

## **DIYYAH UNDER THE SHARIAH PENAL CODE OF KANO STATE: A REFLECTION OR DEFLECTION FROM CLASSICAL MALIKI SCHOOL OF LAW**

***Sodiq Sunkanmi Mustapha (Corresponding Author)***

*Lecturer, Islamic Law Department,*

*Bola Ajibola College Law, Crescent University,*

*Abeokuta, Ogun Nigeria.*

*musodiq@gmail.com / sodiq.mustapha@bacolaw.edu.ng*

***Abdulwahab Danladi Shittu***

*Senior Lecturer, Department of Religions,*

*Faculty of Art, University of Ilorin,*

*Nigeria.*

***Lateef Adeleke***

*Senior Lecturer and Head of Department,*

*Commercial and Property Law, Bola Ajibola College Law,*

*Crescent University, Abeokuta, Ogun Nigeria.*

### **ABSTRACT**

*Justice under Islamic Law is seen as a quadrilateral path, justice to the offender, the offended, the public i.e., state and Allah. Conversely, many notable criminal legal systems focus majorly on the offender. Sympathetically in homicide cases or hurt, the highest justice to the victim or his family is often punishing the culprit. Islamic Law has made provision for diyyah (blood-money) to complete the chain of justice. With the re-emergence of democracy in Nigeria in 1999, Kano State amongst other states clamoured for the implementation of full Islamic Law practice which led to the long due but premature birth of the Shariah Penal Code (SPC) of Kano State in the year 2000. Consequently, avoidable errors filled the SPC which has demeaned the importance of this Law. This work analyzed the provisions on diyyah as contained in the SPC vis-a-vis the Classical Maliki School of Law which was*

*said to be the favoured opinion of the SPC. A doctrinal research method was adopted which aided in finding out the loopholes and discrepancies in the SPC. It was recommended that the law requires urgent amendment while some of the missing rules on implementation can be catered for via detailed judgements.*

**Keywords:** *diyyah, classical, Maliki, justice*

## **INTRODUCTION**

Since the re-birth of democracy in Nigeria in 1999, many states particularly in the northern part who are predominantly Muslims have been agitating for the implementation of Shariah as the law governing their mundane affairs. The Penal Code applicable in the north was seen as not being in total conformity with the tenets of Shariah. These agitations gave birth to enactment of Laws like “The Shariah Penal Code law of Zamfara State,<sup>1</sup> Shariah Penal Code Law of Jigawa State, Kebbi State Shariah Penal Code,<sup>2</sup> The Harmonized Shariah Penal Code<sup>3</sup> and the Shariah Penal Code Law of Kano State<sup>4</sup> which is under study in this instant work among others. These enactments were made pursuant to the conjunctive effect of section 6 of the Constitution Federal Republic of Nigeria 1999 as amended which empowers any State to establish Penal System through legislative process and section 38 of same law which guarantees freedom of religion. This is not to say that there has not been an unending debate on its constitutionality and that of its provisions.

The institution of *diyyah* (blood money) under the Islamic justice dispensation is very germane to achieve absolute justice for all and sundry. It is no surprise that the SPC of Kano State under study contains several provisions on *diyyah*.

---

<sup>1</sup> Zamfara: Sharia Penal Code Law 2000, Law No. 10 of 2000, signed into law on 27<sup>th</sup> January 2000, came into operation on 27<sup>th</sup> January 2000, Zamfara State Gazette Vol. 3 No. 1, 15<sup>th</sup> June, 2000

<sup>2</sup> Kebbi: Penal Code (Amendment) Law 2000, Law No. 21 of 2000, signed into law on 1<sup>st</sup> December 2000, came into operation on 1<sup>st</sup> December 2000, Kebbi State Gazette Vol. 2 No. 1, Supplement 31<sup>st</sup> December 2000

<sup>3</sup> Prepared by Centre for Islamic Legal Studies Ahmadu Bello University Zaria March 2002.

<sup>4</sup> Kano: Sharia Penal Code Law 2000, signed into law on 25<sup>th</sup> November 2000, came into operation on 26<sup>th</sup> November 2000, no gazette information available; printed and published by Kano Printing Corporation, Kano

Many classical Islamic Jurists have written on *diyyah*, though mostly as an aspect of Islamic Crime and Tort and not treated alone while on the other hand many contemporary writers have examined and analyzed the various Shariah enactments including that of Kano. These studies were mostly general review of the law and not specific to an aspect as this instant work seeks to explore. Na'iyā who was the Chairman of Kano State Shariah Penal Code Review Committee observed generally in one of his works (Na'iyā I. S., 2007: 31) that there was rush in the whole of process of the enactment of the law which accounted for many of its notable flaws. The importance of these enactments to the lives of the Muslims cannot be overemphasized, but without prejudice to this, the law needs to be properly studied in principle and in application. This will help determine if truly and completely it conforms to tenets of Shariah according to the Maliki School of Law which is the favoured school as contained in the introduction to the law.

## MEANING AND LEGAL BASIS OF *DIYYAH*

The word *diyyah* (دية) is an Arabic word which literally means blood money or blood wit.<sup>5</sup> Technically in Shariah, it means:

مَا يُعْطَى عَوْضًا عَنْ دَمِ الْقَتِيلِ إِلَى وَلِيِّهِ

*“What is given as compensation for murder to the family of a murdered person’, in a more encompassing definition.”* (Al-Qurtūbī, Abū Bakr Shams al-Dīn, 1964: 315)

الدية هي المال الذي يجب بسبب الجناية، وتؤدى إلى المجنى عليه أو وليه  
*“Diyyah is what becomes payable for inflicting injury, to be paid [from the side of a culprit] to the victim or his family.”* (‘Abd al-‘Azīm Badwī Muḥammad, 2001: 459).

Likewise, section 59 of SPC of Kano state defines *diyyah* as:

*“A fixed amount of money paid to a victim of bodily hurt or to the deceased’s agnatic heirs in murder cases, the quantum of which is equivalent [to] one thousand [D]inar; or twelve thousand [D] irhams or 100 camels.”*

<sup>5</sup> Diyyah ‘Al-Maany Online English Arabic Dictionary’ Accessed via <https://www.almaany.com/en/dict/ar-en/diyah/> on 13<sup>th</sup> June, 2021.

