THE ENFORCEMENT OF THE PUNISHMENT FOR THEFT UNDER THE SHARIAH PENAL CODES OF NORTHERN NIGERIA

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ABSTRACT

In 1999/2000, the introduction and application of Shariah Penal Codes in Nigeria, specifically pertaining to theft (sariqah), underwent significant changes. During this period, twelve Nigerian states embraced Shariah as a legal system alongside existing penal and civil laws in specific instances. Responding to this shift, seven of these states formally enacted Shariah Penal Codes as legal instruments for the state. Despite facing criticism from various quarters, including both Muslims and non-Muslims nationwide, these Shariah laws have been either fully or partially implemented and have become integral components of the legal framework in those states. The offense of theft, referred to as sariqah, is one of the transgressions addressed in these Shariah Penal Codes. This paper seeks to evaluate the provision for the offense of theft within the Shariah Penal Codes, scrutinizing its alignment with the principles of Islamic Criminal Law. Employing a historical research method, the author collected data through a combination of interviews and observations. The author visited states where Shariah laws were implemented to obtain first hand information and engaged with officials in Shariah courts. The research findings indicate that, while the provision for the offense of theft in Shariah Penal Codes is

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generally considered adequate, challenges may arise in the practical implementation and enforcement of these laws. A comprehensive exploration of the extent of alignment with Islamic Criminal Law and an examination of potential areas for improvement or challenges in practice were addressed in the complete research. Recognizing that this analysis is not exhaustive, there is a pressing need for a review and harmonization of laws across the concerned states.

Keywords: *Shariah, Shariah Penal Code, ḥudūd, Shariah enactment, Nigeria*

INTRODUCTION

Allah SWT has instructed His Prophets to actively strive for the establishment of divine law within their communities. Allah SWT says:

ثُمَّ جَعَلْنَاكَ عَلَى شَرِيعَةٍ مِنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

"Then we have made you follow a course in the affair, therefore follow it and do not follow the desire of those who know not."

(Surah al-Jāthiyah, 45: 18)

Similarly, Allah SWT confirms that a society not adhering to the divine law is seen as faithless, marked by injustice and wrongdoing. Allah SWT says:

وَلْيَحْكُمْ أَهْلُ الْإِنْجِيلِ بِمَا أَنْزَلَ اللَّهُ فِيهِ وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْفَاسِقُونَ

"And the followers of the injeel should have judged by what Allah revealed in it; and whoever did not judge by what Allah revealed, those are they that are the transgressors."

(Surah al-Mā'idah, 5: 47)

Muslims globally view the incorporation of divine law, or Shariah, as both a communal and personal duty. The Shariah legal framework is perceived by Muslims as an all-encompassing guide, addressing civil, criminal, and international matters comprehensively. The Shariah derives its guiding principles from two primary sources - the Qur'an and the *sunnah* of the Prophet (SAW). Additionally, there are several secondary sources that complement these main foundations, providing a broader framework for addressing diverse issues. This expansion of sources allows Islamic judges to derive various

solutions applicable to the contemporary world. It is important to note that these secondary sources result from *ijtihad* (juristic exertion), permitting legal interpretations to adapt to changes in times, places, conditions, intentions, and customs.

Islamic law prioritizes worldly punishments over those in the hereafter to safeguard five crucial essentials in Islam: religion, life, intellect, lineage, and property. Two approaches are adopted for preserving these essentials: fostering religious consciousness and imposing deterrent punishments, forming the basis of the Islamic Criminal System. Punishments under Islamic law fall into three categories: *hadd* (fixed punishments for serious crimes), *qiṣāṣ* (retaliatory punishment), and *ta'zīr* (discretionary punishment). *Hadd* punishments, predetermined for specific crimes found in the Qur'an or the Prophet's tradition, include offenses like adultery, defamation, theft, robbery, rebellion, alcohol consumption, and apostasy.

