

**JUDGES AND JUDGEMENTS OF SHARI'AH COURTS IN ZAMFARA
STATE: ANALYSIS FROM ISLAMIC PERSPECTIVES**

BY

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APPROVAL PAGE

This research work has been thoroughly read and approved as having satisfied the requirements for the award of Bachelor of Arts (B.A Hons) Degree in Islamic Studies.

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DEDICATION

I sincerely dedicate this work to my lovely father late Malam Abubakar Abdullahi, And to my mother Hajiya Hajarah Haruna.

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In the name of Allah, the Most Gracious, the Most Merciful. All praise is due to Almighty Allah, the Lord, Cherisher and Sustainer of the Universe. I am grateful to Allah for sparing my life and giving me the opportunity to undertake this research work.

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CHAPTER ONE: GENERAL INTRODUCTION

1.1 BACKGROUND OF THE STUDY

In The name of Allah the most beneficent the most merciful. All praise is due to Almighty Allah the Lord of the world may his peace, mercy and blessing be upon His Noblest prophet Muhammad (S.A.W), his family, his companions and those who follows them with righteous deed till the day of judgment. It is a well known fact that Islam is a complete way of life that encompasses all aspects of

Muslim endeavour of which judicial processes is a type. In this regard Allah the Almighty says:

--- We neglected nothing in the Book¹

It equally means a total submission to the wills of Allah the Almighty. This submission should be a continuous act until death. Allah says:

---And worship your Lord until those come to you the certainty (i.e. death)²

Shari'ah has been described as "corpus Jurist in Islam" in other words it is a collection of laws³ it distinguishes between what is Halal and Haram (lawful and unlawful), as well as punishments and rewards of rightful and wrongful actions. It is a path through which mankind reaches a mutual existence with God, Himself and rest of mankind.⁴

Glorious Qur'an and sunnah are the two primary sources of shari'ah, once any law contradicts the above two primary sources of shari'ah such a law is regarded as null and void to the extent of its inconsistency. In fact it carries no weight in Islam and should be done away with.

Allah says:

Then We made for you law, follow it and do not follow the fancies of those who have no knowledge.⁵

Islam as a religion, comprehensively deals with all aspects of life. Its rules and regulations are based on the commandments of Allah as contained in the Glorious Qur'an and sunnah of the prophet Muhammad (S.A.W), every Muslim is under any

obligation to run his entire life in accordance with the teachings of the Glorious Qur'an and sunnah of the prophet Muhammad (S.A.W).

The Judicial system of Islam is a system which aims at deciding between litigants justly with the aim of settling their disputes in accordance with the injunctions of the divine law.⁶

All messengers of Allah (may the peace and blessings of Allah be upon them all) were sent as teachers, messengers as well as judges. For example prophet Dawud and Suleiman gave judgment to the concerning the field.

Allah Says:

And remember) David and Solomon when they gave judgment in the case of the field in which the sheep of certain people had pastured at night and we were witness to their judgement⁷

And we made Solomon to understand (the case), and to each of them, we gave good judgment and the knowledge⁸.

The above verses pointed out the duties of Judge (Qadi) are obligations that must be carried out by the entire society. But if some members of the society carryout this duty, it is sufficient for everyone, if everyone neglect it, then every one in the society would be regarded as having committed sin⁹.

The work clearly shows the geographical location of zamfara state, the History of Zamfara state the genesis and development of Islamic courts, historical development of Islamic courts from the Prophet's period to date. The work, at the Judicial principles as enunciated y caliph Umar bin Al-Khattab (R.A) the second caliph.

The work also tries to show the historical development of shari'ah courts in Zamfara state, establishment of shari'ah courts in Zamfa state and other related issues.

The purpose upon which this work is based was the need to draw the attention of the people to the challenges that face them as far as this phenomenon is concerned. it is against this background that I feel it as a heavy burden upon myself with the little knowledge I have to bring into light the duties of the state and courts administrators towards dispensation of justice in line with the teaching of Islam (by following the glorious Qur'an, sunnah of the prophet (S.A.W) and imitating the administration of the four guided caliphs, visa-viz the duties of the followers is to abide by all the rulings and verdict they gave, in as much as they do not contradict the teaching of Islam.¹⁰

Again to understand what a court is, various definitions were provided to serve the purpose.

Section 2 of the evidence act defines a court to include all Judges and magistrates and except arbitrators, all persons who are legally authorized to take evidence: it is also seen as a place for the settlement of dispute between individuals or between organizational and individuals and or authorities and to further execute the judgment it delivers in accordance with the principle of natural justice, equity and good conscience enshrined by the law.

Similarly, it is not free from doubt whether all the judges of the shari'ah courts are especially trained men who are vast in clowned of shari'ah and righteous in character as well as Gidfearing that are the basic requirements for the appointment of Judges. In addition the judges should bear to tell Allah on why they accept the post

knowing fully that they cannot discharge the duties properly. The Noblest prophet (S.A.W) said that:

(one who is given this responsibility to be a Qadi (judge) as if he is slaughtered without a knife¹¹.

The above hadith signifies that, if one accept the post of a judge while he knows that he is incompetent or competent but follows his personal caprices and whims thereby adjudicating in total disregard and contradistinction of pure sources of shari'ah then such a person, as exemplified above, resembles the one that is slaughtered with out a knife.

Therefore, it I always preferable for one to refuse to accept the office is he knows that he can not discharge such duties properly, or he is even incompetent.¹²

1.2 SCOPE AND LIMITATION

The scope and limitation of this research work is only going to analyse the judges and judgments of shariah courts in Zamfara state from Islamic perspectives. It should be pointed out that the Judges (Qadi) performs on important role in Muslim society, therefore requirements for the post are carefully discussed. It was considered a religious duty for the authorities to provide the administration of Justice through the appointment of Judge (qadi). Hence, the research will limit itself to the administration and application of Shari'ah in Zamfara state.

1.3 SIGNIFICANCE OF THE STUDY

The research works brings enlightenment on the relevance importance and variability of the Judges and judgments which encompasses what is known as shari'ah courts that act as the best legal system for mankind. By so doing we will come to realize the concept of judges and Judgment in the shari'ah courts.

The research topic is important to the Muslim and non-Muslim alike this is because it will be helpful to both of them in proper evaluation of the various mechanise employed as well as the principles behind various provision of the Shari'ah to the mankind.

It will give an insight to the present form (position) that judges and Judgments hold in the eyes of the populars right from the laymen upto the professionals.

In general, the study will add more light to the existing stock of knowledge and to carry works available on the shari'ah courts in Islamic perspectives as a whole let alone judges and judgments.

By creating awareness of the subject, the professionals and the laymen are expected to be alert with the concept that give a very good sense of responsibility to each of them as ordered.

1.4 STATEMENT OF THE RESEARCH PROBLEM

For any research embarked upon, there must have been a foresight of the giants to be expected. Since the formal implementation of shari'ah legal system in Zamfara state in

the year 2000, people are alerts to see the changes brought upon by the said Shari'ah particularly as it affects the court administration.

However, the first problem I noticed as far as this issues is concerned was the inability to execute punishment after passing judgments (conviction). Also the hiding formula of the ruling class toward this shari'ah is another problem. In the first place they are not serious with the shari'ah, because they are fully aware that shari'ah disturbs their immoral behavior and mismanagement of public funnels.

Another important factor was the issue of appointing the judges. The proper channel of appointing knowledgeable, capable, competent and qualified people is lept. Many of the judges are only holding a certificate of Higher Islamic studies (H.I.S) from Sheikh Abubakar Gummi memorial college, and the higher qualification is a certificate of a diploma in law, shari'ah and civil law of the state college of legal and Islamic Studies or Diploma in hausa, Arabic and Islamic studies in Sokoto State polytechnic. All the above mentioned certificates are not enough to qualify one as a competent judge.

1.5 AIMS AND OBJECTIVES

As far as this research work is concerned, certain aims and objectives were targeted. One, to enlighten the Muslim Ummah and the ruling class in particular on the rights of Allah upon them as it affects their Shair'ah.

It is also aimed at giving my own contribution, as Islamic studies students, to the existing materials and literature available in the area of courts administration, in

addition to the above the work served as a challenge to all Muslim to regard Shari'ah as not only the Court affair, but individual right and responsibility to safeguard.

1.6 METHODOLOGY

This work is largely based upon the series of Oral interviews and materials collected from different people ranging from learned lecturer, Ulama down to judges and litigants where necessary, as a primary sources of this work.

However, library can also be regarded as second source. There in, references were made to some materials like books and Journals dealing with the subject matter. By this, we can concluded that, the work is a combination of both field and library.

1.7 STRUCTURE

Chapter one is little general introduction and it contains the Background of the study, it also contains scope and limitation, significance of the study, statement of the research problem, aims and objectives, methodology, structure, literature review and end notes.

Chapter two also encompasses the Geographical location of Zamfara state, and History of zamfara state, Historical principles as enunciated by caliph Umar bin Al-Khattab (R.A), characteristics of Islamic courts and end notes.

Chapter three equally contains the establishment of shari'ah courts in Zamfara state, shari'ah Courts in Zamfara state, Shari'ah implementation in Zamfara state, the administration and application of shari'ah in Zamfara, composition of shari'ah courts, Qualification of Judges, appointment of Judges and end notes.

Chapter four items like code of conduct for Judges, Judges and judgments of Shari'ah courts in Zamfara state, cases that Shari'ah Courts entertained in Zamfara state, Bail and appeal, lawyers appearance before shari'ah courts, summary, conclusion, end notes.

