

**CONFLICT OF OPINIONS ON THE CONSTITUTIONAL RIGHT TO
FREEDOM OF RELIGION IN NIGERIA: AN ISLAMIC
PERSPECTIVE**

Muhammad Kannike Hassan
Department of Islamic Studies,
Life-Gate College of Education, Laduba-Afon Road,
Kwara State.
kannikeolodomeji@gmail.com
08151600134

&

Muhammadu-Thani Muhammad-Mukhtar
Department of Islamic Studies,
Al-Hikmah University, Ilorin
abuubada14@gmail.com
08060179394

Abstract

The right to freedom of religion is enshrined in Section 38 (1) of 1999 Nigerian Constitution. However, religious leaders and scholars hold divergent opinions on the assumption that the country is either a secular or multi-religious state. Moreso, the right to propagate religion as enshrined in the Constitution is applied by some missionary schools to impose their religious teachings on children of another religion and prevent such children from practising theirs, the aftermath of which has been provoking crises between Muslims and Christians in some quarters. Against this backdrop, this study examines divergent opinions on the constitutional provision to ascertain the religious nature of the country. It also investigates into the root causes of the conflict of opinions and proffer solution from Islamic perspective. Thus, analytical method was adopted. It was discovered from the realities on ground that Islam and Christianity are officially recognised along other religions in the country contrary to the erroneous notion of its secularism. It was also found that conflict of opinions on freedom of religion is due to some factors which are to be redressed from Islamic point of view. It was concluded that based on Section 38 (1) of the Constitution and in accordance with Qur'ānic injunctions, everyone is to be permitted to practise his religious teachings either in private or public as long as such a religious practice does not impede the right of others to practise their religion.

Keywords: Constitution, Freedom, Religion, Right, Conflict.

Introduction

Conflicts have been generated from different phenomena in Nigeria. A conflict may wear the picture of a particular incident while there may be a hidden motive for it. Adam and Abdul-Salam submit that for conflict to manifest, it is often generated from two or more causes.¹ A political conflict may include a religious or ethnic motive and vice-versa. Besides, a law may be enacted with a particular intent, but it may be interpreted to imply a different thing which suites the interest of the interpreter. This is the reason for which genuine proof must be advanced by both the claimants and the defendants. The Prophet of Islam says: "...The onus of proof lies upon the claimant ..."²

Section 38 (1) of the 1999 Nigerian Constitution is being interpreted by some scholars, such as Quadri³ and Makinde⁴ to indicate that Nigeria is a multi-religious society where everyone and every community is given the right to practise the faith of his choice. However, some other scholars, such as Olademo and some Church leaders⁵ posit that the country is a secular state where teachings of a faith should not be officially implemented.⁶

Moreso, putting religious teachings of a faith into practice is impeded by the practice of another faith on the proof from the same Constitutional provision of Section 38 (1). For instance, the right to propagate religion as enshrined in the Section of the Constitution is applied by missionary schools to impose their religious teachings on children of another religion different from theirs. Therefore, Muslim students are made to pray in Christian mode of worship while their right to pray in Islamic way is being denied for them.⁷

The scenarios described above have provoked religious conflict between Muslims and Christians in contemporary Nigeria. In this regard, this study investigates the conflict on the interpretations of Sections 38 (1) and Section 10 of 1999 Nigerian Constitution with reference to the freedom of practice of faith and its restriction in the country. The goal of the study is to proffer solution to the conflict on the implication of the constitutional provisions which are interpreted divergently by the adherents of Christianity and Islam in Nigeria. In the light of this intention, the study adopted analytical method to explicate various views of scholars on constitutional right of citizens to practise the teachings of their faith in a heterogeneous society like Nigeria.

