

# The Effect of Advancement in Information and Communications Technology on The Practice of Islamic Law in Nigeria

By

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## ABSTRACT

*Advancement in Information and Communications Technology (ICT) is one of the sustained landmarks of the past few decades. It continues to gain acceptance and applicability from one field of learning and practice to the other. In Nigeria, everybody uses ICT products daily and such usage is expanding in scope and getting more effective. The use of ICT in law practice is also expanding. However, the pluralistic nature of the Nigerian legal system<sup>1</sup> and the peculiarity of Islamic Law as being theocratic makes it expedient to research into the legality and the effects advancement of ICT on Islamic law practice in Nigeria. This paper explains that the usage of ICT in the practice of Islamic Law can be premised on the principle that whatever is beneficial and not explicitly prohibited is permissible under Islamic law. The research confirms that ICT of immeasurable benefits to the practice of Islamic law in Nigeria. The disturbing aspect is our finding that despite the obvious importance and obvious benefits of ICT to the practice of Islamic Law, issues, and challenges regarding artificial intelligence (AI) entities, lack of proper scrutiny or censorship of information and materials exposed to people via ICT, creation of easy window for the commission of offences at one's convenience and ICT over-reliance syndrome amongst others. The paper recommends inter alia that ICT should be explored to its fullest while guiding against the dissemination of inappropriate and fallacious information and materials that clearly offend Islamic Law teachings or principles.*

**Keywords:** Information and Communications Technology, Software, Islamic Law, E-Learning, E-Commerce.

## Introduction

Information and Communications Technology (ICT) has been a growing trend that has impacted virtually all spheres life. Its impact and expanse of areas of application is continuously growing globally with countries across the world witnessing tremendous development borne by ICT ranging from Broadcasting, Telecommunication, Internet technology, Spectrum Management to E-Commerce etc. Nigeria has witnessed rapid development of ICT for the past three decades. Technological advancements and discoveries bring along the pressure on the law to legalise and regulate its existence. When oil was first discovered in Nigeria in Oloibiri, 1956<sup>2</sup> and continued to show signs of improvement, the Mineral Oils Ordinance of 1914 was the law regulating petroleum operations, until it was amended by the Mineral Oils (Amendment) Act 1958. Similarly, the birth and development of ICT in Nigeria has given birth to a new enactment, review of many laws to

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<sup>1</sup> Common Law and Islamic Law practice

<sup>2</sup> NBC, 'History of the Nigerian Petroleum Industry', Available at <https://www.nnpcgroup.com/NNPC-Business/Business-Information/Pages/Industry-History.aspx> accessed on 4th February 2020

regulate ICT. The effects of these developments on the practice of legal profession in Nigeria cannot be over-emphasised. When considering the effect of ICT in the practice of law in Nigeria, it must be understood that the pluralistic nature of the Nigerian Legal system requires that each system be treated separately. Consequently, the return to democracy in 1999 paved way for the *resorgimento* of the Islamic Law practice to a great extent in the country. This paper seeks to examine the effects ICT has had and will continue to have on the practice of Islamic Law in Nigeria.

### Meaning and Scope of ICT

The term ICT is a conjunction of three nouns to describe a major advancement in the world. According to Cambridge Dictionary, Information means “facts about a situation, person, event, etc”.<sup>3</sup> while Communications mean “the various methods of sending information between people and places, especially phones, computers, radios, etc.”, and Technology means “the study and knowledge of the practical, especially industrial, use of scientific discoveries”.<sup>4</sup> “Information and Communications Technology is the facts about a situation, person, event etc. **communicated by the** various methods of sending information between people and places, especially phones, computers, radios **via** the study and knowledge of the practical, especially industrial scientific discoveries.”<sup>5</sup>

Technically an disjunctively, the noun Information means “knowledge presented to a person in a form which can be understood” or “data that has been processed or arranged to provide facts which have a meaning”.<sup>6</sup> It is also said to include “data, technical specifications, laws and procedures, works of art, emotional responses, statements of morality and ethics and more, produced then communicated by human beings interacting with the world and each other”.<sup>7</sup> On the other hand, the communication can succinctly be seen as “social interaction through messages”.<sup>8</sup> It can further be said to be the “practice of exchanging thoughts, messages, new, reports and information in any form”<sup>9</sup> While technology on its own is the “process of applying scientific knowledge to industrial processes”<sup>10</sup> Reconciling the three, ICT “is a scientific, technological and engineering discipline and management technique used in handling information, its application and association with social, economic and cultural matters.”<sup>11</sup> It can further be said to be technologies that provide access to information through telecommunications.<sup>12</sup>

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<sup>3</sup> Cambridge Advanced Learner's E-Dictionary - 4th Edition, Published and Developed by Cambridge University Press 2013.

<sup>4</sup> Ibid

<sup>5</sup> The boldness of some words is to show emphasis on the conjunctions used to connect the clauses in the definition.