The notable difference in the first two definitions in the classical works and that of the SPC of Kano State is that the latter goes further by stating the quantum of *diyyah* thereby creating a kind of understanding that the quantum is only as above. This is not the case as the quantum of *diyyah* differs depending on the peculiarity of each case and offence. This seeming confusion could have been remedied with addition of the word ‘full’ before the word ‘quantum’.

From the above definitions, *diyyah* can comprehensively be said as a compensation to be paid by a person who inflicts injury or his relative to the injured party or his relatives.

It serves as punishment or compensation and is one of the three options available to the relatives of a murdered person as will be seen in the Hadith of the Prophet SAW in the subsequent paragraphs. Payment of *diyyah* i.e blood money was established by the Quran, the *Sunnah* of the Prophet SAW and consensus of jurists. Allah SWT says in the Glorious Quran:

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَاً وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَرِيبَةُ مُسْلِمَةٍ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَتْ مِنْ قَوْمٍ عَدُوِّكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسْلِمَةٍ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامٌ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا ﴿١٦﴾

*“It is not for a believer to kill a believer except by mistake; and whosoever kills a believer by mistake, he must set free a believing slave and submit compensation (blood money) to the deceased’s family unless they remit it. If the deceased belonged to a people at war with you and he was a believer, the freeing of a believing slave (is prescribed); and if he belonged to a people with whom you have a treaty of mutual alliance, then compensation (blood money) must be paid to his family, and a believing slave must be freed. And whoso finds this beyond his means, he must fast for two consecutive months in order to seek repentance from Allah. And Allah is Ever All-Knowing, All-Wise.”*<sup>6</sup>

The above verse is one of the most detailed of all legal rulings contained in the Qur’an (al-Qurtūbī, Abū Bakr Shams al-Dīn, 1964: 311), and establishes the Institution of *diyyah* under Islamic law.

<sup>6</sup> Surah al-Nisa’, 4: 92

The Prophet said:

وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا يُودَىٰ وَإِمَّا يُقَادُ

“And if somebody is killed, his closest relative has the right to choose one of two things, i.e., either the blood money or retaliation by having the killer killed.”<sup>7</sup>

This is also evidenced in the notable poem:

وتجِبُ الديةُ في القتلِ الخطأ، والإبلُ التخميسُ فيها قسْطًا

“And *diyyah* is obligatory in unintentional murder, quintupling camel in it there should be chestnut.” (Muḥammad Ibn Yūsuf Kāfi, 2012: 273)

Apparently, the verse under discussion makes provision for *diyyah* for killing by mistake which includes quasi intentional murder (Ibrahīm ‘Abd Allāh al-Tuwayjirī, 2009: 73). One may wonder if payment of *diyyah* is also applicable to a person who intentional kills. The proper reading of the verse together with the explanation given by the Prophet SAW and consensus of scholars (Ismā‘īl Muḥammad Bakr, 1997: 297) shows that the punishment for intentional murder is for the culprit to be killed<sup>8</sup> or in the alternative pay *diyyah* or even be forgiven by the family of the deceased.

There is consensus of the jurist on the obligation of payment of *diyyah* in the case of intentional murder where the conditions for retaliation (*qisas*) is not fulfilled e.g. if the killer is a minor or an insane person and also in instances where retaliation is not allowed for intentional murder (Ibrahīm ‘Abd Allāh al-Tuwayjirī, 2009: 73). Scholars however are of the view that when the family of the deceased waive their right to retaliation or are unable to reach a consensus on retaliation in intentional murder then *diyyah* will be paid but from the property of the culprit (‘Abd Allāh Muḥammad Ibn Qudāmah, 1968: 372). The wisdom as understood for its establishment is to serve as relief or consolation for the family of the deceased coupled with other purposes of punishment.

<sup>7</sup> Al-Bukhārī, Abī ‘Abd Allāh Muḥammad Ibn Ismā‘īl al-Ju‘fī (2001). *Ṣaḥīḥ al-Bukhārī*, vol. 9. n.p.: Dār Ṭūq Najat, 5, no. hadīth 6880.

<sup>8</sup> Surah al-Baqarah, 2: 178.

## **DIYYAH PUNISHMENT UNDER SPC OF KANO AND THE CLASSICAL MALIKI SCHOOL OF LAW**

The SPC of Kano State extensively covers the scope of *diyyah* under the Islamic Law but this is not to say there are no loopholes or areas not well covered. In its well encompassing nature, not less than 79 separate Provisions were made in respect of *diyyah* including the schedule to the law. Issues such as the institution of *diyyah*, offences that attracts the payment of *diyyah*, *diyyah* of the unborn Child among others were discussed. The Law provides the offences that attract *diyyah* under three major parts, scope which relates to Homicide, Unborn Child / Pregnant Woman and Bodily Hurts.

### **DIYYAH FOR OFFENCES AGAINST LIFE**

Offences against life are cases in which life of a person is lost either via an intentional or unintentional, direct, or indirect attack. They are murder cases or manslaughter which forms part of offences that are categorized under the Shariah and SPC of Kano as *Qisas* offences i.e. retaliatory offences<sup>9</sup>. The SPC recognizes two major types of offences against life leading to death that is punishable with *diyyah* namely wilful or intentional homicide<sup>10</sup> and unintentional homicide<sup>11</sup>. This categorization is in tandem with the *mash-hur* (popular) opinion of the *Maliki* School of Law. It will aid proper understanding to therefore discuss the punishment in the like manner.

Consequently, *diyyah* for offences against life is divided into *diyyah* for intentional homicide and *diyyah* for unintentional homicide.

