A COMPARATIVE ANALYSIS OF CUSTOMARY LAW AND SHARIA LAW IN NIGERIA*

Abstract
Customary Law and Sharia (Islamic Law) are two prominent non-Western legal systems operating within many African jurisdictions, particularly Nigeria. Customary Law is derived from the traditions and practices of indigenous communities, while Sharia Law is rooted in divine revelation as contained in the Qur'an and Hadith. Although both systems emphasise morality, social order, and justice, they differ markedly in their sources, structure, and modes of application. This article adopts a doctrinal research methodology, relying on constitutional provisions, statutes, judicial decisions, and scholarly writings. Using comparative legal analysis, it examines the conceptual foundations, sources, enforcement mechanisms, and contemporary relevance of Customary Law and Sharia Law within Nigeria's plural legal framework. The article finds that while both systems aim at justice and communal harmony, Customary Law is flexible and evolves through social practice, whereas Sharia Law is grounded in divine norms and exhibits limited adaptability. It recommends harmonisation approaches that respect both systems while ensuring conformity with constitutional and international human rights standards, thereby strengthening legal pluralism in Nigeria.

Keywords: Customary Law, Islamic Law, Sharia Law, Nigeria

1. Introduction

Nigeria's legal systems are shaped by ethnic variety, religious influences, and colonial history. Prior to the emergence of colonisation, indigenous African cultures were regulated by customs, traditions, and unwritten rules that constituted the foundation of Customary Law. Islam similarly instituted Sharia Law, a divine legal framework governing all facets of a Muslim's existence. The two systems persist in coexistence, embodying statute and common law traditions, which illustrate Africa's intricate multiple legal structure. Nonetheless, throughout colonisation, the colonial authorities implemented their legal framework, popularly known as Received English Law. Consequently, Islamic law and customary law were integrated and subjected to specific validity assessments. This signified the inception of the concept that Islamic law constitutes a component of customary law. Customary Law derives its validity from the conventions and recognised practices of a community, whereas Sharia/Islamic law is founded on divine revelation from God as articulated in the Qur'an and Hadith.[1] Both aim to maintain social order, morality, and justice, but differ in their sources, codification, and interpretation. This article compares and contrasts these two systems to highlight their similarities, differences, and contemporary relevance.

2. Conceptual Framework for Customary Law and Sharia

Customary Law refers to the body of unwritten rules, norms, and traditions accepted by members of a particular community as binding.[2] It is transmitted orally from generation to generation and adapts to social evolution. It was defined by T.S Elias as 'the law of a given community, the body of rules which are recognised as obligatory by its members.' Elias emphasises that what makes customary law 'law' is the recognition by the people of the community. According to Max Gluckman, Customary law is defined

> As a set of rules accepted by all normal members of the society as defining right and reasonable ways in which persons ought to behave in relation to each other and to things, including ways of obtaining protection for one's rights.

Gluckman emphasises both the normative duties and the conduct obligations of individuals within the society. There is no universally recognised definition of customary law, a stance endorsed by White. He contended that a universally accepted definition of customary law is absent, contrasting the viewpoints of legal practitioners, who seek norms comparable to those in other legal systems, with those of anthropologists, who examine the relationship between these rules and social and political life. Sharia/Islamic Law, on the other hand, is derived from the *Qur'an, Hadith, Ijma* (consensus), and *Qiyas* (analogical reasoning).[3]It is divine and immutable in its core principles, though juristic interpretations *(fiqh)* allow for some flexibility. Sharia (Islamic) Law is defined

***By Ipoola Aderemi BINUYO, LLB, LLM, MPhil, PhD (Ife), BL, FCArbm** Lecturer, Faculty of Law, Adeleke University, Department of Public Law. Email: binuyojp@gmail.com;
***Adeyemi OLUWADAMILARE, LLB(OAU), LLM (Ibadan), BL, PhD (In view),** Lecturer, Faculty of Law, Adeleke University, Department of Public Law, Email: adeyemioluwadamilarelaw@gmail.com, Tel. 234-8054932801

[1] TO Elias, *The Nature of African Customary Law* (Manchester University Press 1956).
[2] AO Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979).
[3] WA Schacht, *An Introduction to Islamic Law* (Clarendon Press 1964).

as a: 'Broad concept that is not confined to legal rules but comprises the totality of guidance that God Most High has revealed to humankind, pertaining to the dogma of Islam, its moral values, and its practical legal rules.'[4]

