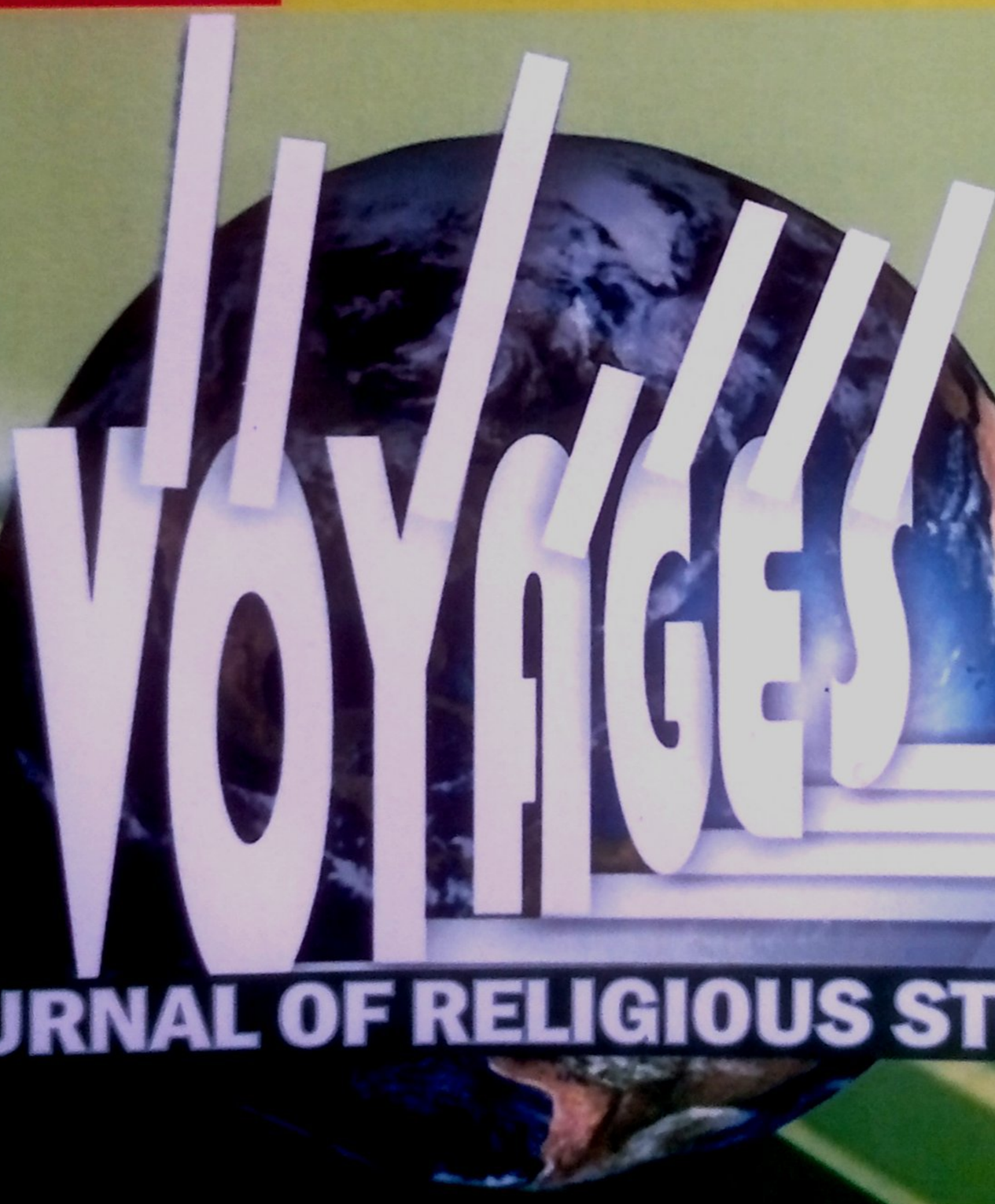
PRIMUS INTER PARES

VOYAGES Journal OF RELIGIOUS STUDIES

Volume 5 December, 2019. ISSN:2504-9046



A PUBLICATION OF THE DEPARTMENT OF RELIGIOUS STUDIES,
GOMBE STATE UNIVERSITY, GOMBE NIGERIA.