***Diyyah for Intentional Homicide:*** The SPC of Kano State provides for the punishment of intentional homicide in section 143 as thus;

*“Whoever commits the offence of intentional homicide shall be punished:*

*(a) with death; or*

*(b) where the relatives of the victim remit the punishment in paragraph (a) above, with the payment of diyah; or*

*(c) where the relatives of the victim remit the punishment in paragraph (a) and (b) above, the convict shall, in addition to the payment of diya be imprisoned for a period not exceeding*

---

<sup>9</sup> See Generally Chapter 9 of SPC Kano 2000

<sup>10</sup> Sec. 143 SPC of Kano 2000

<sup>11</sup> Sec. 145 SPC of Kano 2000

*ten years; except that is causes of gheelah homicide for robbery (hirabah) the punishment shall be punishable with death.”*

The above contains three alternative punishments for committing offence of intentional homicide which is death, payment of *diyyah* and imprisonment for ten maximum years. The law gives the option to seek retaliation to the family of the deceased and they may also remit retaliation and seek for *diyyah* or even forgive the offender totally in line with the Quran injunction.<sup>12</sup>

A proper reading of section 143(c) of the above provision of law will show an ambiguity and self contradiction, this is because the section accepts waiver of right to seek retaliation and *diyyah* but the law further says in event of exercising this right (i.e. right to waive), the offender in addition to the payment of *diyyah* shall be liable to imprisonment. The phrase ‘in addition to payment of *diyyah*,’ seems to mean the offender together with payment of *diyyah* will be liable to imprisonment. The implication is that even though the family of the deceased waives their right to seek retaliation and *diyyah*, the offender will still be ordered to pay *diyyah* and sentenced to imprisonment. This will antagonize the right to seek for *diyyah* or pardon given by Allah to the family of the deceased. It is believed that the expunction of the phrase ‘in addition to the payment of *diyyah*’ will give the law it conceived intent and meaning which will be to the effect that the offender shall still be punished with imprisonment despite waiver of *diyyah* and retaliation by the relative of the victim of crime.

This suggestion aligns with what is obtainable with other similar Shariah enactment of this nature, for instance the Shariah Penal Code of Zamfara via section 200(c) provides thus;

*“Where the relatives of the victim remit the punishment in (a) and (b) above, with caning of one hundred lashes and with imprisonment for a term of one year.”*

Just as in the above, the conceived misunderstanding is remedied in the manner in which the law was couched. This further tally with what is contained in the ‘Harmonized Shariah Penal Code’ produced by the Centre for Islamic Legal Studies of Ahmadu Bello University, Zaria (Ostein. P., n.d.: 53).

According to the Maliki School of Law, the punishment for intentional homicide is retaliation, but the family of the deceased can opt for *diyyah* or totally forgive the offender (Muhammad-Rabī al-Lakhmī, 2011: 6357). They base their opinion on the verse:

---

<sup>12</sup> Surah al-Baqarah, 2: 178.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُنِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ  
بِالْعَبْدِ وَالْأُنْثَى بِالْأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَأْتِيَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ  
إِلَيْهِ بِإِحْسَنٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَهُوَ  
عَذَابٌ أَلِيمٌ ﴿١٧٨﴾

“O You who believe! *al-Qisas* (the Law of Equality In punishment) is prescribed for You In case of murder: the free for the free, the slave for the slave, and the female for the female. but if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood money, Then adhering to it with fairness and payment of the blood money, to the heir should be made In fairness.<sup>13</sup> This is alleviation and a Mercy from Your Lord. so after This whoever transgresses the limits (i.e. kills the killer after taking the blood money), He shall have a painful torment.”<sup>14</sup>

The option of taking *diyyah* is contained in the verse according to opinion relied upon by the Companions such as Ibn Abbas (Aḥmad Jişās, 1984: 186) and Jurists including Imam Maliki and exegetes like Ibn Kathir (Isma‘il Ibn Kathīr, 1999: 491).

This is further evidenced by the saying of the Prophet SAW that the family of the deceased have options which include taking *diyyah* in place of retaliation. He said:

وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا يُؤَدَّىٰ وَإِمَّا يُقَادُ

“....And if somebody is killed, his closest relative has the right to choose one of two things, i.e., either the Blood money or retaliation by having the killer killed.”<sup>15</sup>

It is however the argument of Scholars as put by ‘Audah that a person can be punished with *diyyah* and yet punished under *ta‘zir* in form of imprisonment for a year and 100 lashes of cane (‘Abd al-Qadīr ‘Awdah, n.d.: 115). This is however without prejudice to the right of the family of the deceased to waive their right to collect *diyyah*. This is also the popular opinion of Imam Maliki (Ānas Ibn Mālik, 1994: 633) which by implication means that there are three

<sup>13</sup> This is to emphasize the option for *Diyyah* as contained in this verse.

<sup>14</sup> Surah al-Baqarah, 2: 178.

<sup>15</sup> Al-Bukhārī, Abī ‘Abd Allāh Muḥammad Ibn Ismā‘il al-Ju‘fī (2001). *Ṣaḥīḥ al-Bukhārī*, no. hadith 6880.



alternative punishments for a person guilty of intentional homicide; retaliation, *diyyah* or beating and imprisonment.

Therefore, the inclusion of imprisonment as an alternate punishment for intentional homicide by the SPC of Kano State aligns with the opinion of Classical Maliki Scholars. Notably and importantly, the SPC of Kano grossly deviated from the term of imprisonment set by the Maliki School which is one year (Ānas Ibn Mālik, 1994: 633) by setting the term at ten maximum years. This increment is massive and unjustifiable and the provision has generated controversy in some of the decided cases such as in the case of SHEU USMAN V STATE<sup>16</sup> where the accused was sentenced to seven years imprisonment after the waiver of right to take *diyyah*.

It is further noticed that the provision for canning is omitted in the SPC of Kano State against the opinion of the Maliki School of Law earlier explained.

From the foregone, the provision of the SPC of Kano will be in total conformity with the Maliki opinion in terms of provision of *diyyah* for intentional homicide if the amendment is made as earlier suggested.

On the quantum of *diyyah* for intentional homicide, the SPC of Kano in the definition segment generally provides the quantum of *diyyah* and that is the only provision in the SPC and other Shariah legislations in Kano about quantum of *diyyah*. The SPC of Kano provides thus

*“Diyyah means a fixed amount of money paid to a victim of bodily hurt to the deceased agnatic heirs in murder cases, the quantum of which is equivalent one thousand Dinar or twelve thousand Dirham or 100 camels.”*<sup>17</sup>

The above serves the purpose of defining *diyyah* and stipulating its quantum, the quantum is however a true reflection of the Maliki School of law opinion (Yūsuf ‘Abd Allāh al-Namrī, n.d.: 1108). Qadi Abi Bakr in the popular book ‘Tuhfah’ based on the Maliki School of Law says (Muḥammad Ibn Yūsuf Kāfī, 2012: 272):

وَدِيَّةُ الْعَمْدِ كَذَاتِ الْخَطَأِ أَوْ مَا تَرَاضَى فِيهِ بَيْنَ الْمَلَأِ

*“The diyyah in intentional murder is like that of mistake or based on what is agreed by the two parties.”*

<sup>16</sup> See Sheu Usman v. State. See the record of the Shariah Court of Appeal Kano, SCA/KN/CR/13/05

<sup>17</sup> Section 59 SPC of Kano.

