

## Political Measures in the Administration of Justice in Metropolitan Sokoto, 1804 - 1837

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### Abstract

In every Islamic state, *Shari'ah* as a legal principle/system is being practiced to ensure principally that the *Ummah* is being safeguarded. This comes through its elements otherwise components that allow its dynamism to reflect in the administration of justice. Some of these elements include: *Maslaha*, *Siyasat* and *Ta'azir*. *Siyasat* however formed a significant aspect where legal issues are being resolved without tempering the purpose of law (*Maqāsid al-Shari'ah*). This paper examines the application of *Siyasat al-Shar'iyyah* in the administration of Justice in Sokoto Metropolis during its reformatory stage (1804-1837). The choice of Sokoto province was informed by the fact that, it was the headquarters of the Caliphate as a result of which Sokoto became the seat of the Caliph where all appeals and referral cases were forwarded to. This paper concluded that the principle of *Siyasat al-Shar'iyyah* was used as a measure in handling some judicial cases in the Caliphate only with a view to achieve the *Maqāsid Shari'ah*.

### Introduction

The fact that *Shari'ah* is derived from the divine sources makes it supreme in an Islamic polity. This perhaps, explains the reason for its misconception as fixed and inflexible legal system by some Muslims (who are ignorant of the interpretations of the *Shari'ah* legal system) and many non-Muslims who dearly need its proper definition. However, the basic elements in its legal components resulting to its supremacy rests on the fact that dynamism is ensured through certain principles that particularly render its components satisfactory in every polity where it is being practised. These elements among others include; *Maslaha*, *Siyasat* and *Ta'azir*, all of which revolve within the purview of discretionary power vested on the *Imam* or Caliph to exercise in the interest of justice and in order to achieve the intent of the law in governing an Islamic state. Thus, these provisions were freely accessible and practicable as provided by the Islamic constitutional theory to the leadership in every given Islamic polity only with a view to ensure proper administration and achievement of the *Shari'ah* legal principles.

Thus, *Shari'ah* through these principles ensures its *Maqāsid/objectives* of safeguarding the *Ummah* and even those outside the confines of the *Ummah*, of also protecting the rights of the *Ummah* through balance in equity and justice between one another, and of ensuring the purpose of governance. This is principally in order 'to subject the whole human life to God and to make His word supreme'.<sup>1</sup> This is despite the fact that, *Shari'ah* is aware of the existence of socio-economic stratification as well as the distinction between those in power and those being ruled, which however do not reflect when it comes to the dispensation of justice as well as litigation among the classes in the *Umma* (except in rare cases as shall be analysed later in this paper). This is one distinguishing feature with *Shari'ah* and its application among the *Umma* as against other systems of governance, even though all systems claim advocacy to justice and its applications in the societies where it is being practiced.

The object of this paper is to examine the manifestation of *Siyasat al-Shar'iyyah* in the administration of justice in the metropolis (the headquarters of the Caliphate) to 1837. This is with a view to portray the extent to which the Sokoto authorities (especially the triumvirate – *Shaykh* Uthman bn Fūdi, *Shaykh* Abdullahi bn Fūdi and Caliph Muhammad Bello) practicalised their ideals in conformity with the tenets of *Shari'ah* in the administration of justice in the Caliphate generally despite being greater part of the period (1804-1837) reformatory.<sup>2</sup>

### Conceptual Clarification

#### Political Measures (*Siyasat Al-Shar'iyyah*)

The fundamental philosophy behind the *Shari'ah* injunctions is to ease difficulties, protect human welfare and direct the submission of human souls to Allah, the Almighty. It is in the light of this that Political Measure (*Siyasat*

<sup>1</sup> M. A. Ansari, *Ibn Taymiyyah Expounds on Islam; Selected Writings of Shaykh al-Islam Taqi ad-Din ibn Taymiyyah on Islamic Faith, Life and Society*, np., 2000, P. 500

<sup>2</sup> the period identified above is called reformatory here for two major reasons; one is for the fact that, the jihad movement was generally seen by some scholars like, Last as a reform movement, and secondly, for the fact that, the period itself was a period that the jihad leaders were confronted with a number of problems; ranging from resistance to their authorities to the expansion of the jihad to far reaching areas like Fombina. For more on the reform nature of the jihad movement, see M. Last, "Reform in West Africa: the Jihad Movements of the Nineteenth Century", In J.F. A. Ajayi and M. Crowder (eds.), *History of West Africa*, Vol. 11, London, Longman, 1974.

