



Effect of the Nigerian Constitution on the Implementation of Islamic Inheritance Law among the Yoruba

ABSTRACT

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I. Introduction

Inheritance is a fundamental aspect of Islamic law (Shari'ah), ensuring the equitable distribution of wealth according to divinely prescribed shares. Among Muslims, Islamic inheritance law plays a vital role in maintaining family cohesion, fulfilling religious obligations, and preventing disputes over sharing of property. The Islamic law of inheritance (al-Farā'id) constitutes a comprehensive legal framework, clearly outlined in the Qur'an, particularly in Surah An-Nisa (4:11–12), and further elaborated in the Sunnah. It prescribes fixed shares for designated heirs, ensuring that each eligible relative receives an appropriate portion of the deceased's estate. In addition to outlining the shares, the Islamic law addresses issues of intestacy, testamentary capacity, and the protection of heirs' rights. The making of bequest (Wasiyyah) in Islam is also regulated, limiting donation to maximum of one-third of the entire estate, this instruction safeguard the mandatory shares of heirs, a principle affirmed in a Hadith reported by Al-Bukhari.

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عَنْ عَامِرِ بْنِ سَعْدٍ، عَنْ أَبِيهِ رَضِيَ اللَّهُ عَنْهُ، قَالَ: مَرَضْتُ، فَعَادَنِي النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقُلْتُ: يَا رَسُولَ اللَّهِ، ادْعُ اللَّهَ أَنْ لَا يَرُدَّنِي عَلَى عَقْبِي، قَالَ: «لَعَلَّ اللَّهَ يَرْفَعَكَ وَيَنْفَعُ بِكَ نَاسًا»، قُلْتُ: أُرِيدُ أَنْ أُوصِيَ، وَإِنَّمَا لِي ابْنَةٌ، قُلْتُ: أُوصِي بِالنِّصْفِ؟ قَالَ: «النِّصْفُ كَثِيرٌ»، قُلْتُ: فَالْتَلْتُ؟ قَالَ: «الْتَلْتُ، وَالتَّلْتُ كَثِيرٌ أَوْ كَثِيرٌ»، قَالَ: فَأَوْصَى النَّاسُ بِالتَّلْتُ، وَجَازَ ذَلِكَ لَهُمْ

Narrated by 'Amir ibn Sa'd, from his father (may Allah be pleased with him), who said: I fell ill, and the Prophet (peace and blessings be upon him) visited me. I said, "O Messenger of Allah, pray

to Allah that He does not let me relapse." He said, "Perhaps Allah will raise you in status and benefit some people through you." I said, "I wish to bequeath, but I only have one daughter. Should I bequeath half of my wealth?" He said, "Half is too much." I said, "Then a third?" He said, "A third, and a third is still a lot." So people began bequeathing a third of their wealth, and that was allowed for them. (Bukhari. 2739)

Muslims are mandated by Allah to share their properties according to Islamic provisions as enshrined in the Qur'an (Q4:7, 11, 12, and 176). Deviating from Allah's injunction is considered wrongdoing, with consequences in this world and the hereafter. Ibn 'Abbās reported in Sahīh Al-Bukhārī that the Prophet Muhammad (peace be upon him) said: "Give the Farā'id (the shares of the inheritance that are prescribed in the Qur'ān) to those who are entitled to receive it. Then whatever remains should be given to the closest male relative of the deceased."

حَدَّثَنَا مُسْلِمُ بْنُ أَبِرَاهِيمَ، حَدَّثَنَا وَهَيْبٌ، حَدَّثَنَا ابْنُ طَاوُسٍ، عَنْ أَبِيهِ، عَنْ ابْنِ عَبَّاسٍ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «الْحَقُّوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرَ»

Narrated Ibn 'Abbas:

The Prophet said, "Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased."

However, the application of Islamic inheritance principles faces significant challenges within Nigeria's constitutional framework, particularly due to the secular character of the Constitution. Although the Constitution guarantees freedom of religion under Chapter IV, it simultaneously asserts its supremacy over all other legal systems in Section 1(3), rendering any law inconsistent with its provisions null and void. This constitutional supremacy often places Islamic personal laws, including inheritance regulations, in an unjustified position when they appear to conflict with statutory laws or principles of human rights as interpreted by secular courts. Furthermore, Nigeria's legal system operates a form of legal pluralism, recognizing statutory law, customary law, and in some northern states, Shari'ah law. However, in the South-Western of Nigeria region where the Yoruba Muslims are concentrated, there are no Shari'ah courts of appeal for civil matters such as inheritance. As a result, Muslim inheritance disputes are frequently adjudicated under general civil courts, which may not apply Islamic principles strictly, leading to outcomes that undermine the Islamic law of succession. The secular nature of the Constitution, coupled with judicial practices and historical colonial influences, thus significantly hampers the effective implementation of Islamic inheritance law among the Yoruba. (Okunola 184)