Qiṣāṣ, the second category, applies to crimes with a significant impact on human beings, such as murder (premeditated and non-premeditated) and offenses against human life. *Ta'zir*, the third category, involves discretionary punishments for offenses not explicitly covered by Shariah or where the crime's gravity is minimal. These punishments vary based on time, place, and the severity of the crime. This paper explores the enforcement of theft punishment under the new application of Shariah in Nigeria. It examines the laws and practices related to theft, reviewing Shariah provisions for the offense and its punishment under the Nigerian Shariah Penal Codes. The researcher used a historical research method, collecting primary information through visits to Zamfara and Sokoto states and conducting oral interviews with stakeholders. The study also considers the Shariah Penal Codes of Zamfara and Kano, with a focus on the theft offense.

Zamfara was chosen because it was the first state to adopt a Shariah Penal Code in the modern era, setting a precedent for five other states. The conversation also explores the Penal Code of Kano, highlighting differences in the classification of crimes. The article uses a case from Zamfara to illustrate the practical implementation of this legal system. Additionally, the piece explores the background by investigating the Shariah Penal System in Nigeria before and after independence.

SHARIAH PENAL SYSTEM IN NIGERIA

Kumo (1988: 42-49) noted that Islamic law had a significant presence in the area later recognized as Nigeria long before the period of British colonial rule.

The northern region was predominantly Muslim, characterized by the well-established Shariah courts and the existence of a powerful Islamic state. After Uthman dan Fodio's jihad in 1808, Alkali courts took charge of administering Islamic civil and criminal law in the region. However, a significant shift occurred on January 1, 1900, when the British took control of Northern Nigeria. The jurisdiction and punitive powers of Shariah Courts were restricted. The British abolished practices perceived as mutilation and torture, and other penalties had to adhere to principles of natural justice and humanity (Milner 1962: 263-264).

In 1904, the criminal code was introduced in Northern Nigeria, and eight courts were established to handle criminal cases. According to Belgore (1999), the 1906 proclamation led to the emergence of two types of Native courts: Alkali courts, managed by the Alkalis, and judicial courts overseen by the Emirs. During this period, there was a restoration of the Emirs' prerogatives, granting them unlimited civil and criminal jurisdiction. While these actions might initially appear to be supportive of Islam, they were perceived as a prelude to a broader agenda by the Christian (British) administration to ultimately undermine Islamic Law under the guise of experimentation.

At the time of the amalgamation of the North and South in 1914, Northern Nigeria already had a well-established system of Islamic law. During this period, the introduction of the Native Court Ordinance served as a mechanism to replace the existing Islamic legal framework. Through successive amendments to the Native Court Proclamation, the Native Court Ordinance of 1933 specifically altered Section 4 of the Criminal Code of 1904. According to Mahmud (1988: 11), this amendment restricted criminal trials exclusively to the native tribunal, resulting in the abolition of caning and capital punishment. The enforcement of Shariah law was confined within the framework of Native law and custom until 1946 when it became regional legislation, following the recommendation of the Brooke Commission (Muhammad, 1988: 11).

During the London constitutional conference of 1958, a proposal was made to abolish all criminal law systems other than the statutory codified laws of the country. The approval of this proposal by southern representatives led to the deliberate exclusion of Islamic law from the definition of "written law," aligning it with British Colonialist Law. This legislation was enacted, endorsed, and incorporated into the 1960 constitution of the country. However, Northern Muslims exhibited reluctance and dissatisfaction with the British Criminal Code, finding it incompatible with their way of life. They sought a legal framework that could better accommodate their cultural and religious practices. The concerns raised by Northern leaders prompted the Northern Regional Government to establish a committee that studied legal practices in