This should be understood to mean that the *diyyah* in intentional murder and unintentional murder are either hundred camels, one thousand Dinar or twelve thousand Dirham. They however differ in description, components or how it will be paid. The components relate to the ages and sexes of the camels to be included in the hundred camels. The components of the camels in an intentional homicide are four based on the opinion of Imam Malik with reliance on Hadith of the Prophet SAW. The hundred camels should contain yearlings, two-year-olds, four-year-olds and five-year-olds all in equal quantities i.e. twenty five each (Ānas Mālik, 1985: 850).

The *diyyah* of intentional murder to be paid in camels can be enhanced if the family of the deceased so decide or when a father is responsible for the deliberate murder of his child. In this case the component is in threes and broken down as thirty (30) four-year old, thirty (30) five-year old and forty pregnant camels (Ānas Ibn Mālik, 1994: 558). This enhanced *diyyah* is however practicable only to those who are to pay in camels and not for those to pay in Dinar or Dirham which based on the analogy that any enhancement will change the exact amount stipulated which is one thousand Dinar or twelve thousand Dirham according to the Malikis (al-Qurtūbī, 2004: 194). The *diyyah* in this case is to be paid without delay in order to relief the family of the deceased (Wahbah al-Zuḥaylī, 1985: 5708). Issues relating to the enhancement of *diyyah* is not included in the provision of the SPC or Criminal Procedure Code (CPC) of Kano which is an important component of the Maliki's rule on *diyyah*.

***Diyyah for Unintentional Homicide:*** *Diyyah* is payable when death is caused by mistake or accident as provided for by sections 144 and 145 of the SPC of Kano State. This is when death occurs against the likely consequence of an action or against intention of the actor. SPC of Kano provides that

*“Whoever being a (mukallaḥ) fully responsible causes the death of any other person by mistake or accident is said to commit unintentional homicide.”*<sup>18</sup>

The above provision stipulates the condition of being a *mukallaḥ* before a person can be said to be guilty of unintentional homicide which thus creates a question. The law has been said to categorize homicide into intentional homicide and unintentional homicide, one will be prompted to ask that if a legally incapable person kills by mistake is this out of scope of homicide and then what happens?

---

<sup>18</sup> Sec. 144 SPC of Kano.

The SPC of Kano State explains the legal capacity to mean a person who has attained age of full religious and legal responsibilities<sup>19</sup> i.e. sane conscious adult. The law sees a legally incapable person as immune from legal liability; it explicitly provides via section 71 and 72 that a minor and unconscious person is not criminally liable respectively. This ordinarily is correct as a general rule but it has exceptions or there is more to it when it affects the right of others as in the case of homicide. The SPC of Kano is silent over this unfortunately, but according to the opinion of Maliki School of law scholars ('Abd al-Rahmān al-Qarrāfi, 1994: 274), any death caused by an unconscious person and a minor is still within the scope of homicide but will be treated as a mistake (al-Jizy al-Kalbī, n.d.: 226) and punished as unintentional homicide. The liability of payment of *diyyah* however will be on their *aqillah* and not the legally incapable individuals (Yūsuf 'Abd Allāh al-Namrī, n.d.: 1106). The beauty in this is that, the victim and his family should not be allowed to suffer unjustly without remedy because of acts of individual who ought to be under the guardianship and care of their relative as the case may be.

Consequently, the provision of Sections 71 and 72 of SPC would better reflect the position of the Maliki School of Law if a proviso is made to exempt cases of offences against life or body with a clarification that the burden will be placed on their *aqillah* when such offences are committed by legally incapable persons.

Therefore, an unintentional murder occurs against the will of the offender and is not premeditated or a murder committed by an insane or minor. Unlike intentional homicide the initial punishment in unintentional homicide is the payment of *diyyah* as contained in the Quran:

*“It is not for a believer to kill a believer except (that it be) by mistake, and Whosoever kills a believer by mistake, (it is ordained that) He must set free a believing slave and a compensation (blood money, i.e diyyah) be given to the deceased’s family, unless they remit it.”*<sup>20</sup>

There are several reports regarding the cause of revelation of the above verse Mujahid and others said that it was revealed about 'Ayyash bin Abi Rabi'ah, Abu Jahl's half brother, from his mother's side, Asma' bint Makhrabah. 'Ayyash murdered a person known as Al-Harith bin Yazid Al-'Amiri in revenge for persecuting him and his brother because of their Islam. Unknown to 'Ayyash that the man had embraced Islam and even performed

<sup>19</sup> Sec. 47 and 48 SPC of Kano State

<sup>20</sup> Surah al- Nisa', 4: 92

*Hijrah*, he killed him when he saw him later which led to the revelation of this verse. From another narration it was reported that `Abdur-Rahman bin Zayd bin Aslam said this verse was revealed about Abu Ad-Darda' who killed a man after he had embraced Islam believing him to be an unbeliever who only said words of faith to avert death (Isma'īl Ibn Kathīr, 1999: 373-374).

It is expedient to say that generally for the purpose of applicability of a law, the cause of revelation is a minute issue when there is no conflict of rules. Hence this juristic maxim (Aḥmad Muḥammad Barnū, n.d.: 1042);

العبرة في عموم اللفظ لا في خصوص السبب

*“A legal text has a general application and not specific to its cause of enactment.”*

This purports that irrespective of the cause of revelation for the purpose of deducing the law, the revelation has a general application to the Muslims except where by distinct evidence its application is restricted. The application of this maxim to the rule in the above verse is supported by numerous traditions earlier quoted and the consensus of Scholars (al-Qurṭūbī, 2004: 192).

Section 145 of the SPC of Kano provides that ‘whoever commits the offence of unintentional homicide shall be punished by the payment of *diyyah*’ which is one hundred camels, one thousand Dinar or twelve thousand Dirham according to section 59 of SPC and the Maliki School of Law.

The components of the *diyyah* in camel are five and they contain twenty camels each, they are yearlings, two-year olds female, three-year old males, four-year-olds and five-year-olds (Ānas Mālik, 1985: 851). While the *diyyah* in intentional homicide can be made more stringent by adding some other clauses to the components, that of unintentional homicide can be made lighter with the extension of the time of payment to three years and the shifting of the onus of payment on the ‘*Aqillah*’ (al-Qurṭūbī, 2004: 192).