<sup>6</sup> Collins S.M, *Dictionary of ICT* 4th Ed. Bloomsbury, London, (2004) 125

<sup>7</sup> Andrew W.W, *Information Obesity*, In *Chandos Information Professional Series*, Chandos Publishing, United Kingdom, (2009) 3

<sup>8</sup> John F, *Introduction to communication Studies* 2nd Ed. Taylor & Francis e-Library, (2002) 2

<sup>9</sup> Abdulsalam O. A *Information and Communications Technology Law in Nigeria: A Comparative Reader* Princeton & Associates Publishing Co. Ltd., Ikeja, Lagos, (2017) 3

<sup>10</sup> Collins (n 5) 237

<sup>11</sup> Ratheeswari K. ‘Information and Communication Technology in Education’, (2018) Vol. 3 (i), *Journal of Applied and Advanced Research*, 45

<sup>12</sup> Christensson, P. ‘ICT Definition’. Available at <https://techterms.com> (accessed on 4<sup>th</sup> February 2020)

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Although the definition of ICT differs from one writer to the other, but what can be understood is that it relates to all devices, applications and systems, networking essentials that all amalgamate to allow people and organisations, agencies, governments, and others to interact in the digital world. The term Information Technology (IT) can loosely be regarded as similar to ICT with the exception that the latter is broader and encompassing.<sup>13</sup>

The scope of ICT covers everything that can receive information, store, retrieve, manipulate, reproduce, and transmit information electronically. It therefore contains components such as internet enabled devices, Artificial Intelligence (AI) and Robots, smart phones, television and radio broadcast, mobile phones amongst many other things. The development has however touched every aspect of human life and still promises more in the future. In response to this development several laws have been put in place in Nigeria to regulate the ever growing world of ICT. Some of these laws include Wireless Telegraphy Act 1961 and 1990, the Nigerian Communication Act 2003, the National Film and Video Censures Board Act 85 of 1993, the Nigerian Communications Act, the National Broadcasting Commission Act, the National Information Technology Development Agency Act of 2007 (NITDA Act), the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act amongst others.

The practice of Islamic Law predates the existence of Nigeria as a country and the advent of the colonialist which gave birth to Common Law in Nigeria in the 19th century. The two legal systems have been in existence concurrently ever since then with many major turnovers and turmoil. The practice of Islamic Law however has for long been restricted to issues of Islamic personal law as contained in the constitution but for the extension of its scope to cover criminal cases about 21 years ago. These were possible because section 6 of the Constitution Federal Republic of Nigeria 1999 as amended empowers any States to establish Penal System through legislative process and section 38 guarantees freedom of religion. This is not to say that there has not been an unending debate on the constitutionality of the application of Islamic criminal law in the country. There has been debates by many writers over the legality or otherwise of this penal system but that has not hindered the application since it does not apply to non-adherents of the Islamic faith, and considering that only states with predominantly Muslim population have established courts to administer Islamic Criminal Justice in certain criminal matters. Furthermore, another factor is the high population of Muslims in the country which is 51.6%.<sup>14</sup> Irrespective of the jurisdiction a Muslim finds himself, he is still expected to practice the law in his household faith should regulate his day to day life.

Islamic law is not derived from parliamentary legislation. The major sources of the law are Quran, Sunnah, *Ijma* and *Qiyas*. Islamic Law saliently shares two seemingly contrasting feature of rigidity and flexibility at the same time. It is rigid in the sense that only Allah alone can legislate and only Him can change a rule of law under Islamic Law; with the death of the Holy Prophet Muhammed (Peace Be Upon Him), revelation ended and therefore no more modification in the law. Conversely, it is also flexible in the sense that it can be easily extended to cover all aspects of

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<sup>13</sup> Abdulsalam (n 5) Op. Cit.

<sup>14</sup> CIA, 'Summary Report on Nigeria, World Fact Book', 2019, available at <https://www.cia.gov/library/publications/the-world-factbook/attachments/summaries/NI-summary.pdf> (Accessed on 5th February 2020)

human life, new or old, new advancements inclusive. It is all encompassing as Allah says in the Quran.

..... مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ ثُمَّ إِلَىٰ رَبِّهِمْ يُحْشَرُونَ

....We have not neglected in the Register a thing. Then unto their Lord they will be gathered<sup>15</sup>

### ICT and Islamic Legal Practice in Nigeria

Legal basis for the use of ICT in the practice of Islamic Law is premised on the Islamic legal maxim

"الأصل في المنافع الإباحة وفي المضار التحريم"<sup>16</sup>

which means the “general rule of a beneficial thing is permissibility while that of harmful thing is prohibition” except there is evidence to the contrary. ICT has numerous benefits. It has brought about so many developments that have and will continue to have impact on both the Common Law practice and Islamic Law practice in Nigeria and globally. It is important to point out that Islamic Law in Nigeria is the same as practised in other jurisdictions where similar matters of Islamic Law are covered especially as it relates to the fundamental principles. It is only in the ancillary issues that there often arise differences in opinion. However, the modality of practice may vary depending on the peculiar situation of each jurisdiction. Though this work is primarily concerned with the practice in Nigeria, the issues and conclusions will be applicable in other Islamic Law jurisdictions.