Although the Yoruba ethnic group includes a substantial Muslim population, the consistent application of Islamic inheritance law remains a significant challenge. In practice, inheritance disputes among Yoruba Muslims are often settled not according to Islamic principles (the Shar'iah), but rather through the use of English common law or Yoruba customary law. This inconsistency not only undermines the religious obligations mandated by Islam concerning inheritance distribution, it also infringes on the constitutional rights of Muslims in that part of the country.

The preference for English or customary legal frameworks in these cases can be attributed to a variety of factors, including colonial legal legacies, societal ignorance of Islamic inheritance rules, and the perceived convenience or familiarity of non-Islamic legal procedures. As a result, the religious rights of Muslim individuals and families are compromised, leading to tensions between personal religious commitments and the secular, pluralistic structure of Nigeria's constitutional system. (Okunola 184-187)

This situation raises serious concerns regarding the protection of religious freedoms, the authenticity and preservation of Islamic legal identity among Yoruba Muslims, and the broader implications for the administration of justice in a multi-religious society. Addressing these challenges is crucial for ensuring that Muslims who wish to have their inheritance matters governed by Islamic law are afforded the full protection and recognition of their religious legal traditions within the Nigerian legal framework. (Arikewuyo 130-132)

The primary objective of this study is to examine the influence of the Nigerian Constitution on the implementation of Islamic inheritance law among the Yoruba people. Specifically, the study aims to identify and analyze the constitutional limitations, societal dynamics, and judicial challenges

that hinder the consistent application of Islamic inheritance principles within this context. By doing so, the research seeks to provide a deeper understanding of the factors affecting the realization of Islamic legal rights in a secular legal environment.

Nigerian Constitution and Infractions on the Islamic Inheritance Law

The Nigerian Constitution and the Muslim (Islamic) Law, that is Shar'iah, under which Muslim Inheritance law is included. These two phenomena coupled with other existing customs and native norms (known as customary laws) made Yoruba people to be an object of legal pluralism in which all these laws are enforceable and applicable on all our endeavours; be it social, religious, constitutional and others. In my attempt to enunciate this challenge in which we found ourselves, we need to explain the concepts of Nigerian Constitution, the Shar'iah and the legal problems of using Islamic inheritance law in devolving Yoruba Muslim properties.

The Nigerian Constitution

The Nigerian Constitution is the fundamental document of rules and principles that govern the nation, dictating the structure and conduct of government and society. It serves as the supreme law under which all citizens, including both leaders and the governed, are expected to operate (Nigerian Constitution, 1999, section 15(2)).

In the span of approximately eight decades, Nigeria has adopted nine different constitutions, with the 1999 Constitution (as amended) being the most recent and currently in force (Nwabueze 15). The Nigerian legal system is a product of three distinct legal heritages: English Common Law (received law), Customary Law, and Islamic Law (Ogunbiyi 211). Nigeria's constitutional framework is also federal in nature, meaning that both the central and state governments have legal powers over the citizens.

Shari'ah and Islamic Inheritance Law

Shari'ah is defined by Abdul Rahman Doi as "the ordinance that Almighty Allah ordains for His worshippers so that they may lead a righteous life both in this world and in the hereafter" (Doi 12). Justice AbdulKadir Orire further describes Shari'ah as "the embodiment of divine commandments and specific teachings whose acceptance and application guarantee Muslims a harmonious existence and eternal bliss" (Orire 35).

The sources of Shari'ah are principally the Qur'an and Sunnah, supported by secondary sources such as Qiyās (analogical reasoning), Ijma' (consensus of scholars), Ijtihād (independent reasoning), 'Urf (custom), Istihṣān (juristic preference), Maslahah (public interest), and Istishāb (presumption of continuity) (Kamali 78).

It is important to note that Shari'ah predated the arrival of colonial-imposed constitutions in Nigeria. While the British imperial system began shaping Nigerian governance in the 19th century, Islamic law had already been practiced in Northern Nigeria since the 15th century and in parts of the South-West since at least the 17th century (Abdul 89).

