

**AN EXAMINATION OF THE EXTENT OF POWER AND JURISDICTION OF
SHARIA COURTS TO HEAR AND DETERMINE CASES INVOLVING CRIMINAL
OFFENCES**

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Abstract

This paper presents the power and jurisdiction of Shari'a Courts to hear and determine cases involving criminal offences. Sharia Courts are inferior courts established by the laws of the State House of Assembly in some States in Northern Nigeria. It is the law that donates jurisdiction to the judges manning the courts to hear and determine defendants brought before the courts by the prosecution. The courts have unfettered jurisdiction to determine a criminal case where the accused person is a Muslim. In the case of a non-Muslim defendant, the trial requires the consent of the non-Muslim for the court to properly assume jurisdiction over him. The jurisdiction of the courts consists of original and appellate powers depending on the powers donated to the court by law. In addition to that, the jurisdiction of the courts may be limited to the territorial area and the nature of offences. In Jigawa State any offences under the Violence Against Persons Prohibition Law, 2021 can only be commenced before any court with the consent of the Attorney-General of Jigawa State. Without such permission, the court has no vires to try the criminal cases.

1.0 Introduction

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) has empowered the State House of Assembly to establish an inferior court. It is based on the legislative powers some states have established Sharia Courts. The Courts have jurisdiction to entertain criminal cases. Parties to be arraigned before the Court at the first instance must be Muslims or non-Muslims who subject themselves to be tried by the Court. The Courts have various appellations depending on the state. The Courts are of first instance and appellate jurisdiction. The names of the Courts are Shari'a Court, Higher Shari'a Court, Higher Shari'a Court of Appeal, Upper Shari'a Court and Upper Shari'a Court of Appeal. The jurisdictions of the Courts have been provided in terms of offence and territorial areas. Judges presiding over the Courts are persons knowledgeable in Islamic law who obtained a degree in Islamic law or other qualifications below the degree in law from recognised institutions. It is therefore the intendment of this paper to examine the extent of power and jurisdiction of Sharia Courts to hear and determine cases involving criminal offences. Shari'a Courts Law, Shari'a Penal Codes Law and Shari'a Criminal Procedure Codes of Jigawa, Kaduna, Kano and Katsina State have been used to examine the powers of the Shari'a Courts in Criminal Matters. The paper has been segmented into six parts which consist of introduction, the jurisdiction of the court, establishment of Sharia Courts, jurisdiction of the Shari'a Courts over Criminal Cases, Jurisdiction of Shari'a Court in Hearing and Determination of Cases under Violence Against Persons Prohibition Law in Jigawa State and conclusion.

2.0 Jurisdiction of Court

It is trite and elementary law that jurisdiction is the life-wire of any case and it is the superstructure upon which the judicial power of a Court of law is founded. It is a threshold matter which is so fundamental that any decision reached by any Court of law, no matter how superb, beautiful, or sound such case is, is a nullity, once such trial Court, tribunal or appellate Court lacks the jurisdiction to determine or adjudicate on the matter or appeal.¹ The pre-eminence of jurisdiction as a *sine qua non* in all judicial proceedings is such that an objection to jurisdiction can be raised at any time before, during and after a proceeding before the same Court or even for the first time on appeal at the higher Courts, including the Supreme Court.²

¹ NNPC V. Saleh (2013) All FWLR (Part 708) 836

² Lateef M.A., Jurisdiction of Courts in Nigeria.

It is instructive to note that the issue of jurisdiction, whether limited or not is not new to Islamic Law. It has long been acknowledged as a valid functional aspect of Islamic jurisprudence and is therefore crucial, basic and fundamental to the adjudicatory process under Islamic Law. Thus, Islamic law provides for jurisdiction over territory, period, parties and subject matter.³ In *Asayaya v Asayaya* Court of Appeal Kaduna Division reiterated the position of Islamic law on jurisdiction. Honourable Justice Oredola quoted with approval *Nizaamul Qadai Fi Shari'atil Islamiyyah* by *Abdulkarim Zaidani*:

*"Under Islamic law, territorial jurisdiction or jurisdiction concerning parties and subject matters are conferred on Courts by the authority charged with this responsibility and no Courts of record shall go outside the stipulated jurisdictions. See Nizaamul Qadai Fi Shari'atil Islamiyyah by Abdulkarim Zaidani at page 47. It states: ARABIC CITATIONS... MEANING: It is in order that the jurisdiction of a judge (Court) be restricted to certain specific subject matters.... It is therefore not proper for a judge (Court) to adjudicate on matters which are outside his/its jurisdiction. In a situation where a Court of law entertains a matter over which it has no jurisdiction, its decision is incapable of being enforced. Put differently, such a decision is a nullity. This principle of Islamic law is clearly stated in Nizaamul Qadai (supra) at page 47 thus: ARABIC CITATIONS... MEANING: Limitation of jurisdiction... and this means, restricting the jurisdictional power exercisable by a judge to specific subject matter... If he adjudicates otherwise/outside the specified areas, his judgment will not be enforced."*⁴

The Constitution of Nigeria has established two courts, the Superior and inferior Courts. Section 6 (1) – (3) of the Constitution provide that:

"(1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
(2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.
(3) The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (i) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record."

³ Hon. Justice Abdullateef Kamaldeen, 'An Overview of the Jurisdiction of Sharia Courts' (Being a paper presented at the workshop for Area/Sharia/Customary Courts organized by the National Judicial Institute, Abuja from 3rd to 5th April, 2017).

⁴ (2013) LPELR – 22958 CA (Pp. 12-13, paras. A-B)

The structure or hierarchy of Courts in Nigeria as established by Section 6 sub-section (5) (a) - (k) of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended). The section listed the superior Courts and empowered the State House of Assembly to create lower Court: “(5) This section relates to- (a) the Supreme Court of Nigeria; (b) the Court of Appeal; (c) the Federal High Court; (cc) the National Industrial Court; (d) the High Court of the Federal Capital Territory, Abuja; (e) a High Court of a State; (f) the Sharia Court of Appeal of the Federal Capital Territory, Abuja; (g) a Sharia Court of Appeal of a State; (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja; (i) a Customary Court of Appeal of a State; (j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and (k) such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.”

3.0 Establishment of Sharia Courts

Various State Houses of Assembly in Northern Nigeria have established grades of Sharia Courts to hear and determine Criminal Cases. In Jigawa State “...*There are established in the State the following Shari’ah Courts – (a) Shari’ah Court; (b) Higher Shari’ah Court (and) (c) Upper Shari’ah Court.*”⁵ *It is the responsibility of the Grand Kadi of Jigawa State to establish “such number of Upper Shari’ah Courts in the State as may be designated from time to time...”*⁶ Shari’ah Courts Law of Kaduna State empowered the Grand Kadi of Kaduna State through a warrant in consultation with the Judicial Service Commission to establish “*such Sharia Courts as he shall think fit.*”⁷ Kano State House of Assembly by virtue of section 6 (5) (j) of the Constitution (as amended) has “*For the purpose of smooth implementation of Shari’ah in the State ... established the following Courts:- (a) The Shari’a Court; and (b) The Upper Shari’a Court. (2) The Upper Shari’a Court shall be established in every District while a Shari’a Court shall be established in every Local Government Council. (3) The Grand Kadi may with the approval of the Governor, make an order for the creation of more Shari’a Courts and Upper Shari’a Courts as desirable.*” Katsina State House of Assembly has followed the same pattern used by Kano State House of Assembly in establishing Sharia Court with minor modification. “*There is ... established in the State two grades of Shari’ah Courts namely – (a) Shari’a Court; and (b) Upper Shari’a Court. (2) There may be designated as required such number of Shari’a Courts and Upper Shari’a Courts in the State. (3) The Chief Judge shall by warrant under his hand locate and designate the number of Shari’a Courts and Upper Shari’a Courts in the State after consultation with the Shari’a Commission.*”⁸