*al-Shar'iyah*) is being expounded to ensure liberty, flexibility and dynamism in Muslim community.<sup>1</sup> This is because, *Shari'ah* is spiritually meant to guide mankind to eternity and as human societies passed through different epochs in history; hence the relevance of *Siyasat al-Shar'iyah* in the workability of *Shari'ah* is inevitable. In addition,

The object of *Siyasat al-Shar'iyah* is therefore to design a proper and realistic framework within which the law may be administered so as to achieve its goal. The foundation of the *Siyasat al-Shar'iyah* is liberality, within the limits of the *Shari'ah* and avoidance of such fixity and literalism as may frustrate the purpose of law.<sup>2</sup>

The principle of *Siyasat al-Shar'iyah* as expounded by Sulaiman from *Shaykh* Abdullah's *Diyaul Hukkām* can be defined as 'simply the human effort, through the agency of government to ensure that the fundamental purpose of the *Shari'ah* are realised in the society.'<sup>3</sup> The purposes/objectives of law, otherwise the *Maqāsid al-Shari'ah* include: 'to keep Islamic government viable, to uphold the law, to suppress evil and corruption.'<sup>4</sup> In a nutshell, the principle of *Siyasat al-Shar'iyah* is largely in continuity with what the Maliki scholars termed the *Masalih al-Mursalah*.<sup>5</sup> In a nutshell, it is through this principle that reference to *Siyasat al-Shar'iyah* is mandated in arriving at a legal decision and or in legislations over circumstantial legal issues. Subri<sup>6</sup> however, defined it as 'an action made by Imamate or leadership in a country according to *Maslaha*/benefit which does not have specific revelation in it' used in the administration of justice to achieve the purpose of Law. Kamali also saw it as '... an instrument with which to accommodate the needs of social change within the *Shari'ah*'.<sup>7</sup> Summarily, it is being conceived as a measure or means through which *Maslaha* or *Maqāsid al-Shari'ah* could be attained, hence becomes the working definition of this article.

#### **Public Good (*Masalih Al-Mursalah*)**

The concept of Public Good (*Masalih al-Mursalah*) developed in the *Sunni* jurisprudence with a view to allow flexibility in administering cases that have direct bearing on the *Maqāsid al-Shari'ah* (purpose of law).<sup>8</sup> In the Maliki school of law it refers to the public welfare or good, in the Hanafi school it is called *Istihsan* and in the Hambali it is called *Istislah*, but all bearing the same object. The *Maqāsid/objective* however, reflect the essence of the law itself and as such cases that have bearings on that will be handled using this concept to avoid failing to fulfil the purpose of the law.<sup>9</sup> For instance, the main purposes of the law are: the ability to practice Islam, protection of life, property, children and human rationality, and in any situation these are by no means going to be observed in legal administration.<sup>10</sup> Thus, on the account of these purposes going to be tempered by a particular case, then by this principle the adjudicators have the mandate to go beyond the text where necessary. This is with a view to achieve the public good and or benefit.<sup>11</sup> Some cases that have this bearing will be discussed appropriately below.

#### **Conception of Political Measures (*Siyasat al-Shar'iyah*) by the Sokoto Jihadists**

There is no doubt that, the leaders of the Sokoto Jihad (*Shaykh* Uthman bn Fūdi, *Shaykh* Abdullah bn Fūdi and Caliph Muhammad Bello) were jurists of reputable stand, as a result of which, they were all aware of the relevance of justice and knowledge of *Shari'ah* in the success of any administration. This was categorically stated by both *Shaykh* Uthman bn Fūdi and his brother *Shaykh* Abdullah bn Fūdi in some of their writings.<sup>12</sup> This is with a view

<sup>1</sup> M. Tabiu, "Law and ...," P. 331; See also Ahmad I.T., *Alsiyasah al-Shariyyah fi Islah al-Rai wa al-Ra'iyah* 3<sup>rd</sup> edition, n. p., 1988.

<sup>2</sup> Ibid., P. 329.

<sup>3</sup> I. Sulaiman, *The Islamic ...*, p. 68.

<sup>4</sup> Ibid.

<sup>5</sup> On *Masalih al Mursalah* See T.M. Naniya, "History of ...," p. 14 and also I. Sulaiman, *The Islamic State ...*, Pp. 50 – 55.