Conceptual Clarifications

Conflict

Conflict is "a state of disagreement between two or more people, groups of people or countries."⁸ According to Adam and Abdul-Salam, the nature of conflict determines its meaning. It can be a positive disagreement if

it is constructive and assists to discover new ways of doing things for positive change. Conflict can also be a negative disagreement between the warring factions if it is destructive and leads to physical harms, death, destruction of property and social injustice.⁹ Thus, the outcome of a conflict depends on the way it is handled. If the deep root causes of a conflict are addressed and resolved, it will not escalate to violence, and there will be no hostility between the rival parties. It is to be noted that conflict is a natural phenomenon and when it occurs, Allah enjoins the doing of justice and avoidance of sentiment. He says:

O you who believe! Stand out firmly for Allah as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just, that is near to piety... (Q.5:8)

Constitution

Constitution as defined by Anifowose is “a collection of norms or standards according to which a country is governed.”¹⁰ He further asserted that constitution “contains statements intended to define the relations between rulers and ruled, the basic framework of government, the rights and duties of citizens, and many important procedures to be followed in connection with those matters.”¹¹ In a concise statement, it is “the basic design of the structure and powers of the state and the rights and duties of its citizens.”¹² A model of constitution is that of Madinah Constitution in which both Muslims and non-Muslim citizens were accorded equal right of citizenship.¹³

Freedom of Religion

Different definitions are given to religion according to the background and academic disciplines of researchers. From the perspective of many people, religion is a belief in the Supreme Being, and activities connected with such a belief. What the Supreme Being implies to different religions is diverse. According to Onyeidu, Islam, Christianity and Judaism are regarded as monotheistic religions in the conception of Supreme Being.¹⁴

The right to do or say what one wants without being obstructed by anyone is referred to as freedom.¹⁵ Ayuba posits that freedom is to achieve what one desires, as long as it does not cause harm or disturbance to others.¹⁶ In this regard, freedom of religion can be defined as: having liberty to practise the contents of one’s religion without affecting fundamental human rights of others. Right to freedom of thought, conscience and religion as guaranteed in the Section 38 of 1999 Constitution of the Federal Republic of Nigeria is in consonance with article 18 of the Universal Declaration of Human Rights (UDHR).¹⁷ Thus, everyone has the right to practise and observe his or her religion. Allah says: “There is no compulsion in the matter of religion” (Q.2: 256).

Divergent Opinions on 1999 Constitutional Provisions Regarding Religious Freedom

Some scholars, such as Quadri, Makinde and Alaro assert¹⁸ that right of every one to practise his/her religion is guaranteed in section 38 (1) of 1999 Nigeria Constitution which stipulates:

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.¹⁹

Interpreting this constitutional provision, Quadri holds the view that Nigeria is a multi-religious state in which many religious activities are accorded official recognition. He cited several instances among which are: building the National Mosque and National Ecumenical Centre in Abuja for which a huge amount of money was donated by the Federal Government in 1980s, and declaring every Saturday and Sunday as holiday to allow Christians to attend churches. Out of 365 days, 104 days were devoted to Christians' cause to enable them enjoy weekend church services. According to Quadri, if Nigeria is a secular state as asserted by some Christian leaders, she will not declare public holidays for religious festivals. He further argues that if Nigeria is a secular state, why does national anthem contain the phrase " O God of creation", while the national pledge ends with " So help me God"?²⁰ To this effect, Alaro declares:

Interpreting Section 10 as declaring Nigeria as a secular State in opinion of many legal analysts, is inconsistent with the realities on ground. Both the Federal and State Governments fund religious activities, such as Muslim and Christian Pilgrims Commissions/Boards, and even build mosques and churches in their different State Houses.²¹

Alaro further asserts that in line with the power conferred by the same Constitution, public holidays are declared to mark religious festivals. He also opines that argument advanced by some analysts to assert that both Islam and Christianity are recognised in Nigeria as state religions cannot be easily debunked if the instances stated above are reasonably considered.²²

Some other scholars, such as El-Zakzaki and majority of Christian populace²³ posit that the Federal Republic of Nigeria is a secular state in which all the states of the federation also operate a secular government. El-Zakzaky asserts that *Shari'ah* cannot be implemented in a secular state like Nigeria which is not an Islamic state.²⁴

In the submission of Olademo, she argues that provision of freedom of religion does not imply that a particular religion can be “official in a purely secular setting as provided for by the Constitution.”²⁵ On the contrary, she asserts somewhere else that Section 10 of the 1999 Constitution succinctly describes Nigeria’s status as a multi-religious nation which prohibits the Federal and States to adopt a particular religion as state religion.²⁶ It is obvious therefore, from the both submissions that Olademo claims that the country is both multi-religious and secular at the same time.