4.0 Jurisdiction of the Shari’a Courts Over Criminal Cases

It should be noted that the jurisdiction of Sharia Courts to hear and determine cases involving criminal offences cannot be assumed or implied. It is generally donated by the Constitution and the enabling statute that established the Court. Therefore, jurisdiction is the pillar upon which the entire case stands. Once a party, usually the Defendant, shows that the Court has no jurisdiction, the foundation of the case crumbles; then parties cannot be heard on the merit or otherwise of the case and that puts an end to the litigation. It is also important to note that lack of jurisdiction cannot be waived by one or both parties. This is because parties cannot vest

⁵ Section 3(1) of the Shari’ah Court (Administration of Justice and Certain Consequential Changes) Law Cap. S4 Laws of Jigawa State, 2012.

⁶ Section 3(3) of the Shari’ah Court (Administration of Justice and Certain Consequential Changes) Law.

⁷ Section 4(1) of the Sharia Courts Law, 2001 of Kaduna State.

⁸ Section 3 of the Shari’a Courts and for related matters, Katsina State of Nigeria Law No. 5 of 2000.

jurisdiction in Court where there is none; and where the Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nullity. Therefore, for a Court to have jurisdiction, the following must be present;

- (a) The proper parties are before the Court;
- (b) The subject matter falls within the legal limits or areas for the Court to adjudicate upon.
- (c) The composition of the Court as to members and qualification.
- (d) The suit commenced by due process of law and upon fulfillment of any condition precedent to assumption of jurisdiction.

4.1 Parties Before Shari'a Courts

Criminal proceedings are commenced before Sharia Courts based on the provisions of the substantive and procedural laws. In any criminal proceedings before Shari'a Courts, the proper parties are State and the accused person. It is the State through Lawyers in the Ministry of Justice or Police that have powers to initiate criminal proceedings based on the provision of Section 211 (1), (a) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) and other enabling laws established by the State House of Assembly. In Kano State, the Shari'a Court has jurisdiction "...to hear and determine criminal cases where the accused person is a Muslim."⁹ However, where the accused person is a non-Muslim, he may submit to the jurisdiction of the Shari'a Court to try the criminal case. "Where one or more of the several accused persons are non-Muslims and the non-Muslims refuse to submit to the jurisdiction, the Shari'a Court shall not have jurisdiction to hear and determine the case."¹⁰ Similar provisions have been provided in Jigawa, Kaduna and Katsina States Laws.¹¹ In Jigawa State Law there is an addition that where the accused person is a non-Muslim and wishes to submit to the jurisdiction of the Shari'a Court "...the Alkali shall ensure that the consent so given is voluntary and the person is legally competent and responsible to give it; and shall record the consent given in the proceedings."¹²

From the above provisions, it is clear that Shari'a Courts have jurisdiction in criminal cases over non-Muslims who consent to be tried. The reason for such provisions is to safeguard the rights of non-Muslims in a country such as Nigeria where Muslims and non-Muslims interact. In the course of the interaction, crimes may be committed by non-Muslims, or Muslims and non-Muslims may conspire and commit crimes in states where Shari'a Law apply.

4.2 The Criminal cases within the legal limits or areas for the Shari'a Court to adjudicate upon.

It is permitted in Islamic law to delimit the territorial jurisdiction of Courts. Where a town is large, more than one court may be established.¹³ It is also an acceptable practice in Islamic law

⁹ Section 5(3) of the Kano State Shari'a Courts Law 2000.

¹⁰ Section 5(3) of the Kano State Shari'a Courts Law, 2000.

¹¹ Section 7(b) of the Jigawa State Shari'a Court (Administration of Justice and Certain Consequential Changes) Law, Section 20(1) of the Kaduna State Shari'ah Courts Law, 2001 and Sections 5(1),(b) and 7(1) of the Katsina State Shari'a Law, 2000.