Sudan, Libya, and Pakistan. Following the committee's report, a six-member Panel of Jurists was appointed, with Muhammad Abu Rannat, Chief Justice of Sudan, heading the panel. This group endorsed and advocated for the adoption of the Penal Code and Criminal Procedure instead of the Criminal Code and Islamic Criminal Law. The jurists submitted their report on September 10, 1959. However, the Constitution Drafting Committee later found the Penal Code lacking, as it regarded Islam merely as a religion rather than a comprehensive way of life. Several criticisms were raised against the Penal Code, these include:

a) The panel's chairman, Abu Rannat, and Mr. Justice Sheriff were English-trained lawyers, lacking substantial knowledge of Islamic law, unlike other panel members.
b) The drafted code by Lord Macaulay, a British lawyer, served as the basis for the panel's draft.
c) The Penal Code excluded certain crimes under Islamic law, such as *riddah* (apostasy).
d) Punishments prescribed in the Penal Code often deviated from the principles of Islamic criminal law, with, for instance, imprisonment suggested for adultery.
e) Defenses in the Penal Code were tailored to an English-based criminal code.
f) The Penal Code attempted to draw distinctions between crimes and torts, contrary to Islamic criminal law principles.

Duku (2022: 98-106) documented that, in response to public demands, the Zamfara State Government enacted the Shariah Penal Law in 1999, incorporating Islamic Criminal Law based on the Maliki School of Law. Following this, eleven other Northern States of Nigeria also implemented similar laws. Presently, twelve states in Nigeria have embraced Shariah as a way of life: Zamfara, Kano, Bauchi, Jigawa, Sokoto, Kaduna, Katsina, Niger, Borno, Gombe, Kebbi, and Yobe. The initial seven states codified Shariah law, utilizing it as legal documentation in the courts. This paper scrutinized the sufficiency of the laws enacted in relation to the offense of theft and delved into the practical implementation of these laws in states that adhere to Shariah principles.

SARIQAH (THEFT) UNDER THE SHARIAH

Scholars define theft as the secret taking away of a kept property of another person, that is up to *niṣāb* , by a sane, mature person. The property for which

he is not entrusted, the stealing being done without coercion, be he a Muslim, a *dhimmi* or an apostate, a male or a female, a free man or a slave. (;-Fiqh Al-Islami 1424 : 375). By this definition, it could be deduced that:

a) The offence must be committed by a *mukallaf*, i.e., a sane adult,
b) The property must be secretly taken. If an adult and a sane person take a property openly, it does not constitute theft
c) The property must be a moveable and own-able one
d) The property must have a clear owner and the accused person must not be a part owner to it.
e) The property stolen must be up to *Nisab* (amount) for which amputation is liable.
f) The property stolen must have been guarded
g) The property must have been taken from a guarded place
h) There should be no doubt in establishing the offence

To establish the offence of theft, scholars refer to verses of the Qur'an such as:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill each other or yourselves. Surely Allah is ever Merciful to you."

(Surah al-Nisā'i, 4: 29)

In Al-Andalusi's "al Bahr al Muhit," he elucidates that the phrase "لَا تَأْكُلُوا" (ta'kulũ), literally translated as "do not eat," carries a technical meaning commonly understood as "do not usurp" the property of another person through deceptive means. The term "باطِل" (bāṭil), translated as "false means," encompasses all forms of action that are impermissible and forbidden. This includes theft (stealing), robbery, usurpation, breach of trust, bribery, interest, gambling, and all other dishonest dealings (Al Andalusy 1420: 609). Indeed, other verses addressing theft, such as Q4:2, exist in Islamic scripture. Jurists unanimously concur on the obligation of amputating the hand of a thief, provided certain conditions are met. These conditions typically include the individual being of sound mind, having reached the age of maturity, and having received the Islamic call or invitation to adhere to Islamic principles and laws. Az Zuhayli, (nd:5431) further stressed that for the amputation of a thief's hand to be considered, specific criteria must be met. The stolen property must have a value that warrants amputation (reaching *niṣāb*), and the act of

stealing must have occurred in a particular manner and in a specific location. These conditions help ensure that the severity of the punishment aligns with the gravity and circumstances of the theft.

THE SHARIAH PUNISHMENT FOR THEFT

Scholars agree that the punishment for theft is amputation of hands. Their reliance on the obligation of ***hadd*** of theft is the verse of the Qur'an that reads:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

"As to the thief, male or female, cut off his or her hands: A punishment by way of example from Allah for their crime. And Allah is exalted in power and wise."

