

APPRAISING THE INTERFACE BETWEEN SECULARITY AND FREEDOM OF RELIGION UNDER THE CONSTITUTION OF NIGERIA, 1999 *

Abstract

This paper x-rays the secularity and freedom of religion under the Constitution of the Federal Republic of Nigeria 1999 (as amended). It investigates the concepts of secularism, religion and various types of religion in practice in Nigeria. The work adopted doctrinal research method and argued that the extant Nigerian Constitution promotes religion and suppresses the secularity of the Nigerian State. The authors recommended absolute secularity of the Nigerian state which may be achieved through further amendment of the Constitution. The paper concluded that Nigerian leaders are religiously bias and do not adhere strictly to the constitution on the secularity of the state.

Keywords: Interface, Secularity, Freedom, Religion, Constitution.

1. Introduction

Secularity of Nigerian state implies the need to maintain a clear separation between the State and Religion, hence the constitutional imperative of freedom of religion. Religion, the opium of the masses, is one of the major social factors that influence the society.¹ There can, sometimes be cases of fanaticism which can lead to violence.² For instance, the case of the four coordinated terrorists' attacks by al-Qaeda involving the hijacking and crashing of passenger jet airliners that killed 2,996 people injured over 6,000 others, and caused at least \$ 10 billion in infrastructure and property damage was a clear case of extremism.³ Again, the brutal killing of Rohingya Muslim people by the Myanmar Buddhist extremists has religious connection. Historically, in Spain during the regime of Franco in 1938, Roman Catholic teachings were imposed on the people.⁴ Similarly, the 30- Years War which was the longest and most brutal war in history killing over eight million people started as a battle between catholic states and protestant states. Recently in Nigeria, one Pastor Wale Fagbenro attempted to destroy a traditional shrine in Ketu area, Ogun State of Nigeria. Similarly, fanaticism also leads to cases of nepotism, corruption, incompetence, favoritism, against persons who are not members of a particular religion by members of a particular religion.⁵

The Treaty of Westphalia, also known as the peace of Westphalia, signed on October, 1648 is arguably the first form of international law. The Treaty brought the Thirty years War (a non-stop battle between Catholics and Protestants) to an end. Under the treaty, "all parties would recognize the Peace of Augsburg of 1555, in which each prince would have the right to determine the religion of his own state (the principle of *cuius regio, eius religio*).⁶ The options were Catholicism, Lutheranism, and now Calvinism. Christians living in principalities where their denomination was not the established church were guaranteed the right to practice their faith in private, as well as in public during allotted hours..." As symbolic as this treaty remains to the discipline of international law, it is arguably the first in modern history to provide for freedom of religion and secularization.⁷

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¹ Durkheim 1915. *The elementary forms of the religious life*. London: Allen & Unwind

² Federal Government of Nigeria. 1981. *Report of tribunal of inquiry on Kano disturbance*. Lagos: Federal Government Press

³ Human Rights Watch. 2014. Hundreds of Muslim residents in western parts of the Central African Republic (C.A.R.) are trapped in enclaves in deplorable conditions <http://www.hrw.org/news/2014/12/22/central-african-republic-muslims-trapped-enclaves> (accessed on 12 January 2015).

⁴ GH Mead, Play the game, and the generalized other. In *sociological theory: A book of readings* (3rd edition). Edited by L.A. Coser and B. Rosenberg. London 1934: the Macmillan Company Collier-Macmillan, 273-282.

⁵ RT Schaefer, and RP Lamm, 1989. *Sociology* (3rd edition). New York: MacGraw-Hill.

⁶The noble Qur'an. English translation of the meanings and commentary. Madinah: King Fahd Glorious Qur'an Printing Complex.