For the purpose of this work, the effect of ICT on the Islamic Law practice will be discussed under four major heading which are:

- 1) Effects of ICT on Research and Knowledge Acquisition.
- 2) Effect on Scope of Islamic Law
- 3) It effects on Practice Modality
- 4) Quagmire/Morass of ICT on Islamic Law practice

### Effects of ICT Law on Research and Knowledge Acquisition

Acquisition of knowledge and ability to do research is paramount for the successful practice of any field of learning without the exemption of Islamic Law. This is based on the fact that knowledge is the bedrock of Muslim faith, Islam, and Islamic Law. It is a major yardstick and criteria in appointment of judges and successful practice of Islamic Law. Knowledge is needed for spiritual uplift<sup>17</sup> and a great gift that is worthy of envy.<sup>18</sup> In explaining the importance of Islamic Law knowledge amongst others, the Prophet Muhammed (Peace be upon him) said

<sup>15</sup> Suratul An'am Verse 38

<sup>16</sup> Muhammad S, *Maus'atu Qawa'idul Fiqqhiyah*, 1<sup>st</sup> Ed. Muasasatul Risalah, Beirut, Lebanon, (2003) Vol. 1, 24

<sup>17</sup> Surat Al-Mujadilah V 11

<sup>18</sup> Muslim H, *Musnad Sahih al Mukhtasar bi Naql 'Adl an 'Adl ila Rasulillah (s.a.w)*, Sahih Muslim, Darul Ihya Turath l 'Arabi, Beirut, Lebanon (nd) Vol. 1, 559

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“Whoever travels a road seeking knowledge thereby, Allah will cause him to travel one of the roads of Paradise. The angels lower their wings in approval of the seeker of knowledge. Those who are in the heavens and on earth, and the fish in the depths of the water, pray for forgiveness for the knowledgeable person. The superiority of the scholar over the worshipper is like the superiority of the moon, on the night when it is full, over all other heavenly bodies. The scholars are the heirs of the Prophets. The Prophets did not leave behind Dinars or Dirhams, rather they left behind a heritage of knowledge, and the one who acquires it acquires an abundant portion.”<sup>19</sup>

In line with the above, ICT has been useful in the practice of Islamic Law through e-learning whereby people can be thought, study and learn Islamic law virtually and by use of electronic devices and applications. It is effective based on the flexibility and convenience that accompanies the process. The learning process is often through sharing of e-books, videos lectures, audio lectures and many more. It gives the student or learner the opportunity to listen to the lectures repeatedly till it is properly understood. With the difficulty of securing admission into the Nigerian Universities because the university spaces and opportunities are grossly inadequate with numbers of candidates several hundreds of thousand more than available spaces, online platforms are opportunities for learning Islamic Law. One of such platforms is the Islamic Online University recently renamed International Open University where Islamic related courses such as Islamic Economics is being offered. Many Nigerians are beneficiaries of this opportunity that includes scholarship for Muslims in the North Eastern part of Nigeria where there is insecurity and insurgence. Thousands of Nigerians have benefited from this particular forum and about 273 enjoyed scholarships.<sup>20</sup> There are many other online institutions where knowledge about Islamic law can be acquired. These include Virtual University Pakistan,<sup>21</sup> The Islamic College,<sup>22</sup> Islamic College for Advanced Studies,<sup>23</sup> Shariah Online University<sup>24</sup> to mention a few.

ICT has made a positive impact in ensuring that the research is accessible and far easier for the practice of Islamic Law for the *Qadis*, Lawyers or even the conscious litigants. This is through some common platforms like the Internet, Virtual Library, E-Library or Digital Library. From the internet, surfing the web has made it easy for Islamic Law researchers to gain access to materials needed. There are plethora of Islamic Journals online, millions of articles, *fatawa*, Islamic Question and Answer fora, web pages of scholars and jurists among others. Some of the indigenous website where useful *fatawa* and lectures on Islamic can be found includes Dawah casts<sup>25</sup> and Sheikh Ajia<sup>26</sup> websites. It is an easy and fast means of getting information about a legal issue. The major

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<sup>19</sup> Nasiruddin-Al-Katya, *English Translation of Sunan Abeu Dewed* 1st Ed. Maktaba Darul Salaam, Riyadh, (2008) Vol. 4, Hadith 3641, 207-208

<sup>20</sup> International Open University, “African Scholarships Program – 2019 Report”, available at <https://donations.iou.edu.gm/african-scholarship-program-2019-report/> (Accessed on 6th February 2020)

<sup>21</sup> The official website of the University as of 6th February 2020 is <https://www.vu.edu.pk/>

<sup>22</sup> The official website of the University as of 6th February 2020 is <https://www.islamic-college.ac.uk/study/distance-learning/>

<sup>23</sup> The official website of the University as of 6th February 2020 is <https://digital.ucas.com/courses/details?coursePrimaryId=70900542-8893-4817-9a69-cde5b651a71&academicYearId=2019>

<sup>24</sup> The official website of the University as of 6th February 2020 is <http://shariahuniversity.net/>

<sup>25</sup> Lectures and fatawa of scholars such as Proff. Abdulmajid Alaro can be found in this website <https://dawahnigeria.com/dawahcast/> accessed on 11<sup>th</sup> February 2020.

<sup>26</sup> [http://shaykhajia.com/single\\_question.php?id=61](http://shaykhajia.com/single_question.php?id=61) accessed on 11<sup>th</sup> February 2020.

challenge in this platform is the lack of criteria to screen out correct and wrong material by the web cloud itself, it is open, and anybody can post opinions be it legally backed or not without adequate scrutiny. The job then falls back on the Islamic Law researcher to distil information gathered on the internet before using. Virtual / Digital / E-Library<sup>27</sup> is an organised set of links to items on the network and an improvement on direct internet search.<sup>28</sup> It is a plus to internet surfing for materials as it helps users to locate quality materials of verified source. It remedies some of the major challenge of unfiltered results that one may be faced with when directly searching for materials online. Some of the important libraries where Islamic Law materials can be found includes E-darussalam<sup>29</sup>, Jtsor,<sup>30</sup> The Comprehensive Muslim Library,<sup>31</sup> Islamic E-Library,<sup>32</sup> American University of Beirut University Libraries,<sup>33</sup> Kalamullah<sup>34</sup>.