(Surah al-Mā'idah, 5: 38)

Equally relied upon is the tradition of the Prophet:

"It was narrated from 'Aishah that Quraish became concerned about the case of the Makhzumi woman who had stolen, and they said: 'Who will speak to the Messenger of Allah (ﷺ) concerning her?' They said: "Who would dare to do that other than Usamah bin Zaid, the beloved of the Messenger of Allah (ﷺ)? 'So Usamah spoke to him, and the Messenger of Allah (ﷺ) said, "Are you interceding concerning one of the legal punishments of Allah (SWT)?' Then he stood up and addressed (the people) and said: 'O people! Those who came before you were only destroyed because when one of their nobles stole, they let him off, but when one of the weak people among them stole, they would carry out the punishment on him. By Allah, if Fatimah the daughter of Muhammad were to steal, I would cut off her hand.' (Sahih) (One of the narrators) Muhammad bin Rumh said: 'I heard Laith bin Sa'd say: 'Allah (SWT) protected her (Fatimah) from stealing, and every Muslim should say this." [1]

The interpretation of the verse mentioned above lacks specificity regarding the amount of the stolen property, leading to differing opinions among scholars. Imam Abu Hanifah asserted that the quantum (*niṣāb*) of a stolen property must be ten dirham or dinar or their equivalent. In contrast, the Jurists

[1] Al-Bukhārī, Muḥammad Ibn Ismā'īl (1442 A.H). *Ṣaḥīḥ al-Bukhārī*, vol 4. Bayrūt: Dār Ṭawq al-Najat, 175 no. *ḥadīth* 3475.

of Hijāz, including Imam Malik and Imam Ahmad, advocated for amputation for property valued at three silver dirhams or one-fourth of a gold dinar. Imam Shāfi'i aligned with this viewpoint. Some jurists in Baghdad, citing Imam Malik, considered the prevalent currency of the concerned land, possibly relying on traditions of the prophet that stipulate amputation for a quarter of a dirham in the case of goods.[2]

According to Maliki scholars, if the prevalent currency is *dirham*, the valuation is in *dirham*, but if it is dinar, the valuation is one-fourth of a dinar. In a country like Nigeria, where neither dinar nor dirham is in use, both should be valued in Naira for this purpose. The value of one-fourth of a gold dirham in Nigeria was N5,746 in the year 1432AH/2010, N9,201 in 1434 AH/2012, and rose to N27,471 in 1443/2022. By 1445/2023, it reached an estimated N60,000 due to a decline in the value of the Naira in the world market. This valuation is based on gold weighing 0.03416 troy ounces.

Scholars have deliberated on the amputation of a group of thieves who collectively stole items from a secure place, the total value of which equals the niṣāb. Al Juzairi (2000: 178) noted that scholars generally concur that if a group of thieves steals goods, and each share amounts to a niṣāb, each individual in the group is subject to amputation. This consensus is based on the perspective that such collective theft is deemed equivalent to an individual stealing an amount worth a niṣāb.

However, divergence arises when the stolen amount is precisely one *niṣāb*, such that when divided among the individuals, each receives less than a *niṣāb*. Sabiq (1977: 479). Imam Abu Hanifah and Imam Shafi'i contend that none of them should undergo amputation, as the situation is analogous to an individual stealing less than a *niṣāb*. This stance aligns with their interpretation of the tradition that a thief should not face amputation unless the stolen property is at least one-fourth of a dinar or its equivalent.

Arguing further on the issue of amputation, al Juzairi (2000: 179) further established that Imam Malik holds the view that if the stolen property is of a nature that an individual could not have taken alone, each of the thieves involved should undergo amputation. However, if the property is something that an individual could manage alone and does not meet the *niṣāb* threshold, no amputation is warranted, particularly when the individual carries a property below the *niṣāb*. This perspective is shared by Imam Shāfi'i, Imam Hanbali, and Abu Thawr.

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[2] Al-Bukhārī, Muḥammad Ibn Ismā'īl (1442 A.H). *Ṣaḥīḥ al-Bukhārī*, vol. 8, 160. No. *ḥadīth* 6789, 6790, 6791.