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Sayyid Qutb's Exposition on Qur'an 17:33 and its Relevance to the Nigerian Shari'ah Penal Codes

Oniye, Olayinka Ibrahim[1] and Abdulwahab, Danladi Shittu[2]

Abstract

Nigeria, like many other countries, is characterized by acts of disrespect, disregard and affront to human life. This is evident in the prevalence of killing, kidnapping, bombing and sacrificing of human beings for rituals. The action is against the teaching of Islam and thus, attempt is made in this paper to examine the relevance of Sayyid Qutb's exposition on the sanctity of life to the law in use in the Northern Nigeria. This work navigated through the expository effort of Sayyid Qutb on homicide as contained in *Sūratul 'Isra'*. A combination of historical and hermeneutical methods are adopted to study the relevance of the views of the exegete to the provision for the offence in the shariah penal codes with the objective of appreciating the relevance of *Shari'ah* on the execution of the life of a deserving criminal. Findings of the work revealed that Sayyid Qutb narrowed his discussion on the legality for the execution of life as contained in the Qur'an just as he gave a literal interpretation to the *Sunnah* of the Prophet that legalizes the execution of the life of some category of people. This position is capable of allowing jungle justice in the execution of a criminal. It is in the light of the above that this paper condemns jungle justice in any form and recommends the adoption of *Sharīᶜah* as a legal system of the state.

Keywords: *Sharīᶜah*, Sanctity of life, northern Nigeria, Penal Codes

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Introduction

Homicide is a social malady that renders sanctity of human life negligible in Nigeria just like it is found in some other parts of the world. Even though every law and culture of the world frowns at the act of destroying human life in an unjust manner. This is the more reason why the Qur'an threatens a murderer thus:

> On that account: We ordained for the children of Israel that if any one slew a person- unless it be for murder or for spreading mischief in the land, it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the whole people… (Q5:32).

Considering the need to sanitize the nation from malice of different kind, the Nigerian Shariah Penal Codes were initiated by some northern states of Nigeria following the re-introduction of Islamic Criminal Law in the year 1999. The Shariah Penal Codes identify three categories of criminal offences. The *hudud* and *hudud* related offences. These are offences that have their punishments stipulated in the Qur'an and the sunnah of the Prophet (SAW) and they include the punishment for the offence of adultery and fornication, theft, false accusation of *zina*, armed robbery, rebellion, consumption of alcohol and apostasy. Out of all these offences, rebellion and apostasy are not contained in all the seven Shariah Penal Codes probably because of constitutional constraint. The second category of the punishments in the Shariah Penal Code is the punishment for the offence of homicide and causing injury to a part of the body which could be either willfully or mistakenly. The punishments for these offences are rightly captured in the Shariah Penal Codes as they could be found in the Islamic Criminal Law. The third category is the offences whose punishments are under the discretion of the judge. Even though some of the offences are mentioned in the Qur'an and the hadith, the two authorities are silent on the punishment for them. This initiative is considered a good testing ground for the execution of punishments for criminal offences in Nigeria. This work studies the relevance of the verse on the sanctity of life to the practice of *Shari^{c}ah* in Nigeria. The exposition of Sayyid Qutb, a Qur'an exegete, is imperative in this context because his expository work gives a

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justification for the infliction of punishment for anybody who commits the offence that under estimate the sanctity of life. This is in contrast to the instigation made against the Islamic criminal law that it is repugnant to social justice. The researchers adopted a combination of historical and hermeneutical research methods in collecting and analyzing research information. These methods became relevant in view of the fact that the work is both historical and exegetical in nature.