<sup>6</sup> I. M. Subri et al, "*Siyasat Al-Shar'iyah* and Its Implementation in Malaysia", *Australian Journal of Basic and Applied Sciences*, Vol.8:13, Aug. 2014, p. 418; cf [www.ask.com/Islamic+Encyclopeadea](http://www.ask.com/Islamic+Encyclopeadea)

<sup>7</sup> M. H. Kamali, "*Siyasat Shar'iyah* or the Policies of Islamic Government", *The American Journal of Islamic Social Sciences*, Vol. 6:1, 1989, P. 75; cf I. M. Subri et al, Ibid.

<sup>8</sup> C. Shawamreh, "Islamic Legal"..., p.204

<sup>9</sup> For details of the concept and legal vis-à-vis the juristic implications of the *Maqāsid Al-Shari'ah*, see M. T. Ibn Ashur, *Ibn Ashur: Treatise on Maqāsid al-Shari'ah*, IIIT Books-in-Brief Series, 2013; A. Al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, IIIT Books-in-Brief Series, 2013

<sup>10</sup> Ibid., see also A. I Doi, *Shari'ah the ...*, Pp. 81-83

<sup>11</sup> Cf [www.download.flvrnner.com/encyclopeadea](http://www.download.flvrnner.com/encyclopeadea); [www.ask.com/Islam+Encyclopeadea](http://www.ask.com/Islam+Encyclopeadea)

<sup>12</sup> Thus, in *Kitab al-Farq* for instance, *Shaykh* Uthman bn Fūdi stated that, "A land can endure with unbelief but cannot endure with injustices". Scholars of the Sokoto jihad have to a greater extent attributed the fall of the Caliphate to the ailing decay in the ideals of justice that the Caliphate was earlier built on in the last days of the Caliphate. Cf, *Shaykh* Usman bn Fodiyo, *Kitab al-Farq*, nd., Edited and Translated by M. Hiskett, Kaduna, Baraka Press and Publishers. Equally, *Shaykh* Abdullah bn Fūdi, in his *Diya 'ul Hukkam* identified some qualifications to be adhered to while appointing a state official, and openly emphasized

to portray the essence of justice and knowledge of *Shari'ah* to anybody who is appointed to the position of authority (especially with the leadership roles where he could dispense justice). This further informed the choice of their learned lieutenants as Emirs and Nuwabs in different emirates to take charge of their respective emirates with follow-up instructions on issues relating to administration of justice and good governance.<sup>1</sup>

Thus, understanding the essence of justice and the knowledge of *Shari'ah* as prerequisite for the foundation of good governance and administration of justice in an Islamic state, the leadership of the Sokoto jihad was fully aware that circumstances might warrant resorting to *Siyasat* in solving some judicial problems. This is first conceivable from their understanding of the nature of the Society they want to build as well as the nature of the people around them while the jihad was going on. It was on this basis that Sultan Muhammad Bello observed the weakness of the community in their response to the dictates of the *Shari'ah* and categorised the community into ten based on their initial support to the jihad course.<sup>2</sup> The legal implication of this division drawn by Sultan Muhammad Bello in *Jama at ahl al- Shaykh* informed the basis of him and his father's realism in the grounding of the Caliphal Judicial system to which *Siyasat al-Shar'iyah* was resorted to in legislating and administering a number of judicial problems facing the nascent Caliphate. This was only with a view to achieve the *Maqasid al-Shari'ah* as shall be expressed in the subsequent sub-themes.

On the other side, *Shaykh* Abdullah bn Fūdi, albeit, being an idealist in principle and practice<sup>3</sup> and who is known for his firm stand on justice<sup>4</sup> as well as his view that; there should be no distinction between people if it comes to judicial matters.<sup>5</sup> However, he recognised *Siyasat* in judicial administration.<sup>6</sup> On this note, this doyen of legal luminaries in the Caliphate (*Shaykh* Abdullah bn Fūdi) recognised the fact that, *Siyasat al- Shar'iyah* is inevitable for justice to be successfully achieved in an Islamic polity. Albeit, this inevitability in the administration of justice should only be within the frame of a given circumstances and with serious caution. He thus expressed how inevitable it is in the following;