In cases where two individuals conspire to steal, with one entering to take the property and the other staying outside to receive it, Muhammad (1993: 87) highlighted that Malik, Shafi'i, and Ahmad bin Hanbali assert that amputation should be carried out on the one who entered, while the person outside should be exempt. According to their reasoning, the person who entered is considered the thief because they physically brought the stolen property out of custody.

In contrast, Imam Abu Hanifah argues that neither of the two should be subject to amputation since theft was not completed by either of them. However, this stance is not widely supported, as it could potentially lead to an increase in theft within society. The person who removed the property from custody is held accountable because, had it not been removed, the other person would not have had access to it.

In a scenario where a group is involved in theft, with one person excavating the custody, another removing the property, and a third merely observing, Imam Shafi'i suggests that both the person who excavated and the one who stole should face amputation, while the third party, who played a passive role, should be exonerated. On the other hand, Imam Abu Hanifa argues that amputation is only warranted when all members actively participated in excavation, burglary, and theft. However, Imam Malik posits that if it can be established that there was cooperation among the group, even if they functioned independently (with one person excavating and leaving, and the second person stealing the property that is no longer in hirz), there would be no amputation for any of them (Al Arabi, 1988: 111).

It is relevant to observe here that preference should be given to the view of Imam Shafi'i over Imam Malik unless the independent functions mentioned by Imam Malik lack cooperation and agreement within the group.

In the case of a group of thieves entering the custody of another man's property, where some come out with stolen property worth a niṣāb and others come out empty-handed, Al Juzairi (2000:180) reported that both Abu Hanifah and Ahmad argue that all individuals in the group should undergo amputation. This stance is based on the belief that all members aided in penetrating the custody, regardless of whether they personally took stolen property.

In the same context, Al Juzairi (2000:180) confirmed that both Maliki and Shafi'i scholars asserted that only those who came out with stolen property should face amputation. According to their perspective, theft is considered when the property is actually removed from its custody. This viewpoint is supported by the absence of evidence to convict those individuals who exited the custody without taking anything.

MODE OF AMPUTATION AND THE STATUS OF STOLEN PROPERTY

Regarding the part of the body to be amputated, scholars unanimously agreed that for the first theft attempt, the right hand should be amputated, and for the second attempt, the left leg should be amputated. However, their opinions diverge on subsequent attempts. Abu Hanifah and Ahmad argue that amputation should not go beyond one hand and one leg; any subsequent offenses should be penalized with imprisonment. This perspective may stem from concerns that crippling the plaintiff could result in them becoming a burden to society. On the other hand, Maliki, Shafi'i, and some followers of Ahmad assert that for the third offense, the left hand should be amputated, and for the fourth attempt, the right leg should be amputated (Muhammad 1993: 93).

There is unanimity among scholars that a convicted thief who undergoes amputation should return the stolen property to the original owner if the property remains intact, even if the thief has repented. Malik and Abu Hanifa maintain that if the property has been destroyed or utilized, the thief must compensate for the damages if he has the means to do so. However, if the thief is impoverished, the damages should be waived. In contrast, Shafi 'i contends that the punishment is a right of Allah, while the stolen property is the right of the original owner, who may choose to waive the right or claim it. Despite these differences, it seems that all the Imams agree that the thief should return the stolen property if it remains in their possession.

EXEMPTIONS IN THE PUNISHMENT FOR THEFT

In Islamic law, a person who engages in fraudulent acts or embezzles public funds is not subject to amputation of hands because they employ methods other than direct theft to achieve their unlawful objectives. Instead, they are deemed religiously and morally bankrupt and are obligated to repay the rights of the affected individuals adequately. The Hanbali, Maliki, and Shafi'i schools, however, hold the opinion that their hands should be amputated, considering fraud as a form of stealing (Al Juzairi 2000:171). The rationale behind this stance is rooted in the belief that if Shariah fails to impose *hadd* (prescribed punishment) on embezzlers, it could pose a threat to social justice, especially in the context of widespread embezzlement in government establishments.

