

IMPLEMENTATION OF ḤUDŪD LAW WITH SPECIAL
REFERENCE TO NIGERIA

BY

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ABSTRACT

This thesis intends to examine the enforceability of *ḥudūd* punishments for *ḥudūd* offences, and general implementation of the *ḥudūd* law based on the guidance of the Holy Quran and *Sunnah* of the Holy Prophet Muhammad (SAW) in Nigeria. These include the effects, consequences, challenges, problems, and prospects of *ḥudūd* implementation in a multi-religious Nigeria. Nigeria is a country with a Muslim population of an estimated 55% to 60% of the total Nigerian population. Islam has existed and flourished in the area presently known as Nigeria for over 1,000 years. After conquering Northern Nigeria between 1897 and 1903, the British colonised the area by inter-alia pursuing policies of appropriation, containment, and surveillance of Islamic Law; and the “indirect rule” policy, up till Nigeria’s independence from British rule on October 1st 1960. Effective from 1999-2000 and up till 2002, twelve states from Northern Nigeria have re-introduced Islamic criminal laws, including *ḥudūd* since the pre-colonial and colonial periods. The Penal Code for Northern Nigeria was codified in order to reflect Islamic principles and norms of the mostly Muslim North; while the equivalent Criminal Code is applicable to the South. All the twelve states currently implementing *ḥudūd* were visited by the researcher during field work, and a sample of officers concerned with *ḥudūd* enforcement were consulted and interviewed in these states. This thesis posits that the implementation of *ḥudūd* (among other Islamic Criminal Laws) based strictly on the Holy Qur’ān and the *Sunnah* of the Holy Prophet (SAW) for Nigerian Muslims, will best serve the interest of drastically reduced crime rates for Nigeria generally and clamour for full *sharī’ah* enforcement by Nigerian Muslims. Reference is made to the experience of countries where *ḥudūd* is/was enforced, including Pakistan and Sudan. Some other Muslim countries enforcing or attempting *ḥudūd* implementation were also considered.

خلاصة البحث

يهدف هذا البحث إلى دراسة تطبيق عقوبات الحدود لجرائم الحدود، والتنفيذ العام لقانون الحدود القائم على هدي القرآن الكريم. والسنة النبوية المطهرة بدولة نيجيريا. شاملاً الآثار، والنتائج، والتحديات، والمشكلات، وتوجهات تنفيذ الحدود في دولة نيجيريا المتعددة الديانات. حيث يمثل المسلمون فيها حوالي 55-60% من مجمل نسبة تعداد السكان. وقد ظهر الإسلام وازدهر في المنطقة والتي تُعرف اليوم بنيجيريا لأكثر من ألف سنة. استعمر البريطانيون المنطقة وما حولها بعد التغلب على شمال نيجيريا بين عامي 1897-1903م. وقد اتبعوا سياسات الاستيلاء، والاحتواء، والمراقبة فيما يتعلق بالقانون الإسلامي، كما طبقوا سياسة الحكم غير المباشر حتى استقلال نيجيريا عن الحكم البريطاني في أكتوبر عام 1960م. وبدءاً من عام 1999-2000م قامت اثنتا عشرة ولاية من ولايات شمال نيجيريا بإعادة تقديم القانون الجنائي الإسلامي مشتملاً الحدود منذ مرحلة ما قبل الاستعمار، والمرحلة الاستعمارية. وقد أُعيد تقنين قانون العقوبات لشمال نيجيريا ليعكس المبادئ، والمعايير الإسلامية السائدة في الشمال ذات الأغلبية الإسلامية بينما بقي القانون الجنائي الموازي مطبقاً في الجنوب. وقد زار الباحث جميع الولايات الاثنتي عشرة التي طبقت فيها الحدود خلال بحثه الميداني، وتمت مقابلة واستشارة عينة من المسؤولين المعنيين بتطبيق الحدود في تلك الولايات. وقد افترض البحث أن يكون تنفيذ الحدود (ضمن قوانين جنائية إسلامية أخرى) معتمداً على القرآن الكريم، والسنة المطهرة للنبي الكريم –صلى الله عليه وسلم- بما يناسب مع مسلمي نيجيريا، وسوف يخدم على نحو أفضل مصلحة تقليل معدلات الجريمة في نيجيريا عامة، ويُدعم المطالبة بالتطبيق الكامل للشرعية من قبل مسلمي نيجيريا. هذا وقد رجع الباحث إلى تجارب الدول التي طبقت الحدود، مثل: باكستان، والسودان، كما أخذ في الاعتبار كذلك دولاً أخرى تطبق الحدود أو تحاول تطبيقها .