A Short Biography of Sayyid Qutb

Sayyid Qutb ibn Ibrahim ibn Husayn As-Shadhili was born in 1906 CE in a village called Moshe, in Asyut district of Egypt. He memorized the Qur'an at the age of eleven and in 1919, he joined *Dāru 'l-`Ulūm* for elementary and higher-level studies where he specialized in Arabic Language and its Literature. At the age of twenty-seven, he obtained his Bachelor Degree in Education (Yusuf 58). Thereafter, he joined the Ministry of Education in Egypt and was posted to teach in schools, in Beni Sueif and Dumyat schools spending a year each in the two places before he was transferred back to the Ministry. Sayyid Qutb was an active member of *Al-Ikhwānul Muslimūn* (The Muslim Brotherhood), a revolutionary Islamic organization in Egypt. He had immense contribution to its formation, growth and consolidation. In fact, many literature describe him as the leading ideologue of the brotherhood (Yusuf 68).

Sayyid Qutb's writings majorly centered on criticism of the West and the western leadership style. He also wrote to expose some leaders in Islamic countries identified as violating the precepts of Islam. He served as a liaison officer between the Brotherhood and the Free Officers who overthrew the monarchy of Egypt in July 1952. Perhaps because he was expecting cooperation between the military leadership and the Brotherhood in establishing an Islamic state in Egypt which was his longtime dream. When it became clear that Jamal Abd al- Nasser, the person that took over from the monarch leader, and the military leadership intended to create a secular state, Qutb and the Brotherhood distanced themselves from the new government. They embarked on intense

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campaign against the government. In January 1954, the government banned the Brotherhood and imprisoned many of its key figures, including Qutb, because of their increasing criticism of the regime's domestic and foreign policies (Yusuf 70). The decree that banned the activities of the brotherhood was rescinded three months later. In October 1954, following an assassination attempt on Nasser by a member of the Brotherhood, Qutb was again arrested and severely tortured despite his frail health. In July 1955, he was sentenced to fifteen years imprisonment.

Sayyid Qutb wrote his two most influential works that inspired numerous Islamic Revolutionists while in the prison; an exegetical work entitled: *Fi Zilal al-Qur'an* (In the Shade of the Qur'an) and an inspirational literature entitled *Ma'alim fi al-Tariq* (*Milestones*) (Gordon 181). These two works are without doubt, a true reflection of the environment in which the author lives. His approach in his exegetical work is practical and contemporary. In the work on exegesis, his discussion on the sanctity of life, the limitation to the protection of life and the rationale behind the limitation are well captured for discussion. The position of Islam on the sanctity of life will be discussed for a better appreciation of the view of Sayyid Qutb.

The Formation of the Northern Nigeria Shariah Penal Codes

Before the British conquest of Nigeria, Islamic law was considered the law of the land in what later became the northern states of the country. The Emirs' courts were given the power to hear and determine criminal matters related to *Zina* (adultery and fornication), *sariqah* (theft), *hirābah* (robbery) and *riddah* (apostacy). With the coming of the British colonialists, limitation was placed on the jurisdictions of the *Sharī'ah* Courts in punishment. There was a total abolition of mutilation and torture and other penalties were subjected to the requirements that they were not repugnant to natural justice and humanity. At the time of the amalgamation of the North and South in 1914, Islamic law had been fully established in the Northern Nigeria (Shittu 103-118).

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Peters (7-10) confirms that after several changes in the Native Court Proclamation, section 4 of the Criminal Code of 1904 was amended by the Native Court Ordinance of 1933 to confine the trial of cases to the native tribunal. This amendment abolished caning and capital punishment and limited the shariah law enforcement. The situation according to him, remained like that until 1946 when the law was made a regional legislation on the recommendation of Brooke Commission. The shortcoming of this provision was not noticed until in 1947 with the case of Tsofo Gubba vs. Gowanda Native authority. In this case, Gubba was found guilty of intentional homicide for killing a person he saw having an affair with his wife. The Emir of Gwandu's court therefore sentenced him to death because the action was considered a willful homicide under Islamic law. Under English law, provocation of such type would only be considered manslaughter and the culprit will be punished in a way lesser than capital punishment. In the light of this, the sentence was nullified.