⁷The Holy Bible, King James Version, with words of Christ in red, maps and selected help to Bible study. Nashville, Tennessee: Holman Bible Publishers

Furthermore, on 25 November, 1981, the United Nations General Assembly passed the Declaration on the Elimination of all forms of intolerance and of Discrimination Based on Religion or Belief.⁸ This declaration recognises freedom of religion as a fundamental human right in accordance with several other instruments of international law.⁹ The Universal Declaration of Human Rights (UDHR) which is a milestone document in the history of human rights, proclaimed by the United Nations General Assembly in 1948 makes provision for the freedom of religion. Under Article 18, it provides: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.’ Under the African Charter, freedom of conscience and free to practice of religion are guaranteed. Furthermore, Section 38 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), states that ‘Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.’ In other words, it ensures the freedom of everybody to practice any religion or hold any religious beliefs of his choice.¹⁰ The constitutional provisions on freedom of religion evince the fact of diverse ethnic, cultural and religious differences in the country. It is therefore imperative for the sake of national unity, peace and cohesion that the state should not adopt any religion as state religion. This work focuses on the interface between secularity and freedom of religion under the Constitution of the Federal Republic of Nigeria 1999. It examines the concepts of secularism and freedom of religion and contends that the affairs of the state should be made complete independent of the religious biases of the holder of the state offices.¹¹

2. Definition of Concepts

2.1 Secularity: Secularism is defined as the belief that religious influence should be restricted, and in particular that education, morality, the state, etc. should be independent of religion. Secularity is the state of being separate from religion, or not of being exclusively allied with or against any particular religion. According to Dietrich Bonhoeffer, secularism lays emphasis on this world rather than the supernatural, behaviour rather than belief, freedom rather than obedience and a bold maturity rather than conservatism. Wilfred Cantwell Smith postulated that ‘a secular state is a form of state so contrived as to win and hold and deserve the loyalty and warm allegiance of any citizen of whatever religion or of none.’ Reverend Leslie Newbiggin holds the view that secularism refers to ‘a system of belief of an attitude which in principle denies the existence or the significance of realities other than those which can be measured by the methods of natural science.’ The point being made is that secularity abhors the dependence of religion.

2.2 Freedom: Freedom, generally, is having the ability to act or change without constraint. Something is “free” if it can change easily and is not constrained in its present state. In philosophy and religion, it is associated with having free will and being without undue or unjust constraints, or enslavement, and is an idea closely related to the concept of liberty. A person has the freedom to do things that will not, in theory or in practice, be prevented by other forces.

2.3 Religion: The definition of Religion is controversial, with scholars unable to agree on any one definition. Oxford Dictionary defines religion as the belief in and worship of a superhuman controlling power, especially a personal God or gods. There are however two general definitions: the

⁸U.S. Department of State Diplomacy in action. 2008. International religious freedom report 2008 www.state.gov/j/drl/rls/irf/2008/108385.htm (accessed on 13 November 2014).

⁹ B Usman, *The manipulation of religion in Nigeria 1977-1987*. Kaduna: Vanguard publishers.

¹⁰Ibid.

¹¹ ML Yesufu. ‘The 2001 Jos Conflict and Its Impact on Women and Children.’ In *Women, Children and Internal Conflict in Nigeria*. Edited by Okechukwu Ibeanu and J.G. Sanda. Ibadan: HEBN Publishers 2007.

sociological/functional and the phenomenological/philosophical definitions. Under the Sociological/functional definition, a renowned sociologist, Emile Durkheim defined religion as ‘a unified system of beliefs and practices relatives to sacred things, that is to say things set apart and forbidden-beliefs and practices which unite into one single moral community called a church, all those who adhere to them.’ Under the Phenomenological/philosophical definition, Max Lynn Stackhouse defined religion as ‘a comprehensive worldview or ‘metaphysical moral vision’ that is accepted as binding because it is held to be in itself basically true and just even if all dimensions of it cannot be either fully confirmed or refuted¹².

3. Forms of Religion

Globally, various types of religion exist. Nigeria, the most populous African country (with a population of over 190 million in 2018), is nearly equally divided between Christianity and Islam, though the exact ratio is uncertain. There is also a growing population of atheist Nigerians. The majority of Nigerian Muslims is Sunni and is concentrated in the Northern region of the country, while Christians dominate in the south. According to a 2001 report from the World Facebook by the Central Intelligence Agency (CIA), about 50% of Nigeria’s population is Muslim, 40% are Christians and 10% adhere to local religions. The Pew research Centre stated in 2010 that 48.3 percent Nigeria’s population was Christian, 48.9 percent was Muslim, and 2.8 percent were followers of indigenous and other religions, or unaffiliated. Additionally, the 2010 census of Association of religion Data Archives has reported that 47.5 percent of the total population is Christian, slightly bigger than the Muslim population of 45.5 percent, and that 7.0 percent are members of other religious groups.