The Constitutional Conflict

However, despite the deep historical roots of Islamic law, English Common Law remains dominant within Nigeria's constitutional structure, particularly in matters of succession and inheritance. The Nigerian Constitution recognizes three systems of inheritance law: the English law of succession, customary law of succession, and Islamic law of succession (Oba 13). In practice, however, the English law of succession is often prioritised, leaving Islamic inheritance law marginalized, especially in the Southern parts of the country.

The application of Islamic inheritance law is largely restricted to personal law matters, such as marriage, divorce, adoption, and inheritance, and is primarily enforceable in Northern Nigeria (Nigerian Constitution, sec. 262–264). In contrast, Muslims in Southern Nigeria often find their religious rights compromised, as Islamic inheritance laws are not given full legal recognition or enforceability outside the Shari'ah courts, which themselves are subject to the appellate jurisdiction of the High Courts, Court of Appeal, and the Supreme Court institutions grounded in English common law tradition (Oba 16).

This covered judicial structure effectively limits the full implementation of Shari'ah, even in Northern Nigeria, as judgments from Shari'ah courts can be overturned by higher courts that may not apply Islamic principles. Consequently, the freedom of religion and the right to full Islamic legal practice, particularly in the area of inheritance are substantially curtailed within the Nigerian legal system. This situation is, indeed, a significant challenge for Nigerian Muslims who wish to live in accordance with their religious obligations.

The Complication between Nigerian Constitution and Implementation of Islamic Law (Shari'ah)

The way out for us as Muslims subjected to alien constitution and legal system, we need to consider the following from the two systems of law:

In Section 38(1) of 1999 Constitution of the Federal Republic of Nigeria as amended, it's specifically stated thus: "Every person shall be entitled to freedom of thought, conscience, and religion, including freedom to change his religion or belief, and freedom to manifest and propagate his religion or belief in worship, teaching, practice and observance". This simply means that any Nigerian is constitutional empowered to profess his or her religious thought and practice in cycle with his or her belief without any hindrance whatsoever.

Nigerian Constitution allows the implementation of inheritance procedure through testation (will writing) and intestacy (Inheritance at the death of the deceased who has written no will). The distribution in the latter is subjected to each Nigerian state's estate and properties law.

The Muslims worldwide are mandated by Allāh to share their properties according to Islamic provision as enshrined in Q4 verses 7, 11, 12 and 176; and whoever deviated from Allah's injunction is a wrong doer and shall face His wrath in this world and the hereafter. Ibn 'Abbās as narrated in Sahīh Al-Bukhārī reported that the Prophet of Allāh said: "Give the Farā'id (the shares of the inheritance that are prescribed in the Qur'ān) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased". (Bukhari, 6732)

Superiority of the English Law

The English received law of succession is often prioritized over customary and Islamic laws. Islamic law of succession, or Muslim law of succession as it is referred to in the Nigerian Constitution, is restricted to personal law areas such as adoption, divorce, inheritance, and marriage, predominantly enforced in Northern Nigeria. Southern Nigerian Muslims are often subjected to customary and English received laws of succession, denying them their fundamental religious rights to live and act as Muslims. Even in Northern Nigeria, the implementation of the Shari'ah in inheritance processes is limited, as Shari'ah Court jurisdictions are subordinate to higher courts such as the High Courts, Courts of Appeals, and the Supreme Court, which can override Shari'ah Court decisions without reference to Shari'ah provisions.

Going by the above declaration from the constitution which guaranteed freedom of religion in abstract not in reality, the states' powers to determine the estate laws and the Qur'anic obligations on Muslims to follow the precepts of Islām in devolving their properties, we could not but wonder what would a Nigerian Muslim do to please His creator? Is there any way out for Nigerian Muslims by bypassing the burden of constitution in order to please their Lord.

Perception of the Nigerian Constitution as a Hindrance to Islamic Inheritance Law in South-West Nigeria

A field work was conducted in which total of 300 questionnaire were administered to respondents and 210 was returned, which represents 70 per cent response rate. The response rate presents this study with data for a realistic analysis of the phenomena under investigation, based on the survey instruments. Table 4.1 below shows the distribution pattern and response rate of the administered questionnaire. As highlighted in the Table, 160 questionnaire were administered to respondents from Oyo State, majority of the respondents sampled by the study have significant presence in Oyo state, hence, the higher apportioning of responses. Further distribution of questionnaire comprises of 90 questionnaire distributed in Osun state and 50 questionnaire administered in Ogun State.