In a London constitutional conference held in the year 1958, there was the move to discontinue all criminal law systems other than the statutorily codified criminal laws of the country. This law was passed, accepted and entrenched in the 1960 constitution of the country. The Northern Muslims were reluctant and displeased with the British Criminal Code because it was opposed to Muslims way of life and they needed a law that could accommodate their culture and religion and this led to the alternative of adopting a penal code. In response to the agitation, the Northern Regional Government set up a Committee to study the law in practice in Sudan, Libya and Pakistan. Upon the receipt of the report of the Committee, a six-man Panel of Jurists under the chairmanship of Muhammad Abu Rannat, Chief Justice of Sudan was constituted. This panel adopted and recommended the Penal Code and Criminal Procedure in place of the Criminal Code and the Islamic Criminal Law. The Penal Code so recommended had a defect of punishments for criminal offences contrasting the provision of the Qur'an and the *Sunnah* of the Prophet. The abdication of Islamic Criminal Law in favor of the fabricated law by the Muslims marked the beginning of the long-lasting problem of Islamic Law in Nigeria.

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Muslims in the Northern Nigeria began to witness the shortcomings of the Penal Code as it could not occupy the position of the pure Islamic law. In response to the yearnings of the people, Zamfara state government re-introduced the application of full Islamic Criminal Law on the 27th day of January 2000. And a bill to establish shariah courts to replace the area courts after three months of transition was signed by the governor on October 8, 1999. The penal code covers punishments on *hudūd* (fixed punishments), *qisās* (retaliatory punishments) and *taᶜzir* (discretional punishments) as obtainable in the Islamic Criminal Law. Eleven other states from Northern Nigeria that followed suit are; Bauchi, Jigawa, Kano, Kebbi, Sokoto, Yobe, Niger, Borno, Gombe, Kaduna, and Katsina. All the states that re-introduced the practice of *Sharīᶜah* according to the Maliki School relied on the constitutional provisions for the expansion of the jurisdiction of Islamic law (Peter 13).

Islam and the Sanctity of Life

The worth given to human life by Islam is so high that not a single soul could be terminated in an unjust manner. In Islam, all human beings, at any and every stage of life, in any and every state of consciousness or self-awareness, of any and every race, color, ethnicity, level of intelligence, religion, language, gender, character, behavior, physical ability/disability, potential, class, social status, etc., of any and every particular quality of relationship to the viewing subject, are to be perceived as persons of equal and immeasurable worth whose life should not be terminated without a legitimate cause. Allah says: "*Whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one, it is as if he had saved mankind entirely*" (Q5:32).

This verse shows how life is so much preserved in Islam so that the havoc in killing a single soul is equated with killing the entire mankind. It is so much emphasized that even if one kills oneself, he is not seen as the owner of one's soul but as the destroyer of the work of Allah and one shall be entitled to a severe

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punishment of Allah as if one had done it to another person. It was reported that the Prophet (SAW) said:

> Whoever intentionally swears falsely by a religion other than Islam, then he is what he has said, (e.g. if he says, 'If such thing is not true then I am a Jew,' he is really a Jew). And whoever commits suicide with something will be punished with using that thing in the Hell Fire (Muslim 1:105. Hadith110).

In a similar hadith narrated by Jundub; the Prophet (SAW) was reported to have said: "*A man was inflicted with wounds and he committed suicide, and so Allah said: My slave has caused death on himself hurriedly, so I forbid Paradise for him*"(Muslim 1:107. Hadith113).

Several other traditions were reported confirming the prohibition of causing death for oneself. In fact, the Prophet was reported to have said that a person who commits suicide will continue to suffer the pain of the suicide until the day of resurrection (Tirmidhi 3:454 Hadith, 2043).

Qutb's Interpretation of Qur'an 17:33 and the Shari'ah Penal Codes

Allah (SWT) says in Suratul Isra'i that:

> Nor take life - which Allah has made sacred – except for just cause. And if anyone is slain wrońgfully. We have given his heir authority (to demand *Qisas* or to forgive): but let him nor exceed bounds in the matter of taking life; for he is helped (by the Law) (Q: 17:33).