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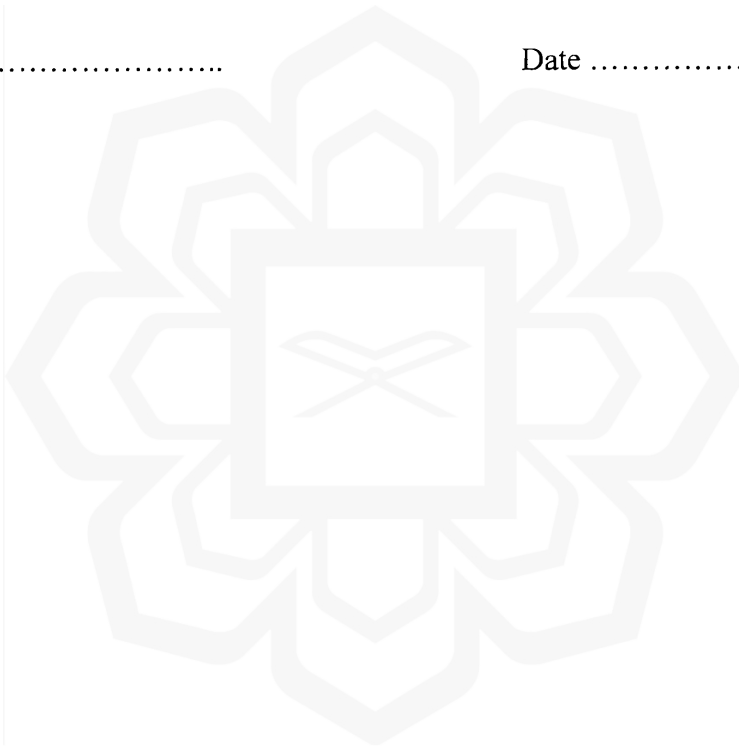
DECLARATION

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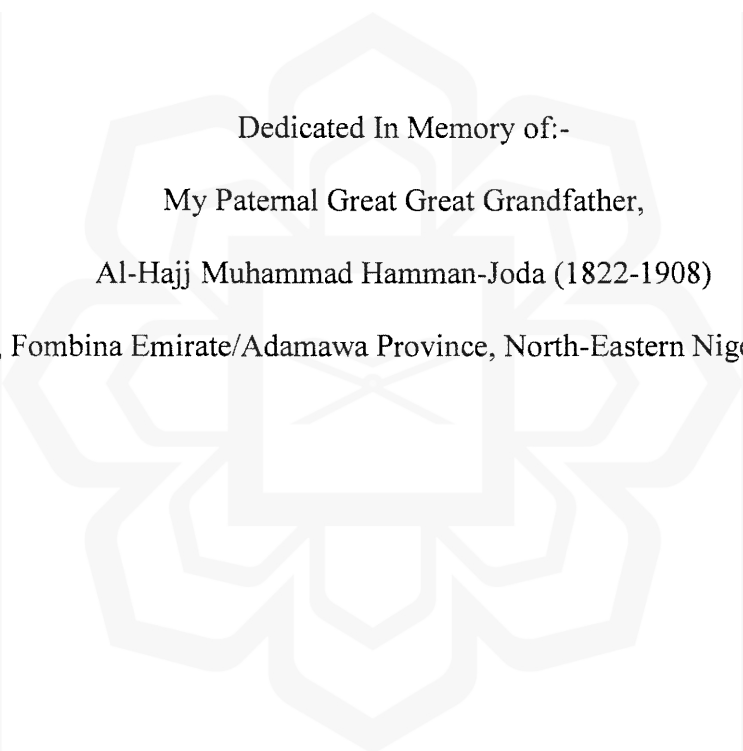
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Dedicated In Memory of:-
My Paternal Great Great Grandfather,
Al-Hajj Muhammad Hamman-Joda (1822-1908)
Chief Qādī, Fombina Emirate/Adamawa Province, North-Eastern Nigeria (1888-1908)