According to Gbemi, Sharia (Islamic) Law is defined as:

> An identifiable and generally agreed upon body of general principles of law and ethics accepted by all Muslims as authoritative and binding statements from God. Sharia provides for codes of ethics, social interaction and legal system. It regulates the full range of human activities from religious rituals, social manners and political institutions to, legal rules in civic, commercial, criminal and family.[5]

While Customary Law is community-specific, Sharia Law applies universally to all Muslims. Colonialism introduced English Common Law into Nigeria, creating a tripartite legal system in Nigeria, i.e Customary Law, Sharia Law, and Statutory Law.[6]

3. Origins of Customary Law and Sharia Law

Customary Law obtains its authority and legitimacy from the traditions, practices, and social norms of Nigerian communities. It is predominantly unwritten, fluid, and community-oriented, embodying the values, beliefs, and social structure of the populace it serves. The origins of Customary Law are delineated below:

Customary Practices and Traditions: The primary source of Customary Law is the customs, traditions, and usages of the people themselves. These customs gain legal force through long and consistent practice accepted by the community as binding. A custom must satisfy three conditions to be recognized as law: antiquity, reasonableness, and certainty. Justice Bairamian FJ in *Omidokun Owonyin v Omotosho*[7]stated that 'customary law is a mirror of accepted usage' among a people, showing its origin in communal practices. Similarly, Justice Obaseki in *Oyewunmi v Ogunesan*[8] held that 'customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions.' Elias also defined Customary Law [9]as 'the body of rules which are recognised as obligatory by members of an indigenous community.'

Judicial Decisions: The courts play a vital role in identifying, interpreting, and developing customary law. Since most customs are unwritten, the judiciary acts as the main institution for articulating their content. Once a court has recognized a custom as valid, it may be judicially noticed in subsequent cases. For instance, in *Agbai v Okogbue*, [10]the Supreme Court acknowledged the role of courts in validating customary practices provided they are not repugnant to natural justice, equity, and good conscience. Similarly, *Lewis v Bankole* [11]remains a foundational case where the court defined Yoruba customary land tenure, showing how judicial pronouncements crystallize customary law.

Legislation and Codification: Certain aspects of customary law have been codified or incorporated into statutory law. These codifications often appear in areas like marriage, inheritance, and chieftaincy. Examples include: The Evidence Act 2011 (Nigeria), section 258 (1) defines 'custom' as 'a rule which, in a particular district, has, from long usage, obtained the force of law.'[12]Local Government and Chieftaincy Laws in many West African states incorporate customary rules of succession and traditional authority. Codification aims to preserve and harmonize customary norms with modern legal systems, although it risks freezing living traditions into rigid forms.

Opinions of Legal Writers and Anthropologists: Legal scholars and anthropologists have contributed extensively to identifying and analyzing the nature of customary law. These writings serve as secondary sources used by courts and practitioners to understand the content and evolution of custom. White[13] observes that 'customary law is difficult to define as it varies from one community to another and must be understood within

[4] Mohammad Hashim Kamali, 'Shariah: Meaning, Definition, History, and Sources' in *Shariah and the Halal Industry* (Oxford University Press 2021) 17–25.
[5] Gbemi Egunjobi, *Sharia as a Theocratic System* (2000) as quoted in 'Sharia as a theocratic system' *HTS: Theological Studies (South Africa) (2000) (unpaged).*
[6] NWA Allott, *Essays in African Law* (Butterworths 1960).
[7] (1961) 1 All NLR 304 (FSC).
[8] (1990) 3 NWLR (Pt 137) 182 (SC).
[9] Ibid.
[10] (1991) 7 NWLR (Pt 204) 391 (SC).
[11] (1908) 1 NLR 81.
[12] Evidence Act 2011 (Nigeria) s 258(1).
[13] C M N White, 'African Customary Law: The Problem of Concept and Definition' (1965) 9 *Journal of African Law* 86.

the social and political life of the people.' Max Gluckman[14]viewed customary law as 'a set of rules accepted by all normal members of the society as defining right and reasonable ways in which persons ought to behave.'