1.8 LITERATURE REVIEW

Literature review deals with the Shari'ah as a legal system would be reviewed. This in the Glorious Qur'an and Ahadith of the prophet (S.A.W) urge Muslims to take shari'ah as their legal system to be used in directing their lives and activities Almighty Allah Says:

Then we made for a law so follow it and do not follow the fancies of those who have no knowledge.¹³

Therefore, every Muslim who surrenders himself whole heartedly to the wills of Allah must follow the Shari'ah of Islam. Other wise he is not a true and sincere Muslim.

However, the two main sources of Islamic law are the Qur'an and sunnah of the prophet (S.A.W) Different kinds of information have been revealed in the Qur'an and explained by prophet (S.A.W) According to the glorious Qur'an, the hand of the thief must be amputated following the verse of the Glorious Qur'an. Allah says:

As for theif both male and female cut off their hands punishment by way of example from Allah for their crimes¹⁴

Shari'ah (Islamic law) also ensures the establishment of Justice among the people, it curtails an unjust oppression and punishment.

The following books are relevant to this research and therefore would be consulted one of such books is “*Al-WAJIR FIL AL_FIQH AL_SUNNAH WA ALKITAB AL-AZIZ*”. This book provide for the code of conduct for Qadi (Judge) and many other things related to this subject matter. As for the code of conduct, the author said: “It is prohibited for judge (Qadi) to take a gift and let alone bribe” this means that, a judges (qadis) is not allowed to take gift except from his relatives who did not present gift except from his relatives who did not present gift to him so as to judge in their favour.

Criminal procedure code synoptic guides, 2004, is also consulted for the reference of constitutional evidence of Shari’ah courts.

Zamfara state of Nigeria. Shari’ah criminal procedure code, law 2000. As reference for historical establishment of shari’ah courts in Zamfara state.

1999 constitution of the Federal republic of Nigeria and fundamental Right, as reference for the qualification of Qadi of Shari’ah courts.

For instance, it is said that: “A person shall not quality to hold an office as Qadi of shari’ah court of a state unless:

He is a legal practitioner in Nigeria and has been so qualified for a period of less than 10 years and has obtained a recognized qualification of Islamic law from an institution acceptable to the National judicial council...¹⁵

“Al-Qawanin al-fiqhiyyah is another material book which provides many things relevant to my work, such as qualification of Qadi (Judge), code of conduct for Qadi and many other things.

The article titled “the essential of good government and the obligation of leadership” by Shehu Uthman bin Fodiyo. Nigeria world. Com/299.hym. is also used in this work. This article provides:

The caliph must be an his guard and refuse to listen to mischief makers. He should keep his voice law and watch what he say, he must never lie and never break promise. If he makes a law he must ensure it is kept.¹⁶

It is relevant to this work because all what he said are required to be performed by Qadi.

- 1- The Islamic and challenge of history. Ideas, policies and operation of the Sokoto caliphate.
- 2- The Journal of Islamic and comparative law.
- 3- Wikipedia.org/wiki/Qadith history.
- 4- Islamic law in Nigeria, monograph series no,1 law years, legal education and Shari’ah courts in Nigeria
- 5- The development and application of Shari’ah in Northern Nigeria: issues and challenges.

A Muslim leader must do justice according to the Qur’an and sunnah. If he does so, a person against whom judgment is given will accept it.

Finally, sake Adegbite in his book titled:

“gwandu Emirate in the 19th Century with special reference to political reality” has said:

The caliph had the power to appoint Judges in the caliphate and also he was the head of judiciary. In many cases court proceeding took within the palace of the emir particularly whenever he was present, and he had appeal from other courts within his emirate.¹⁷

END NOTES

- 1- Qur'an, 6:38
- 2- Qur'an, 15:99
- 3- B.A Lemu, *Islamic studies for Senior Secondary Schools*, Islamic Publicaiton Bereau, Zaria, 1989, P.3
- 4- Ibid
- 5- Qur'an, 45:18
- 6- A.I. Doi, *The Basic of Shari'ah, centre for Islamic law*, Ahmadu Bello University, Zaria, 1982, P.2
- 7- Qur'an, 21:78
- 8- Qur'an, 21:79

- 9- Sharatudeen al-Nawawy, *40 Al-Nawawy collection*, np, 2011, Hadith no.28
- 10- A.M. Muhmud, *the Approach of the Muslim law al-kutub al-Ilmiyya*, Lebanon, 2007, P.444
- 11- M.M, Khan, *Translation of Sahih al-Bukhari*, almunawara, Islamic publication, 1977, Vol. 9 n0.157
- 12- A.I. Doi, *Shari'ah Islamic law*, np, nd, P.11
- 13- Qur'an 45:18
- 14- Qur'an 5 :38
- 15- S. Adegbite, *Gwandu Emirate in 19th Century with special Reference to political reality*, np, nd, P.57
16. *1999 constitution of the Federal republic of Nigeria and fundamental right.*
17. *Nigeria world.com/299.hym.nd,np.*

CHAPTER TWO: HISTORICAL BACKGROUND OF ZAMFARA STATE

2.1 GEOGRAPHICAL LCOATION

Zamfara state lies between latitude 11⁰ and 13⁰ East and longitude 6⁰ and 7⁰ north. It shares border with Sokoto state to the north kebbi and Niger state to the West. Katsina state to the East and Kaduna state to the South. The climate in the area is dry season including harmattan which is takes place from the month of November to May.

The rainy season from June to October the average amount of rainfall in the area fluctuates between thirty six (36) and Eighty (80) millimeters in a year.¹

Zamfara is part of the geographical belt of precombrained from as a result of metamorphosis and igneous activities the granite parts came in two groups. The younger and the older, the older granites are more widespread. They formed smooth rounded hills which characterized the landscape of the basement complex area. The hills rise up to 200 meters. A good example is found in Kotarkoshi and Tsafe. The younger granites which are Jurassic age intrude in to the basement complex in the plateau area as in Yandoto. There are tertiary sediments which have resulted in limestone day graphite, stone and coal.²

Zamfara state vegetation is a hybrid of southern Sudan and Northern Guinea Savannah.³

2.2 THE HISTORY OF ZAMFARA STATE

Zamfara was one of the seven Northern states of the central Sudan. In account recorded by Muhammadu Bello and other Islamic historians. The area called Zamfara is one of the famous Bilad al-Sudan in which Islam flourished. The Bilad al-Sudan later included Kano, Rano, Daura, Katsina, Zaria, Birnin Gbiri, Kebbi, Zamfara, Yauri, Nupe, Girma, Borgu and Yoruba.

The provenance of the people of Zamfara has not been clearly recorded. But according to some local historians, the Zamfara people like so many other kingdoms of the central Sudan, came from the east through Borno and what is today known as

Kano. They were farmers as well as hunters. The zamfara people were and still called “*Taubasai*” or tribal cousins of the Kanawa (The people of Kano).⁴

Zamfara kingdom was from the 15th century, one of the kingdoms that made up the old Sokoto caliphate, the kingdom extended from the River Rima and even in the North dam to river Kano in the south west. By the first decade of the 16th century, Zamfara kingdom has become a flourishing dynasty operating system under the *Sarauta* system of sarkin Zamfara.⁵

The first Zamfara settlement which was only a small of land was *Dutsi*, an area within Zurmi district. History has it that they were seventy seven in number and for seven years they lived without a ruler. Then they appointed Dakka to be their leader. And later, in memory of this first ruler, every Zamfara king was known as *Ginshikin Gidan Dakka* that is “Pillar of the house of *Dakka*”. After *Dakka*, there were four successive male kings Jatau, Jimiro, Dakka, kaikai-Kaikai, Bakarakar Dudu-fomi and a queen Yorgoje. It is said that these early six rulers were against in build (Samudawa). They had on unusual strength physical and impressive ability to rule justly.⁶

“Queen Yorgoje ascended the throne in 1320 and reigned till 1350. She relocated the capital of the kingdom from Dutsi to a more strategically defensible area at Kuyambana, a thiddy forested zone is today believed to be somewhere in Dansadau.”⁷

‘Yorgoje was a very powerful ruler and her reignited in an area of space and progress to the kingdom the remains of that destiny is today a tourist attraction. The

origin of the name “Zamfara” is told differently by different local historians. But they are mostly on the lips of people is the story of a beautiful princess, a daughter of Sarkin Gobir whose name was Fara. Fara was married to a man she hated. On the hateful day, she ran away from her husband’s house and entered a bush where she eventually got lost.⁸

A group of hunters found her in the bush and took her to their home at Ungawar maza near Dutsi. Fara felt comfortable with the hunters and preferred to live with them. And so for years, she lived with the youngest of the men and eventually became pregnant by him. The hunters decided to take her home they asked her the name of her land she replied that it was “Gobir”. Few months later the hunter took Fara back to her home where she gave birth after fourteen days. The king of Gobir was very pleased to see his daughter safely back home and therefore as a gesture all the land in Ungawar maza to the bank of River—they called the land “Kasaw Mazan ferra” i.e (The land of men of Fara) and so Birnin Zamfara came into existence, the Birnin Zamfara was built over the place where Fara was originally found by the hunters.⁹

During the time of Bukumku, the seventh ruler of Zamfara, the kingdom moved to a new site, the town is at present is a local government in Sokoto state. The place was subsequently developed into a great walled town. It was said to have had fifty gates (the remains of which are still visible near the eastern entrance of Isa town. A total of twenty rulers succeeded Bukuku in Zamfara before the turn of the century.¹⁰

By the sixteenth century, Zamfara became very powerful extending its territories west-east and northwards to occupy Zabarma, Katsina, Kano and Adar.