The impact of ICT on research and acquisition of knowledge needed for practice of Islamic Law in Nigeria will be incomplete without the mention of offline Virtual Islamic Libraries such as Maktabah Shamelah containing over 5300 books at the initial installation of the software with facility to upgrade when connected to the internet.<sup>35</sup> There are more than 80 books with several volumes specifically on Milk School Law which is the predominant and most favoured Islamic School of Law in Nigeria. The provisions of the Shariah Penal Laws in Nigeria are vastly in tandem with the Milk School of Law which further emphasises its importance to the practice of Islamic Law in Nigeria. A selling point is that it is free and offline Library which means that a person does not need to be connected to the internet before having access to thousands of Islamic materials. Some other similar libraries are Maktabah Al-Waqfeyah and Maktabah al Islamiyah. All these confirm the effective role ICT has played in the acquisition of Knowledge and research in practice of Islamic Law.

### **Effects on Scope of Islamic Law Practice**

Having earlier explained that the effect of ICT cuts across almost all field of practice, and similarly law regulates all field of practice, it therefore suggests that the scope of Islamic law will be extended to regulate the effects of ICT on all the spheres of practice. One of the landmark effects of ICT on practice of Islamic Law in Nigeria is the extension of the scope of Islamic Law. This does not mean introduction of new rules or laws but the extension of the existing rules of law to cover the novel issues generating from the various technological advancement. Some of the notable aspects of law that ICT affects in the scope of Islamic Law includes Economy and Finance (E-Commerce) , Medicine, Industry (AI and Robots) and Security (Cybercrime).

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<sup>27</sup> They are nowadays used interchangeably.

<sup>28</sup> Justin C. 'Digital Libraries and Virtual Libraries: Definitions, Concepts and Goals' (2003) Paper presented at Workshop on Technical Aspects of Building Digital Libraries and Electronic Information Networks, Addis Ababa, Ethiopia, 5

<sup>29</sup> Accessible via <https://edarussalam.com/> as of 5th February 2020

<sup>30</sup> Accessible via <https://www.jstor.org/> as of 5th February 2020.

<sup>31</sup> Accessible via <https://www.muslim-library.com/?lang=English> 5th February 2020.

<sup>32</sup> Accessible via <https://abuaminaelias.com/islamic-e-library/> 5th February 2020.

<sup>33</sup> Accessible via <https://aub.edu.lb/libguides.com/c.php?g=276467&p=1842743> as of 5th February 2020

<sup>34</sup> Accessible via <https://kalamullah.com/> as of 5th February 2020

<sup>35</sup> Islamic Library Maktab Shamilah

<https://islaamiclibrary.wordpress.com/2009/03/01/the-comprehensive-library/> accessed on 5th February 2020.

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Starting from economic and financial transaction, E-commerce is an essential feature of ICT in business transaction. E-commerce can be said to mean the application of ICT to commercial transaction just as in E-business.<sup>36</sup> With the ever growing world of ICT, the traditional way of buying and selling has been modified typically all products can be purchased online and inter country. With this development, the scope of trade under Islamic law is undoubtedly broadened to regulate transactions of this nature. The general rule of commercial transaction under the Islamic law is permissibility, which often represented with the maxim “*Al aslu fil mu’amalat al ibaha*” once it satisfies the rules stipulated under the Islamic Law.<sup>37</sup> Generally just as in other financial transaction, the following principles guide the practice of E-Commerce.

- 1) Elimination and prohibiting of *Riba* (usury or interest)<sup>38</sup>
- 1) Prohibition of uncertainty (*Gharar*)<sup>39</sup>
- 2) Product must be Shariah compliant<sup>40</sup>
- 3) Mutual agreement between the parties
- 4) Prohibition of gambling<sup>41</sup> (*maysir*)

Other rules depend on the nature of the transaction being negotiated, it therefore becomes the duties of Islamic Law experts to guide Islamic Law adherents on some of the major online stores in Nigeria including Jumia,<sup>42</sup> Konga,<sup>43</sup> ONG(OLX),<sup>44</sup> Kara,<sup>45</sup> Slot,<sup>46</sup> Jiji,<sup>47</sup> and other foreign sites including Amazon,<sup>48</sup> Aliexpress,<sup>49</sup> Ebay,<sup>50</sup> Shopify.<sup>51</sup> Islamic banks (e.g. Jaiz Bank) also offer online banking transactions with the aid of ICT. They send statement of account electronically, request for debit card electronically, transfer fund electronically and many other things. All these cannot be done independent of the Islamic Law laid down principles or else the purpose of the creation of the Banks becomes defeated. (issue of charging or service and *Riba*).