If *Siyasat* is neglected and not applied, people will eventually lose their rights, the *Hudud* may be suspended and corrupt people will gain the upper hand... if *Siyasat* is given a free reign, and goes beyond the boundaries of the sharia, the inevitable outcome will be the prevalence of injustice, bloodshed, and confiscation of property.<sup>7</sup>

Thus, this understanding, otherwise conception and application of the principle of *Siyasat al- Shar'iyah* by the leadership of the Sokoto jihad as well as the founding fathers of the Sokoto Caliphate, reflected their missions and commitment to the desire of achieving the purpose of law which will in turn reform the Society. In addition, this conception laid the basis for a number of judicial legislations and decisions as shall be expressed below, that some critiques of the Caliphal leadership made their comments on.<sup>8</sup>

### Political Measures (*Siyasat al- Shar'iyah*) in Legislation of Judicial Matters

Unlike how *Shari'ah* is being perceived by the orientalist as rigid, nonflexible and not dynamic, only because it

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the disapproval to leadership position of anybody who seeks leadership position by himself.

<sup>1</sup> On this note, a clear example is discernable in the *Shaykh* Abdullahi's *Diya 'ul Hukkam* and *Diya al- Siyasat* that was written on the request of the *Jama'a* in Kano; Sultan Muhammad Bello's responses to Emir of Bauchi Yaqub – the Manual of advice and answers to some of his questions, and equally his *Usul al- Siyasat* that was written on the request of Emir of Katsina, Umbaru Dallaji.

<sup>2</sup> On this division see, M. Bello, *Jamā'at ahl al- Shaykh*, MS., Nd; see further, Y. Y. Ibrahim, "Content Analysis of Sultan Bello's *Bayan Jamā'at Al- Shaykh* and Its Islamic Implications", In Z. I. Oseni (ed.), *Florescence of Arabic and Islamic Studies in Nigeria: Festschrift in Honour of Professor Wahab O. A. Nasiru*, Ibadan – Nigeria, HEBN Publishers Plc., 2008

<sup>3</sup> Thus, a number of scholarly works were and is being undertaken even though not exhaustive, on the life, ideas and writings of *Shaykh* Abdullahi bn Fodiyo. Some of these works included; S. U. Abdullahi, *On the Search for a Viable Political Culture: Reflections on the Political Thought of Shaikh Abdullahi bn Fodiyo*, Kaduna – Nigeria, New Nigerian News Paper Ltd., 1984; A. A. Gwandu et al (eds.), *The Life and Works of Shaykh Abdullahi B. Foduye*, Center for Islamic Studies Seminar Series, Usmanu Danfodiyo University, Sokoto, 2009; A. A. Gwandu, "Abdullahi Bn Fodiyo As A Muslim Jurist", PhD Thesis, University of Durham, 1977; M. S. Zaharadeen, "Abdullahi bn Fodiyo's Contributions to the Fulani Jihad in the Nineteenth Century Hausaland", PhD Thesis, McGill University – Canada, 1976

<sup>4</sup> On firm stand on Justice see T. M. Mukhtar, "Abdullahi bn Fodiyo's Position on Justice in an Islamic State", *Sokoto Journal of History*, Vol. III, 2013

<sup>5</sup> Y. Y. Ibrahim, "Administration of Justice in Islamic Polity: The Sokoto Caliphate Model", *Degel: Journal of Arts and Islamic Studies*, Vol. VI, Aug., 2003

<sup>6</sup> See M. Tabiu, "Law and Social Change in the Sokoto Caliphate", In A. M. Kani and K. A. Gandhi (eds.), *State and Society in the Sokoto Caliphate*, Sokoto – Nigeria, Usmanu Danfodiyo University, 1990, Pp.320-339

<sup>7</sup> I. Sulaiman, *The Islamic ...*,

<sup>8</sup> H. A. S. Johnston, *The Fulani Empire of Sokoto*, London, Oxford University Press, 1967; R. Peters, *Islamic Criminal Law in Nigeria*, Ibadan – Nigeria, Spectrum Books, 2003

is revealed or derived from the divine means,<sup>1</sup> the principle of *Siyasāt al-Shar'īyyāh* among others, is one of these means through which its dynamism is constitutionally provided as well as ensured to cater for the emerging circumstances that may prevailed as a result of time and geographical situations.<sup>2</sup> However, to cater for these emerging situations, legislations have to be made in consideration of the circumstances prevailing either the causation of a particular judicial problem, the process of ascertaining the guilt of the accused or in determining the judgement to be passed by either the *Qāḍi* or anybody charged with the responsibility of administering justice to that effect.<sup>3</sup>