Table 4.1 Distribution of Administered Questionnaire and Response rate

STATES	ADMINISTERED QUESTIONNAIRE	RETRIEVED QUESTIONNAIRE	PERCENTAGE
OYO STATE	160	110	36.7
OSUN	90	70	23.3
OGUN	50	30	10
TOTAL	300	210	70%

The Nigerian Constitution enshrines the principle of religious freedom under Section 38(1), which allows individuals to practice and manifest their religion. However, the implementation of Islamic personal laws including inheritance is largely restricted by constitutional and judicial interpretations, especially outside the core northern states. This section explores the perception among respondents in South-West Nigeria about the extent to which the Constitution hinders the practice of Islamic inheritance law.

Presentation of Data

Respondents were asked to express their views on whether the Nigerian Constitution acts as a barrier to the practice of Islamic inheritance laws in the region. The table below presents the distribution of their responses.

Perception That the Nigerian Constitution Hinders Islamic Inheritance Law

RESPONSE CATEGORY	FREQUENCY	PERCENTAGE (%)
VERY LARGE EXTENT	27	12.9%
LARGE EXTENT	15	7.1%
DON'T KNOW	43	20.0%
MINIMAL EXTENT	30	14.3%
VERY LOW EXTENT	27	12.9%
LOW EXTENT	69	32.8%
TOTAL	210	100%

Interpretation and Analysis

The findings reveal a complex perception of the Nigerian Constitution's role in the enforcement of Islamic inheritance law. Only 20% of respondents (Very Large Extent and Large Extent combined) believe that the Constitution significantly hinders Islamic inheritance practices. This relatively small segment may interpret the secular posture of the Nigerian state as a structural impediment to the full application of Shari'ah, especially since the Constitution does not explicitly recognize Islamic law outside of customary status (Oba 821).

However, a notable 45.8% (Minimal Extent, Very Low Extent, and Low Extent combined) disagree with the assertion that the Constitution is a major hindrance. This suggests that many respondents may not view constitutional provisions as directly hostile to Islamic inheritance laws, possibly recognizing that freedom of religion still provides a legal avenue for Muslims to voluntarily follow Shari'ah in private matters. Ajetunmobi supports this interpretation by stating that "constitutional freedom of religion offers a foundation for Islamic inheritance, but the lack of dedicated institutional support complicates its enforcement" (134). Of particular interest is the 20% of respondents who also answered "Don't Know," reflecting considerable uncertainty or a lack of understanding of the legal complexities involved. This legal ambiguity may stem from the absence of Shari'ah Courts of Appeal in South-West Nigeria, where Islamic laws function primarily as customary laws without the backing of formal court enforcement mechanisms (Ogunye 92).

It is also important to note that 32.9% of respondents selected "Low Extent," indicating that while they do not strongly perceive the Constitution as a hindrance, they recognize minor limitations or indirect constraints. This view may align with those who experience practical barriers to enforcement; such as the dominance of civil courts in inheritance matters rather than explicit constitutional bans.

Also in an interview conducted, several respondents highlighted key reasons why the Nigerian legal system hinders the effective implementation of Islamic inheritance law. A primary

factor identified is the supremacy of the Nigerian Constitution, which overrides all other legal systems in the country. Additionally, the lack of awareness among some Muslims was emphasised as a significant challenge. Many Muslims, particularly those in the southwestern region, are either unaware of their rights under Islamic law or have misconceptions about its procedures. This ignorance often leads them to embrace customary or statutory laws that may conflict with Islamic principles. Furthermore, the pluralistic nature of Nigeria's legal system, which simultaneously accommodates customary, statutory, and Islamic laws, creates a complex environment where Islamic inheritance laws struggle to find adequate recognition and enforcement. Respondents stressed that unless there is greater public enlightenment, constitutional review, and a conscious effort to educate Muslim communities, the effective implementation of Islamic inheritance law will remain limited within Nigeria's current legal framework.

Harmonizing the Conflict in the Implementation of Islamic Inheritance Laws in Yorubaland

To safeguard the Islamic faith within families and ensure adherence to its principles, a dedicated effort is required to orient the society about the core teachings of Islam and awareness about their rights. A committee comprising knowledgeable Islamic scholars, community leaders, and parents should be established to take on the responsibility of providing consistent and structured guidance. This committee can organize seminars, workshops, and community sessions to emphasize the awareness on how to implement Islamic Inheritance Laws in Yoruba land.

The 1999 Constitution of Nigeria guarantees the freedom of religion, allowing individuals to practice their faith without restriction. However, the same constitution limits the full application of Shari'ah law across all areas of life. Despite this restriction, the legal system permits the use of Islamic and customary laws in specific matters such as inheritance, marriage, divorce, and land disputes. Muslims are divinely obligated to distribute their properties in accordance with Islamic principles. This creates a dilemma: how can Muslims fully obey Allāh's commands while navigating a system influenced by man-made laws?