¹² Section 7(c) of the Jigawa State Shari'a Court (Administration of Justice and Certain Consequential Changes) Law

¹³ Al-mawardi, A.A. (2006). Al-Ahkam al-Sultaniyya wa al-Wilayat al-Dinniyya. Dar-al-Hadith, Cairo, p. 123; Mahmud, A.B. (1991). Supremacy of Islamic Law. Alhuda-Huda, Zaria, at p. 127.

for a judge to be empowered to hear both criminal and civil matters. The criminal cases upon which Shari'a Courts have jurisdiction to entertain in Nigeria can be found in various State Laws where Shari'a is applicable. In Jigawa State section 3 (5) of the Shari'ah Court (Administration of Justice and Certain Consequential Changes) Law provides that the jurisdiction exercisable by the "*Shari'ah Courts shall be as conferred upon it by or under this law and shall be exercised within such area and to such extent as may be specified in the enabling warrant establishing the court under section 3(4) of this Law; and effective from the date specified therein.*" However, the warrant referred may be suspended, cancelled or altered by the Governor of Jigawa State upon recommendation of the Grand Kadi to suit the requirement of the state.¹⁴ The Extent of the criminal jurisdiction of Shari'a Courts in Kaduna State has been provided in Second Schedule to the law which creates Shari'a Courts.¹⁵ Limits of the jurisdiction of grades of Shari'a Courts in Kano State in Kano State can be found in First Schedule of Part I to the Kano State Shari'a Courts Law, 2000.

4.3 The composition of the court as to members and qualification

Composition of Court is part of the jurisdiction of Court which is a universally acclaimed subject that bestrides all Courts in all matters. In Jigawa State, the quorum of Shari'a Courts in hearing and determination of criminal cases depends on the matter. A case before the Court of the first instance is constituted by a judge of that Court. "*A Shari'ah Court shall be properly constituted if presided over by a single Shari'ah Court Alkali... A Higher Shariah Court sitting in its original jurisdiction shall be properly Constituted if presided over by a single Alkali of the Court...*"¹⁶ Similar provisions can be found in Section 4(1) of the Kano State Shari'a Courts Law, 2000 "*A Shari'a Court shall be duly constituted where it is presided over by a single Shari'a Court Alkali... An Upper Shari'a Court shall be duly constituted ... where it sits in its original jurisdiction, by a single Alkali...*"

Kaduna and Katsina States Shari'a Court Laws have a different pattern of the composition of Shari'a Courts sitting in their original jurisdiction. Section 5(1) of the Kaduna State Shariah Courts Law provide that "*A Sharia Court shall consist of: (a) an Alkali sitting alone; or an Alkali sitting with two Muftis...*" in Katsina State, Sharia Court is duly constituted if presided over by an Alkali sitting with two members.¹⁷

However, Upper Sharia Courts of Appeal have been established by the laws of the Jigawa, Kano, Kaduna and Katsina States. The appellate Courts are duly constituted as per the quorum provided in the laws. Upper Sharia Court of Appeal and Higher Sharia Court of Appeal in Jigawa State are constituted with three Alkalis and proceedings of the Courts to be presided over by the most senior Alkalis.¹⁸ In Kano State, the Upper Sharia Court of Appeal is constituted by at least two Alkalis and the sitting of the Court to be presided over by the most senior Alkali.¹⁹ In Katsina State quorum of the Upper Sharia Court sitting in its appellate

¹⁴ Section 3(6) of the Jigawa State Shari'a Court (Administration of Justice and Certain Consequential Changes) Law

¹⁵ See section 22(2) of the Kaduna State Shari'a Courts Law, 2001. Appendix A to the Shari'a Criminal Procedure Code, 2002 has tabulated the extent of the criminal jurisdictions of the Shari'a Courts in Kaduna State.

¹⁶ Section 4(1) and (2) of the Jigawa State Shari'ah Court (Administration of Justice and Certain Consequential Changes) Law.

¹⁷ Section 4(1) of the Katsina State Shari'a Courts Law, 2000.

¹⁸ Section 4(2) and (3) of the Jigawa State Shari'ah Court (Administration of Justice and Certain Consequential Changes) Law.

¹⁹ Section 4(2),(b) and (3) of the Kano State Sharia Courts Law, 2000.

jurisdiction is presided over by an Alkali sitting with not less than three members.²⁰ By paragraph 6 (c) of Part II of the Third Schedule to the Constitution, it is the powers of the State Judicial Service Commission to appoint judges of the Shari'a Courts in Nigeria.