In Sokoto metropolis, the triumvirate at the beginning emphasised on exploring leniency rather than harshness, the principle through which they imbibed considering the revolutionary nature of the community and with a view to achieve social stability with ease in the nascent Caliphate.<sup>4</sup> In this respect, the triumvirate in various ways emphasised this, and as a result some cases were redressed through the medium of leniency. This was simply for the fact that, it was commonly believed and accepted by the triumvirate that to err in leniency is better than to err in harshness.<sup>5</sup> Moreover, harshness does not in any way formed part of the objects *Shari'ah* wants to achieve. It is on this ground that Sultan Muhammad Bello (d. 1837) wrote categorically to Emir of Gwandu Ibrahim Khalil (1833-1858) advising him to exercise leniency in administration whenever there was that chance and harshness only when there was no chance of leniency.<sup>6</sup> This could be understood to mean exploring every possibility that would soften his heart over a legal matter, like accepting blood money in place of *Qisas* where and whenever necessary.<sup>7</sup>

In addition, in the process of investigation and or dealing with the accused, *Shaykh* Abdullah bn Fūdi, proposed legislation of other means of evidence (by the *Qāḍi* or the person in charge) no matter how weak these means may be, when the conventional means of proof; *Shahadat* (testimony of eye-witness) and *Iqrar* (admission) could not be ascertain. For instance, in the event of non-availability of an *Udul* (a just witness), eye-witnesses that are not just in character have to be resorted to in determining the faith of a given legal dispute.<sup>8</sup>

Similarly, on the process of investigating legal cases (especially criminal related) character of the accused has to be taken into consideration while trying to establish the reality of the matter before passing judgement. For instance, an accusation could be framed on a pious and gentle man in a society, while trying to establish the fact about the matter; the judge must not in the process of investigation apply torture, because of the integrity of the accused. But for instance when a notorious criminal is accused of a criminal act and there are no proof to ascertain his conviction, the judge in this context has the mandate to torture the accused, and in a situation where despite the torture nothing could be established, *Shaykh* Abdullah bn Fūdi was of the view that, the accused could be imprisoned for some time as a deterrent to his behaviour vis-à-vis to other criminals in the community.<sup>9</sup>

In the same vain, legislations on legal matters in Sokoto Caliphate, takes effects from *fatwa* over legal issues. On this note, the triumvirate on several occasions were confronted with these issues that may arise as a result of some circumstances either from within the metropolitan region where the Caliph resided or from the distant emirates.<sup>10</sup> However, within the metropolitan region, one of the most serious of these *fatwa* that had even led to a serious disagreement between *Shaykh* Uthman bn Fūdi and his brother *Shaykh* Abdullah bn Fūdi, was the status of the properties that were plundered by the Jihad forces and other members of the *Jamā'at* before the capture of Alkalawa in 1808.<sup>11</sup> On this issue *Shaykh* Uthman bn Fūdi issued a *fatwa* that the judges were was to use in determining the claims of these properties by the earlier owners. The *fatwa* was that, 'the fall of Alkalawa be used in determining the properties acquired by the jihad forces; those properties acquired after the fall of Alkalawa and those that their ownership can be proven beyond reasonable doubt be returned but those acquired before and those that their ownership cannot be proven be maintained'.<sup>12</sup>

*Shaykh* Uthman bn Fūdi however, based this *fatwa* on the fact that the society at that time was in its nascent as well as revolutionary stage, and therefore, retrieval of these properties from the Jihad forces would only

<sup>1</sup> Cf H. A. S. Johnston, *Ibid.*; R. Levy, *The Social Structure of Islam*, Cambridge, Cambridge University Press, 1969

<sup>2</sup> See M. Tabiu, "Law and" ..., Pp. 324-325

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, See S. Kumo and E. M. E. Rushwan, "Social Objectives of Penal Policy in Islamic Law", Presented at The International Seminar on Islamic Social Justice, Institute of Administration – ABU, Zaria, 1978

<sup>5</sup> M. Tukur, "Political Ideals of the Sokoto Caliphate", Presented at The International Seminar on Islamic Social Justice, Institute of Administration – ABU, Zaria, 1978

<sup>6</sup> WJHCB (SSHCB)/AG/OLO/AR-1

<sup>7</sup> Cf WJHCB (SSHCB), Sok,S/OL(J)O/AR-3; S. Kumo and E. M. E. Rushwan, "Social Objectives" ..., Pp. 10-11

<sup>8</sup> M. Tabiu, "Law and" ..., Pp. 320-339; cf A. Fodiyo, *Diya ul Hukkam*, Edited and Translated by S. Yamusa, Kaduna, Baraka Press; cf *Diya al-Umara*, Ms nd.