We shall now consider the various religions that are being practiced in Nigeria.

3.1 Christianity: Christianity is one of the three main religions in Nigeria. According to the Pew Research Centre, Nigeria has the largest, Christian population in Africa, with more than 80 million persons in Nigeria belonging to the church with various denominations. The majority of Christians are found in the South East, South-South, South West and Middle-belt regions.

3.2 Islam: Nigeria has one of the largest Muslims populations in West Africa. Islam was introduced to Northern Nigeria as early as the 11th Century and was well established in the major capitals of the region by the 16th century, spreading into the countryside and toward the middle Belt uplands. Shehu Usman Danfodio established a government in Northern Nigeria based on the Islam before the advent of Colonialism in the 19th century. The British Colonial Government therefore established indirect rule in Northern Nigeria base on the structure of this Government. Islam also came to South Western Yoruba-speaking areas during the time of Mansa Musa’s Mali Empire. The Yoruba Colloquially referred to Islam as “Esin-Mali” or some will say “Esin-Mole”, which means “religion from Mali”. The Islamic religion in Nigeria is divided into various sects according to their beliefs and practices. These groups include:

3.2.1 Sunni: The vast majority of Muslims in Nigeria are Sunni belonging to Maliki School of jurisprudence; however, a sizeable minority also belongs to Shafimadhab. A large number of Sunni Muslims are members of Sufi brotherhoods. Most Sufis follow the Quadiyya, Tijaniyyah or Mouride movement.

3.2.2 Shia: The Shia Muslims of Nigeria are primarily located in the Sokoto State. Shia Muslims make up between two and four million of Nigeria’s population. Ibrahim Zakzaky introduced many Nigerians to Shia Islam.

3.2.3 Sufi: Some Nigeria Muslims emphasized asceticism and mysticism and usually form groups called “Tariqas”, “Sufi orders” or “Sufi brotherhoods”. They always preach peaceful co-existence and had no empathy for radical Islam. Most Sufis follow the Quadiyya, Tijaniyyah or Mouride movement.

¹² NB Zahradeen. *The Maitatsine Saga*. Zaria: Hudahuda publishing 1989.

3.2.4 Ahmadiyya: The Ahmadiyya movement established itself in Nigeria in 1916, and make up approximately 3% of the Muslim population. There are numerous Ahmadiyya centre in Nigeria including the Baitur-Raheem Mosque in Ibadan inaugurated in 2008, the Mubarak Mosque in Abuja, which is the last Ahmadiyya Mosque, built in the first century of the Ahmadiyya Caliphate. Ahmadiyyas have also established a weekly newspaper called “The Truth” which is the first Muslim newspaper in the country.

3.3 African Traditional Religion (ATR): Alongside the main religious sect is the traditional belief system that without contradicting civil law manages to also govern ethics and morality amongst much of the population. As much as the messages of Islam and Christianity have taken over the major part of the country, the previous indigenous worship could not be properly annihilated. These indigenous religions are simply the Worship of inanimate objects, the worship of rocks, trees, or some mysterious animals like lions or a huge python which they believe to be their source of strength or spiritual guide. For instance, in the city-states of Yoruba land and its neighbors, a more reserved way of life remains, one that expresses a theology that links local beliefs to a central citadel government and its sovereignty over a hinterland of communities through the monarch. The seat of the king (Oba) is responsible for the welfare of its jurisdiction, in return for confirmation of the legitimacy of the Oba’s rule over his subjects.