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 Zamfara State Shari'ah Courts Establishment Law 1999 (Zamfara State of Nigeria)

Zamfara State Shari'ah Criminal Procedure Code Law 2000 (Zamfara State of Nigeria)
Zamfara State Shari'ah Penal Code Law No. 10 2000 (Zamfara State of Nigeria)



LIST OF ABBREVIATIONS

ABU	Ahmadu Bello University
AD	Anno Domilis, i.e., the Gregorian Christian Calendar
AH	Anno Hegirae, i.e., the Islamic Calendar, meaning "After Ḥijrāh", which reckoning started with the Holy Prophet Muhammad's emigration to Medina from Mecca, in 622 CE
ALL E.R.	All England Law Reports
BSSCA	Bauchi State Sharī'ah Court of Appeal
BSSCPC	Bauchi State Sharī'ah Criminal Procedure Code Law
BSSPC	Bauchi State Sharī'ah Penal Code Law
CE	Christian Era, based on the Gregorian Calendar
CILS	Centre for Islamic Legal Studies
CILSHSCPC	Centre for Islamic Legal Studies Harmonised Sharī'ah Criminal Procedure Code Law
CILSHSPC	Centre for Islamic Legal Studies Harmonised Sharī'ah Penal Code Law
C.O.P	Commissioner of Police
CPC (A)	Criminal Procedure Code (Amendment) Law
Cr. L. J.	Criminal Law Journal
F.N.R	Federation of Nigeria Reports
F.S.C	Federal Sharī'ah Court
ICPC	Interim Criminal Procedure Code Law
ISNA	Iranian Students New Agency
JSSCA	Jigawa State Sharī'ah Court of Appeal
JSSCPC	Jigawa State Sharī'ah Criminal Procedure Code Law
JSSPC	Jigawa State Sharī'ah Penal Code Law
JSSPC (A)	Jigawa State Sharī'ah Penal Code (Amendment) Law
KTSSPC	Katsina State Sharī'ah Penal Code Law

MFLO	Muslim Family Laws Ordinace
NJC	National Judicial Council
NJI	National Judicial Institute
N.N.L.R	Northern Nigeria Law Reports
N.R.L.N	Northern Region Laws of Nigeria
N.R.N.L	Northern Region of Nigeria Laws
N.R.N.L.R	Northern Region of Nigeria Law Reports
N.W.L.R	Nigerian Weekly Law Reports
P.Cr.L.J	Pakistan Criminal Law Journal
PLD	Pakistan Law Division
PT. / Pt.	Part
RA	" <i>Radi Allāh ‘anhu/‘anhum</i> ", i.e., "May Allah Be Pleascd with Him/Them", used in refercncc to the close companion(s) of the Holy Prophet Muhammad (SAW) including the four <i>Khulafa al-Rashidun</i> (rightly-guided Caliphs of Islam) whenever their names are mentioned, as a sign of respect to them by Muslims.
SAW	" <i>Sallā Allāhu ‘Alayhi wa Sallam</i> ", i.e., "Peace Be Upon Him", referring to the Holy Prophet Muhammad, usually chorused whenever his name is mentioned; or written in parentheses after his name, as the case may be, by Muslims, as a sign of great respect for him.
S.C	Supreme Court
S.C.A	Sharī‘ah Court of Appeal
S. Ct.	Sharī‘ah Court
S.D	Sharī‘ah Division
SIAC	Sharī‘ah Implementation Advisory Commitee
SIAJR	Sharī‘ah and Islamic Administration of Justice Reform Law
S.L.J.R	Sudan Law Journal Reports
S.L.R	Sharī‘ah Law Reports
SPLA	Sudan People’s Liberation Army
SSSC	Sokoto State Sharī‘ah Criminal Law
SSSPC	Sokoto State Sharī‘ah Penal Code Law