Received English Law and Colonial Influence: Throughout the colonial period, English law shaped the evolution and acknowledgement of customary law. The repugnancy test, established by colonial courts, permitted the acknowledgement of a custom solely provided it was not contrary to natural justice, equity, and good conscience, and did not conflict with statutory law. This test, despite its contentious nature, continues to be integral to contemporary court procedures in numerous African nations.[15]

Local and Traditional Institutions: Traditional authorities such as chiefs, elders, and family heads play a crucial role in maintaining and enforcing customary norms. Their pronouncements and dispute resolutions in local forums are important sources of living customary law. The practice of these institutions ensures continuity and adaptation of customary norms.[16]

While Sharia /Islamic law represents the divine guidance revealed by Allah (God) to regulate every aspect of human life. The term Sharia literally means 'the clear path to be followed' and refers to the totality of God's commands relating to human conduct, encompassing moral, social, spiritual, and legal norms. As Mohammad Hashim Kamali observes, [17]'Sharia is not confined to legal rules but embraces the totality of guidance that God has revealed to mankind.' The primary sources of Sharia /Islamic law include:

Qur'an: The Qur'an is the first and most authoritative source of Islamic law. It is regarded as the direct word of Allah revealed to the Prophet Muhammad (peace be upon him) over a period of 23 years. The Qur'an contains explicit legal injunctions (known as *ayat al-aḥkam*) on areas such as family law, inheritance, contracts, and criminal sanctions, alongside moral and spiritual guidance. While only about 500 verses (out of over 6,000) deal directly with legal matters, the Qur'an lays down fundamental legal and ethical principles such as justice, equality, mercy, and accountability. These are interpreted and applied by Islamic jurists (*fuqaha*') in formulating specific legal rules.

i. 'O you who believe! Fulfil your obligations.' [18]
ii. 'If you judge between people, judge with justice. [19]

***Sunnah* (Traditions of the Prophet):** The Sunnah is the second primary source of Islamic law. It consists of the sayings (*hadith*), actions, and approvals of Prophet Muhammad (peace be upon him), serving as a practical interpretation and implementation of Qur'anic principles. The Sunnah provides detailed guidance where the Qur'an is general or silent. According to Abdur Rahman I. Doi, [20]'The Sunnah explains, clarifies, and supplements the Qur'an, and serves as the second legislative authority in Islam.' Examples include: The Prophet's elaboration on Qur'anic injunctions such as the method of prayer (*ṣala*h) and fasting (*ṣawm*),[21] His decisions in social and judicial matters, which established procedural and evidential norms in Islamic jurisprudence.

***Ijma* (Consensus of Jurists):** *Ijma*, meaning consensus, is the agreement of qualified jurists (*mujtahidun*) on a legal issue after the death of the Prophet. It ensures uniformity and continuity in Islamic legal thought, especially when no clear ruling exists in the *Qur'an or Sunnah.* According to the classical jurist *Al-Shafii*, [22]'The truth is one, and consensus cannot exist except upon it.' Thus, ijma represents the collective reasoning of the Muslim community's scholars, serving as a means of adapting Islamic law to changing circumstances. Examples include the consensus on: The prohibition of interest (riba) and the obligation of compiling the Qur'an into a single text during Caliph Abu Bakr's era.[23]

***Qiyas* (Analogical Reasoning)**: *Qiya*s refers to the process of deriving a legal rule for a new situation by analogy with an existing rule established in the Qur'an or Sunnah, based on a shared effective cause *('illah*). It allows

[14] Max Gluckman, *The Judicial Process Among the Barotse of Northern Rhodesia* (2nd edn, Manchester University Press 1967).
[15] *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1931] AC 662 (PC).
[16] Allott, *Essays in African Law* (Butterworths 1970).
[17] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 24–25.
[18] Qur'an, Surah al-Mā'idah 5:1.
[19] Qur'an, Surah an-Nisā' 4:58.
[20] Abdur Rahman I Doi, *Shari'ah: The Islamic Law* (Ta Ha Publishers 1984) 28–32.
[21] The Hadith of the Prophet Muhammad, reported in *Sahih al-Bukhari*, vol 1, hadith 8.
[22] Al-Shāfi'ī, Al-Risālah, *Treatise on the Foundations of Islamic Jurisprudence* (Majid Khadduri tr, Islamic Texts Society 1987).
[23] Wael B Hallaq, *A History of Islamic Legal Theories* (Cambridge University Press 1997) 45–48.

Islamic law to address new issues not explicitly mentioned in the primary sources. For example, the Qur'an prohibits wine due to its intoxicating effect.[24] By analogy, jurists extended the prohibition to all intoxicants, including drugs, based on the same 'illah (intoxication). According to Mohammad Hashim Kamali,[25] 'Qiyas represents the extension of Sharia from the known to the unknown and ensures the dynamism and adaptability of Islamic law.'