3.4 Hinduism: Hinduism spread to Nigeria mainly by immigration of Hindus from India and of Hare Krishna Missionaries known as International Society for Krishna Consciousness (ISKCON). The Hare Krishna Movement or Hare Krishnas, is a religious organisation formed in 1966 in New York. Its core beliefs are based on the Hindu Scriptures, particularly the Bhagavad Gita, the Srimad Bhagavatam, and the Gaudiya Vaishnava tradition, which has had adherents in India since the late 15th century and American and European devotees since the early 1800s in North America. Many Nigerians have converted to Hinduism.

3.5 Chrislam: Chrislam is an attempt to syncretize Christianity with Islam. Through it began in Nigeria in the 1980s, Chrislamic idea has spread throughout much of world. The belief is centered on the notion that Christianity and Islam are compatible, that one can be a Christian and Muslim at the same time. Chrislam is not an actual religion on its own, but an attempt to blur the divergent line that separates Christianity from Islam. It hopes to quell religious feuds among Nigerians.

3.6 The Grail Movement: The Grail Movement is an organisation which originated in Germany in the late 1940s, inspired by the work of the self-proclaimed Messiah, Oskar Ernst Bernhardt (also known by his pen name Abd-ru-shin). The Grail Movement is a new spiritual Movement dedicated to the dissemination and spread of the work “In the light of Truth: The Grail message by Abd-ru-Shin.” Most members reside in 16 countries across Europe, primarily Germany and France, with the Grail movement reporting hundreds of members in Britain and in the USA. It can also be found in Canada, Brazil and currently established in 22 African countries such as Nigeria, Zaire (DR Congo) and Cote d’Ivoire, as well as in South Africa, Australia, New Zealand and Ecuador amongst others. Nigeria has become an Africa hub for the Grail Movement.

3.7 The Reformed Ogboni Fraternity: The Ogboni Fraternity is based on ancient rites, usages and customs. It was established in 1914 by the Ven. Archdeacon T. A. J. Ogunbiyi. Membership is open to all adults who embrace a non- idolatrous faith in God. The Fraternity is headquartered in Lagos, Nigeria. In 1996 it had about 710 conclaves/Lodges or “Iledi” in Nigeria and overseas.

4. Secularity and Religion under the Constitution of the Federal Republic of Nigeria 1999 (as amended)

For emphasis, secularism is a system of social organisation that does not allow religion to influence the government. A secular state is therefore a state or country that is officially neutral in matters of religion, supporting neither religion nor irreligion. A secular state also treats all its citizens equal regardless of religion, and avoids preferential treatment for a citizen of a particular religion/non-religion over other religion/non-religion. Although secular states do not have a state religion or equivalent, the absence of

a state religion does not guarantee that a state is secular. Secularism is commonly regarded as an ideology that holds that religious issues should not be the basis of politics, or, in the extreme, that religion has no place in public life. Secularism, therefore, seeks to preserve the religious neutrality of Government and governance. The Constitution provides as follows: ‘The Government of the federation or a state shall not adopt any religion as State religion.’ The secularity of the Nigerian state is important so as to maintain a state of equality, justice and neutrality amongst members of the public, who are of diverse religion entities in Nigeria. Adopting a state religion will be a breach of the rights of the other members of other religious groups. Thus, the freedom to practice any religion of one’s choice as well as to manifest and propagate them and to change such religion, implies that the Nigerian Government should not either by law or through practices adopt any of these religions as a State religion.

The Nigerian Constitution 1999 provides for religion and secularity at the same time in four sections of the constitution namely: (a) Section 10: It is established the secularity of the Nigerian state by stating that, ‘The government of the federation or of a state shall not adopt any religion as state religion.’ (b) Section 38: It re-enforces the rights of Nigerians to freedom of thought, conscience and religion. (c) Section 275 and 280: this made a volt-face and contradicted the two earlier quoted sections. Section 275 and 280 respectively provide for the creation of Shia Courts of Appeal and Customary Courts of Appeal, for states that require them. First, the secularity of the Nigerian state as well as the freedom of religion as provided for in sections 10 and 38 respectively are completely negated by the provisions found in sections 275 and 280 of same constitution. Establishing Sharia and Customary Courts of Appeal in various states indirectly compels non- adherents to either Sharia legal system or customary legal system to become bound thereof. Second, the adherents of other religions apart from Islamic and Customary legal systems have been relegated to an inferior status and discriminated against by the provisions in sections 275 and 280 because their religions were not given equal recognition by the same constitution. Third, while these provisions recognise the important place of religion in our national life, they pretend that we can operate some modicum of secularism and not pluralism. For while secularism hold the position that religious belief should not influence public and governmental decisions, pluralism is the holding of more than one religion at a time.