In the above verse, it is made clear that there could be a justification for the execution of a soul. A general prohibition against homicide is the theme of the verse. Exemption is then given that there could be a justification for killing. The legitimacy for the taking of life is not contradictory to the doctrine of sanctity of life but rather, it emphasizes that due respect should be given to both individual and societal right so that peace and justice are upheld and restored (Muhammad

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25). Allah recommends taking of life for the offence of homicide so that criminals would be scared of perpetrating their evil acts. Allah says:

> O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother anything, then, there should be a suitable follow-up and payment to him with good conduct. This is alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment (Q: 2:178).

The taking of life in retribution of committing criminal acts such as murder and spreading mischief and corruption in this world as provided for in Islam can only be decided and meted out by a competent court of law and not for any human being to take it upon himself to carry out the punishment for such offences and take away the perpetrator's life (Muhammad 33).

Explaining the verse on sanctity of life, Sayyid Qutb (2:121-123) observed that the law against homicide was revealed as a measure for creating a community that would be crime free. He reiterated that human life is sacred in Islam and must not be unjustly taken. He concluded that termination of human life in an unjust manner is rated in Islam as the highest sin, next only to *Shirk* (associating partners with Allah). Supporting the view of Sayyid Qutb, As-Sharawi (14:8511), in his interpretation of the verse, considers the soul of anybody to be a structure of Allah which nobody should destroy.

In the explanation of the legitimacy for termination of a soul as referred to in the verse, Sayyid Qutb and of course, many exegetes of the Qur'an relied on the tradition of the Prophet where he was reported to have said that;

لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ إِلَّا بِإِحْدَى ثَلَاثٍ: النَّفْسُ بِالنَّفْسِ، وَالزَّانِي الْمُحْصَنِ، وَالتَّارِكِ لِدِينِهِ الْمُفَارِقِ لِلْجَمَاعَةِ

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> No Muslim person who bears witness that there is no deity other than God and that I am indeed God's Messenger may be killed except for one of three reasons: a life for a life, a married adulterer, and a rebel who renounces his faith and abandons his community (Bukhari 9:5, Hadith 6878).

In the tradition mentioned above, three reasons are advanced as justification for the termination of a soul; retaliation, adultery and rebellion. While discussing fair retribution as a legitimate way of taking the life of a Muslim, Qutb maintains that the law of retribution is a measure of preserving human life. If not for that law, men would have gone to the extreme in taking the life of other. He further stressed that there is life for the community as the heirs are not allowed to indiscriminately take vengeance (2:122-126).

In Islamic law, willful homicide that attracts retribution is when a murderer deliberately takes the life of the murdered, while it is quasi-intentional when the murderer did not intend the murder but the victim died due to injury sustained from the murderer (Shafi'i 6-8). It is inadvertent when an offender has no intention to harm the victim, but mistakenly shut the victim which consequently causes his death. Scholars agreed that for the murderer who shall be subjected to *qiṣāṣ*, he must be *bāligh* (mature) and must have intended to murder the murdered. Shittu (109) explains that the law permits the heirs to pardon the murderer and take *diyyah* (victim's compensation) in the place of capital punishment or even waive taking the *diyyah* in which case, the murderer will be set free (Shittu 109). Premising his argument on authentic tradition of the Prophet (SAW), Shittu argues that total pardoning is a better alternative to retaliation or taking of *diyyah* in situation where the heirs are relatives of the murderer and would not want to lose two souls at a time. This position shows the diversity in the application of *Sharī'ah*.

Qutb explains further that wrong execution of an individual gives the right to his heirs and relative to choose between blood money and demanding the termination of the culprit's life by the authority. He identified this as the best

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approach to prevent retaliation, spread of anger, malice and hatred in the land. He argued that it will equally checkmate the heirs of the victim from going into extreme; hence there are prescriptions to that effect. He also pointed it out that Allah did not impose on the heirs of the victim but gave them the opportunity to choose what pleases them, yet calling their attention to forgiveness (2:126-127). Under the Shariah Penal Codes, the punishment for willful homicide is execution. Section 142 of the Kano State Shariah Penal Code defines intentional homicide as: Whoever being fully responsible (*mukallaf*) causes death:(a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or (b) by doing an act with knowledge that he is likely by such act to cause death; or(c) by doing a rash and negligent act, commits the offence of culpable homicide (*qatlu-ᶜamd*).