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<sup>36</sup> N. Srivastava and S. Sings , ‘E-Business: Scope and challenges in India’ (2003) Vol 2(8), X *International Journal of Business and Management Invention ISSN*, 2

<sup>37</sup> Before a commercial transaction can be legal under Islamic law, certain pillars and conditions must be met. The pillars include contracting parties, offer and acceptance, subject matter, and consideration. See Zuhayli W. M *Al Fiqh al- Islamiy Wa adilatuhu*, 2<sup>nd</sup> Ed. Darr Fikr, Damascus, Syria. (1985) Vol. 5, 3309

<sup>38</sup> Surat Babara v. 275-280

<sup>39</sup> Hanafi scholars have defined *Gharar* as “something which its consequence is undetermined.(Uddin, Md Akther, ‘ *Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir* ‘, p4, INCEIF, Kuala Lumpur, Malaysia, 2015. ) The subject matter of the agreement must be ascertained in terms of description, quantity, quality and other features including time and place of delivery.

<sup>40</sup> It must not be alcohol, pork or any prohibited item

<sup>41</sup> Suratul Baqarah v. 219

<sup>42</sup> Available via the link below as of 7th February 2020 <https://www.jumia.com.ng/>

<sup>43</sup> Available via the link below as of 7th February 2020 <https://www.konga.com/>

<sup>44</sup> Available via the link below as of 7th February 2020 <https://nigeria.ong.ng/>

<sup>45</sup> Available via the link below as of 7th February 2020 <https://www.kara.com.ng/>

<sup>46</sup> Available via the link below as of 7th February 2020, <https://slot.ng/>

<sup>47</sup> Available via the link below as of 7th February 2020 <https://jiji.ng/>

<sup>48</sup> Available via the link below as of 7th February 2020 <https://www.amazon.com/>

<sup>49</sup> Available via the link below as of 7th February 2020 <https://www.aliexpress.com/>

<sup>50</sup> Available via the link below as of 7th February 2020 <https://www.ebay.com/>

<sup>51</sup> Available via the link below as of 7th February 2020, <https://www.shopify.com/>

**ICT in Medicine:** the practice of medicine has also witnessed many developments because of ICT starting from contact with Doctors and giving medical advice via the internet, management of patient's record, diagnostic services through ICT gadgets, patient monitoring and patient treatment and robotic surgeries. This evolving development has and continues to generate many ethical issues. Technology has been used to assist reproduction in many patients in Nigeria, coupled with the facts that this can be done in several ways such as Intracytoplasmic sperm injection (I.C.S.I), Embryo Donation, Gamete Intra- ,Fallopian Tube Transfer (G.I.F.T.), Egg Donation, Surrogacy Assisted Insemination by Husband (AIH) and Intrauterine Insemination (IUI), Artificial Insemination by Donor (AID), Testicular Biopsy and so on. These have been generating many ethical issues requiring intervention of Islamic Law expert from time to time.<sup>52</sup>

**Islamic Law and Cybercrime:** this aspect of crime is a clear indication on the extension of the scope of Islamic Law brought about by ICT because Cybercrimes are crimes perpetrated through the use of ICT. Computer crimes as it also known<sup>53</sup> can be categorised under two major segments; computer assisted crimes and computer based or focused crimes.<sup>54</sup> The first aspect relates to crimes that have been in existence before the coming of ICT but well aided by ICT such as fraud, money laundering, theft, pornography amongst others. These offences remain as they have been before, and ICT will only be seen as an instrument to perpetrate the criminal acts. For example, a man who uses a robot to commit offence of armed robbery or theft will be punished for *Hirabah of sarqah* respectively once the conditions are met. As for the novel offences like hacking and viral attacks to mention a few, the Islamic law will not fold her arm and watch the wrong as this will antagonise the principle of protection against harm and the goals which Islamic Law seeks to achieve.

It has been observed that "Hacking refers to activities that seek to compromise digital devices, such as computers, smart phones, tablets, and even entire networks"<sup>55</sup> it involves gaining access to someone's gadget or devices there are so many ways of hacking or gaining control into another person's devices and there have several of such cases in Nigeria. In March 2015, the Independent National Electoral Commission of Nigeria's (INEC) website was hacked by a team known as Nigerian Cyber Army before access was regained by INEC days after.<sup>56</sup> On the prohibition hacking under the Islamic Law, Allah says in the Quran which is the first primary source of Islamic Law that

"O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded."<sup>57</sup>

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<sup>52</sup> The issue of E-marriage, DNA, video evidence, forensic evidence amongst others are also areas where ICT affect the practice of Islamic Law in Nigeria.

<sup>53</sup> Eboibi F. E, *Handbook on Nigerian Cybercrime Law* 1st Ed. Justice Jeco Printing and Publishing Global, Benin City, Edo State, (2018) 14

<sup>54</sup> Majid-Yar, 'The Novelty of 'Cybercrime' An Assessment in Light of Routine Activity Theory' *European Journal of criminology*, Vol 2 (4) ) 410

<sup>55</sup> Malwarebytes, "Meaning of Hacking" Available at <https://www.malwarebytes.com/hacker/> 10th February, 2020.

<sup>56</sup> Channels Television, Updated 'INEC Restores Hacked Website' March 28, 2015. Available at <https://www.channelstv.com/2015/03/28/inec-restores-hacked-website/>

<sup>57</sup> Holy Quran Suratul Nur. Quran 24 verse 27

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From the above verse, it can be understood that accessing other people's gadget, system, network, or anything related to ICT without permission is in gross contradiction to the commandment of Allah and hence is punishable. A person is either punished under *Hudud*, *Qisas* or *Ta'azir* under Islamic Law. It depends on the purpose or what was perpetrated by the act of hacking that will determine what degree of punishment to subject the person to. It is however conceived that hacking without more should be punished under *Taazir* i.e. based on the discretion of the judge.