The qualifications of the persons to be appointed as Alkalies or Sharia Courts judges is part of the jurisdiction of the Court. Under Islamic law, it is the only competent judge that has the power to adjudicate a case.²¹ A person to hold the office of a judge under Islamic law must have integrity and be knowledgeable. Ambali quoted with approval Al-Katsinawiy the qualities an Islamic judge must possess:-

*“...he should be a Muslim, free born, male and **Mukallaf**, i.e. accountable for all his deeds. He should possess the capacities to hear and see. He should be literate, intelligent, conscious, scrupulous, upright and should be capable of making independent research and interpretation of the Qur'an and Sunnah or at least possess the capacity to reinterpret what 'Mujtahid', i.e. an exponent of Islamic Law has interpreted on the basis of the Qur'an and Sunnah.”*²²

In Islamic law, the appointment of Female Judges is a debatable subject. The controversy is a result of the lack of a clear provision in *Sharia*, which prohibits or allows women to occupy the exalted office of judges (Sonneveld & Tawfik, 2015). The advocates and those not in support of appointing Female Judges interpret the Qur'an and the sayings of the Prophet (Peace be Upon Him) to advance their positions (Sonneveld & Tawfik, 2015).

Three major *Sunni* Schools of Jurisprudence, which consist of Hanbali, Maliki, and Shafi'i have rejected the opinion that women can be appointed judges (Ibn Qudama, 1985). These scholars had relied on Chapter 4 verse 34 in the Qur'an which says: Men are defenders and maintainers of Women as a result of extra strength Allah Has given to the Men over Women and Men support them from their resources. Furthermore, the jurists had also cited a Prophetic saying which says: *“No people will prosper who appoint a woman in charge of their affairs.”* (Ibn Hanbal, 1993). Another reason used to disqualify women from becoming judges is that they lack independence. Women at every point of their lives are under the control of their fathers, guardians or husbands (Ambali, 2014).²³ In practice female or women are not being appointed Sharia Courts judges in Nigeria.

Various State laws have provided the qualification a person must possess before he can be appointed as a Sharia Court judge. The requirements consist of religion, age, and educational qualification. In Jigawa State a person qualified to hold the office of a Sharia Court judge must be *“...a Muslim; is not less than 30 years of age; and is a serving Area or Upper (sic) Court Judge with an impeccable record of Islam piety; or a is a legal practitioner in Nigeria and has been so qualified for a period of not less than five (5) years and has a recognised qualification in Islamic Law from an institution acceptable to the Judicial Service Commission.”*²⁴ In the

²⁰ Section 4(2) of the Katsina State Shari'a Courts Law, 2000.

²¹ Ambali, M.A. (2013). *The Practice of Muslim Family Law in Nigeria*. Priceston & Associates Publishing Company Ltd, Lagos, at pp. 122-123.

²² Ibid, at p. 103.

²³ Aliyu, M.A. (2019). “Appointment of Female Sharia Judges: A Study of Malaysian and Nigerian Law and Practice, Being a Paper Presented at the International Conference on Law and Globalisation: “National Law in The Era of Industrial Revolution (I.R.) 4.0” ICLG 2019 held at at Universiti Sultan Zainul Abidin (Unisza), Gong Badak Campus, Terrengganu, Malaysia, 28 – 29 July 2019.

²⁴ Section 11(2) of the Jigawa State Shari'ah Court (Administration of Justice and Certain Consequential Changes) Law.