Fortunately, many judicial precedents and constitutional provisions offer Nigerian Muslims the freedom to decide their personal and family matters without interference from customary or appellate courts. However, this right is often overlooked because many Muslims remain unaware of their constitutional and religious entitlements. This ignorance has allowed non-Muslims, who often hold positions of power, to mislead or marginalize the Muslim community. The situation can be reversed through proper education, awareness of constitutional rights, and a unified effort to pursue these rights judiciously.

One key area of difference lies in the preparation of wills. Islamic wills (Al-Wasiyyah) differ significantly from common law wills. In Islamic practice, a person is not allowed to arbitrarily distribute or deny inheritance to legitimate heirs. The individual can only list their properties, allocate up to one-third for charitable purposes or non-heirs if desired, and clearly specify outstanding debts to be settled before the distribution of the estate. These contrasts sharply with the common law will, where the testator can freely dispose of their assets, even at the expense of rightful heirs.

To ensure the validity of an Islamic will, Muslims must engage qualified Islamic inheritance experts to assist in accurately listing their properties, heirs, debts, and permissible legacies. The will must be properly witnessed by at least two men or one man and two women and then submitted for registration at the probate registry. According to Section 38(1) of the 1999 Constitution, courts cannot alter a properly documented Islamic will that respects the rights of heirs. If disputes arise, the beneficiaries may seek legal redress up to the Supreme Court, as illustrated in *Yinusa v. Adesubokan*, though that case was misjudged. Clear testamentary intent ensures that Islamic inheritance principles prevail. The Constitution further strengthens this position through Section 277(2)(c), which empowers the Shari'ah Court of Appeal to adjudicate on endowments (Waqf), gifts (Hibah), wills (Wasiyyah), and succession (Mirāth), ensuring the protection of Islamic personal law in Nigeria.

II. Conclusion

The findings indicate a lack of consensus on whether the Nigerian Constitution directly obstructs the implementation of Islamic inheritance laws in South-West Nigeria. While a minority

perceives the Constitution as a direct hindrance, the majority appear to view it as either minimally obstructive or neutral. This has the following implications:

Legal awareness campaigns are needed to clarify the constitutional rights of Muslims concerning inheritance.

The lack of dedicated Shari'ah appellate courts in the South-West hinders formal implementation and contributes to the perception of constitutional weakness or indifference.

The data suggests a need for institutional reforms that harmonize constitutional provisions with religious legal systems to reduce conflicts and enhance the credibility of Islamic inheritance adjudication.

These findings support broader arguments in the literature on Nigeria's legal pluralism, where constitutional silence or neutrality often has the practical effect of sidelining religious legal systems in Yoruba regions.

III. Recommendations

To ensure proper implementation of Islamic inheritance in the area of study the following recommendations have to be taken into consideration by stakeholders:

Involvement of Islamic Inheritance Experts: Involve Islamic legal experts in the process of implementing Islamic inheritance law to ensure that the distribution of the estate is done in accordance with Islamic principles, and to seek guidance from Islamic legal experts on the interpretation of Islamic law and its application to specific cases.

Proper Documentation of Bequest: The bequest (Wasiyyah) should:

List all properties by compiling a comprehensive list of all properties, including assets, lands, and other possessions.

Enumerate all the beneficiaries of the bequest by identify and document all beneficiaries of the bequest, ensuring that their rights are protected.

Specify all the outstanding Liabilities by pacifying all outstanding debts, or obligations that need to be settled from the estate like Zakat.

Include legacies and permissible bequests within one-third of the estate, in accordance with Islamic law.

Witness Requirements: Follow Islamic requirements of witness two males or one male and two females to serve as witnesses to the bequest.

Legal Registration: Submit the bequest to the probate registry to ensure it is recognized and protected under law, and obtain legal validation of the bequest to prevent disputes and ensure smooth distribution of the estate.

Pursue Legal Redress When Necessary: If the Islamic will is contested or wrongly interpreted (as in the Yinusa v. Adesubokan case), affected parties should challenge the decision up to the Supreme Court.

Awareness Campaign: Conduct educational programs to enlighten Muslim communities on their constitutional rights and the correct process for Islamic inheritance.

By following these recommendations, the implementation of Islamic inheritance law in Yoruba land can be done in a fair, transparent, and efficient manner.

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