## **DIYYAH FOR OFFENCES AGAINST THE UNBORN AND PREGNANT WOMAN**

The SPC of Kano provides that any person without due cause who intentionally or unintentionally causes miscarriage of a foetus is liable to payment of *ghurrah* and may be punished additionally with up to ten lashes.<sup>21</sup> This is also the opinion of Scholars based on the numerous Hadith like that of two women

<sup>21</sup> See sections 150-151 SPC of Kano

from Hudhail who struck the other being pregnant leading to the death of the foetus and the woman and the Prophet SAW adjudged that *ghurrah* is to be paid for the foetus.<sup>22</sup> Technically, *ghurrah* means the *diyyah* of the unborn, Qadi Abi Bakar in the popular book ‘*Tuhfah*’ based on the Maliki School law says:

وفي الجنين غرّة من ماله أو قيمة كالإرث في استعماله

“For a foetus is payment of *ghurrah* from the property of the offender; or its equivalence, to be like inheritance in its application.” (Muḥammad Ibn Yūsuf Kāfi, 2012)

The above poem refers to the obligation of paying *ghurrah* by a person who mortally hurts an unborn child and further summarizes those who are entitled to it. This does not mean that only a physical injury warrants the payment of *ghurrah*, a person who shouts at a pregnant woman or scares her leading to miscarriage or stillbirth is also liable. This is based on the judgement passed in a case brought forward to Umar and other companions of the Prophet SAW companions including Ali RA who judged that the person that causes the fear is liable to pay *ghurrah* (‘Alī ‘Abd al-Salām, 1998: 629).

The SPC of Kano uses the word miscarriage as causing the death of the unborn child, this use of it however does not adequately portray the purpose it seeks to serve. This is based on the fact that the technical and medical meaning of the word miscarriage according to the American Heritage Medical Dictionary is ‘the spontaneous, premature expulsion of a non viable embryo or fetus from the uterus.’<sup>23</sup> It is also defined as ‘the loss of an embryo or foetus before the 20th week of pregnancy’<sup>24</sup> medically it is called spontaneous abortion. These meanings do not bring the full intention of the law as understood from the provisions of the law itself. The provision of the SPC should be understood to mean causing the death of any unborn child in the womb of its mother without time limitation. This ambiguity will be addressed if the word ‘stillbirth’ is added to complement the word miscarriage. The word ‘stillbirth’ means ‘the

<sup>22</sup> Al-Bukhārī, Abī ‘Abd Allāh Muḥammad Ibn Ismā‘il al-Ju‘fī (2001). *Ṣaḥīḥ al-Bukhārī*, vol. 9, no. hadīth 6910.

<sup>23</sup> The American Heritage Medical Dictionary ‘Miscarriage’, (Houghton Mifflin, 2004) <https://medical-dictionary.thefreedictionary.com/miscarriage> Accessed on 27th February, 2021

<sup>24</sup> The Free Dictionary Medical Dictionary, ‘Miscarriage’, <https://medical-dictionary.thefreedictionary.com/miscarriage>, accessed on 27th February, 2021.

intrauterine death and subsequent delivery of a developing infant that occurs beyond 20 completed weeks of gestation'.<sup>25</sup>

The meaning of the word 'stillbirth' in conjunction with 'miscarriage' will completely bring forth the intendment of the law; therefore miscarriage is death of the foetus before 20 weeks while stillbirth is death after 20 weeks and both are punishable under the SPC of Kano.

The SPC of Kano recognizes two major forms in which the unborn child can be miscarried; it is either voluntary<sup>26</sup> or involuntary<sup>27</sup> and both are punishable with *diyyah* of the unborn under the law which is *ghurrah*. An act under this section is said to be voluntary when it is done to the woman or by the woman to actually cause miscarriage. It may be in form of inflicting injury or hurt to the pregnant woman or by way of administering harmful substance on the woman to affect her foetus. On the second part, an act of causing death of the foetus is said to be involuntary if what is intended is merely to hurt the pregnant woman but eventually causes death of the foetus as a result.

The SPC of Kano further includes that anyone who does an act that can make him be punished with intentional homicide to cause death of an unborn child shall also be liable to pay *ghurrah* and canning which may extend to hundred lashes.<sup>28</sup>

Additionally, the law provides that:

*"Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth and does by such act prevent that child from being born alive or cause it to die after its birth, shall, if such act is not caused in good faith for the purpose of saving the life of the mother be punished (a) with retaliation (qisas) and (b) if without intention by payment of diyyah."*<sup>29</sup>

It can be inferred with relative ease that the above provision creates two possibilities; a) Either the child dies before birth or, b) The child dies immediately after birth.

---

<sup>25</sup> National Stillbirth Society, 'Stillbirth: Trying To Understand', Accessed via <http://americanpregnancy.org/pregnancy-loss/stillborn-trying-to-understand/>, accessed 25<sup>th</sup> May, 2021.

<sup>26</sup> Sec. 150 SPC of Kano

<sup>27</sup> Sec. 151 SPC of Kano

<sup>28</sup> Section 154 SPC of Kano

<sup>29</sup> Section 153 SPC of Kano

Notwithstanding the two possibilities, the law provides same punishment for the two occurrences which is not the correct position of the Maliki law. The determinant of a foetus being entitled to *diyyah* of *ghurrah* is whether it is injured and as a result born dead. The first condition is covered within the purview of SPC provisions i.e. inflicting injury but the second condition is not contained and that is the major cause of the seeming error in punishment provided for under section 153(b) of SPC. Jurists all concur that an injury inflicted on foetus born alive who later dies is punishable with *diyyah* (al-Qurṭūbī, 2004: 198) just as in the case of murder earlier discussed, but if stillborn or result to miscarriage it shall attract *ghurrah* no matter what the intention of the perpetrator is.

Consequently, the punishment in the above provision should be distinguished between when a foetus dies before birth and after birth; the former attracts *ghurrah* while the latter attracts either *qisas* or *diyyah* depending on the circumstance of each case and the decision of the relatives of the dead child.

Fundamentally, the question of how to know if a child is born alive should be addressed, it is worthy to say the SPC of Kano and all its ancillary laws are silent over this. The opinion of the Imam Malik is that the hearing of the squall or the cry of the child signifies life and such a case will be judged as punishable with *diyyah* because the child was born alive (Ānas Ibn Mālik, 1994: 631).