While minority of the Christian populace in Nigeria submits that Nigeria is a multi-religious state, the majority of them insist that it is a secular state. This is as confirmed by Imo thus: “Religion should be separated from the state thereby opting for the principle of secularity of the state.”²⁷ The minority which, according to Imo, is becoming a forceful group maintain that “if there should be a state religion it can only be Christianity.”²⁸

Noticeably, Section 10 of the 1999 Constitution declares that no religion shall be adopted as State Religion by either federal or state government. This constitutional provision does not prevent a combination of religions widely embraced by citizens to be religions of the country as it manifests presently in the country. It only allays the fear of adopting a particular religion as the sole state religion. It should be noted that religious prayers that are said during national celebrations in the country are those of Islam and Christianity. This instance indicates that the two religions are the most recognised religions in the country.

It should be noted that making some of the religious activities officially implemented in Nigeria has basis in the Constitution itself. Establishment of *Shari’ah* Courts (Section 275 (1) of the 1999 Constitution) and introduction of non-interest banking have basis in the Law.²⁹ Quadri notes that the Constitution of the Federal Republic of Nigeria empowers any state to enact its laws for the good governance of the state in as much as the law is passed by the House of Assembly and signed in to law by the governor. He further opines that “All that matters is for the law to enjoy tremendous support and not fall within the exclusive list of the Federal government.”³⁰ Justifying the step taken by the ex-governor, Sanni Yerima of Zamfara, Quadri quotes him as saying that:

Shari’ah if fully implemented is capable of ridding the society of immorality and obscenities. Section 4 (4) (7) empowers a state governor to find solution to the problem in his state by regulating the life of the people. Section 4 (4) (7) says: “The House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof.”³¹

In this regard, the realities on ground and constitutional provisions as proved earlier indicate that Nigeria is a multi religious nation. Section 38 (1) stipulates that everyone is entitled, either alone or with others and in public or in private, “to manifest and propagate his religion or belief in worship, teaching, practice and observance.”

Factors Provoking Conflict of Opinions on Freedom of Religion

Some factors observed to be the causes of conflicts on freedom to religious practices are discussed as follows:

Fear of Domination of One Religion over the Other

Qur’ān 2 verse 256 opposes imposition of Islamic teachings on adherents of other religions. This is the reason for which payment of *Zakāt*, the use of *Hijāb* and other Islamic modes of worship and social life were not imposed on Christians living in the territories governed by Islamic Law. Onibonoje, a Christian historian, affirmed that when Muslims conquered Egypt and Jerusalem, the Christians therein were treated well, and they were allowed to practise their religion.³² He also declares that unlike the Arabs who “often allowed the conquered people to practise their religion if they pay tribute or tax to the Caliph, Christianity refused any compromise between itself and idolatry.”³³

It is affirmed in this study that the Section 38 (1) of 1999 Constitution empowers everyone to practise the teachings of his religion, either individually or in groups. Discovering that the implementation of some facets of their religion cannot be effectively accomplished except they are officially introduced, Muslims lobbied for the official establishment of Muslim courts and non-interest banking system in Nigeria.

Having assumed that Islam may dominate their religion if the agitations of Muslims were granted, some Christians started to rumour that Muslims were making efforts to Islamise Nigeria which is a pluralistic and secular society. Imo observes that the Christian radicals in the Northern parts of Nigeria started to react to Muslims’ agitations. He describes the Christians’ reaction as follows:

The Christian radicals; on their own part have continued to carry out aggressive preaching during which some of them pass unguided negative remarks about the Prophet or Islam as a whole in such ways that infuriate the Muslims and sometimes lead to conflict. This led to the northern part of the country experiencing more of the impact of religio-political controversies than other parts of the country.³⁴