Jigawa State law the recognised qualification includes (a) a degree in Islamic Law from a recognised university; (b) a certificate from Kano (Islamic) Law School; (c) a diploma in Shari’ah and Civil Law from a recognised university, college or institution.²⁵ Similar provisions are contained in Kaduna, Kano and Katsina States laws with some modifications. Male gender is also part of the qualification in Kaduna State Shari’a Court law and that requirement has not been clearly provided in Jigawa, Kano and the Katsina State Laws.²⁶ Unlike in Jigawa State, in terms of qualification, the specific age a person must possess to be a Shari’a Court Judge is not part of Kaduna, Kano and Katsina States Shari’a Courts Laws and in Kaduna State law the specific age of 40 years has been pegged.²⁷ Two (2) and Seven (7) years post-call to the bar qualification and experience in the practice of Islamic Law are part of the requirements in Kaduna and Kano States Laws respectively.²⁸ In Katsina State Law, Barrister at Law qualification is not part of the criteria.²⁹

4.4 The suit commenced by due process of law and upon fulfillment of any condition precedent to assumption of jurisdiction

For any Court of law including Sharia Court to assume jurisdiction to try criminal cases such cases must be “initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. Any defect incompetence is fatal, for the proceedings are a nullity however well-conducted and decided: the defect is extrinsic to the adjudication.”³⁰ Substantive and procedural laws in criminal matters before Shari’a Courts are laws enacted by the State House of Assembly. In addition to the Constitution (as amended), and Shari’a Courts Laws, Shari’a Penal Codes Laws and Shari’a Criminal Procedure Codes Laws of various states are laws that regulate criminal proceedings before Sharia Courts in Nigeria.³¹ Furthermore, criminal trials before Shari’a Courts must conform with the sources of Islamic law.³² In addition to that Shari’a Courts must comply with the principles of fair trial contained in Section 36 (5) and (8) of the Constitution (as amended). Section 36 (5) of the Constitution (as amended) presumed an accused person innocent until proven guilty “*Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty: Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.*” Other provisions in Section 36 that Sharia Court must comply with are as follows:

“(6) *Every person who is charged with a criminal offence shall be entitled to -*
(a) be informed promptly in the language that he understands and in detail of the nature of the offence;
(b) be given adequate time and facilities for the preparation of his defence;
(c) defend himself in person or by legal practitioners of his own choice;
(d) examine, in person or by his legal practitioners, the witnesses called by the

²⁵ Section 11(3) Ibid.

²⁶ Section 7(2) of the Kaduna State Shari’a Courts Law, 2001.

²⁷ Section 13(2), (c) of the Katsina State Shari’a Courts Law, 2000.

²⁸ Section 7(1),(a) of the Kaduna State Shari’a Courts Law 2001 and Section 111(c) of the Kano State Sharia Courts Law, 2000.

²⁹ Section 13 of the Sharia Courts Law, 2000 of Katsina State.

³⁰ *Madukolu & Ors v Nkemdilim* (1962) LPELR – 24023 SC per Bairamiam JSC (as he then was) at PP. 9 – 10, paras. F – D.

³¹ See

³² Section 6 of the Jigawa State Shari’ah Court (Administration of Justice and Certain Consequential Changes), Law 2001, Section 7(b) of the Kano State Shari’a Courts Law, 2000 and Section 8 of the Katsina State Shari’a Courts Law, 2000.

prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any person authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.”

The Jigawa, Kaduna, Kano and Katsina States Houses of Assembly have enacted Sharia Penal Code in their states. The laws have criminalized certain acts. The Jigawa State Shari’ah Penal Code Law, 2000 has 409 Sections within ten (10) Chapters; the Kaduna State Shari’ah Penal Codes Law, 2002 has provided 401 provisions with ten (10) Chapters; Kano State Shari’a Penal Code Law, 2000 contained 388 Sections and Twenty (21) Chapters and 394 provisions are contained in Katsina State Sharia Penal Code Law, 2001 which has twenty (21) Chapters. Offences and punishments in the laws have been clearly stipulated.

Shari’ah Criminal Procedural Laws have been passed in Jigawa,³³ Kaduna³⁴ and Kano States.³⁵ In these laws process of commencement of criminal trials to the judgement have been clearly provided.