There are also secondary/supplementary sources of sharia law to ensure flexibility and contextual relevance in legal rulings. These include:

***Istihsan* (Juristic Preference**): A method allowing departure from strict analogy to achieve equity and public interest. The Hanafi jurists used it to avoid hardship (haraj).[26]

***Maslahah Mursalah* (Public Interest):** Used where no clear text applies, provided it serves the objectives of Sharia (maqaṣid al-sharia), such as preservation of life, property, and religion[27].

***Urf* (Custom):** Custom or local usage is admissible as a legal source if not contrary to the Qur'an or Sunnah. This allows the integration of local African, Asian, or Arab customs within Sharia.[28]

Istishab (Presumption of Continuity): This principle maintains the status quo until evidence proves a change, ensuring stability in legal relations.[29]

4. Judicial and Constitutional Recognition (Nigerian Example)

In Nigeria, the 1999 Constitution (as amended) recognises Islamic personal law and establishes Sharia Courts of Appeal with jurisdiction over matrimonial, inheritance, and guardianship matters governed by Islamic law.[30] The courts apply the principles of Sharia primarily in Northern Nigeria, with procedural recognition in Sharia Penal Codes and state statutes.[31]From the sources highlighted above, it can be inferred that while the Customary Law evolves from human experience, Sharia Law originates from the divine command.

5. Nature and Scope of Application of Customary Law and Sharia Law

Customary Law is flexible, dynamic, and community-based, adjusting to social developments. It emphasizes reconciliation, compensation, and social harmony over punishment.[32]It is applied in customary courts and through traditional rulers. Customary Laws are mostly not documented. They are usually unwritten. In the words of Justice Ibekwe (as he then was),

> Our own customary law is unwritten. It was handed down the ages, from generation to generation. Like a creed, it seems to live in the minds of people. This explains why so little was really known at the beginning about the vast body of laws which had always governed the affairs of our ancestors from time immemorial[33]

Secondly, Customary Law remains flexible, evolutionary and capable of adaptation to changing circumstances. In *Lewis v Bankole*, Osborne CJ opined that:

> *One of the most striking features of West African [N]ative custom … is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its individual characteristics.*

Several instances have illustrated the flexibility of customary law. For example, land under the customary law was totally inalienable. It belonged to either a family or community. But due to the flexibility of customary law, the concept of inalienability of land under the customary law was discarded in a favour of transferability by way of sale. Web J in *Balogun and Scottish Nigeria Mortgage and Trust Co. Ltd. v Saka Chief Oshodi* stated:

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[24] Qur'an 5:90).
[25] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 275–280.
[26] Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Press 1964) 57.
[27] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld Publications 2008) 102.
[28] Noel J Coulson, *A History of Islamic Law* (Edinburgh University Press 1964) 124.
[29] Wael B Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge University Press 2005) 143.
[30] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 260–264.
[31] Sharia Courts (Administration of Justice and Procedure) Law 1960 (Northern Nigeria).
[32] CN Nweze, 'The Interface between Customary Law and Human Rights in Nigeria' (1999) 23 *Journal of African Law* 1.
[33] DO Ibekwe, *Conflict of Cultures and our Customary law in African Indigenous Laws'*(1974) Enugu: Government Printer,297

> *It seems to me that [N]ative law existent during the last fifty years has recognized alienation of family land, even by a domestic, provided the permission of the family is obtained … The chief characteristic of [N]ative law is its flexibility, one incident of land tenure after another disappears as the times change but the most important incident of tenure which has crept in and become firmly established as a rule of [N]ative law is alienation of land.*

From the above definitions and characteristics of Customary Law, it is crystal clear that Sharia/Islamic law does not fit into the descriptions and definitions of Customary Law. Sharia/Islamic law, unlike the customary law, is largely written, more rigid and uniform and based on the Islamic faith. While customary law which is man-made law is derived from the customs and traditions of the people, Sharia /Islamic law is divine law from *Allah (SWT).* Furthermore, customary law has been described as flexible and unwritten in nature but Islamic law has been, is being and will continue to be a written law. This is because the primary sources of Islamic law which are the *Quran* and *Hadith* of the prophet have been reduced to writing for more than 1400 years. In fact, Islamic law is older than English law which came to merge Islamic law as part of customary law. English Law was introduced in Nigeria, beginning with Lagos in 1863 and extending to the rest of the country in 1900, Islamic law has been in existence for more than 1400 years.