According to Makinde, some Christians are nursing fear of forcing Christians to Sharī’ah legal system when it becomes implemented fully. He pointed out that a Christian leader declared that he does not support the idea

of generalising the implementation of *Shari'ah* where the state would look like a Muslim state.³⁵ Shittu observed that, currently, *Shari'ah* is being implemented to a great extent in twelve states of Northern Nigeria, namely; Zamfara, Niger, Jigawa, Kebbi, Sokoto, Yobe, Borno, Gombe. Others are Kano, Katsina, Bauchi and Kaduna.³⁶ Thus, there is no any case of dragging a non-Muslim into it against his will. Likewise, since the inception of Islamic Banking in the country, there is never any case of forcing non-Muslims to use it.

Some Christians also describe the introduction of non-interest banking as a plot to Islamise Nigeria. Allaying this fear of Islamisation of the country, Alaro discloses that non-interest banking is being practised today in not less than seventy countries of the world including the most secular countries of the world in Europe, America and Japan.³⁷ He also pointed out that:

The introduction of a non-interest or Islamic banking does not reflect in any sense adoption of Islam as a (sic) religion, and this explains why Britain for instance remains a Christian state, with Christianity as State Religion, despite having Islamic Bank of Britain (IBB) on its soil since September 2004.³⁸

Religious Intolerance

Rivalry in the mind of some adherents of some religions makes them anxious of impeding the practice of another religion even when such a religious practice of others does not obstruct theirs. It should be noted that differences among people particularly in religions is predetermined by Allah Who says:

If it had been your Lord's Will, all who are on earth would have believed. Will you then compel mankind, against their will, to believe (Qur'an 10:99).

Thus, the implication of this verse is that, it is normal to find different religions in a state. This is the reason for which the Prophet and his Companions tolerated the existence and practice of Judaism and Christianity in states governed by Muslims in as much as there was no treachery³⁹ from their part against Islam.

Failure of the authorities of Christian missionary schools taken over by the government, to allow female Muslim students to use *Hijab* is an act of religious intolerance. It is to be noted that in the Christian missionary schools, Muslim students are denied their right to pray in Islamic way. Female Muslim students are prevented to wear *Hijab* to cover their head as prescribed by their religion. It is against this backdrop that a Court of Appeal Judge, Justice Saidu Tanko Husaini declared in his verdict that the wearing of *Hijab* or veil by female Muslims to cover their heads is

“an act of *Ibadah* (worship) as recognised in the Islamic religious worship. The act or practice is also in tune with the Constitution of Federal Republic of Nigeria, 1999 (as amended)”⁴⁰

Also worthy of mentioning as a religious intolerance is the protest of Christian Association of Nigeria against the registering of Nigeria as a member of Organisation of Islamic Conference (OIC) under General Babangida’s regime. It is based on this that Olademo observes that the implication of inclusion of the country as a member of OIC is the loss of religious neutrality status.⁴¹ Contrary to Olademo’s position on the religious status of the country however, Iorjaah argues that if development, dignity and unity of Nigeria and Nigerians are to be promoted, the first step is to remove the erroneous notion that Nigeria is a secular state.⁴² It should be noted that Nigeria is a multi-religious state based on the realities on ground as explicated earlier.

Furthermore, as established earlier, the introduction of Non-Interest Banking System in Nigeria was described by some Christians as a plot to Islamise Nigeria, simply because it is based on the teachings of Islam.⁴³ Nwabueze and Eso among others argued that establishment of Islamic Banking amounts to adopting Islam as a state religion.⁴⁴ Their claim notwithstanding, Omidiwura and Akinmameji frankly note that, as a result of their religious intolerance and hatred for Islam, the Christians do not bother with the economic benefits of non-interest loan of the Organisation of Islamic Conference (OIC) before they opposed Nigeria membership of the organization.⁴⁵

Owing to the intolerant nature of some Christians to *Sharī‘ah*, Makinde asserts that as long as Nigerian society is a pluralistic one where the Constitution enshrines freedom of religion, both Muslims and Christians have the right to live and practise the teachings of their religions. He therefore pleads with the Christians that for the sake of religious tolerance and mutual understanding, they should consider a way by which they would concede to the demand of the Muslims for their right because they “consider *Sharī‘ah* integral part of their faith.”⁴⁶ If there is religious tolerance and understanding among Nigerians, demand for what would enhance the practice of a particular religion will not be opposed by the adherents of another religion.