5.0 Jurisdiction of Shari’a Court in Hearing and Determination of Cases under Violence Against Persons Prohibition Law in Jigawa State

The law has six parts with a schedule.³⁶ Part I of the law is a preliminary which is a technical part that consist of a short title and commencement followed by interpretation of some concepts and words. This part aims to assist the court in understanding some of the concepts and words

³³ Shari’ah Criminal Procedure Code Law, Cap S6 Laws of Jigawa State, 2012

³⁴ Shari’ah Criminal Procedure Codes, 2002 , Law No. 5 for Kaduna State.

³⁵ Kano State Criminal Procedure Code Cap 37 (Amendment) Law, 2000.

³⁶ Violence Against Persons Prohibition Law, Law No. 02, 2021. The application of law had been commenced on 24th February, 2021.

in the law. The part of the law does not preclude judges from resorting to interpretation law and judicial decisions of superior courts where there is no interpretation of any concepts or words in the law.

5.1 Offences in the Law

The second part of the law has been provided in line with section 36 (12) of the 1999 Constitution (as Amended). “*Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore, is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.*” Sections of the law in this part have clearly defined offences and prescribed punishment for those offences. In the law, there are five types of punishments provided as follows:

- (a) Death sentence
- (b) Life Imprisonment
- (c) Term of Imprisonment
- (d) Community service
- (f) Fine
- (g) Compensation in rape, willful infliction of physical injury and bodily damage.

Section 3 (1) expands the definition of rape which constitutes intentional penetration by a female or male of a vagina, anus or mouth of another person with any other part of his or her body or anything else without the consent of the other person. A person below the age of 17 cannot give consent. A convict of the offence is liable to life imprisonment and where the convict knows he is HIV positive and infects the victim with it, is liable to a death sentence. The victim of the offence is entitled to N500,000.00 compensation which shall be awarded by the Court. In addition to that, “Court shall order for public shaming of the convicted sexual offender through radio announcement and other media announcement or any other means that the Court deems fit.”

Administering substance with intent to induce someone to engage in sexual activity with that person – 1 year or with a fine of not less than N20,000.00 or both. Incest life imprisonment or death where the victim is infected with HIV. Inflicting physical injury on person 6 months or a fine of not less than N100,000.00 or both. Coercion to engage in any act to the detriment of physical or psychological well-being of a person - 6 months imprisonment or fine not less than N100,000.00 or both. Willfully placing a person in fear of physical injury 1 year or a fine of not less than N100,000.00 or both. Administering substance with intent induce someone to have sex with the other FGM, the frustration of investigation and prosecution, willfully making a false statement, ejection from home (spouse and dependents), depriving a person of his liberty (not by court order, parental guidance or spousal care), economic abuse, forced isolation or separation from family and friends, emotional, verbal and psychological abuse, harmful traditional practices, abandonment of spouse, children and other dependents without sustenance, stalking, intimidation, spousal battery, attack with a harmful substance, political violence, violence by state actors, indecent exposure (of genitals or a substantial part of it), exposure or display of phonographic materials, kidnapping and abduction.

The law has placed a restriction on the commencement of criminal proceedings without the formal consent of the Attorney-General and Commissioner of Justice of Jigawa.³⁷ And “No action shall be commenced for any offence under this law (the Violence Against Persons Prohibition Law) by direct criminal complaint.”³⁸

6.0 Conclusion

From the foregoing, Shari’a Courts have jurisdiction to hear and determine criminal cases. It is the Constitution of the Federal Republic of Nigeria, 1999 (as amended) that empowered the State House of Assembly to establish the Shari’a Courts. The courts have jurisdiction over Muslims arraigned as accused persons or non-Muslims who subjected themselves to be tried by the court. The Courts are of first instance and appellate jurisdiction. Judges presiding over the courts are people knowledgeable in Islamic law who obtained a degree in Islamic law or other qualifications below the degree in law from recognised institutions. It is therefore the intendment of this paper to examine the extent of power and jurisdiction of Sharia Courts to hear and determine cases involving criminal offences. And finally, the provisions of the Violence Against Persons Prohibition Law, 2021 of Jigawa State has been concisely examined.

³⁷ Section 28 of the Violence Against Persons Prohibition Law, Law No. 02, 2021

³⁸ Section 29 Ibid.