As a state, Zamfara attained great fame, became populous and popular in the surroundings. Its history has characterized by the exploits of gallantry and patriotism. In the 16th century, nations and states were in a state of belligerency and existed only on account of their military power and economic viability. In that era, a nation would flex its muscles for the purpose primarily of expanding its territory. Zamfara as a land of warriors began its successful attack on the then prosperous Kano. In the third quarter of the 17th century, series of successful attacks were initiated by the then Sarkin Zamfara Abdul Naba Wanka. His son Sarkin Zamfara Suleiman who later succeeded him made a similar successful attack on Kano around 1670's. The victories were marks of glory and manifestation of emergent committable military might of the Zamfara. By 17th century, Sarkin Zamfara Abdu Dansulaiman undertook the task of expanding Zamfara area to cater for the rising volume of population.¹¹

Another achievement of Zamfara was over Kebbi army in 166's and early 1670's during the reign of Suleiman Dan Abdu Nabawanka. They emerged their forces with that of Adarawa to fight against Kebbi. After the death of Suleiman Dan Abdu, his successor Sarkin Zamfara Muhammadu Namaska came to the throne and took over from where he stopped and carried on the fighting against Kebbi in 1670's and 80's. In 1715, the victory over Kebbi was finally consolidated during the reign of the 36th Sarkin Zamfara, Sarkin Zamfara Babba. The metamorphosis of Zamfara to a greater status of an empire was somehow started by the rise of Gobir empire. In the 1739's Gobirawa began to steadily emigrate to Zamfara. At first, they were resisted, but later out of compassion by the ruler Sarkin Zamfara Yakubu Danfalkaki. They were allowed to settle on the area of Alkalim Zamfara as peaceful farmers. Initially,

they respected and became loyal and faithful subjects but later they turn other way round by refusing to show loyal to the king.¹²

By the 1740's the Gobirawa on the northern boarder were on a friendly affiliation with the Sarkin Zamfara Malam Dansabuwa. However, they tendency for aggression became apparent in their interest to expand their territory and the good relationship that had earlier existed was disrupted owing to the ingratitude manifested in their attitudes. They launched offensive attacks against Zamfara, kebbi, Adar Zabarma, Borno across the Niger and to the South as far as Ilorin.¹³

As a result of Gobirawa attack this powerful kingdoms which collapsed when its capital Birnin Zamfara was destroyed by their forces in the second half of 19th century. This led to the yet another re-location of the kingdom by 1717, Kiyawa flourished and became an other capital of Zamfara state. Zamfara and Katsina joined forces to fight their common enemy Gobirawa with the succession of Bawa Jangwarzo as the Sarkin Gobir, fighting became intense and fierce.¹⁴

Again, the second capital of Zamfara was lost to Gobirawa. Sarki Abarshi Moriki's son who succeeded his father in to the throne as Sarkin Zamfara moved his people to another capital called Banga. But not with standing, the Gobirawa went forth with their massive attacks on zamfara especially during reign of Sarkin Gobir Nafata in 1803.¹⁵

With what is in the heart of Zamfarawa for the ingratitude of Gobirawa and the burning desire for self re-assertain and re-establishment of kingdom Sarkin Zamfara

Abashi mobilized formidable force and Banga to a strategic location at Sabon Gari 20 miles north of Anka in 1805.¹⁶

Finally, sultan Bello permitted Sarkin Zamfara to finally leave, Sabon Gari and settle at Anka. The 47th Sarkin Zamfara Dangad who succeeded Dan Bako transformed the bush area of Anka to a more cozy residential town.

This is how Anka became the final capital of Zamfara Kingdom.¹⁷

2.3 HISTORICAL DEVELOPMENT OF ISLAMIC COURTS

The absolute knowledge which is required to lay down a path for human life is not possessed by any group of people. In the words of sayyid Qutb, they are equipped with nothing but fancies and ignorance when they undertake the task which is no concern of their and does not proper belong to them. They claim to one of the properties of divinity is a great sin, and great evil.¹⁸

So, Shari'ah literally mean "the way to a watering place". It is the path not only leading to Allah the most High, but the path believed by all Muslims to be the path shown by Allah, the creator Himself through His messenger Muhammad (S.A.W). In Islam, Allah alone is the sovereign and it is He, who has the right to ordain a path for the guidance of mankind.¹⁹

Prophet Muhammad (S.A.W), was the greatest epitome of Islam. The religion of Islam was sent through him with the establishment of Islamic community in Madinah, an agreement was quickly reached between the Muslim and non- Muslim living in Madinah and its territory. Part of the agreement was that, prophet

Muhammad (S.A.W) should be the head of the state and the head of government, and in the event if any dispute or disagreement arising between individuals and or group which cannot be settled, then it should be referred to the noblest prophet (S.A.W) for judgment. Similarly, it was agreed to regard respect and recognize the rights and dignity of all citizens Muslim or non-Muslim. These rights include protection of lives and properties, protection of religion among others. If at any point, one interferes with one's right or property, the noble prophet is the judge to administer justice.

Once again, when the Prophet (S.A.W) was delivering the farewell pilgrimage, he delivered a sermon which is full of religious teaching and injunctions. He is reported to have said:

Oh you people, listen well, for I do not know whether I shall be among you here next year. Oh people, it is prohibited upon you blood of your brothers and their properties up to the Day of judgment. Among you whoever is entrusted with a trust should return it to the rightful owner. Never do injustice and do not let anyone cheat you. Besides, there is a right of you upon your wives and visa-viz. A Muslim is a brother to fellow Muslims. It is not allowed upon Muslim to collect anything from somebody without his personal will and consent-----²⁰

This, in addition to Prophet's actions, laid a foundation stone to Islamic legal system and principle governing it. The period also marked another evolution in the history of courts in Islam. The companions who were the repository of Sunnah, the second best primary source of Islamic law, had seen the Prophet (SAW) deciding

cases of various natures and degree of compulsion and have therefore, (though not supreme and absolute), Judges as well as jurists throughout their period²¹.

The remarkable event in the history of Islamic courts in the period of the companions was for the first time in the history of Islam, the ESTABLISHMENT OF COURTS SEPARATE FROM THE PALACE IN THE REIGN OF THE CALIPH Umar bin al-Khattab (R.A). Before them, in the period of the Prophet, the Prophet was the leader and the judge though he appointed governor to other places to govern and judge like Mu'adh bin Jabal and others. His immediate successor Abubakar (R.A) was also a leader as well as a judge, but when Umar assumed office, he found it unbearable to judge to represent him and reduce his burden to leadership. In appointing them, he considered their qualities which include knowledge of Shari'ah, reliability, capability and eligibility among other things. He appointed for instance, Abu Darda'i to stay with him in Madinah, *Shurah to Basrah*, Abu Musa al-Ash'ari to Kufa. The guide of administrating courts at that time was Qur'an and Sunnah. Therefore, they decided cases in the light of the Glorious Qur'an and the Sunnah of the Prophet (S.A.W). Although it was argued that, most of the laws were neither contained in them, probably because Allah did not want to give much laws, but wanted to leave much laws to be made by man himself guided by the Divine revelation²².

Allah Say:

O you who believe, do not put questions about things which if declared to you may trouble you. And if you question about them when the Qur'an is revealed, they shall be declared to you.....²³

Out of hundred of civil and criminal offences, only six had been dealt with in the Qur'an and the sunnah on the civil side and the principles relating to marriage, dowry, diverse and inheritance.

This practice went up to the fourth Caliph Ali (R.A) for example, Qadi Shuraih decided a case between caliph Ali and a Jew as follows:

Ali lost a gown of Mail belonging to him on his way to Siffin, after the termination of the war, Ali returned to Kufa, and there he saw his amour in the hand of a Jew and he said to the Jew. "this amour is mine; I neither sold it nor gave it away". The Jew answered, it is my amour and in my possession'. They both went to the court of shuraih. Shuraih said "proceed oh prince of the faithful" and he said yes this amour which is in the hand of this Jew is my amour- I neither sold it nor gave it away. Shuraih said what do you say oh Jew? He replied, it is my amour and in my possession, then shuraih said yes, hast then any proof, oh prince of the faithful? He said, "Kambar and al-Hassan are witnesses that the amour is mine. Shuraih replied "the evidence of a son is not admissible in favour of a father" the judgment was given in favour of the Jew. At this the Jew exclaimed, "I testify that there is no God but Allah, and I testify that the Prophet Muhammad is His messenger and that this amour is thy amour".²⁴

During the Umayyad caliphate, there was no regular court of appeal, but the board for the inspection of grievances, *the Rad al-mazalim*, effectually controlled the judiciary. Its function was to set right cases of miscarriage of justice. It is that on the analogy of *Khulafa al-rashidun* who used to hear complain and decide cases, the Umayyad Khalifa Abdul-Malik inaugurated this board and he himself heard appeals.

The used to refer intricate law points to the famous Qadi, Abu. Idris Auzi. After him Umar bin Abdul-Aziz was particularly in personal receiving complaints and hearing appeals. the latter Umayyad Khalifas also followed this practice.