The matter of secularism or non-secularism of Nigeria came to the fore during the 2014 National Conference when two delegates representing the Christian Association of Nigeria (CAN), Bishop of Kafanchan Diocese of the Roman Catholic Church, Joseph Bagobiri, representing the northern central zone, and Pastor Bosun Emmanuel, representing the south west zone, brought up what they described as the unfair treatment of Christians and Christianity in the country. They submitted at a plenary session that the Constitution of the Federal Republic of Nigeria 1999 was skewed in favour of Islam and Muslims and called on delegates to correct this anomaly. Pastor Bosun Emmanuel submitted that the Constitution mentioned ‘Sharia’ 73 times, ‘Grand Khadi’ 54 times, ‘Islam’ 28 times and ‘Muslims’ 10 times but did not mention the words ‘Christ’, ‘Christian’ ‘Christianity’ or ‘church’ even once. He concluded very politely that: ‘Some mischievous elements are taking these lapses in the Constitution to come to the ungodly decision that probably the state is an Islamic state.’

5. Challenges to the Secularity of the Nigeria State

Various legal and conventional practices hindering the practice of secularity in Nigeria are as follows:

5.1 The Preamble to the Constitution: the preamble to the Constitution of the Federal Republic of Nigeria 1999, (as amended) provides in part as follows: ‘We the people of the Federal Republic of Nigeria, having firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign nation, under *God*,... Do hereby make, Enact and give to ourselves the following constitution.’ The term “God” as spelt in the preamble to the constitution is the same word Christians use to describe their supreme deity. Just as the Muslims use Allah, and the Buddhists use Buddha, the Christians use ‘God’, as spelt with the first letter capitalised, to describe the Supreme Being whom they worship. Its presence in the preamble to the Nigerian Constitution gives Christian religion sentiments to the *grund norm*. To Affirm the Secularity of the Nigerian state, various sections and provisions of Nigerian laws which directly or indirectly introduce religious sentiments into the Nigerian legal system should be altered.

5.2 Sharia Code Law: Sharia law or Islamic law is a religious law forming part of the Islamic tradition. It is derived from the religious precepts of Islam, particularly the Quran and the Hadith. In other words, it is purely a legal system dependent solely on the religious precepts of Islam. In Nigeria, Sharia has been instituted as a main body of civil and criminal law in some Muslim-majority and in some part of Muslim-plurality states. These started in 1999, when the then-Zamfara state Governor Ahmed Sani Yerima began the push for the institution of Sharia at the state levels of Government. Nevertheless, the institution of Sharia law is nothing but a clear contravention of the principle of secularity enshrined in Section 10 of the Constitution, which states that no government of the federation or the state shall adopt any religion as a state religion. By the institution of Sharia law, it sends a clear message that the government of the various states where Sharia Law applies, have chosen the Islamic laws as an instrument that governs their day-to-day activities. This also invariably applies to all other religious followers who reside within the various localities where such legal system applies; they are subject to the whims and caprices of the Sharia law, even though they know little or nothing about it. This is a draw back in the path of secularism as well as freedom of religion. The imposition of Sharia law also weakens the ability of other persons to freely practice their respective religions without prejudice, or in extreme cases, persecutions.