### Effects of ICT on Practice Modality

**Provision of Practice Tool:** this is one of the most important effect that ICT has on the practice of Islamic Law in Nigeria with the use of several practice tools such as computer system, mobile devices, software, television and radio for acquisition and dissemination of knowledge. With internet and email for instance, a person can be able to communicate his *Wasiyah* (will) easily irrespective of where he is at that particular time. Research which is the bedrock of the practice of Islamic Law is made easier through ICT as earlier explained, classical texts and contemporary texts can be easily accessed via virtual libraries without any problem. More importantly and depending on the users level of ICT literacy, search feature of most devices makes it easier to locate the particular information a person is interested in within seconds. For example, using Shamela Offline Virtual Library earlier explained, a researcher may decide to search the whole library for a particular phrase, word or topic or he may decide to search a particular book as practicalities in the images shown below.

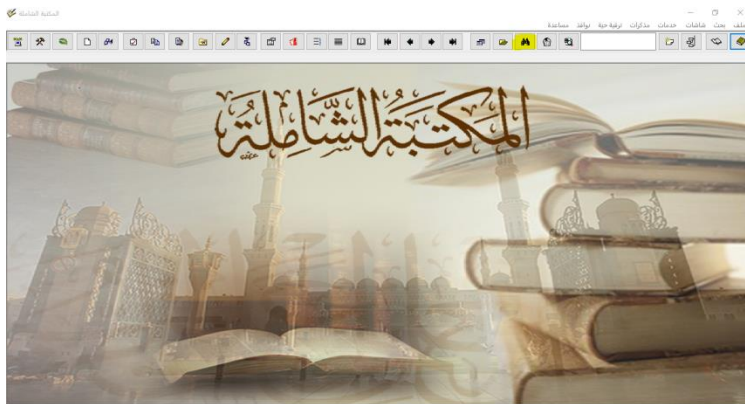


Image A: front page of Maktabah Shamela

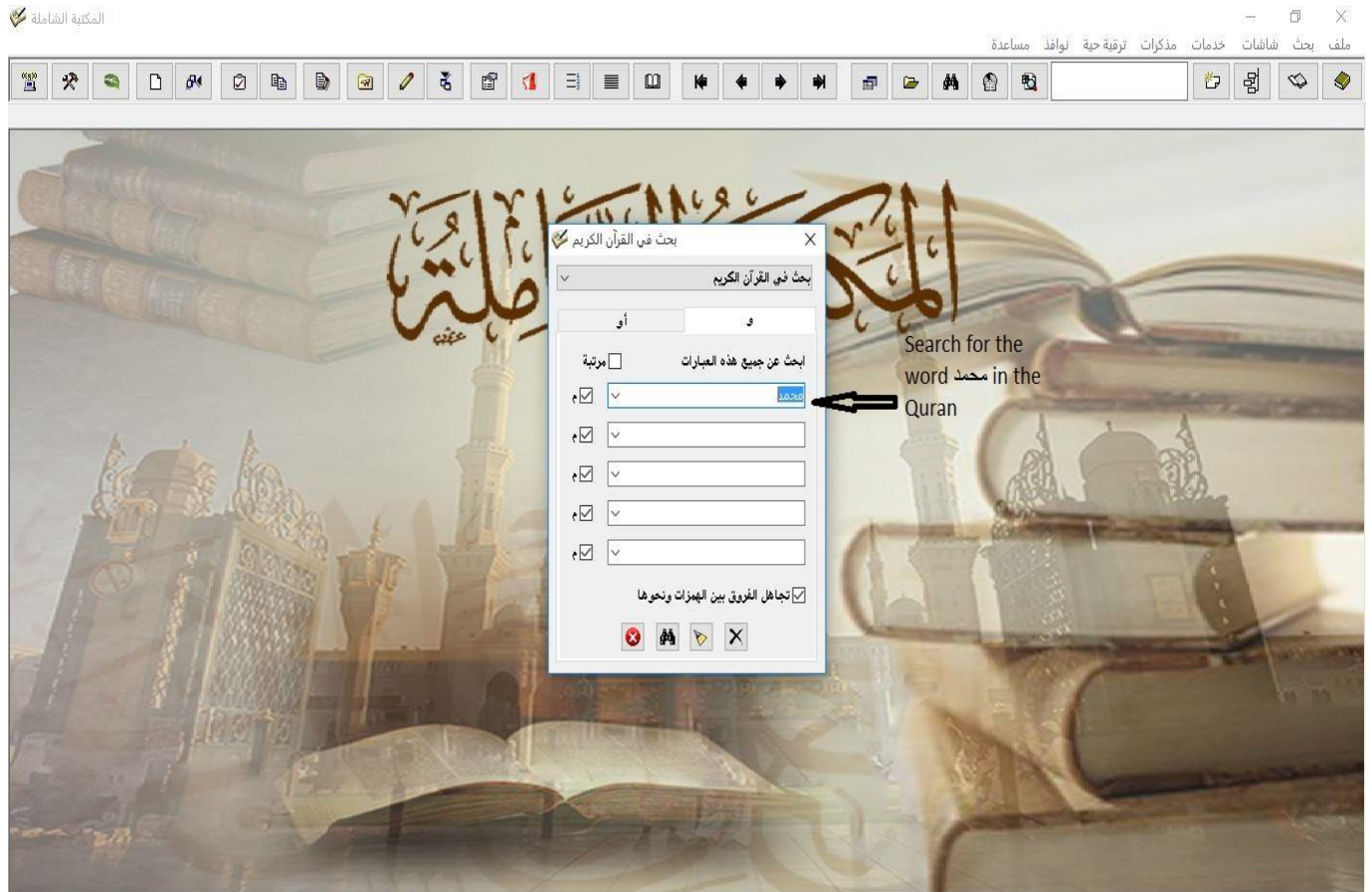


Image B:search menu(Ctrl+f) with the word Muhammad typed ready to be searched in the Quran

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Image C: search report on the word “محمد” in the Quran

In less than five seconds, the result of the search as displayed in Image C above was gotten. It saves a researcher a whole lot of time in searching page by page or chapter by chapter.

In a more sophisticated effect, the advancement of ICT has brought about development of certain software that aid the practice of Islamic which are available on Android , IOS or computer. For the purpose of this research, two types of Inheritance Calculator were briefly reviewed and tested, Android (smart phone) inheritance calculator named “سهم - حساب المواريث”<sup>58</sup> randomly selected from google play store applications on inheritance and an online Inheritance calculator named “Islamic Inheritance Calculator: *AL mirath*”<sup>59</sup> being the first displayed when the keyword inheritance calculator is searched on google search. These two inheritor calculators were subjected to two phases of tests, the first test is to input and erroneous scenario to see how it will react to it, while the second test is to examine the accuracy of the calculation. The two calculators shares similar interface in the sense that the list of all heirs have been listed and a user is expected to select the heirs as the case at hand presents.