Courts and Qadis, during the Abbasite Khaliph and their functions were in general similar to those of the Umayyad Khilafa, the institution of *Rad al-mazalim* was also in vogue. Of the Abbasite Caliphs notably Mahdi, Hadi, Harun and Mamun generally received complaints and heard appeals to set right cases of miscarriage of justice. The last khalifa, who kept up these practices, was Muhtadi, Later on a special officer known as the president was appointed to hold and preside at sittings of the *rad al-Mazalim*.²⁵ A *wazir* with unlimited powers could preside but a wazir or governor with limited powers had to be specially nominated as president by the Khalifah. The position of the president was higher than that of the Qadi, the later was under the supervision and control of the president. The president's court consisted of court, Judges and men learned in law to solve difficult law questions, secretaries to record minutes of the work and recorders to carry out the directions of the court. It was in about 1176 C.E, that Nural-Din Mahmud who was a great jurist and a traditionalist established a high court of justice called the '*DAR Al-ADL* and he organized and greatly improved the judiciary.²⁶

Beside these, the chief duties of the president were as follows:

1. To supervise and control waqf properties
2. To execute judicial decisions which the Qadi was powerless to enforce.
3. To maintain public order and protection of Divine services and prayer.

4. To supervise the officers in charge of chancery and finance and taxes and to investigate in to the oppressive conduct of executive officers and there by initiate proceedings ex-officio.

This practice went up to the third period of the history of Islam, the period in which four Imams of Islamic jurisprudential schools lived and worked. It should be noted here that, in spite of the differences of opinions on so many law points, all the four schools of law are recognized to be madhabs by the followers of every one of them. Accordingly, a Qadi (judge) of one school of law is permitted to decide a case according to any one of the four madhahibs if it is described under the particular circumstance of the case.²⁷

At this juncture, it is worthy to note that, it is not free from doubt whether this Imamate holds a court, but it is strongly believed that most of them due to their in-depth knowledge of Islamic law were offered the post of a judge which they rejected. For instance, Imam Abu Hanifah was offered the post by Sultan al-Mansur of the Abbasid dynasty, but he rejected. For this reason, he was imprisoned but allowed to attend to his student.²⁸

The remarkable achievement recorded in this period was the recognition and application of other sources of law in addition to the Qur'an and sunnah, in the name of secondary sources of Shari'ah. They include the use of ijma (the consensus of the sahaba), the use of Qiyas (analogical deduction) among others. Similarly, the first book on Islamic legal system was written during that period by Imam al-shafi' called "*Al-Umm*".²⁹

2.4 THE JUDICIAL PRINCIPLES AS ENUNCIATED BY CALIPH UMAR BIN AL-KHATTAB

According to the available historical material and latest research findings, ‘Umar, as caliph, wrote about 425 letters to his provincial governors, Judges, army commanders, notables of big cities, leaders of different region and some of them to the Roman Emperor. Abu Musa al-Asha’ri received about seventy of these missives, the highest number received by any of Umar’s officials. A comparative study of letters written by the Caliph shows, and that is also the view of ibn al-jauzi that those addressed to Abu Musa are the richest in substance. They discuss more important topics-judicial, legal, administrative, moral and political and contain a variety of elaborate discussion³⁰.

The most important and the known of all these letters is the one which Umar addressed to Abu Musa Al-Ash’ari according to Ibn al-Hadid al-Nuwayri and Ibn al-Faqih, Abu Musa was then governor and the chief Justice in Basra, one of the most important provinces of Umar’s caliphate.

It is important to note why Umar selected Abu Musa out of all the distinguished governors and judges serving under him to receive his famous instructions on Judicial principles and procedure. The answer is not far to see. Abu Musa after his conversion in the time of the Prophet (SAW), constantly remained one of the distinguished men of state until and during the time of Umar. There is evidence that he was one of the senior and respected companions of the Prophet (SAW). The Prophet himself chose him for a high office in Yemen then Umar selected him as one of the experienced and tried men of his age, one who was well-known for his political sagacity, Judicial insight and moral integrity. This is why he was given the charge of the two new key cities of Kufa and

Basra at different times. It is a unique in that period. His continued popularity, moral and intellectual virtues obviously made him the fittest person to receive the special attention of the caliph, who conveyed through him a set of important principles on judicial practice and organization to the people of Iraq. Brief letters of the same kind were also addressed to other governors and judges, but complete and detailed instructions were issued only to Abu Musa, because he could understand and practice them better.

The memorable letter of Sayyidina Umar (R.A) written to Abu Musa on the eve of his appointment as Qadi (Judge) outlines the functions and responsibilities of a Muslim judge and is equally relevant even today. Among other things he said in the letter:

Try to understand the depositions that are made before you. Because, it is useless to consider a plea that is not valid. Consider all equal before you in the court and (consider them equal) in giving your attention to them, so that the highly placed people may not expect you to be partial and the humble may not despair justice from you. The claimant must produce evidence. An oath must be taken from the defendants. It is permissible to have compromise among Muslims, but not an agreement through which haram (unlawful) would be turned to Halal (lawful) and vice-versa. If you have given a judgment yesterday and to day you may arrived to the correct opinion upon re-thinking, you must not feel prevented from retracting from your first Judgment because, Justice is primeval, and it is better to retract than to continue in error. Use your own individual judgment about matters that people and about which neither an answer is found in the Qur'an and sunnah. Know the similitude and weigh the issue accordingly. (here Abu Musa is asked to use individual Judgment and arrived to a logical conclusion through the use of Qiyas and Ijma). If one brings a claim, which he may not able to prove, decide a time-limit set (by you), you should

allow his claim, otherwise you are at liberty to give judgment against him---- Good bye.³¹

The teachings of this letter are numerous particularly to the rulers and judges. The letter guides judges as to the manner of establishment of justice and responsibilities of the rulers. But unfortunately, the deeds of our present rulers are nothing but a total modification if not contradiction of Islamic law. It is therefore necessary for the rulers and the judges in particular and for every Muslim in general to put in mind the teachings of Qur'an and the sunnah, so as to achieve worldly gain as well as that of the hereafter.³²

2.5 CHARACTERISTICS OF ISLAMIC COURTS

When caliph Umar bin Al-khattab (R.A) appointed Abu Musa al-Ashari as a judge to Kufa, he wrote a letter to him which was latter circulated to all judge principles and guidance for the proper administration of justice.

Umar (R.A) warned them on the dangers of any act that will not augur well for Allah and His Messenger (S.A.W). Like injustice, taking bribe among others. He concluded the letter by citing a verse from the Glorious Qur'an which read thus:

---when you are judging between people judge (between them) with justice---³³

It is therefore, understood that Islamic courts should possess qualities and characteristics below:

1. Equality before the law

2. Justice

3. Judicial independence.³⁴

1- Equality Before The Law

This refers to the equal treatment of all parties by the court irrespective of their status, position in power and or sex.

It also includes indiscrimination by virtue of closeness of whatever degree or hatred of whatever nature by the court to any of the party or parties. This doctrine as it is understood today is the key principle in the dispensation of justice in line with Islamic teachings and injunctions. Allah made it clear in the Qur'an, pertaining the issue of the equal treatment where he said:

O you who believe, conduct yourselves with justice and bear the allegiance before Allah even through it be against yourselves, your parent and or your kinsfolk. Whether he is rich or poor. Know that Allah has better right over both. Therefore, follow not the law of desires, that you may be able to act equally. And if you conceal truth or evade it, then, remember that Allah is well-aware of what you do.³⁵

This warning was given to the effect that concealing the truth upon a ground of whatever degree amount to a great sin. Like wise giving fair and equal treatment to all people poor or rich, ruled or rulers, Muslims or non Muslims is encouraged. In passing Judgment, a judge should not unjustly incline to any party no matter the degree of closeness.

He should consider all equal before the law as did the noble Prophet (S.A.W) in the case of mat'ama and a Jew.³⁸

Still on the issue of equality before the law, Umar bin Al-Khattab (R.A) was reported to have dismissed a judge from an office on the ground of deliberate misjudgments of a case. This treatment enjoined in Islam is not limited to Muslims only, but it is extended to all classes of people and other living creatures.³⁷

2- Justice:

The most controversial area in the field of court administration is the question of justice. In many places in the glorious Qur'an, Allah called upon people to establish Justice and goodness.

WHAT IS JUSTICE?

People differ on what justice is. To some, justice means leaving things the way they are and how they suppose to be. Anything other than this is injustice. Others say that, justice is to get what is due to one. According to this view any excess or shortage of what is due to one is injustice.³⁸

Islamically speaking however, justice means putting something in its rightful position or place, anything contrary to this is injustice. The issue of injustice or justice is a problem to any court. This is because of the fact that, most of the people nowadays are not Allah fearing.³⁹

Above all, man is man, very difficult to understand. In any case, and in whatever circumstance, justice must be maintained. But are thing which is common now is that, loser of any case has the judge to blame rightly or wrongly. A good example is our politics today. Whenever one loses, he would say that elections might

be full of irregularities, rigging and malpractice among others, which may be true or otherwise. Nevertheless, it is strongly that because of one reason or the other, judges at times operate not in conformity with equity hence providing good Avenue for perpetration of injustice in the administration of justice, therefore, a judge must be upright to the care. Nothing should distract his mind from the path of justice. In case he does wrong thing, he is not only responsible, to the people, but also to Allah. The noble prophet (S.A.W) was reported to have said that no Judge shall pass judgment between two men while he is angry. As Allah dispenses justice among His subjects, a judge must, under any circumstance, Judge cases that are brought before him with Justice. That was why the noble prophet (S.A.W) said:

one who is made a Qadi (Judge) to administer Justice among the people as if he is slaughtered without a knife⁴⁰

Yet, he said in another hadith:

The previous nations were destroyed because they left off persons of high rank and punish the poor and the helpless.⁴¹

Under shari'ah, a judge is a judge for every matter, criminal and military. There is no separate court for separate civil, criminal and political departments⁴².