5.3 Oath-Taking by Government Appointees and Witnesses before Court Proceedings: According to Section 5 (1) of the Oaths' Act:

Whenever an oath is required to be taken under the provisions of this or any other Act, or in order to comply with the requirements of any law in force for the time being in Nigeria, or other country, the following provisions shall apply. The person taking the oath may do so in the form and manner following, that is to say he shall:

- (i) If a Muslim, place both hands on a copy of the Koran;
 - (ii) If a Christian, hold in his right hand a copy of the Holy Bible of the New Testament;
 - (iii) If a Jew, hold in his uplifted hand a copy of the Old Testament; and shall say or repeat after the person administering the oath the words pre-scribed by law or by the practice of the court; as the case may be;
- b. Any other manner which is lawful according to any law, Customary or otherwise, in force in Nigeria.

We argue that it defeats secularism to reference the supreme beings of our various religions while making oaths. If we must shake off the influence of religion over the matters of the state, we must strive to enthrone patriotism, rather than foster the influence of such religion. For instance, instead of taking an oath while holding the bible, or other religious books, one can take oath while holding a copy of the Nigerian Constitution. And when one makes such oath, he should swear on his Citizenship as Nigerians, instead of the religion which he professes.

5.4 Sponsorship of Religious Pilgrimages: Sponsoring religious pilgrimages by various states is a challenge to the secularity of the Nigerian state particularly given the fact that African Traditional religious believers and other religious faiths are not given same sponsorship for their respective feasts. Again, public funds are used for religious feasts of few segments of the state. For instance, the Lagos state Commissioner for Home Affairs, Dr. Abdulhakeem Abdullateef confirmed that the Lagos state Government spent ₦ 1.5 Billion annually on pilgrimages. Fortunately, for the past three years, the Lagos state Government has ceased its sponsoring of pilgrimages and has reportedly saved about ₦ 4.5 Billion in the past three years. Also, Kano state in 2016 alone, spent ₦ 3 Billion on Hajj, and later decided to back out from sponsoring such pilgrimages in future. It is same in almost all the states of the Federation.

5.5 Opening prayers before State Events: This is one of the most common practices that violate the principle of secularity, and freedom of religion. This is because during such events the prayers, commonly said, may not be the prayers of all the people present in the event. The proper thing to do is to scrap off the prayers totally. In its place, the National Anthem and the National Pledge should mark

the beginning and the end of all state events. This will also help protect not just the right to religious freedom of the people, but foster the principle of secularism in Nigeria.

5.6 Exemption of Religious Institutions from Taxation: There is the general notion that religious institutions like churches and mosques are exempted from the payment of tax. The exemption under Section 23 (1) (c) of Companies Income Tax Act only apply to the extent that the income of the exempted organization is not generated from any trade or business carried on by such organization. There is need for the church to be subjected to taxation, as religious institutions are also subjects to the state. They should be taxed, so that the religious institutions will not be seen as being equal to the Government or the state. That is the reason behind the separation of the church and the state (secularism), to declare the independence, and dominance of the state over religion.

5.7 Various Public Holidays in Honour of Various Religious Feasts: The major religions in Nigeria are Christianity and Islamic religions. They have their respective days when they observe their holy feasts. On these days, a National Public Holiday is declared to commemorate with them. Strictly construed, this is an infringement on the fundamental right to freedom of religion of members of other religious sects who are not given similar recognition during the days of their respective religious feasts. Since these holidays cannot capture all other religions, they should be scrapped off, to avoid he continuous injustice being meted on members of other religious institutions that are not covered during National Public Holidays. Nigeria should only consider holidays that celebrate our National pride and integrity, as well as those which are celebrated globally and are not religious-affiliated.

5.8 Skewed Government Appointments: since the inception of the Government of President Muhammadu Buhari in 2015, the Government has been criticized and rightly so, in our opinion for favouring the Muslim North in key Government Appointment particularly on the Appointments of Service Chiefs, Justices of the Appellate Courts among others.

6. Conclusion

Secularity exists where the state is separate from religion, or of not being exclusively allied with or against any particular religion. On the other hand, freedom of religion entails the fundamental right of freedom of thought, conscience and religion, which also includes the freedom to change religion or belief, and freedom to propagate and manifest the precepts of that religion. It is important that the highlighted provisions of the Constitution on freedom of religion, and secularity as well as various practices and means advanced in this work are enforced so as to guarantee more liberal, peaceful, secure and democratic state for Nigeria.