Starting with the Android calculator, the following people were imputed as the survivors of a deceased, father, mother, **husband, wife**, son, and daughter. At all times, it is impossible under

<sup>58</sup> This can be downloaded via goggle play store as of 9th February 2020

<https://play.google.com/store/apps/details?id=com.yadumi.mawareeth3>

<sup>59</sup> Available at <http://www.inheritancecalculator.net/> as of 9th February 2020

the Islamic law of inheritance for a husband and wife to inherit in the capacity of husband and wife together. For any of them to inherit in such capacity, it must mean the other partner is the *propositus* or *propositae*. The inheritor application as programmed un-ticks the former when husband and wife are ticked concurrently. The test of picking more than a father, mother, husband was equally carried out and the application makes it impossible to do this. The results of these tests indicate that the application is to a large extent is able to distil a possible scenario and an impossible one.

The online inheritance calculator on a different note contains addition information to guide user on the important conditions that may prevent an heir from inheriting before picking the heir like killing of the *propositus*. When the above test was also carried out on this platform the error message “Husband & Wife both cannot be entered. Please select one of them” was displayed. The test of inputting more than a husband, father, mother of more than 5 fives was carried out and it was flagged as an error albeit correctly.

The second sets of tests were the calculation of estate of a deceased who is survived by wife, mother, full sister, father’s sister, and mother’s sister. Amazingly, the application did not only distribute the estate correctly, but it also further claimed that there is *awl*<sup>60</sup> in the case and addressed it accordingly.

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<sup>60</sup> *Awl* is a situation whereby the legal heirs over subscribed to the estate of the deceased based on their legal share. This was resolved during the time of Umar via Pro Rata reduction of the shares of the legal heirs. This is by by inflating the denominator to be equal to the summation of the shares of the heirs. See Ajetunmobi, M., “Collection And Review Of Cases Of Al-'Awl (Pro-Rata Reduction) In Sharī'ah Law Of Succession” (Islamic Studies, (1988) 27(3), 209-219. Retrieved February 10, 2020, from [www.jstor.org/stable/20839895](http://www.jstor.org/stable/20839895) It means when the addition of the fractional shares of the heirs exceeds the lowest common multiple, the shares of the heirs will be reduced proportionately to remedy the difference. It is proportionate decrease in shares of the heir to accommodate all heirs in getting their entitlement in certain circumstances