3- Independence Of Judges

This is the third characteristic of Islamic courts. It refers to the degree of independence given to a judge to establish justice and administer it without any fear or favour. Independence of judiciary also implies the status of the judges, their salaries and allowances which should be free from any interference from the executive or

ruling power by virtue of their offices. The salaries are supposed to be paid on special scale, so that the executive arm of the government cannot alter its structure.⁴³

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CHAPTER THREE: SHARI'AH IMPLEMENTATION IN ZAMFARA

3.1 ESTABLISHMENT OF SHARI'AH COURT IN ZAMFARA

Before the advent of colonial rule, Islamic law in its total ramification applied in the Northern Nigeria. The reason for this, according to professor A.H. Yadudu, was that the jihad, a mass religious movement of shaykh Uthamn Danfodiyo of 1804

which revitalized the shari'ah was primarily to displace the corrupt and unjust of the rulers of hausaland and to establish in its stead, a leadership that derived its legitimacy from the shari'ah (Qur'an and Hadith). The aim was to establish a society whose institutions would be shaped in accordance with the shari'ah and to cultivate a cadre of disciples, the flag-bearers, who would submit totally to its dictates.¹

The judiciary system of native courts which existed long before the introduction of British rule have been reconstituted and modernized under status known as area courts law of 1988 under which courts were established for the old Northern states. This law superseded the native courts law 1957 of the former Northern, Eastern and western regions respectively.

The law also provides for the existence, composition and jurisdiction of customary courts in the rest of the country. Shari'ah courts were also referred to as customary courts for the purpose of definition only. This is because, the existing custom and tradition of Northern states at that very time and today is Islamically oriented.²

It should be noted that, the personnel of the court who have to administer justice were drawn from the local people and are largely lay men. But in the Muslim areas of some Northern region, majority of the area court are manned by professional men trained in Muslim law and its administration.

It should be noted that, these courts were established mainly for the administration of customary laws. In the southern part of the country, the court were termed "customary court" while in the Northern state, the term "Area courts" was used

instead. Actually, the system of these courts is not uniform throughout the country. It is very significant to restrict my discussion to the Area courts in Northern Nigeria and Zamfara state as a case study.

The bill to establish shari'ah courts to apply shari'ah legal system in Zamfara state was enacted by the state house of Assembly which was later signed into law by the state Government on 11th February, 2000.³

The law provides necessary change and modification in the old system of courts to suit the current system. The areas affected are the establishment and constitution of shari'ah courts, qualification of a judge, court Jurisdiction and law to govern the activities of shari'ah courts. The law reads:

--- and where as the provisions of section 4(7) and section 6 (4) and (5) of the constitution of the federal Republic of Nigeria, the house of Assembly of the state is vested with powers to make laws for peace, order and good government of the state or any part there of, now therefore, be it enacted by the House of Assembly of Zamfara state.⁴

This law may be cited as the shari'ah courts law 1999 and shall come into operation on 11th February 2000 in part two of the law, are hereby established in the state the following shari'ah courts.

- 1- Lower shari'ah courts
- 2- The upper shari'ah courts
- 3- The shari'ah court of appeal⁵

3.2 IMPLEMENTATION OF SHARI'AH COURTS IN ZAMFARA STATE

The return to civil rule in Nigeria in 1999 beg of the “revival” of the shari’ah legal system in some states of Northern Nigeria. (colonialism bequeathed a “one-legged” shari’ah by its phasing out of Islamic criminal justice system. Thus at the return of democracy, the applicable Shari’ah was limited to personal matters like marriage, divorce, inheritance, custody of children e.t.c and issues of Mu’amalat (i.e transaction).⁶

The section 36(12) of the 1999 constitution clearly made application of Islamic penal law impossible by prohibiting charge or trial of a person accused of on offence under any unwritten law which Islamic penal law was, not being a law made by power conferred.⁷

Barely two months after inauguration, the Governor of Zamfara state in North-Western Nigeria broke the lid by constituting a law review committee to, among others, examine and review all existing laws and edicts to make hem conform with the tradition culture, values and norms of the people of the state. The committee submitted its report and recommended among others, that the shari’ah penal law can “fully” be enforced without offending any of the provisions of the constitution. Armed with the recommendation, the governor set the ball rolling signed certain bill in to law and formally declared the implementation of the shari’ah legal system in the state.⁸

In the end, the Governor, Alhaji ahmad Sani Yarima publicly declared the implementation of shari’ah on the 11th of February, 2000. The fire was thus doused and the shari’ah-loving populace breathed a sigh of relief. The government swung into action. What later came to be known as the Zamfara initiative sparked off debates on

the constitutionality or other wise there of and more importantly galvanized sister predominantly Muslim-populated states in the North in to action.⁹

The state government then wanted a gradual implementation of the law but it was overwhelmed by individuals and Islamic organizations who felt that the matter was being unnecessarily delayed.¹⁰

This administration attaches so much importance to the activities of the Hisbah institution. It finds it to be an indispensable tool for the realization of its set objectives. This the Board was created by the Zamfara State government, Hisbah Board law. It is composed of a full-time chairman, representatives of the shari'ah and Zakkah and representatives of all the law enforcement agencies and security outfit, e.t.c in each village, local Government and senatorial zone, there is a Hisbah committee to ensure a wide coverage. There are established the hisbah corps, eligible to be appointed as justice of the peace, who are under a commander appointed by the governor.¹¹

Their responsibilities as spelt out by section 7 of the law include:

- 1- Rendering necessary assistance to the police and other security agencies especially in the areas of reporting of offences;
- 2- Encouraging Muslim to unite in their quest for justice, equality and enjoin one another to do good and avoid evil;
- 3- Advising against acquiring interest, usury, hoarding and speculations;
- 4- Reconciliation of civil disputes between willing parties; and
- 5- Assisting in traffic control and emergency relief operations.¹²

In fact the Hisbah had plays an important role in the state.

Whatever the efforts of the Government and people of the state, implementation of shari'ah can not be a full one. By our constitution (section 38), one has a fundamental right to change one's religion and under the shari'ah such changes is a criminal offence which may attract death penalty. Any law criminalizing change of religion may, therefore be declared null and void for being inconsistent with the constitution. This explains the conspicuous absence of apostasy (Ridda) on the list of offences in the shari'ah penal code law.¹³

We must return to Islam totally, because its an organic whole (as it has been explained).

We must return to Islam totally, because its an organic whole (as it has been explained).

Finally, the implementation of shari'ah cannot be achieve without using the primary sources of the Shari'ah (i.e Qur'an and sunnah). The prophet Muhammad (s.A.W) said:

I have left two things for you, the Qur'an and its like the (sunnah)¹⁴

3.3 THE ADMINISTRATION AND APPLICATION OF SHARI'AH IN ZAMFARA STATE

The shari'ah is essentially a believer's law in the sense that it is primarily binding on those who believe in it. It coherently combines ethical norms of virtue and vice, good and evil, and represents the standard of judgment for all human actions.¹⁵

The emergence of Sokoto caliphate in the 19th century C.E, gave the shari'ah a new out look altogether in Nigeria, it became supreme in every sphere of life: government, economic foreign policy, Administration of justice and the organization of society. The Sokoto caliphate probably represented the most ambitious (considerable effort) attempt in Islamic history after the first two centuries of Islam, to organize state and society in accordance with the prophetic model and in compliance with the precepts and provisions of the shari'ah¹⁶.

In our contemporary period, the administration of justice in Zamfara state is a full contradiction of the past, who administered their shari'ah based on the system of Islamic law. For example it is stated in the Qur'an that:

The hand of a thief male or female should be amputated¹⁷

To stone to death the adulterer and adulteresses¹⁸

To demand blood money as compensation for the minor injuries¹⁹

It was reported from umm-salmah that, the prophet Muhammad (S.A.W) said:

you bring cases before me for my decision and one of you intend the proofs of the other, and I decided it accordingly on the evidence, but to those in whose favour I give judgment concerning any of the right of his brother, let him, not take it for lonely, cut off for him a place of the fire²⁰

Shari'ah rule with in the Jurisdiction of the glorious Qur'an and Sunnah of the prophet (S.A.W) is that any law that contradict the above two primary sources of

shari'ah, such law is not an Islamic law. In fact, it has nothing to do with Islam. Allah says:

Then we put thee on the (right) way of Religion: so follow though that (way), and follow not the desires of those who know not.²¹

Though, some of the cases that have been presented before the shari'ah courts were dispensed according to the Islamic sources of law, however, the government has turned the system down. In Islam, Qadis (judges) are to be well compensated, so as to protect them and prevent them from the acts of bribery and corruption in Judgment. As soon as these things are provided for them, the Application of shari'ah would be based on Justice, and the judges would be free from corruption.

Government has also contributed in turning down the image of shari'ah implementation and dispensation of justices in courts. For instance, whenever a case is brought particularly capital offence involving one of the royal family members or an important figure in the society, the government do intervened so that such person in question is set free.