And in all the Shariah Penal Codes, the punishment for homicide is death. The Shariah Penal Codes are more detailed regarding what type of killing constitutes homicide under the *Shariᶜah*. The exemption of specific category of people whose killing shall not be considered homicide and which, even though not taken care of by Qutb, are contained in section 204 of the Zamfara State Shariah Penal Code thus:

> Except in the circumstances mentioned in section 200, intentional homicide is punishable with the payment of *diyyah* and not with death in any of the following circumstances:(a) Where the offender is an ascendant of the victim of where the intention of the ascendant is clearly shown to be the correction or discipline of the victim; or (b) where the offender, being a public servant acting for the advancement of public justice exceeds the powers aiding a public servant so acting exceeds the powers given to him by law and necessary for the due discharge of such duty and without ill-will towards the person whose death is caused; or(c) where the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against

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whom he is exercising such right of defense without pre-meditation and without any intention of doing more harm than is necessary for the purpose of such defense.

The exemptions given in the Shariah Penal Codes agree with the provision of Islamic law. As for the father not to be killed for killing his son especially if the killing is not of intent, this position is taken after the hadith of the Prophet that said that the father should not be killed for killing his son (Rushd 2:327).There is equally a report that the Prophet said anybody who killed in self-defense is not a murderer and anybody who carries out a killing by virtue of his position to execute a law is only performing a religious obligation (Ismail 2:298).

As regards the right for execution of life on the ground of committing adultery which is considered a second justification for the execution of life, Islam recognizes the sexual need of an individual and thus gives him a permissible way to satisfy it through marriage. Thus, *zina* or sexual intercourse between a man and a woman out of wedlock, and sexual acts between members of the same sex are clearly and strictly prohibited. Islam prescribes severe punishment for the crime of *zina* in order to protect the purity of a person's lineage. A person who commits *zina* could be likened to a murderer because of the destruction he is doing to the lineage. Qutb posited that execution of the life of an adulterer is to prevent the spread of immorality in the society. In his exposition on the verse that precedes the verse in question, Qutb comments on the evil of *zina* thus:

إن في الزنا قتلاً من نواحي شتى . إنه قتل ابتداء لأنه إراقة لمادة الحياة في غير موضعها ، يتبعه غالباً الرغبة في التخلص من آثاره بقتل الجنين قبل أن يتخلق أو بعد أن يتخلق...وهو قتل في صورة أخرى . قتل للجماعة التي يفشو فيها ، فتضيع الأنساب وتختلط الدماء ، وتذهب الثقة في العرض والولدوتتحلل الجماعة وتتفكك روابطها ، فتنتهي إلى ما يشبه الموت بين الجماعاتوهو قتل للجماعة من جانب آخر إذأن سهولة قضاء

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الشهوة عن طريقه يجعل الحياة الزوجية نافلة لا ضرورة لها ، ويجعل الأسرة تبعة لا داعي إليها.

> Zina represents killing in many ways. It is originally a killing because it is a placement of life matter in the wrong place. It is often followed by a desire to get rid of its consequences through the killing of the embryo before or after it is created …Moreover, it is a killing of the community because family relations are thus lost, and blood ties are confused. People will have little trust that the children they bring up are their own. Thus, community relations become weakened and the spirit of the community more or less dies…Zina may be described as a killing of the community for a different reason. The ease that it provides for the fulfillment of sexual desires makes marriage a redundant institution, and the family an unnecessary responsibility (Qutb 2:128-129).

Qutb looks at *zina* as a crime that does not only attract the wrath of Allah but equally destroys the community. It therefore follows that Qutb considers death as an appropriate penalty for adultery. The death punishment for adulterer is taken from the hadith of the Prophet (SAW). It was narrated by Ubada ibn al-Samit that the Prophet (SAW) said:

> Take from me. Verily Allah has ordained a way for them, for a married man and woman who has committed *zina*, the punishment shall be one hundred stripes and shall be stoned to death, whereas an unmarried fornicator for him (or her) one hundred lashes and banishment for a year (Muslim 3:1416 Hadith 1690).