## The Effect of Advancement in Information and Communications Technology on The Practice of Islamic Law in Nigeria

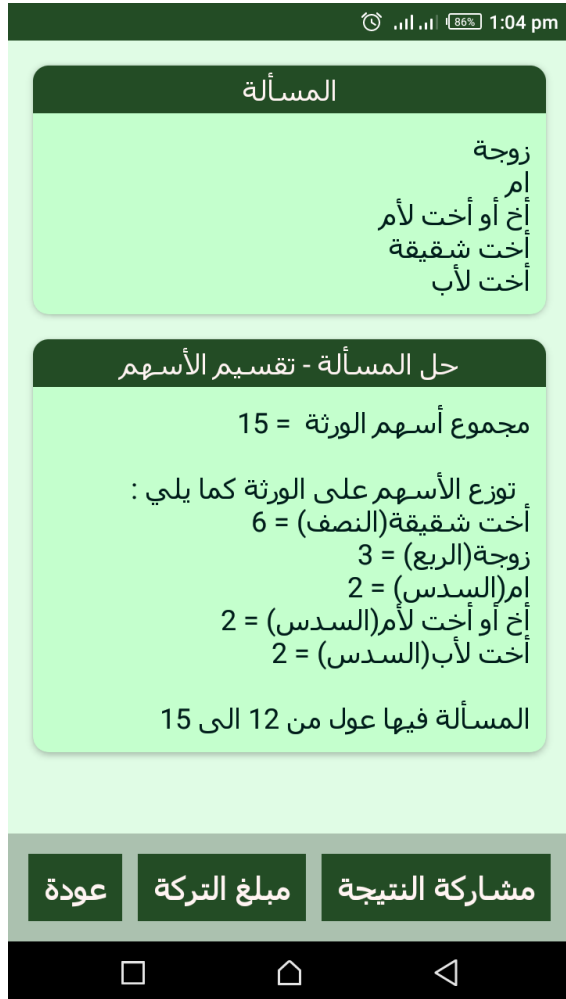


Image D: Result of the question as displayed on the interface



Image E: Translated version of the user interface user showing result

The accuracy of this result and some other results is verified against many reputable books of Islamic Law of Inheritance such as work of Saabuni<sup>61</sup>. Same question was tried on the online platform but with an obvious challenge of not making provision mother's sister or father's sister as a legal heir. This indicates the limitation of some of the applications or websites rendering such service. It is therefore realised that even though there are some highly effective and accurate practice tools such as "سهم - حساب المواريث" care still needs to be taken by users to ensure that the application is used correctly to be able to address some preliminary issues necessary before distribution of estate.

From a different angle, there is also the availability of *Zakat* calculator on different platforms just as in the case of inheritance calculator. This is also a particularly useful tool that can and has been used in the practice of Islamic Law in Nigeria. A website publishes the *Nisab* for *Zakat*, *Ddiyyah*,

<sup>61</sup> Saabuni M. A, Al Mawarith fi Shari'atul Islamiyah fi Dau'il Kitab wa Sunnah, Darul Hadith, Saudi Arabia, (2002) 126

and *Sadaq* to ease the practice of law on yearly basis.<sup>62</sup>

### **Quagmire/Morass of ICT on Islamic Law**

Earlier discussions have been on the positive effects of ICT on the practice of Islamic Law in Nigeria, it will be an imbalance and bias analysis to turn deaf ear to some of the quagmires arising from ICT in the country. One of the major issues is the evolvement of the so called “Internet Scholars” and which is used to represent people who totally desist from learning the orthodox way and decide to learn by grasping everything they see online without ability to distill what is an authentic source and a weak source that cannot be relied upon. The flaw is that, there is no major way of checkmating the correctness or otherwise of what a person posts online, what most IT providing firms do is watch against infringement of copyright and intellectual property. It therefore creates problems of following wrong *fatwa* and creation of unnecessary controversy in the field of Islamic Law.

***Legal Status of ICT wares like Autonomous machines:*** The major question here is the legal status of AI, Robots under the Islamic Law. Are they to be treated like animals, property, mentally unsound or minor? These questions are craving for answers to help in understanding and adjudication of cases relating to crimes committed by AI entities which are just products of ICT. Apart from this, the whole of ICT and its products cannot be taken hook line and sinker under Islamic Law, it must still be within the confines of Shariah, for instance the creation and use of sex toys and sex robots is prohibited under the Islamic Law.<sup>63</sup>

***Over reliance on ICT:*** Young and ICT oriented Islamic Law practitioner may and often fall into the morass of over relying on ICT even at the expense of the established orthodox methods. This over reliance has grown to an extent where acts of worship such as *Salat (prayer)* time is based on what online *salat* time says despite the easy ways of naturally monitoring times of *Salat*. They even follow ICT against the obvious which may make one rhetorically ask, is ICT to replace or corroborate the general practice of Islamic Law in Nigeria..

### **Conclusion and Recommendation**

Based on the foregoing, attempt has been made to explain the effects of ICT on Islamic Law practice in Nigeria. It has been explained that the use of ICT is well embraced to a large extent according to the Islamic law due to benefits it brings to the people. Results of this research work shows that its effect is dual faceted; positive and negative effect with the former outscoring the later immensely. The use of ICT must however be adopted with caution as it does not guarantee 100% in any form of its usage. The quagmire of ICT on Islamic Law practice needs attention through series of research work and caution.

It is recommended that

- 1) Islamic Law practitioners should move with the world of ICT by learning and amassing its various opportunities to the brim to enhance their practice.

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<sup>62</sup> Zakat Professionals, Available at <https://zakatprofessionals.com/2019/05/13/breaking-new-zakat-nisab-for-2019-published/as> of 20th February 2020

<sup>63</sup> J. A Yusuff, T. Ismaila , ‘Ethical and Legal implications of Sex Robot: An Islamic Perspective’ (2012) *OIDA International Journal of Sustainable Development* Vol.3(6)

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- 2) Islamic Law practitioners and students should seek for knowledge of the law and use it to sieve the authentic materials from the weak materials as contained online.
- 3) Islamic Law practitioners and students should be wary of over reliance on man-made products at the expense of the orthodox teaching of the Prophet Muhammed (Peace be upon him).
- 4) Islamic Law experts and researchers should think ahead of time by examining the various legal issues that these innovations may bring from time to time without waiting till this issue arises to curb unnecessary controversy.