Sami ul Haqq and Fehman (2020: 115-130) reported that if a person steals a coffin from a grave, the Hanbali, Maliki, and Shafi'i schools assert that the grave is hirz (a protected area), and therefore, theft of the coffin from it is liable to hadd. When theft involves perishable foodstuffs such as milk, fruits,

and meat, there is no amputation prescribed. However, scholars unanimously agree that such offenses warrant ta'zīr (discretionary punishment). Similarly, if prohibited items like intoxicating drinks or pork are stolen, the thief is not subject to hadd punishment, according to the consensus of scholars.

SARIQA (THEFT) UNDER THE SHARIAH PENAL CODES IN THE NORTH

The Shariah Penal Codes of Zamfara and Kano states are examined for evaluation. The definition of theft, as outlined in Section 133 of Kano State SPC (2000) and Section 144 of the Zamfara State SPC (adopted by five other states), is when a person covertly and dishonestly takes any lawful and movable property belonging to another out of its place of custody (hirz) and valued not less than the minimum stipulated value (*niṣāb*) without justification. Conditions of hirz (place of custody) and *niṣāb* (quantum) are deemed necessary to establish theft, aligning with Shariah provisions.

Concerning the punishment for theft, Kano State SPC 2000, Section 134 sub-sections 1 to 5, and Zamfara State SPC Section 145 prescribe amputation. However, the Niger State Penal Code (Amendment) Law 2000 is less comprehensive, stating in S. 68A(2) 'a' that amputation applies to a stolen article worth not less than ₦20,000. This is deemed inappropriate, as the *niṣāb* for amputation under Islamic law is traditionally based on the value of one-fourth of a dinar. Kano State SPC Law 2000, Section 134, addresses the theft of government money, stipulating amputation of the right-hand wrist, a minimum of five years imprisonment, and confiscation of stolen wealth. If mixed with other wealth, all funds are confiscated until public property is recovered. The law further provides that if the confiscated amount and stolen property do not match, the entire wealth shall be confiscated, leaving the offender with some amount for sustenance. This provision is unique to Kano State.

Section 134 (B) of Kano State SPC Law imposes amputation for embezzling public funds, aligning with the classical Maliki School doctrine, considering embezzlers as thieves. Ruxton (1974: 248) observed that after amputation, the embezzler is sentenced to imprisonment for not less than five years. Zamfara State SPC Section 147 (a-h) and Kano State SPC Section 135 (1) 'a-g' outline conditions for remittance of hadd penalties for theft, and both codes agree on ta'zir punishments for offenses not punishable by hadd. Conditions for remittance include offenses committed between spouses, under circumstances of necessity, when the stolen property is immediately needed by the thief, if the offender believes they have a share in the property, if the offender retracts

confession before execution, if the offender repents and returns the stolen property before trial, if the offender had permitted access to the place of custody, and if the victim is indebted and unwilling to pay. These remittances are not exhaustive, and the punishment was enforced on Bello Buba in Nigeria, though facing criticism. A study of such cases provides insights into the effectiveness of law enforcement in the country.

The Trial of Bello Buba for the Offence of Theft under the *Shariah* Penal Code of Zamfara State[3]

The case of Bello Buba, who became the first amputee in the history of Shariah in Nigeria after being convicted of theft, provides an example of the implementation of Islamic law in the country. Buba, a native of Jangebe in Zamfara State, was charged with stealing a cow and admitted his guilt during the trial. The Shariah Court convicted him according to Section 144 of the Zamfara State SPC and sentenced him to amputation under Section 145 of the State Shariah Penal Code on February 21, 2000. Buba was given a one-month period to appeal the decision, but he did not file an appeal, leading to the execution of the punishment on March 24, 2000 (USC/CR/21/2000. Record book of Upper Shariah Court, Talata Mafara, Kano).