As for the pregnant woman, the law provides where a person intends to unjustly cause the death of a foetus and resultantly causes the death of the woman, he will be liable to pay *diyyah*.<sup>30</sup> This is also according to the directive of the Prophet SAW which is so because the intention is to cause the death of the foetus not that of the mother therefore it is an unintentional homicide punishable with *diyyah*. It must be understood at this juncture, that the punishment of the unborn child and the pregnant woman are different from each other and are not together. A person who causes the death of a foetus and thereafter causes the death of the mother is liable separately to the *ghurrah* of the unborn child and the *diyyah* of the mother.

As for the quantum of *ghurrah*, it is one twentieth of full *diyyah* or in other way five percent of the *diyyah* according to the opinion of the Maliki School of Law. This means the *ghurrah* of the unborn is five camels or six hundred Dirham or fifty Dinars (Muḥammad Aḥmad Rushd, 1998: 31).

---

<sup>30</sup> Sec. 152 of SPC of Kano

## **DIYYAH FOR OFFENCES RELATED TO CAUSING BODILY HARM**

The SPC of Kano provides that the right to *diyyah* arises from unintentional injury, intentional injury where *Qisas* is not possible and destruction of function of sense organ with or without destroying the organ.<sup>31</sup>

Offences related to causing bodily harm for the purpose of proper understanding can be divided into *Shijaj* i.e. that which affects the head or face and that which affects other parts of the body.

Starting with the latter, the *diyyah* for offences that relates to severance of bodily part like limbs or the destruction of these parts can attract the payment of full *diyyah*, half *diyyah* or a particular percentage as understood under the *Shariah*. For ease, Jurists have classified the bodily parts and the *diyyah* they attract into four different categories (Sayyid Amīn, 2001: 113-114). The first category is the part of the body which has no replicate or part that is only one like the component of the Central Nervous System i.e. the Brain and the Spinal cord when damaged they attract the payment of full *diyyah*.

The second category comprises of the bodily parts in pairs like the eye, the hand, leg, among others each pair attracts a half *diyyah* while disabling the two at the same time attracts full *diyyah*.

Thirdly, parts of the body in quartet or foursome like the canine (Zubair A., 1990: 68) attracts one quarter of full *diyyah* for each part. Therefore, the damage of all the parts attracts full *diyyah*.

The last category of this division is for the parts of the body in decuple like the fingers and for each part is one tenth of a full *diyyah*.

Relating the above categories to the provisions on *diyyah* on injury not involving death, a critical perusal of the SPC of Kano shows that the division of hurt or injury that attracts *diyyah* is based on the quantum of *diyyah* for each offence. The Law provides for cases that attracts full *diyyah*, those that attracts half of full *diyyah*, injuries that attracts one third of full *diyyah*, injuries that warrants one twentieth of full *diyyah* and those that attracts three twentieth of a full *diyyah*. Most of these provisions however tally with what is obtainable in the classical works despite the variation in the modes of categorizing these offences. For instance, the SPC of Kano gives examples of cutting of the two hands, cutting of the two legs, cutting of the testicles, cutting of the breasts etc. as offences that attract full *diyyah*<sup>32</sup> which are earlier explained as parts of the

---

<sup>31</sup> See Schedule to Sec. 163 Part B SPC of Kano.

<sup>32</sup> See Schedule to Sec. 163 Part B(1) SPC of Kano.



body in pairs, damage of the two parts attracts full *diyyah*. For offences that attract half of full *diyyah*, the SPC of Kano provides that dismembering of one part of the body in pairs via intentional hurt where the victim opts for *diyyah* or unintentional act is punishable with the payment of half of full *diyyah* just as earlier explained.

The law further gives cases of offences punishable with one twentieth of full *diyyah* such as removal of tooth, a phalange of the thumb or the big toe. This punishment is a true reflection of the Maliki School of Law on similar instances such as removal of the tooth (Yūsuf ‘Abd Allāh al-Namrī, n.d.: 1115) and dismembering of the thumb (Naṣīr al-Tha‘labī, 2004: 191).

A notable deviation from the opinion of the Maliki School of law is seen in the punishment for each finger and each toe, SPC of Kano says it attracts one third of full *diyyah*,<sup>33</sup> conversely, the undisputed opinion of the Maliki School of Law is that it attracts one tenth of a full *diyyah* (Yūsuf ‘Abd Allāh al-Namrī, n.d.: 1113).

For offences to the face and head known as *Shijaj* the SPC of Kano provides for *Ma’mumah*, *Ja’ifah*, *Mudiha*, *Hashimah* and *Munaqilah*. *Ma’mumah* and *Ja’ifah* which are injuries which affects the cerebral membrane and those that affect internal cavities or bore deep into the abdomen respectively attracts the payment of one third of a full *diyyah*<sup>34</sup> this is in line with opinion of the Maliki School (Yūsuf ‘Abd Allāh al-Namrī, n.d.: 1114). *Mudiha* on its own according to the law attracts one twentieth of full *diyyah* for it is an injury which exposes the bone also in conformity with consensus opinion of the scholars based on a Hadith of the Prophet SAW (al-Qurtūbī, 2004: 202).

*Hashimah* and *Munaqilah* attracts three twentieth of full *diyyah* which is equivalent of 15 percent of full *diyyah*, this surprisingly antagonizes the majority opinion of Jurists including Maliki Scholars opine that they both attract 10 percent of full *diyyah* when it occurs via intentional injury and half of this when it is a mistake. This is also the stand of the Companions based on the uncontroverted report by Zayd bn Thabit on the subject matter (*Ibid*: 203).

Other offences within this category are to be decided by what is called estimated damages which is called *Hukumah* discussed in the introductory part of this work (Muḥammad Ibn Yūsuf Kāfī, 2012).

From the aforesaid, the provision of the SPC of Kano is mostly in conformity with the position of law as contained in the classical works of the Maliki, some

---

<sup>33</sup> See Schedule to Sec. 163 Part F SPC of Kano.