Evangelical Mission

It is asserted that Islam and Christianity are the missionary religions which struggle to proselytize converts to their folds. Thus, some missionary individuals and groups are enthusiastic to impose their religious beliefs and practices on the adherents of other religions. This habit is a factor leading to the conflict of opinions on the Constitutional provision of Section 38 (1) regarding the freedom to manifest and propagate one’s religion. For instance,

Adeniyi points out that the fact that Muslim children are forced to take Christian Religious Studies in schools would be sufficient to generate conflict between conscious Muslim parents and Christian schools' administrators.⁴⁷

Moreso, it is discernible that the habit of Christian missionary schools' authorities to force Muslim children to pray in Christian mode of worship in their schools is an imposition of their religious belief on the adherents of another religion. Proofing their argument, in Ilorin division of the Court of Appeal, on their right to enforce Christian teachings on the Muslim children in over 150 Kwara State missionary schools already taken over by the government, the Christian missionaries asserted that Section 38 (1) of the 1999 Constitution empowers them to establish, manage and run the schools in accordance with Christian religious doctrines. They maintained that the major motive of establishment of the missionary schools is to propagate Christianity. Thus, the missionaries concluded that it would be provoking enough and be regarded as an insult to allow wearing *Hijāb* in schools or institutions established to practise Christianity.⁴⁸ Delivering his verdict in the Court of Appeal, Justice Saidu Tanko Husaini declared:

Every person has a right to conduct himself in a manner permitted by his religious calling, but the provision (of section 38 (1) of 1999 Constitution) does not permit any person under the guise of propagating his religion to impose his beliefs on another person who does not belong to the same religious calling with him.⁴⁹

Conclusion and Recommendations

This study has attempted to discuss the issue of conflict of opinions on Constitutional Right to freedom of religion as enshrined in Sections 38 (1) of the 1999 Nigerian Constitution as amended. It has been found that neither Section 38 (1) nor Section 10 of the Constitution prohibits religious practices to be accorded official recognition in Nigeria. Therefore, on the basis of the realities on ground and the evidences from Constitutional provisions as proved earlier, the country is a multi-religious society. This is the reason for which Nigeria governments give official recognition to some religious practices like pilgrimage, religious education, holidays for religious feasts and national places of worship.

Moreso, it has been established that Section 38 (1) of the Constitution enshrines freedom to practise religious teachings in a manner that does not violate the constitutional right of other religions under the guise of propagating a religion particularly in both private and public institutions. It has been pointed out also that Section 10 of the 1999 Constitution as amended

only allays the fear of confining a state to a particular religion and impeding the practice of another religion. The Constitution does not make Nigeria a secular state nor oppose the establishment and approval of religious institutions by the government in the country.

In view of the factors observed to be the causes of the conflict of the opinions as pointed out in this study, the following recommendations are proffered as panacea of the conflicts:

- i. The position of the Nigerian Constitution on the issue of religious nature of the country should be made obvious based on the realities on ground. Therefore, Section 10 of 1999 Constitution should be amended in the subsequent constitutional amendment to stipulate that the country is a multi religious nation;
- ii. Religious leaders themselves should embrace the culture of religious tolerance and exhort their followers on the need to tolerate the rights of adherents of other religions for peaceful co-existence;
- iii. Nigerian Government at all levels, should protect the rights of Muslims to *Shari'ah* courts, the use of *Hijab* and worship in schools as guaranteed in the Constitution;
- iv. Religious leaders and organisations should extensively enlighten people that their religious practices which require government approval and intervention would not affect adherents of other religions. These include establishment of *Shari'ah* Court, non-interest banking system and a dressing code based on religious prescription;
- v. Dialogue should be embraced to settle religious conflicts among adherents of different religions in the country. And;
- vi. Scholars and law experts should avoid sentiment while interpreting constitutional provisions regarding religious matters.

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