TMC	Transitional Military Council
U.S.C	Upper Shari'ah Court
v	Versus, i.e., Against, as used in court cases between parties
WLR	Weekly Law Reports
ZSSC	Zamfara State Shari'ah Courts Law
ZSSCA	Zamfara State Shari'ah Court of Appeal
ZSSCPC	Zamfara State Shari'ah Criminal Procedure Code Law
ZSSPC	Zamfara State Shari'ah Penal Code Law



CHAPTER ONE

INTRODUCTION

1.0 Introduction

Hudūd are the rights or claim of God; and legally, *hudūd* is a separation between permissible and impermissible acts. *Hudūd* offences and their corresponding punishments are exact, fixed, and ordained in the Holy Quran and Sunnah of the Holy Prophet (SAW) corroborated and confirmed by the secondary sources of Islamic Law.¹

The quranic expression *Hudūd* Allah occurs fourteen times in the Holy Quran typically, in the sense of signifying the divine, spiritual, religious, legal, or moral limits of both acceptable and unacceptable behaviour.² For instance in the sense of separating the *halāl* or permissible (sanctioned) from the *ḥarām* or forbidden (penalized) behavior.

Generally, the legislations of most if not virtually all Muslim countries providing for *hudūd* offences; as well many authors and books, exclude *riddah* and/or *baghy* or one or more others from the *hudūd* offences. Such legislations include those of the current 12 *sharī'ah* criminal law implementing states of Northern Nigeria; the *hudūd* ordinances of Pakistan; and the Unified Arab Model Code, 1986, among others. Other legislations which exclude *riddah* and/or *baghy* from the *hudūd* offences also include: Sudan

¹ Muhammad 'Ata Al-Sid SidAhmad, *Islamic Criminal Law: The Hudūd* (Petaling Jaya: Eagle Trading, 1995), 45-48.

² Mohamad Ismail Hj. Mohamad Yunus and Shamsina Mohamad Hanifa. "Harmonisation of Prescribed Punishment (Ḥadd) in Islamic Law and Under the Malaysian Penal Law: A Mere Fantasy or A Reality?" *IKIM Law Journal*. Vol. 9. No. 1 (2005): 46.

Criminal Act, 1991; Yemen Penal Code, 1994; and the Draft Law of the Ordained Penalties of Ḥudūd, of Al-Azhar University, Cairo, Egypt, among others.

In the case of the *sharī'ah* criminal law implementing states, Philip Ostien (2007) asserts that with regards to *riddah*, it is due to Section 38 Sub-Section 1 of the 1999 Nigerian constitution, which guarantees freedom of religion, among other things.³

Some of the authors and textbooks which exclude these or other *ḥudūd* offences include: Muhammad Abdel Haleem, ed., "Criminal Justice in Islam"; Dr. Mukarram Ahmed (ed.), "Crime and Punishment Under Islamic Law"; and Mir Wali Ullah, "Islamic Jurisprudence"; among others.

Many of the authors, textbooks, and legislations consulted in this study also apparently exclude the *ḥadd* offence of *baghy* from the *ḥudūd* offences, and in some cases even join or lump *baghy* together with *ḥirābah*. For instance, such authors and books include: Mohammed S. El-Awa, "Punishment in Islamic Law: A Comparative Study"; Mohammed Iqbal Siddiqi, "The Penal Law of Islam"; and "Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Centuries", among others.

However, it seems there is no logic or rationale for this. More so, as *baghy* is one of the original seven *ḥudūd* offences mentioned in the Holy Quran and/or supported by the Sunnah of the Holy Prophet (SAW) with their fixed and prescribed punishments. Such an exclusion appears to be merely an attempt to shirk the responsibility of enforcing this *ḥudūd* offence and thereby forgo it. On the other hand, it could be because it is

³ Philip Ostien, *Sharī'ah Implementation in Northern Nigeria, 1999-2006: A Sourcebook, vol. IV, The Sharī'ah Penal and Criminal Procedure Codes*. (Ibadan: Spectrum Books Limited. 2007), 17.