<sup>34</sup> See Schedule to Sec. 163 Part E SPC of Kano.

of the variation could be as a result of typographical error and some from the hasty nature adopted in the drafting of the law. On the same line, Part ‘E’ and ‘F’ of the Schedule to section 163 contains very similar headings which portrays similar meaning which is to the effect that laws under both parts are punishable with one third of full *diyyah* which has been said to be wrong with special emphasis Part on ‘F’ with ought to attract payment of one tenth of full *diyyah*. The replacement of the heading of the Part with the sentence ‘offences that attracts the payment of one-tenth of full *diyyah*’ will remedy this error.

### **DIYYAH FOR SPECIAL PERSONS**

Some peculiar situations warranting payment of *diyyah* distinct from the general rule and peculiar cases of hurt or murder are treated under this heading as special cases such as *Dhimmi*, *Kitabiy* and slaves.

Starting with the *diyyah* of *Dhimmiy* who is a non-Muslim sacredly protected in an Islamic state.<sup>35</sup> When an offence of murder or hurt is committed against him and *diyyah* becomes obligatory, the *diyyah* of a *Dhimmiy* according to the opinion of the Maliki School of law is half of the *diyyah* of a Muslim of his kind (‘Alī ‘Abd al-Salām, 1998: 622). This is also the case when the victim is a Christian or Jew in an Islamic State, he or his family is entitled to the half of a full *diyyah* of his Muslims sex (Muḥammad al-Miyārah, n.d.: 283; al-Qurṭūbī, 2004: 197).

The law under examination has no provision or distinction in this cases, this is understood to be the case in order to avoid the controversy of equality before the law as contained in the Constitution of the Federal Republic of Nigeria which the SPC of Kano is still subject to. Section 42(1) of the Constitution prohibits subjecting any person to a different form of punishment based on his sex, race or religion. With the supremacy clause contained in the constitution equally, which makes all other laws subordinate to it and makes it have overriding effect on all other laws, provisions for special cases such as this will undermine the validity of the SPC of Kano.

Soberly, the decision of the drafters of the law can be supported by accepting that a lesser evil of not including a distinction between the punishment of *diyyah* of a Muslim and non-Muslim is better than making the SPC of Kano not being passed at all or a subject of chaos in the country. This is supported by

---

<sup>35</sup> Al Maʿaniy, Al Maʿani online Diction Arabic to English of the word *Dhimmiy*’ accessed via <https://www.almaany.com/en/dict/ar-en/%D8%B0%D9%91%D9%90%D9%85%D9%91%D9%90%D9%8A%D9%91%D9%90/> on 25th May, 2021

the juristic maxim ‘*irtikaab akhafu dararayn*’ (‘Abd al-Wahhāb Khalāf, n.d.: 208), which means choosing of a lesser evil when there are two evils. This is not to mean the Muslims should fold their arm and watch the Law of Allah being subjected to manmade laws rather, steps should be taken to give the Law its desired supremacy to make it totally conform to Allah’s command.

As for the woman, *diyyah* in their matter is also half of that of a Muslim male just as she inherits half of what a man inherits (al-Qurṭūbī, 2004: 197) and the SPC of Kano is likewise silent over any distinction between hers and that of a man. The same issue as explained above is a militating factor here.

## FINDINGS

Based on the above forgone, examination of punishment of *diyyah* has shown that;

- a) The provisions as contained under the SPC of Kano are unsurprisingly less comprehensive as those seen in the classical works of jurists.
- b) Majority of the provisions on *diyyah* in the SPC of Kano are in tandem with the Maliki School of Law opinion with few variations.
- c) There are some areas of where the SPC of Kano deviated from the classical provision of the Maliki School without justification such as the increment of term of punishment for *ta’azir* following *diyyah* from one year to ten years. Likewise the provision relating to punishment for damage of the toe and fingers.
- d) Matters on how to pay *diyyah*, when to pay and inconclusively who to pay *diyyah* is not included in the SPC of Kano or any of its ancillary laws.
- e) Special cases such as injuries and murder against a woman, *Dhimmiy*, a non Muslim among others were omitted in the SPC of Kano to avoid controversy of running afoul the provision of the Constitution of Nigeria 1999 as amended which is seen as ground norm and thus making the provisions incomplete
- f) Finally, it is understood that though majority of the provisions of the SPC of Kano State are in tandem with the Classical Works of Malikis, there are aspects not contained on payment of *diyyah*, there are some not adequately provided and few contradictions.

## RECOMMENDATIONS

Consequent upon the above findings, it is recommended that

- a) Judges/*Qadis* should in their judgements cater for omitted details on *diyyah* such as who to pay, what to pay, when to pay and how to pay *diyyah* in accordance with the opinion of the Maliki School of Law.
- b) There is need to amend the SPC to correct the obvious errors such as the typographical errors and the substantive errors as pointed out in this work such as the unjustifiable ten years imprisonment for a murderer.
- c) For the unwithered application of Islamic Law and provisions of *diyyah* there is need for the constitution to be amended to permit the practice of Islamic Law without hindrance and without being subjected to any other law. Only with this can provisions of *diyyah* be fully provided for and the freedom of religion fully achieved.

It is strongly believed that the implementation of the above recommendations in line with this current work will go a great deal in helping the cause of justice and in achieving the goals of punishment on the society.

## REFERENCES

- ‘Abd al-‘Azīm Badwī Muḥammad (2001). *al-Wajīz fī Fiqh Sunnah wa al-Kitāb al-‘Azīz*. Qāhīrah: Dār Ibn Rajab.
- ‘Abd Allāh Muḥammad Ibn Qudāmāh (1968). *al-Mughnī li Ibn Qudāmāh*, vol. 8. Qāhīrah: Maktabah Qāhīrah.
- ‘Abd al-Qadīr ‘Awdah (n.d.). *‘al-Tashrī‘ Jinā‘ī al-Islāmī Muqāranah bi al-Qānūn al-Waḍ‘ī*, vol. 2. Bayrūt: Dār al-Kutub al-‘Arabī.
- ‘Abd al-Raḥmān al-Qarrāfī (1994). *al-Dākhīrah li al-Qarrāfī*, vol. 12. Bayrūt: Dār Gharb al-Islāmī Publishers.
- ‘Abd al-Wahhāb Khalāf (n.d.). *‘Ilm Uṣūl al-Fiqh*. Qāhīrah: Dār al-Qalam.
- ‘Alī ‘Abd al-Salām (1998). *Bahjah fī Sharḥ Tuḥfah*, vol. 2. Bayrūt: Dār al-Kitāb ‘Ilmiyyah.
- Aḥmad Jiṣāṣ (1984). *Aḥkām al-Qur’ān*, vol. 1. Bayrūt: Dār Iḥyā’ Turāth al-‘Arabī.
- Aḥmad Muḥammad Barnū (n.d.). *Mawsū‘ah al-Qawā‘id al Fiqhiyyah*, vol. 8. Bayrūt: Mawsū‘ah Risālah.
- Al Ma‘aniy, Al Ma‘ani online Diction Arabic to English of the word *Dhimmiy*’ accessed via <https://www.almaany.com/en/dict/ar-en/%D8%B0%D9%91%D9%90%D9%85%D9%91%D9%90%D9%8A%D9%91%D9%90/> on 25th May, 2021