As for the punishment for *zina*, all the Shariah Penal Codes agree on the stoning to death for an adulterer. The Zamfara State SPC Law 2000 states: S.127: Whoever commits the offence of *zina* shall be punished:

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(a) With caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year; or

(b) If married, with stoning to death.

S.125 of Kano State SPC states: Whoever commits the offence of *zina* shall be punished:

(a) With caning of one hundred lashes if he is yet to marry, and shall also be liable to imprisonment for a term of one year; or in the case of male;

(b) If married or has previously been married, with stoning to death (*rajm*)

The Niger State Penal Code (Amendment) Law (2000) states:

The punishment in the case of married convict is stoning to death and in the case of unmarried convict is 100 lashes.

The differences within the three SPCs is that the Zamfara State SPC S127(a) generalizes the one-year imprisonment on both male and female culprit while the Kano State SPC (2001) limits the one-year imprisonment to the male. The Niger State Penal Code (Amendment) Law 2000 is silent about the issue of imprisonment. The provision of the Maliki School as emphasized by Ruxton (331) is stoning to death for a married male and female and one hundred lashes for an unmarried male and female or married but have not consummated the marriage.

The Kano State SPC (2000) which provides for an unmarried adulterer and limits the imprisonment of one year to the male much agrees with the classical Maliki School of Law. In the Maliki School, the male, and not the female, shall be sent on exile for one year after being subjected to one hundred lashes; The Niger State Penal Code (Amendment) Law is however, an improvement over the ever existing penal code but does not put into

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consideration, the view of any of the four schools. It only agreed with the explicit provision of the Qur'an when it stipulates one hundred lashes.

Regarding the legitimacy of executing the life of an apostate, Qutb considers the killing of an apostate to be a repel to spiritual corruption which leads to chaos within the Muslim community. He argued that a Muslim who rebels and renounces his faith should be killed because he accepted Islam by choice. If he had remained an unbeliever, nobody would have compelled him to be a Muslim; rather, he would have enjoyed the protection of Islam. The killing of an apostate, in the argument of Qutb, is because his action constituted a threat to Islam (Qutb 2:128-129). Evidences relied upon on the legality of execution of an apostate in the Qur'an include:

> Whoever disbelieves in Allah after his belief... except for one who is forced [to renounce his religion] while his heart is secure in faith. But those who [willingly] open their breasts to disbelief, upon them is wrath from Allah, and for them is a great punishment (Q: 16:106).

And the verse;

> …And whoever of you reverts from his religion (to disbelief) and dies while he is a disbeliever for those, their deeds have become worthless in this World and the thereafter, and those are the companions of the fire; they will abide therein eternally (Q: 2:217).

In the two quoted verses, there is no mention of death as a penalty for a renegade. This is probably the reason why it is admitted that the consequence of *riddah* is a subject of discussion among scholars. Despite the verses on the criminality of apostasy and the saying of the Prophet that "Whoever renegades his religion (among Muslims) should be killed" (Sabiq 2:455), all the Shari'ah Penal Codes are silent about the offence and its punishment probably because the constitution of the country allows for freedom of religion. That notwithstanding, the position of Sayyid Qutb on apostasy as established in the tradition of the

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Prophet agrees with the provision of *Shari'ah* and so, it is acceptable by the authors of this paper.

Conclusion and Recommendations

Attempts have been made in this paper to compare the renditions of Sayyid Qutb in his *Tafsir* on the sanctity of human life with the provision of the Shari'ah Penal Codes which are in use by the *Shari'ah* friendly states of Nigeria. This paper agrees that life is sacred and, in those places, where the *Shari'ah* provides for the execution of life, it is still for the sanctity. The fact that the Shari'ah Penal Codes agree with the provision of the law in the country indicates that Nigerian have a lot to gain from the implementation of *Shari^{c}ah* especially in the area of sanctity of life. It therefore follows that other states dominated by Muslims in the country should strive towards implementing the law so that lives will be more secured and citizens will have their rights ever protected. It should be emphasized that the law is exclusively applicable for Muslims and non-Muslims living in such states should not be compelled to adopt the law as their way of life.

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