Buba's situation brings forth both ethical and practical dilemmas regarding the use of amputation as a punishment for theft. While the Qur'an (Q.5:38) references amputation as a consequence for theft, Islamic law necessitates a confession to solidify this punishment. Moreover, Islamic principles dictate that theft driven by dire necessity, like stealing food, should be exempt from such severe penalties. Furthermore, if an individual shows genuine remorse before being caught, the amputation might be pardoned, especially if the case hasn't been formally presented to a judge. However, even if the case reaches the judge and the theft is deemed a matter of necessity, the punishment can still be waived. Notably, during Buba's amputation, Zamfara State was ranked as the 7th most impoverished state in Nigeria, with a staggering 84% of its populace living below the poverty line as gathered from the National Bureau of Statistics, 2003.[4] Such a high percentage not only raises alarms but also poses significant challenges to the state government. Ibn Qayyim recounted an incident during Umar bn Al-Khattab's era where an individual stole a camel

[3] See Record Book of TalataMafara Upper *Shari*ᶜ*ah* Court, Kano.Suit:USC/CR/21/2000. Date of Judgment: 21st February, 2000.

[4] National Bureau of Statistics, National Poverty Rate 2003-04(Revised) and 2009-10 abridged report

and admitted to the act. Initially, Umar ordered the thief to be amputated. However, he later reconsidered, compensated the camel owner double the amount he claimed, and released the thief. This decision was influenced by the ongoing famine, suggesting that the theft might have been a result of desperate circumstances. One might expect a similar compassionate approach from the Zamfara state government, given the prevailing conditions.

In Buba's case, the state government offered him an appointment after amputation, and later, Sani Yarima, the government during the introduction of the law, gave him N500,000 to start a cattle-rearing business. Another individual, Mallam Lawali Isa, was also amputated for confessing to stealing a set of bicycles. The aftermath of these amputations, as gathered in the Vanguard news paper of May, 2012, highlights the complexities and consequences of such punishments.[5]

The case prompts reflection on the effectiveness and ethical implications of amputation as a penalty for theft, especially in a socio-economic context like Nigeria. It raises questions about the rehabilitation and reintegration of those who undergo amputation and emphasizes the importance of addressing root causes, such as unemployment and societal well-being, to prevent such crimes. The regret expressed by Buba after accepting amputation and the impact on his subsequent opportunities underscore the need for a holistic approach to criminal justice and social development.

CONCLUSION

Under Islamic Law, theft is subject to the penalty of amputation. In the Nigerian states that uphold Shariah principles and have reintroduced Islamic Criminal Law, their Shariah Penal Codes stipulate amputation as the designated punishment for theft. Nevertheless, specific prerequisites need to be satisfied for executing this penalty. Such prerequisites encompass proving the accused individual's criminal liability, verifying that the stolen item meets the required threshold for amputation, and ensuring that the item was taken from a secure location, among other considerations.

The instance involving Bello Buba was examined as a representative case of theft under the Shariah Penal Code. It was found that the amputation aligned with the established legal criteria. Yet, the writer identified a significant oversight: the broader framework, especially the principle of *al*

[5] See https://www.vanguardngr.com/2012/05/sharia-zamfara-rehabilitates-amputees/

masalih al-mursalah (general public interest), wasn't sufficiently addressed. The prevailing conditions, characterized by severe poverty where the theft took place, weren't thoroughly considered. The author proposes that: Prior to introducing penalties for theft, it's crucial to establish a nurturing environment that tackles the underlying reasons behind crimes, such as ensuring basic necessities are met.

In such situations, judges should consider more lenient consequences rather than immediately resorting to severe measures like amputation. If someone isn't penalized for stealing a camel during a time of widespread hunger, it seems unjust to amputate an individual for taking a cow, especially when a significant majority of the community lives in poverty.

Considering Nigeria's distinct challenges, the government's priority should shift towards cultivating self-sufficient citizens instead of fostering dependence. A person subjected to amputation may find it even more challenging to achieve self-reliance. Rather than solely focusing on punitive actions, there's a need for a comprehensive strategy that emphasizes rehabilitation, education, and offering alternative livelihood options. This integrated approach not only addresses the immediate crime but also aims to empower individuals and communities, minimizing future offenses.

The perspective discussed above emphasizes the importance of considering socio-economic factors and the overall well-being of the society when implementing Islamic criminal laws. It calls for a balance between the application of legal punishments and the broader welfare of the population, highlighting the need for a holistic approach to justice that takes into account the social and economic realities of the community.

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