Muslim jurists who later developed Islamic law have documented hundreds of thousands of books on several subject matters, making Islamic law a profoundly rich law. Undoubtedly, Sharia/Islamic law predates common law, which only became fully developed after the enactment of the Judicature Acts of 1873-1875. Prominent Muslim jurists such as Imam Abu Hanifa (author of Al-Fiqh al-Akbar), Imam Malik ibn Anas (author of Al-Muwatta), Imam Al-Shafii (author of Kitab al-Umm), and Imam Ahmad ibn Hanbal (author of Musnad Ahmad ibn Hanbal) contributed immensely to Islamic jurisprudence centuries before the development of the common law tradition. Their works laid the foundation for the comprehensive legal systems of Islamic law that continue to influence legal thought today.

Sharia /Islamic Law is comprehensive, covering all aspects of life, spiritual, moral, social, and legal. Its application in Nigeria is mainly in the northern states, where Sharia Courts of Appeal operate under sections 275–279 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).[34]
While Customary Law applies to members of a particular ethnic group, Sharia Law applies to Muslims, regardless of ethnicity.

6. Principles and Objectives of Justice under Customary Law and Sharia Law
Under Customary Law, justice is restorative i.e focused on restoring harmony within the community. Offences are viewed as wrongs against individuals or society, not against the state.[35]Sanctions aim to reconcile, not to punish. On the other hand, Sharia/Islamic Law promotes retributive and deterrent justice. It recognizes *Hudud* (fixed punishments), *Qisa*s (retaliation), and *Tazir* (discretionary punishments).[36] The emphasis is on obedience to divine will and maintenance of moral order. Despite this difference, both systems are grounded in morality and social cohesion.

7. Status and Rights of Women under Customary Law and Sharia Law
Under customary law, women traditionally hold a subordinate status, especially in matters of inheritance, marriage, and property.[37] Customary Law, being community-based and unwritten, varies from one ethnic group to another. However, its general features reflect patriarchal structures and communal obligations. Women's legal personality, property rights, and family roles are typically defined in relation to their positions as daughters, wives, or mothers. Under customary law, a woman's legal status was traditionally subsidiary to that of a man, whether her father, husband, or eldest male relative. Women rarely acted independently in legal or property matters. In *Mojekwu v Ejikeme*,[38] the Court of Appeal condemned the '*Oli-ekpe'* custom (which excluded women from inheritance) as discriminatory and contrary to natural justice. Nevertheless, customary law recognises women as crucial to the survival of family and lineage. They are custodians of domestic and moral values, and their fertility and social contribution enhance their communal status. As Elias notes, 'the role of women, though subordinate in structure, is fundamental to the continuation of customary society.'[39]

[34] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 275–279.
[35] *Re Effiong Okon Ata v Henshaw* (1962) WRNLR 75.
[36] R Peters, *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books 2002).
[37] J Olawale Elias, *Groundwork of Nigerian Law* (Routledge 1989).
[38] (2000) 5 NWLR (Pt 657) 402 (CA).
[39] Ibid.

Marriage under customary law is largely contractual and communal, involving the transfer of bride price (dowry) and establishing inter-family relations. A woman gains social recognition through marriage, but her marital rights are balanced by obligations of fidelity and domestic responsibility. Polygamy is permissible under customary law, though the first wife traditionally holds seniority. Divorce is allowed but often subject to communal mediation. Women may petition for divorce on grounds of cruelty or desertion, though their rights are sometimes curtailed by patriarchal interpretations.[40]

Traditionally, property ownership in Customary Law was male-dominated. In most communities, land was held by family heads, and women could only possess rights of use and not ownership of the land. The landmark case of *Mojekwu v Iwuchukwu* [41]reiterated that customs which exclude women from inheritance are repugnant to natural justice, equity, and good conscience. Modern jurisprudence, especially after the 1999 Nigerian Constitution of the Federal Republic of Nigeria (sections 42 and 43), has increasingly invalidated discriminatory customary practices. Courts now emphasise that equality before the law extends to women, and customs inconsistent with this principle are void.[42]