<sup>9</sup> *Ibid.*

<sup>10</sup> Cf NHRS P.116/1, M. Bello, *Al-Qaul al-Mauhub fi Ajwibati Amir Bauchi Yaqub*

<sup>11</sup> S. U. Abdullahi, "Shaykh Abdullahi B. Foduye: The Misrepresented Personality", In A. A. Gwandu et al (eds.), *The Life ...*, Pp.223-238; M. Tukur, "Political Ideals" ..., P. 2

<sup>12</sup> *Ibid.*

cause problems of social instability and ultimately problem to the young Caliphate.<sup>1</sup> But *Shaykh* Abdullah bn Fūdi strongly opposed this position of *Shaykh* Uthman bn Fūdi on the grounds that rights and acquisitions should not be determined by a given time no matter how and what, but should only be determined by the legality of enjoying either the rights or acquiring the property, hence the properties be returned to their original owners.<sup>2</sup> Despite this critique by *Shaykh* Abdullah bn Fūdi, this *fatwa* was used by the judiciary in determining these kinds of cases. In a similar vein, the jihadist further recognised the influence of *Urf* (Customs) in human life and its relevance in a given social system and as a result of which they emphasized the consideration of *Urf* (Customs) in passing *fatwa* to the society.<sup>3</sup> This is in the sense that; ‘when the law moves into a new age, or into a new society, whose customs, habit and practices, habits and social conditions are different, it develops and changes to meet the new situation’.<sup>4</sup> This will give room for the law to accommodate social change as well as the flexibility the law required to contain certain circumstantial issues coming up. On this note, Sultan Muhammad Bello is of the view that, stressed that this principle could take precedence over the interpretation of Islamic law in passing a legal verdict.<sup>5</sup> In a nutshell, *fatwa* or legal verdicts should be issued only in consideration of this principle whenever the case is related to *Urf*. Majority of the cases that reflected the usage of *Urf* in the Caliphate are related to civil matters; marriage contracts, business transactions, slavery, etc.

### Political Measures (*Siyasāt Al- Shar’iyyāh*) in the administration of Justice

One of the greatest challenges faced by the Jihadists after the success recorded in 1804 was the establishment of justice as they had all along been professing. The challenge became obvious for the fact that, the jihadists have been criticising the Gobir administrations for the injustices being meted to their subject before the jihad,<sup>6</sup> and the power shift to the jihadists’ means they assume the leadership status of the Gobir aristocrats which by implication required the jihadists to implement as well as uphold justice among their subjects. Another point worthy of note here is the nature of the society that supported the jihad course, who was believed to have been motivated by different forces.<sup>7</sup> The implication of which could be translated to having a new community with different calibre of people under an Islamic umbrella that they wished to have, but they were not used to. Thus, law as a means of ensuring and maintaining social stability in the new community had to be enforced with all seriousness as well as in consideration of all the circumstantial forces that may revolve within a given legal discord.

Despite the nature of the new Caliphal society described above, the leadership was all out to ensure justice reigned within the territorial formations of the Caliphate. In this attempt, the leadership had to resort to utilising every possible means and or opportunity provided by the *Shari’ah* to ensure that injustice is redressed and justice is maintained in the society. However, it is on this note that resorting to applying the principle of *Siyasāt Al-Shar’iyyāh* in administering some judicial problems became necessary for the leadership of the Caliphate at the beginning. A clear example of these judicial problems is related to the jihad forces and some notable jihad officials as shall be expressed below.

Since before the official declaration of hostility between the *Shaykh’s* community and the Gobir administration, there was legal problem claimed to have been committed by the *Shaykh’s* community, of ambushing the Gobir forces who attacked Gimbana and captured some disciples of Abdulsalami. It was recorded that, *Shaykh’s* community rescued these Muslims from captivity as well as captured the Gobir forces into captivity and seized their property.<sup>8</sup> This became a legal issue simply because during the time of this incidence there was no official declaration of hostility between the *Shaykh’s* community and the Gobir authority. As a result, the *Shaykh* released the Gobir captives and their properties were returned to them.<sup>9</sup> But in the event of those wounded or killed, *Qisās* was not applied because of the nature of the community during the early period.