- Al-Bukhārī, Abī ‘Abd Allāh Muḥammad Ibn Ismā‘il al-Ju‘fī (2001). *Ṣaḥīḥ al-Bukhārī*, vol. 9. N.p.: Dār Ṭūq Najat.
- Al-Jizy al-Kalbī (n.d.). *al-Qawānīn al-Fiqhiyyah*. Maktabah Shamilah, Fiqh Maliki, Version 3.48, vol. 1.
- Al-Qurtūbī, Abī Wālid Muḥammad Ibn Aḥmad Ibn Muḥammad Ibn Aḥmad Ibn Rushd (2004). *Bidāyah al-Mujtahid wa al-Nihāyah al-Muqtaṣid*, vol. 4. Qāhirah: Dār al-Ḥadīth.
- Al-Qurtūbī, Abū Bakr Shams al-Dīn (1964). *Tafsīr al-Qurtūbī*, vol. 5. Qāhirah: Dār al-Kitāb al-Miṣriyah.
- Ānas Ibn Mālik (1994). *al-Mudawwanah al-Kubrā*, vol. 4. n.p.: Dār al-Kitāb ‘Ilmiyyah.
- Ānas Mālik (1985). *Muwatṭā‘ al-Imām Mali’*. vol. 1. Bayrūt: Dār Iḥyā’ al-Turāth al-‘Arabī.
- Diyyah ‘Al-Maany Online English Arabic Dictionary’ Accessed via <https://www.almaany.com/en/dict/ar-en/diyah/> on 13<sup>th</sup> June, 2021.
- Ibrahīm ‘Abd Allāh al-Tuwayjirī (2009). *Mawsu‘ah al-Fiqh al-Islāmī*, vol. 5. n.p.: Dār Afkār al-Dawliyah.
- Isma‘īl Ibn Kathīr (1999). *Tafsīr Qur‘ān al-‘Azīm*, vol. 1. n.p.: Dar Toyibah Publishing and Distributing Press.
- Ismā‘īl Muḥammad Bakr (1997). *al-Fiqh al-Wāḍiḥ min al-Kitāb wa al-Sunnah ‘ala Madhāhib al-Arba‘ah*, vol. 2. Qāhirah: Dār Manār.
- Muḥammad Aḥmad Rushd (1998). *Al-Bayān wa Tahsīl wa Sharḥ wa Tawjiyah wa Ta’līl li Masā’il al Mustakhrija*, vol. 16. Bayrūt: Dār Gharb Islāmī.
- Muḥammad al-Miyārah (n.d.). *al-Itqān wa al-Iḥkām fī Sharḥ Tuḥfah al-Ḥukkām*, vol. 2. Bayrūt: Dār al-Ma‘rifah.
- Muḥammad Ibn Yūsuf Kāfī (2012). *Iḥkām al-Aḥkām ‘ala Tuḥfah al-Ḥukkām*. Bayrūt: Dār al-Fikr Publishers and Distributors.
- Muḥammad-Rabī al-Lakhmī (2011). *al-Tabsīrah li al-Lakhmī*, vol. 13. Qatar: Wizārah al-Awqāf wa Shu‘ūn al-Islāmiyyah.
- Na’iya I. S. (2007). “The Making of the Zamfara and Kano State Sharia Penal Codes,” in *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, vol. 4, no. 2, ed. Ostien P. Ibadan: Spectrum Books Ltd.
- Naṣīr al-Tha‘labī (2004). *al-Talqīn fī Fiqh al-Mālikī*. Bayrūt: Dār al-Kitāb ‘Ilmiyyah.

- National Stillbirth Society, 'Stillbirth: Trying To Understand', Accessed via <http://americanpregnancy.org/pregnancy-loss/stillborn-trying-to-understand/> on 25<sup>th</sup> May, 2021.
- Ostein. P. (n.d.). "The Centre for Islamic Legal Studies Draft Harmonised Sharia Penal Code Annotated," in *Shariah Implementation in Northern Nigeria 1999-2006: A Source Book*, ed. ed. Ostein. P. Vol. IV P. 53
- Sayyid Amīn (2001). *al-Mas'ūliyyah al-Taḡṡīriyah an fī al-Ghayr fī Fiqh al-Islāmī al-Muqāran*. n.p.: al-Askandariyah Publishers.
- The American Heritage Medical Dictionary 'Miscarriage', (Houghton Mifflin, 2004) <https://medical-dictionary.thefreedictionary.com/miscarriage> Accessed on 27<sup>th</sup> February, 2021
- The Free Dictionary Medical Dictionary, 'Miscarriage', <https://medical-dictionary.thefreedictionary.com/miscarriage>, Accessed on 27<sup>th</sup> February, 2021.
- Wahbah al-Zuhaylī (1985). *al-Fiqh al-Islāmī wa Adillatuh*, vol. 7. Dimashq: Dār al-Fikr.
- Yūsuf 'Abd Allāh al-Namrī (n.d.). *al-Kāfī fī Fiqh Ahl al-Madīnah*, vol. 2. n.p.: n.p.
- Zubair A. (1990). *An Outline of Islamic Law of Tort*. Lagos: Islamic International Contact Publications.

### **List of Statutes**

- Kano: Sharia Penal Code Law 2000
- Kebbi State Gazette Vol. 2 No. 1, Supplement 31<sup>st</sup> December 2000
- Kebbi: Penal Code (Amendment) Law 2000, Law No. 21 of 2000
- Sheu Usman v. State, Shariah Court of Appeal Kano, SCA/KN/CR/13/05  
SPC of Kano 2000
- Zamfara: Sharia Penal Code Law 2000, Law No. 10 of 2000