The messenger of Allah (S.A.W) said:

The nation that lived before you were destroyed by Allah, because they punished for their crimes.²²

3.4 COMPOSITION OF SHARI'AH COURTS

Shari'ah courts are usually administered by a single judge. Nevertheless, the general nature of the case itself can determine the number of judges to sit and

determine it. Based on this, therefore, two instances can be the increasing in the number of judges to determine a particular case:

- 1- The general nature of the case
- 2- The nature of the court

When a case is brought in the first instance, it is usually presided by the single judge in the lower shari'ah courts, but in the case of appeal, the number of judges will increase to three at once to determine it.²³

Similarly, the complexity of the case may warrant and necessitate the requirement of a Jury to assist the judge before passing the judgement. An example to support this claim was a case brought before caliph Umar bin al-Khattab. One day, a complicated case was brought before Umar involving the distribution of an estate of a woman who died leaving behind her husband, mother, two uterine brothers and full brothers. As a judge, he wasted no time in applying the golden rule there by giving the appropriate shares allocated to the husband, mother and uterine brothers by the Qur'an leaving nothing to full brothers. After Umar (R.A) had taken this decision, some companion appealed to him to reverse the decision and they depended their argument, because to him the companions concerned were neither fighting for social justice nor equity, but simply because most of them belong to this group of full brothers. On appeal, the full brothers abandoned their original contention that they are agnate relation which gave them absolute priority over uterine brothers. And they further argued that as full relations to the deceased and this is enough to put them an equal before the supreme court of caliph Umar²⁴ and said:

Oh commander of peace, supposing our father is a donkey
are we not still having the same mother with the deceased?
We only wear the character of agent with the deceased
through the father.²⁵

Base on this therefore, caliph Umar (R.A) summoned a meeting of the other companions and ignored the golden rule and permitted the full brothers to inherit with uterine brothers.²⁶

3.5 QUALIFICATION OF JUDGES

Qadi is a judges ruling in accordance with Islamic religious law (Shari'ah) appointed by the ruler of a Muslim country. The judgment of a judge (Qadi) must be based on the Qur'an, sunnah or Ijma' (the prevailing consensus of Muslim scholars). The term qadi was used right from the time of the prophet (S.A.W) and remained the term used for judges throughout the Islamic history and the period of the caliphates. While the muftis and fuqaha' played the role in elucidation of the remained the key person ensuring the establishments of justice on the basis of these laws and rules.²⁷

The office of the judge (Qadi) continued to be every important one in every principality of the caliphates and sultanates of the Muslim Empires over the centuries. The rulers appointed Qadi in every region, town and village for judicial and administrative control and to establish peace and justice over the dominions they controlled. The Abbasite created the office of chief Qadi, who acted primarily as adviser to the caliph in the appointment and dismissal of qadi. Later Islamic states generally retained this office, while granting to its holder, the authority to issue appointment and dismissals in his own name.²⁸

The qualifications that a judge must possess are stated in the law. The minimum requirement upon which all the jurists agreed are that, a Qadi has two qualifications, one of which is obligatory and the other is preferable. The compulsory are ten, they are:

- 1- That he should be a Muslim: A justice is a post of binding legal authority; an unbeliever should not be given such authority over the Muslim. Allah says:

Allah will never grant the unbeliever away over the believer²⁹

Moreover, a judge must apply the injunction of the Islamic law and this is in itself a religious act.

- 2- He should be sane: it is not permissible for an insane or mentally challenged individual to hold the position of a judge likewise, a person whose judgment is un-fair on account of old age, or sickness should not act as judge.
- 3- He should be matured
- 4- He should be male: A judge must be male, although there are disagreements among Muslim jurists in appointing a female as adjudge
- 5- He should be free: a judge must enjoy complete freedom. He should not be a slave at all. A slave in the process of regaining his freedom can not be appointed as a judge. If such a person is appointed, his decision will not be binding; the reason is that, a slave does not have complete capacity and free will of himself, so he should not be put in the position of authority over the affairs of others. A slave is liable to work for the interest of his master. Moreover, the judicial post is a position of honour and prestige that must be

able to defer and defer hardneed criminal and deviants. This will not happen if the judge is a slave.

- 6- He should have the ability of hearing: A deaf person may not be appointed as a judge, because he is not able to hear when the parties to a case are speaking.
- 7- He should have the ability of seeing: A blind person may not be appointed as a judge, because he cannot distinguish the plaintiff from the dependent by sight, nor the one admitted another's right not the witness from the one being witnessed or against the person who cannot pronounce judgment and his signs language are not understandable to the majority of people.
- 8- He should have the ability of speaking: A Qadi must be a person capable of speaking. A dumb person is legally incapacitated from being a judge.
- 9- He should be just: justice is one of the obligatory duties commanded by Allah to the believers. Therefore, judgment of an unjust person is null and void.
- 10- He should know what he will judge with: here, a Qadi must have the knowledge of Qur'an, Hadith and ijma' among others. These are the fundamental sources of Islam. A Qadi who cannot understand the case brought to him due to lack of sound knowledge of Shari'ah or a knowledgeable but biased judge. Such persons should not be given the position of the Judge and if he Judges under this condition, his judgement is null and void.³⁰

These are the obligatory qualities that a judge must possess before he deserves to hold the office.

Also, there are some qualities that are preferable to the judges, among these are:

- 1- He should have sound knowledge of the Qur'an and sunnah to the extent that he could make his ijihad in the rules of shari'ah.
- 2- He should have the knowledge of Arabic language, that is essential for judges. With the knowledge of Arabic language, a Qadi can understand the solution of the case and he can easily drive laws from the original sources of shari'ah which are largely written in Arabic.
- 3- A judge should be meticulous in his religion
- 4- A judge should be rich person and if he is poor, an imam or Governor should enrich him.
- 5- He should be patient.
- 6- He should be member of the town that he is judging in.
- 7- He should be well known in his lineage, not a person born through illegal way (Zina), and not a person of li'an.
- 8- He should not be a person who has been punished of a had, even if he had repented.³¹

These are some of what the religion of Islam pointed out about the recommended qualifications of a Qadi (judge).

While in our contemporary shari'ah courts, the qualifications are the same as that of the Islam, except some constitutional modifications made. According to the

1999 constitution of the Federal Republic of Nigeria, a person shall not be qualified to hold the office of a judge of the shari'ah court of appeal of state unless:

- a- He is legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has obtained a recognized qualification in Islamic law from an institution acceptable to the national judicial council;
- b- He either has considerable experience in the practice of Islamic law, or
- c- He is a distinguished scholar of Islamic law.³²

However, as against this background in Zamfara state, any person who obtained the certificate of Diploma in Islamic studies, or Hausa. Islam or Arabic-Islam, in as much as he can read and write the Arabic, he can be appointed as a judge (Qadi) in Shari'ah courts.

3.6 APPOINTMENT OF JUDGE (Qadis)

Prophet (S.A.W) himself sent many people among his companions to different places to serve as governors and judges. At the appointment of such judges, the prophet (S.A.W) gave them some instructions on how to decide cases, what would be the procedure and how to deal with various kinds of people in different territories.

Ibn Hisham said that, Bukhari reported that at the appointment of Mu'adh binjabal to yemen, the prophet (S.A.W) instructed him:

Not by an ill clemeanor (bad behaviour) though arts soon going to the people who would ask thee, what is the key to Heaven? Tell them: it is witnessing that there is no God but Allah the one who has no partner.³³

According to another report, the prophet (S.A.W) said to Mu'adh bin Jabal:

How would you decide cases? Mu'adh answered, "I shall decide according to the Book of Allah, the prophet then asked: and if there is nothing in the book of Allah, mu'adh replied: then according to the sunnah of the prophet, the prophet asked again: failing in both mu'adh replied I shall use my own judgement, there up on the prophet of Allah said, "praise be to Allah who enabled the messenger of the prophet of Allah to say what has satisfied the prophet of Allah.³⁴

On the appointment of Ali (R.A) to another province of yemen, the prophet (S.A.W) advised him and gave the following instructions:

Impart to people knowledge of Qur'an and of the laws of Islam and decide their disputes, gathered the amount of religious taxes collected by the local official. In yemen. When two disputants came to you, do not decide until you have heard the arguments of both the parties and you have clear understood the cases.³⁵

No appointment is properly made without fulfilling of the following three conditions:

- 1- The caliph or (appointing body) must ensure the man to be appointed is qualified. If he is not qualified he should not be appointed. If it is necessary to make appointment before all the relevant information is available , the man should be given a temporary appointment subject to confirmation.
- 2- The person to be appointed must be given a clear description of his duties and the limits of his authority must be defined. Failure to do so negates the appointment.
- 3- The official awaiting appointment must be given his assignment in advance and its territorial limits must be clefined. It is forbidden for any appointment to be made on the basis of personal preference or favouritism.³⁶

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CHAPTER FOUR: JUDGES AND JUDGEMENT OF SHARI’AH COURTS IN ZAMFARA STATE

4.1 CODE OF CONDUCT FOR JUDGES

The one who is given the post of judge shall be committed with the following morals:

- 1- He should be strong without violence, lenient without weakness, in order not to arouse the greed of the unjust or frighten the one who has the right.
- 2- He should be forgiving without accepting any insult from the mischief-makers.
- 3- He shall be patient without delay or negligence.
- 4- He shall be witty and characterized by deep insight, without self vanity or underestimation of any one.
- 5- The place of meeting people should be special to get adversaries and witnesses.
- 6- He shall impose justice among any adversaries in view of everything, as he shall not prefer one adversary to the other.
- 7- His session shall be attended by jurists, scientists of al-Qur'an and sunnah, in order to consult in case of any problem that may arise.¹

A judge shall avoid the following characters:

- (a) To judge while being angry or feeling any illness, hunger, thirsty, hot weather, cold weather, being bored or laziness, according to the messenger of Allah (S.A.W) who said:

A judge shall not judge between two adversaries while being angry²

- (b) To judge in the absence of a witnesses.
- (c) To judge according to his witnessing, of the witness of those whose evidence is not acceptable, the body, the father or the wife.
- (d) To accept bribe

- (e) To accept gift from those who have not given him any gift before his appointment as a judge (Qadi).