Thus, during the confrontation period, the jihad forces were reported to have over stretched their whims on some communities. A clear example of this is discernible from the Kwalde case, where the jihad forces on their

<sup>1</sup> Ibid.

<sup>2</sup> Ibid.

<sup>3</sup> On the position of the Jihadists on the usage of the principle of *Urf* (customs) and *adā* (practices), see, M. Bello, *Kitab Al-Tahrir*, Mss, nd., See also A. I. O., “The Role of *Urf* in the Development of Islamic Law”, *Al-Bayan Journal of Islamic Research*, Vol. 1:1, 1992, Pp. 17-28

<sup>4</sup> M. Tabiu, “Law and”..., Pp. 334

<sup>5</sup> M. Bello, *Kitab Al-Tahrir* ...

<sup>6</sup> On this kind of criticisms see S. U. Danfodiyo, *Kitab Al-Farq*, nd., Edited and Translated by M. Hiskett, Kaduna – Nigeria, Baraka Press; S. U. Fodiyo, *On Good Governance: Being the Translation of Section 51-57 of Bayan Wujub AL-Hijrah ala-Ibad*, Edited and Translated, F. H. El-Masri

<sup>7</sup> M. Bello, *Jamā’at ahl al- Shaykh* ...; Y. Y. Ibrahim, “Content Analysis” ...

<sup>8</sup> Y. Y. Ibrahim, “Application of Radd Al-Mazalim in Sokoto Caliphate”, *Dirasat Islamiyyah: Journal of Islamic Studies*, Vol. 1:1, 2007, P. 33; cf M. Bello, *Infaq Al-Maisur fi Tarikh Bilad Al-Tukurur*, nd., Translated and Paraphrased as *The Rise of the Sokoto Fulani*, by E. J. Arnett.

<sup>9</sup> Ibid.

way to Alwasa attacked on the Kwalde people with no justifiable cause.<sup>1</sup> The gravity of this case was felt seriously by the triumvirate, in which specifically *Shaykh* Abdullah bn Fūdi and Sultan Muhammad Bello attributed their hardship in Alwasa to this incident, and the *Shaykh* himself had restituted this unjust practice committed by the jihad forces.<sup>2</sup> Similarly, Sultan Muhammad Bello reported this kind of unjust conduct on the Alkalawa people after its fall, which resulted to legal tussle on the status of the property usurped by some members of the *Shaykh's* community.<sup>3</sup> In this case legal decision had to be made by the *Shaykh* which formed the basis for determining this legal issue in the court of law as was fully examined under *Siyasāt al-Shar'īyyāh* in dealing with such legal matters mentioned above.

On the part of the state officials, instances of over exercising their powers beyond the realms of the *Shari'āh* were also recorded. For instance, Last reports a case involving *Amir al-Jaish* Aliyu Jodi and a non-Muslim who claimed to be a *Dhimmi*.<sup>4</sup> Last, however, related that Aliyu Jodi was said to have killed the non-Muslim over a horse and according to Ibrahim such case was not restituted by the *Shaykh*.<sup>5</sup> But restitution of this case could be affected by the revolutionary nature of the society (where the administration was nascent) as well as the jurisprudential nature of the case, where some scholars are of the view that, *Qisās* cannot be administered between a Muslim and non-Muslim.<sup>6</sup>

Similar to this was the case involving Buba Yero (d. 1842) and his brother – Hammarwa (d. 1833), who was reported to Sokoto for killing his brother (Hammarwa) and his Brother's son (Bose) on the pretext of scheming secession from Gombe.<sup>7</sup> What appears apparent is that correspondences were undertaken in respect of the matter between Buba Yero and Caliph Muhammad Bello. Though not recoverable except an extant of one of these correspondences which states as follows;

From Amiral Muminin to Buba Yero. Greetings and peace. Next to proceed, I have seen your letter and your excuse and it is good and right, but your point of view is one sided; (but) if you look into the problem objectively you could see what I have reminded you of and Allah knows (the) best. What I want from you is that you should not harm the sons of Hammarwa at all; ... if not because of fear of much detail I could have brought to you the proof of what you have overlooked and this is sufficient to you because of your desire to obey our orders. But you believe that I have not been adequately informed about your affairs and that if I was I could have accepted your view point on them (Hammarwa and Nafada). But this is not so and you will receive from me right opinion backed by its proofs.<sup>8</sup>