Also, formal leadership was traditionally male-dominated, women held informal power in communal decision-making. For instance, in the Yoruba culture, women's councils (such as the Iyalode) and market associations wielded significant influence.[43] However, colonial legal systems and modern statutory structures marginalized these traditional roles, further diminishing women's political agency. While Sharia (Islamic Law) accords women spiritual equality with men while maintaining distinct social and familial roles derived from the Qur'an and the Sunnah of the Prophet Muhammad (peace be upon him), it aims to promote justice, protect family values, and safeguard human dignity. Islam recognises men and women as equal before God. The Qur'an declares: 'And for women are rights similar to those of men over them in kindness.'[44] This principle underscores spiritual equality and the recognition of women's independent legal personality. A woman can own property, enter contracts, and inherit in her own right i.e rights which predate similar recognitions in European law.[45]

Marriage *(nikah*) under Sharia is a civil contract based on mutual consent and stipulations. The woman has the right to consent to marriage, to receive *mah*r (dower), and to retain ownership of her property after marriage.[46] Polygamy is permissible under the Qur'an but limited to a maximum of four wives, with the condition of equal treatment.[47]Women may seek divorce through judicial means (*khul'*) or on grounds such as cruelty, impotence, or failure to provide maintenance. Under Islamic inheritance law, women have definite shares in estates. The Qur'an specifies inheritance portions, often granting women half the share of men.[48] This distinction is based on financial responsibility, as men bear greater obligations of maintenance. Despite this, women's right to inherit is divinely guaranteed and cannot be denied by custom or male relatives.[49]

Islam encourages both men and women to seek knowledge. The Prophet Muhammad (peace be upon him) stated: 'Seeking knowledge is obligatory upon every Muslim, male and female.'[50]Women are entitled to engage in business, own property, and earn income independently. Early Muslim women such as Khadijah bint Khuwaylid (the Prophet's wife) exemplify this economic autonomy. Sharia enjoins modesty (haya') and moral conduct to protect women from exploitation. However, patriarchal interpretations have sometimes distorted these injunctions into restrictions on women's agency, especially in matters of public life. Modern Muslim scholars advocate a contextual reinterpretation (ijtihad) of Sharia to promote gender justice.[51] Reform efforts are ongoing in both systems. In Customary Law, courts have begun to invalidate discriminatory practices inconsistent with constitutional rights.[52]In Sharia, progressive scholars reinterpret texts to promote gender justice consistent with Qur'anic principles of fairness.[53]

[40] ibid
[41] (2004) 4 SCLR 1 (CA).
[42] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 42, 43.
[43] Bolanle Awe, *Women and Politics in Historical Perspective* (Institute of African Studies, University of Ibadan 1992) 27.
[44] Qur'an 2:228.
[45] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society 2003) 221.
[46] Jamal J Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation* (3rd edn, Brill 2009) 45.
[47] (Qur'an 4:3).
[48] (Qur'an 4:11).
[49] M Khadduri, *The Islamic Conception of Justice* (Johns Hopkins University Press 1984) 67.
[50] Wael B Hallaq, *An Introduction to Islamic Law* (Cambridge University Press 2009) 88.
[51] A An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press 2008) 142.
[52] *Mojekwu v Mojekwu* [1997] 7 NWLR (Pt 512) 283.
[53] *Ukeje v Ukeje* [2014] 11 NWLR (Pt 1418) 384.

8. The Interaction of Customary Law and Sharia Law with the Modern Legal System

The legal systems in Nigeria, are pluralistic, that is, comprising customary law, Islamic (Sharia) law, and received English law introduced during colonial rule. The interaction among these three systems has produced a complex hybrid legal order where traditional norms coexist, sometimes uneasily, with constitutional and statutory frameworks. Customary Law and Sharia Law continue to serve as the living law of millions of people, governing personal, family, and communal relations. However, their relationship with modern law is marked by both integration and tension, as post-colonial States strive to harmonize indigenous values with constitutionalism, human rights, and global legal standards.