The authority of a judge, according to his post, deals with the following:

- a- Setting between adversaries in all cases and claims, by the decisive judgments, or by agreeing between them in case of similarities, hiding or weakness of evidences.
- b- Suppressing the unjust, supporting those inflicted by injustice and rights to other owners.
- c- Judging in cases of marriage, divorce, alimony and the like.
- d- Executing punishment limits and judging in case of blood retaliation, and wounds.
- e- Judging in the property of those who are legally incapacitated from making any disposition in respect of their property without the consent of their guardians like minors, orphan, insane people, absentees and those completely prohibited to legally manage properties.
- f- Judging in cases of public interest of the country like roads, services and others.
- g- Ordering people to perform righteousness, prohibiting, changing and eliminating the effect of unrighteousness in the country.³

The above are the code of conduct, a Qadi (Judge) should implement according to the Islamic law.

But, most of our contemporary Qadis (Judges) are found wanting in obtaining such qualities and from anybody, some of them engage in businesses, many of them

are the servants of the government, they some times accept directives from ernment; they use to pass judgment in accordance with what they have been directed by the government even if is contradicts the law. If one of the highly placed people in the state is guilty, they release him without being punished, fearing that, if they judge against him they would be dismissed from their position. In addition to the above, when the judge (qadi) wants to Judge according to the Islamic law, it is the government that prevents him from doing so. Therefore, the Judges of shari'ah courts should try to obtain such morals or code of conduct, in order t be free from Allah's punishment.

4.2 JUDGES AND JUDGEMENTS OF SHARI'AH COURTS IN ZAMFARA STATE

The judges of the shari'ah courts ruling in accordance with Islamic religious law (shari'ah) appointed by the ruler of a Muslim state.

The judgment of a judge (Qadi) of the Sharia'h court must be based on the qur'an, sunnah and Ijma' (the consensus of Muslim scholars). The term judge is not a new appointment but it was the earliest time since the time of the prophet (S.A.W) and remained term used for judges through out the Islamic history and the period of the caliphates up to our present day to day and continued up to date.⁴

JUDGES ENFORCE COURT PROCEDURE

The Judges first role is to make sure all the parties and witness follow proper room procedure. Although this does'nt sound particularly exciting, procedure was designed to ensure that every one who comes to court gets a fair trial.

As far as judges are concerned we can see the procedure and ruling came in to play in the court when a judge responds after one of the lawyers makes an objection. In such circumstances, the judge is usually on the part of procedure that governs evidence. The jury is only allowed to see or hear certain evidence so that they are not unfairly prejudiced toward (or against) one party. Although many questions about evidence are settled before the start of trial in pre-trial motions, some times these decisions have to be made on the fly times these decisions have to be made on the fly while court is in session⁵.

JUDGES DECIDE ISSUE OF LAW

Most trials have two arguments going on at the same time:

- 1- The first is the argument over the facts of the case: who did, what, where and when. The jury usually decides these questions, although in some types of cases the judge can act as fact finder.
- 2- The second argument is about the laws each written by determining the exact status of the law. Then, the lawyers argue with each other about why the lawyers favour their respective clients.

Sometimes, when both parties mostly agree on the facts, this happens during summary Judgment. When the facts are in dispute, the judge will provide the jury with instructions about the law so that the Jury can make an educated decision about the case.⁶

THE QUALITY OF A JUDGEMENTS

The zamfara chief judge decrees quality of judgment by Qadat (judges).

The chief judge of Zamfara state, “Justice Kulu Aliyu”, has directed the Grand Khadi to organize refresher course on application of criminal justice under the penal code for the Qadis (Judges) of shari’ah court. The chief judge gave the directive on Friday during her visit to zamfara satellite prison in continuation of her officer visit to prison. Justice Kulu Aliyu noted that Qadis (Judges) were delivering judgments base on the wrong laws, saying that this often times led to mis carriage of Justice.

some of these shari’ah court Judges deliver their judgment as if they never read the provisions of the law and have no recourse to the principles of fair hearing and justice in the discharge of their responsibilities.⁷

The chief Judge’s comment followed her discovery of cases of mis carriage of justice by the Judges in the course of her visit to the prisons.

A 30 years old Kabiru ladan was sentenced to one year imprisonment for stealing a Nokia, handset worth #1,500 and this case emanated from the judgment delivered by a Qadi (judge) Ladan who had already spent five months out of his term, told the chief Judge that he sold the stolen handset for #500 and used it to feed his family. The convict was given 20 strokes of the cane and was set free, because according to the chief judge, the offence attracts a maximum of one month imprisonment in line with the provisions of the penal code.⁸

Chief judge Kulu Aliyu also set free one Aliyu Musa, convicted for stealing a sheep for #19,000 out of which #15,000 was recovered by the court and that he paid additional #45,000 being the cost of the sheep approve by the Qadi of Maradun

Higher shari'ah court, Malam Muhamamd Madaci. He said further that Madaci also administered 50 strokes of the cane on him and sentenced him to six months imprisonment. The chief Judge then discharge the convict, directing the judge to report to the Grand Khadi in Gusau.⁹

Justice Kulu Aliyu also released the following inmates:

- 1- Buhari Aliyu
- 2- Sama'ila Tsalha
- 3- Muhammad lawali
- 4- Babuga Sajo
- 5- Aliyu Abubakar, a student of the federal polytechnic, Kaura Namoda.¹⁰

4.3 CASE THAT SHARI'AH COURT ENTERTAINED IN ZAMFARA STATE

The Shari'ah courts have jurisdiction to hear and determine civil matters and cases where the parties are Muslims and in criminal offences where the suspect (s) or accused person(s) is/are Muslims, or person (s) he voluntary subject him/themselves to the Jurisdiction of the shari'ah courts, thus, for the purpose of sub-section (1) of this section, the shari'ah courts shall be competent to decide all civil matters and cases if all proceeding involving:

- 1- Marriage under Islamic law (al-Nikah)
- 2- Guardianship and maintenance (al-kafalah-waal-Nafaqa)
- 3- Succession (Mirath), will (wasiyyah), Gift (Hibah), endowment (waqf), pre-emption (shuf'ah) and trust (amanah).

- 4- Land law (hukm nizam al-Ard).
- 5- Contract (al-Aqd)
- 6- Tort (al-Diyya)
- 7- Commercial law (Ahkam al-Buyu)
- 8- Partnership and company law (al-musharakah wa al-ahkam al-sharikah) for the purpose of section (2) of this section shari'ah courts shall be competent to try all criminal cases in which suspect (s) or accused person (s) is/are Muslims, include:

1. Homicide (Qatl al-Nafs)
2. Robbery (al-Muharaba)
3. Theft (as-sariqah)
4. Defamation (al-Qadhaf)
5. Drunkenness (hurb al-Khamr)
6. Causing grievous hurt (al-Qisas)
7. Homo sexuality (al-liwat)
8. Adultery (al-zina)
9. Lesbianism (al-Sihaq)
10. Bestiality (Wad'al-Bahima)
11. Offering and receiving of gratification (al-Rissiwa)
12. Perjury (al-Tawir)
13. Criminal breach of trust (al-Khiyanah)
14. Cheating (al-Qish)

15. Mischiefs (al-fasad)

16. Receiving stolen property (Shara'u mata'al-sariqah)

17. Giving false evidence (shahadat al-zur).¹¹

Similarly, something very impressive was that, before the implementation of shari'ah in zamfara state, lower courts have very limited jurisdiction in terms of criminal offences and could not try homicide cases. However, with the introduction and implementation of shari'ah legal system in the state, any shari'ah court of whatever grade can fully try and convict any criminal case in as much as the accused is a muslim.

The applicable laws in both civil and criminal proceedings shall include:

- 1- The Glorious Qur'an
- 2- Sunnah (Hadith of the prophet (S.A.W)
- 3- Ijma'
- 4- Qiyas
- 5- Masalih al-mursalah
- 6- Istihsan
- 7- Al-urf
- 8- Qawl al-sahabi
- 9- Other subsidiary sources of shari'ah.¹²

The reference books to be used by the shari'ah courts shall include the following texts and authorities:

- 1- Al- Risalah
- 2- Mukhtasar
- 3- Tuhfah
- 4- Al-adawi
- 5- Al-fawakh al-Dawani¹³

And other Maliki books

4.4 BAIL AND APPEAL

BAIL: In its literal meaning refers to the release of some body in critical condition upon some stipulated conditions.¹⁴

In our case, it refers to a situation where by a person charged by court can be released to his lawyer, relative or surely on some conditions which are to be fulfilled by the surely, lawyer or relative.¹⁵

In Islam, bail is allowed and it is broadly classified in to two:

- 1- Bail in respect of property
- 2- Bail in respect of person

Number one, stands for a situation where by is guaranteed bail to the effect that he should compensate the property (s) in question within a stipulated time decided by the court either instalmentally or in full.