Thus, from the letter above, three points are deductible. One is the fact that the execution had taken place (of Hammarwa and Bose); and that Caliph Muhammad Bello expressed his concern over the decision taken by Buba Yero based on his views that were one sided and lastly, on the orders given him by the Caliph not to further harm the sons of the deceased at all. But this letter did not show categorically the action of Caliph Muhammad Bello against the Homicide committed by Buba Yero however, it was established by Muri emirate's narratives to have been the reason behind Muri emirate's autonomy from Gombe which was granted by Caliph Muhammad Bello as a punishment to Buba Yero.<sup>9</sup> The case has been seen by some scholars<sup>10</sup> as not enough, for *Qisās* was supposed to have been ordered by Caliph Muhammad Bello but it was not possible for the Caliph because of the influence Buba Yero had in the Gombe axis.

On these two cases the leadership in Sokoto had resorted to apply the concept of *Siyasāt al-Shar'īyyāh* in the administration of such cases. The concept as explained in the conceptual clarification of this work gives the Caliph the mandate to politically administer some judicial decisions only when and where necessary the problems could temper the *Maqāsid al-Shar'īyyāh* – the object of Islamic Law after strict administration.<sup>11</sup> Thus, some scholars are of the view that, in achieving the objectives /*Maqāsid*, the Caliph enjoyed the right to act even outside

<sup>1</sup> Ibid. Pp. 82-83; A. Fodiyo, *Tazyin Al-Waraqat*, Translated and Edited by M. Hiskett

<sup>2</sup> Ibid., Pp. 118-119

<sup>3</sup> Ibid.; cf subsection on legislations above.

<sup>4</sup> M. Last, *The Sokoto Caliphate*, Longman, London, 1976, P. 67

<sup>5</sup> Y.Y. Ibrahim, "The Concept" ... Pp.194-196;

<sup>6</sup> Cf note three above.

<sup>7</sup> H. A. S. Johnston, *The Fulani Empire of Sokoto*, London, Oxford University Press, 1976, P. 187

<sup>8</sup> M. Hamman, *The Middle Benue Region and the Sokoto Jihad 1812-1869: The Impact of the Establishment of Muri*, Kaduna – Nigeria, Arewa House – ABU, 2007, P. 99, note 17; cf *Gazetteer of Muri Province*

<sup>9</sup> Ibid.

<sup>10</sup> One of the leading among these Scholars was *Shaykh* Abdullah bn Fūdi. For more on this see M. Last, *The Sokoto ...*

<sup>11</sup> For more details on the *Maqāsid Al-Shari'āh* see, Ibn Ashur, *Treatise on Maqāsid al-Shari'āh*, (trans. M. E. El-Mesawi) London, IIT, 2013; Imam Al-Shatibi, *Theory of the Higher Objectives and Intents of Islamic Law*, (trans. A. Al-Raysuni) London, IIT, 2013

the frame of *Shari'ah* provisions, and as such these cases were adjudged appropriately.<sup>1</sup>

### **Conclusion**

It is a noted fact that injustices of the Hausa aristocrats had been the basis behind the demise of their administrations in the early years of the nineteenth century. The demise of which however, resulted to the establishment of a new system of government led by *Shaykh* Uthman bn Fūdi under the prescribed principles of *Shari'ah*, a legal system that was and still being perceived as a static, inflexible and non-dynamic by some orientalist and or Eurocentric scholars. In this paper, an attempt has been made to examine one of those principles of *Shari'ah* that allows for dynamism in the process of legislation and administration of judicial matters in the Sokoto Caliphate during its reform period. Thus, using this principle, the leaders of the Caliphate legislated as well as addressed some judicial problems that they encountered in consideration of a number of circumstantial as well as jurisprudential challenges surrounding the causation and determination of complex legal problems. On this note, it is the view of this paper that the Jihad leaders administered the Caliphate during its reformatory period despite the difficult nature of the community at that time.

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<sup>1</sup> M. B. Uthman, 46 years, Lecturer, Institute of Administration – ABU, Zaria, 19<sup>th</sup> Oct. 2012