Legal pluralism in Africa originated from colonial legal policies that recognised existing customary and Islamic institutions but subordinated them to colonial courts. The British system of indirect rule in West Africa allowed native authorities to administer justice according to local laws, provided these laws were not 'repugnant to natural justice, equity, and good conscience.'[54] Customary Law interacts with modern law through recognition, subordination, and gradual adaptation within constitutional and statutory frameworks. Most African constitutions, including Nigeria's, recognize customary law as part of the legal system. Section 315(3) of the 1999 Constitution of Nigeria provides for the continued application of existing customary laws, subject to constitutional provisions. The Evidence Act 2011, section 258(1),[55] defines a custom as 'a rule which, in a particular district, has, from long usage, obtained the force of law.' This definition formally integrates custom into the national legal system. The recognition of customary law is conditional. Courts apply the repugnancy test, incompatibility test, and public policy test to determine its validity. In *Eshugbayi Eleko v Officer Administering the Government of Nigeria*,[56] the Privy Council held that 'the native law and custom must not be repugnant to natural justice, equity, and good conscience.' Similarly, in *Amodu Tijani v Secretary*, [57]Southern Nigeria, the Privy Council recognised customary land tenure as a valid legal system, showing the coexistence of indigenous norms within the modern legal order. Customary law has been increasingly influenced by statutory and constitutional reforms, especially in areas such as marriage, inheritance, and women's rights. Discriminatory customs have been struck down for violating constitutional equality provisions. This judicial evolution demonstrates the ongoing domestication and modernization of customary norms to align with constitutional human rights principles. Customary courts and traditional authorities continue to function under state supervision, particularly in matters of marriage, land, and succession. Their existence alongside statutory courts reflects an attempt to institutionalize pluralism within a unified national framework.

While Sharia Law, like customary law, coexists with modern statutory and constitutional systems but operates primarily in the personal and moral domains, in some African countries, such as Nigeria, Sudan, and Somalia, Sharia has been partially or fully integrated into the formal legal order. Islamic law has been part of West African societies since the 11th century, long before colonialism. The British colonial administration initially recognised Islamic law but restricted it to personal status matters (marriage, divorce, inheritance).[58] After independence, several Muslim-majority States reasserted Islamic law's relevance. In Nigeria, for instance, Sharia Courts of Appeal were constitutionally established in Northern states to handle Islamic personal law matters.[59]

The 1999 Nigerian Constitution recognises Sharia law as part of the legal system but with limits. Section 275(1) provides that a state may establish a Sharia Court of Appeal to exercise jurisdiction over matters of Islamic personal law. However, Sharia must operate subject to the Constitution, particularly the fundamental rights provisions in Chapter IV. *In Alkamawa v Bello*,[60] the Supreme Court held that 'Sharia is not the law of a particular religion but a complete legal system derived from the Qur'an and Hadith.' The expansion of Sharia criminal law in Northern Nigeria since 1999 sparked debates on compatibility with constitutional rights particularly freedom of religion, equality, and fair trial.[61]Some scholars argue that the coexistence of Sharia and secular laws demonstrates the functional pluralism of Nigeria's legal system, while others warn of normative conflicts between divine and secular standards of justice.

9. Areas of Convergence and Conflict between Customary Law and Sharia Law

Both customary and Sharia systems share the goal of social harmony, morality, and justice. They emphasise reconciliation and community welfare rather than adversarial litigation. Their moral underpinnings complement

[54] T O Elias
[55] ibid
[56] 1931] AC 662 (PC).
[57] [1921] 2 AC 399 (PC).
[58] J N D Anderson, *Islamic Law in Africa* (Frank Cass 1954) 65.
[59] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 260.
[60] (1998) 6 SCNJ 127.
[61] A An-Na'im,

statutory law's concern for order and justice. However, tensions arise when customary or Sharia norms contradict constitutional principles, especially regarding gender equality, freedom of religion, or due process. Examples include discriminatory inheritance customs or the application of Sharia penal laws that prescribe corporal punishment. Courts often resolve these conflicts by applying constitutional supremacy, as provided in section 1(3) of the Nigerian Constitution.

9. Conclusion and Recommendations

Customary Law and Sharia Law offer distinct normative logics and strengths: Customary Law is communal, and restorative; Sharia is doctrinal coherent and with moral authority. Both systems can adapt and both have been sources of gender-discriminatory practices. The modern legal order's challenge is to mediate pluralism protecting human rights and constitutional principles while respecting cultural and religious autonomy. Effective responses require jurisprudential creativity, democratic law-making, inclusive reform processes, and robust judicial oversight. It is recommended that Governments should codify valid customary practices to promote uniformity and accessibility, Sharia and Customary Law should be interpreted in line with constitutional and international human rights standards, Continuous legal education should be provided for judges and traditional leaders administering these systems and there should be harmonization of frameworks for coexistence of plural laws without undermining religious or cultural identity.