Number two, stands for a situation where by a person is guaranteed temporary freedom on condition that he must present himself before the court whenever the court demands.¹⁶

When bail can be granted?

Zamfara state shari'ah criminal procedure code law 2000, when any person accused of an offence punishable with imprisonment for a term not exceeding three years whether with or without fine or caning or with fine only, is arrested or detailed without warrant by an officer in charge of a police, station or appear or is brought before a shari'ah court and is prepared at anytime while in the custody of that officer or before that court to giving such security as may seem sufficient to the officer or court, such person should be released on bail unless the officer or court for reason to be recorded in writing considers that by reason of the granting of bail the proper investigation of the offence would be prejudiced or a serious risk of the accused escaping from justice be occasioned.¹⁷

(2) The officer or the shari'ah courts referred to in sub-section(1) if he thinks fit may instead of accepting security from such person discharge him on his executing a bond without sureties for his appearance as provided in section 294 and 295 can bail be taken in case of non-bailable offence? Section 290, sub-section (1) provides that, persons accused of an offence punishable with death shall not be released on bail.¹⁸

Sub-section (2) of this section says: persons accused of an offence punishable with imprisonment for a term exceeding three years shall not ordinarily be released on bail; nevertheless, the upper shari'ah court or the shari'ah court of appeal accused as afore said if it considers:

- a. That by reason of the granting of bail the proper investigation of the offence would not be prejudiced;

- b. That no serious risk of the accused escaping from justice would be occasioned;
and
- c. That no grounds exist for believing that the accused, if released would commit an offence.¹⁹

Sub-section (3) of this section started that: notwithstanding anything contained in sub-section (1) and (2), if it appear to the upper shari'ah court or the shari'ah court of appeal that there are not reasonable grounds for believing that a person accused has committed the offence. But that there are sufficient grounds for further inquiry, such person may, pending such inquiry, be released on bail.²⁰

Power of shari'ah court to direct released on bail:

Zamfara state shari'ah criminal procedure code provided that:

Where any person is accused of an offence, a single Alkali of the upper shari'ah court or the shari'ah court of appeal may, subject to the provision to section 290, direct that such person be admitted to bail.²¹

Sub –section (2) of this section says that:

When any person is convicted with an offence in a shari'ah court and appeals from such court to the upper shari'ah court of shari'ah court of appeal may, subject to the provisions of section 290, direct that person is a admitted to bail.²²

Power of shari'ah courts to order reduction of bail bond:

Shari'ah criminal procedure code provides that: an Alkali of the upper shari'ah court may in any case direct that the bail bond required that an officer in charge of a police station or any shari'ah court be reduced.²³

APPEAL

The only reasons given to the cases of appeal are three:

- 1- In tafsira al-Hukkam, it is stated that when an ignorant judge was appointed and judges with ignorance, the case is subject to appeal even if the judgment is right.²⁴
- 2- In As'hal al-madarik, it is stated that a judge who passed judgment, himself or some body superior class has no right to vitiate the judgment unless if the judgment in question contradicts the shari'ah. It went on to define judgment that contradicts shari'ah, as one which contradicts the Qur'an, sunnah and consensus of the Muslim Jurists. So therefore, any judgment with the said problem is subject to re-examination by the Qadi himself his equal or high authority.²⁵
- 3- Judgment with elements of injustice openly is also subject to appeal.²⁵

Apart from these three instances above, any judgment which is based upon the minority view (shadh) is a subject to re-examination through appeal, for example, the Judgment of Justice Kulu Aliy.²⁷

Again, the judgment that is passed upon presumption is subject to appeal whenever the contrary is proved-these are the few instances in which Islamic law allows the cases of appeal to be adequately entertained and not in every Judgment as is the case in our contemporary shari'ah courts today.

4.5 LAWYERS APPEARANCE BEFORE SHARI'AH COURT

Justice Kulu Aliyu is Qadi (Agran Qadi) as then was, sees nothing wrong with the appearance of lawyers in shari'ah court of Appeal although her lordship did not cite a single authority from Islamic law in support of her view. Her lordship's articulation of the issue deserves to be quoted in essence, so because it presents the most liberal of the views on the matter and because of the important conditions that her lordship too attaches to the appearance of lawyers in shari'ah courts.²⁸

The appearance of lawyer in the shari'ah court of Appeal has not ipsofacto (but reasoning from previously known fact), generated more controversy. Rather as can be seen from Justice Kulu Aliyu statement, Islamic law proponents have difficulties in accepting the present situation due to most lawyers ignorance of Islamic law, their introduction of common law doctrines into Islamic courts and their lack of respect for Islamic law. As Ajenmubi 1988: 198 rightly pointed out, if lawyers want to continue appearing in shari'ah courts, it is only proper that they are adequately prepared for the task. Legal education both at the academic and professional stages should include 'care shari'ah course' such as Islamic law of evidence and procedure, Islamic family law and so on. This may entail a radical reform of legal education in Nigeria. The result should be that all lawyers in Nigeria are properly equipped to take both common law and shari'ah case.²⁹

4.6 SUMMARY

In the foregoing chapters, we have seen what is meant by shari'ah court and its development from the period of the prophet (S.A.W), to-date. The research discussed the geographical location of Zamafara state, we have also discussed the History of

Zamfara state. The research also discussed the Judicial principles as enunciated by caliph Umar bin Al-Khattab (R.A) and we discussed the characteristics of Islamic courts.

We also discussed the establishment of shari'ah courts in Zamfara state, also the implementation of shari'ah in zamfara state and administration and application of shari'ah in Zamfara state we have also seen the composition of shari'ah courts, the Qualification of judges.

The research also highlighted the code of conduct for judges, the judges and Judgments of Shari'ah courts in Zamfara state.

We also discussed the cases that shari'ah courts entertained in Zamfara state in this research project. Furthermore, shari'ah rules with the jurisdiction of the Glorious Qur'an and Sunnah of the Prophet Muhammad (S.A.W).

CONCLUSION

Shari'ah (The Islamic law) stands as a right path to be followed, how judges should observe their duties and rights before Allah and that state. Islam is a religion accepted by Allah right from the time he sent the messenger to the last Day. Allah said:

verily, the religious of Allah is Islam.³⁰

This religion has great concern for the shari'ah system and those appointed to carry out its responsibilities. The duties of Judges are "Fard alkifaya (if performed by some, others are relieved)" that must be carried out by the society. If some members of the society. But, if everybody refuses to accept the post, the whole society commit a sinful act.³¹

Moreover, those who have to decide cases are warned in the Glorious Qur'an not to make injustice in their Judgment.

In accordance with the 1999 constitution of the Federal Republic of Nigeria, the fellow Muslims of Zamafara state have the right to appeal to the federal Government to leave them to implement Islamic shari'ah in all their affairs. And to apply shari'ah in totality and to reject other laws which are unacceptable in Islam. The shari'ah must be within the fold and submission to the whole injunctions of the Qur'an and sunnah. Not based on the constitution or penal code.³²

Also, Judge should take note the following:

- 1- If the Judge fully knows that the witness is just, he shall, Judge according to his evidence.

- 2- If the claim is upon a veiled woman, who cannot afford speaking to men or attend courts, she shall not be compelled to attend, but it will be enough to be represented by an agent to attend the claim on her behalf.
- 3- The judge shall not judge by his knowledge, but according to the evidence, in order not to be accused of injustice. This comes according to the sayings of Abubakar al-siddiq (R.A):

If you see a man subject to a punishment limit ordained by Allah you should not execute it, or call anyone against him, unless there is someone else.³³

- 4- If there is a claim issued against someone present, he shall attend it, and the judgment shall not be issued upon him in his absence, unless he delegates someone as his agent. If he is absent, he shall be summoned to attend the claim or his deputy.
- 5- The statement of a judge can be accepted by the judge, in something other than punishment limits, if the statement is witnessed by two witnesses.
- 6- The claim which is not stated by the claimant shall not be listened to, such as when someone says: I have something with (somebody), or: I think that I owe him (something) even if he states this thing and assures his claim against the accused.³⁴
- 7- The Judgment of a Judge in the apparent cases shall not legitimize something illegitimate or announce illegitimate something legitimate. The two pieces of evidence contradict each and there is no reference between any one of them, the accused shall take an Oath, since the messenger of Allah (S.A.W), Judge according to that before.³⁵

Therefore, Judges should maintain the above rules, in order to save themselves from been accused by the people and be free from the punishment of the Hell-fire.

Finally, I thank the Almighty Allah, the lord of the heavens and the Earth and their burdens. Peace and Blessings of Allah be upon our prophet Muhammad (S.A.W), his family, companions and those who follow their footstep till the last Hour. May make us among them, (Amin).

END NOTES

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3. A.A. Bidawi, *Al-wajeer fial-fiqh al-sunnah wal-al-kitab al-Aziz-farskar*, op.cit, P.450
4. A.H Yaduddu, “*The prospect for shari’ah in Nigeria*, dept of Islamic law B.U.K, 10127, nd, P.12
5. *Litigation findlaw. Cam/legal system/what is a judges. Role-in court-htm/*
6. Ibid
7. [WWW.point blanknews.com/phm/news/zamfara-chief-Judge.clerires quality of Judgements by Khadis/](http://WWW.pointblanknews.com/phm/news/zamfara-chief-Judge.clerires%20quality%20of%20Judgements%20by%20Khadis/)
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18. Ibid P.112
19. Ibid, section 290(1), P.115
20. 20. Ibid, section 290 (2),
21. Ibid, Section 290 (3),
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