

## Religion, Rule of Law and Social Stability

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Black's Law Dictionary defines 'Religion' as a system of faith and worship involving belief in a supreme being and usually containing a moral or ethical code. The same dictionary defines 'Law' as the body of rules standards and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them. Religion has always been a part of law. Most of our laws are derived from the religion of the founding fathers of the nations for whom the laws were made. Laws are usually derived from scripture, tradition and reason. Throughout the history of mankind, law has been influenced by religion. Law also embodies principles of equity and good conscience, in short, the values and morals of the society. No doubt, morality plays an important role in regulating social relations that maintain social order. Even though morality and law have different identities, where morality conflicts with law, the law must prevail. Religious sentiments must also be distinguished from the law. In the celebrated case of *Thomas v. Olufosoye* (1986) 1 NSCC 326, the Supreme Court of Nigeria held that a mere church member had no locus to challenge the appointment by the House of Bishops of

a Bishop for th. The court in appreciating the dichotomy between law and religious sentiments held as follows:

"What is very important in the case is the danger of bringing religion as such to the reasoning of jurisprudence. The reasoning in religion is one of God or Allah which passeth all jurisprudential understanding. The more so when Christian judges have to be called upon to settle Moslem disputes or Moslem judges adjudicate upon Christian issues. The unbeliever in such cases can only apply the law of the state. Since Aquinas' summa theological, jurisprudence as legal reasoning within the confines of law itself has not been co-terminus with religious philosophy. Yet judges once they are seized of a matter, have no choice but to apply the law and not religious sentiments. Perhaps, religionists would assist themselves more, by devising a forum for settlement of their disputes and come to court only when that fails. For legal locus standi may not be the same to a believer as it is to lawyer."

No doubt law is a vital tool in safeguarding freedom of religion or freedom not to believe in any religion. Protection of religion by the law is nor universal.

Laws of non secular countries protect the religion of the state from perceived apostasy and not individual right to religion.

I am a Judge, I deal daily with live issues. I am not too strong on all the theoretical expositions of the theme of this symposium, but if you follow

world news, you will realize that my Country, Nigeria, encapsulates the essence of the theme under discussion. I will talk briefly about religion, rule of law and social stability in Nigeria and to situate the topic in the context of the Nigerian State. Nigeria is multi-lingual, multi-ethnic, and multi-religious. The two major religions are Islam and Christianity. Both religions were imported into the homogenous entity called Nigeria. Islam by the Jihadists from North Africa and Christianity by the Missionaries who came along with traders and later the Colonialists from Europe. Presently, the grundnorm of Nigeria is the Third Republican Constitution of 1999 with subsequent amendments. The Constitution did not state specifically that Nigeria is a secular state. However, S.10 prohibits both the states and federal government from adopting any religion as a state or federal religion. S.38(1) guarantees freedom of thought, conscience and religion. S.42(1) guarantees the right to freedom from discrimination in any form and specifically names religion. An interesting non-justiciable part of the Constitution is Chapter II—this is called Fundamental Objectives and Directive Principles of State Policy. In S.17(3) the fundamental principles enjoins among other things that the state should provide facilities for free religious life. In short, freedom of religion and expression of religious faith is provided for by the Constitution. There seems to be an understanding in view of the elaborate constitutional evidence of an unambiguous intention

to separate state affairs from religious creeds that Nigeria can safely be described as a moderately secular nation.

The constitution also recognizes the fact that three concurrent systems of law co-exist in Nigeria. These are: (1) inherited common law and equity principles on one hand and statutes promulgated by the state or national legislative houses, (2) customary law and (3) sharia law. These three are the sources of Nigerian law.

Public and judicial office holders in Nigeria must take the oath of office. The Constitution goes further in S.280 to provide for the establishment of a Customary Court of Appeal for each state of the federation. Appeals from which by S.245 lie to the Court of Appeal. This customary Court of Appeal has appellate and supervisory jurisdiction in civil proceedings involving questions of customary law. The Constitution in S.275 provides for the establishment of the Sharia Court of Appeal of each State. Appeals from the State Sharia Court of Appeal lie to the Court of Appeal. S.277 of the Constitution provides that the Sharia Court of Appeal shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law. S.277(2) specifies the disputes as the questions of Islamic personal law regarding Muslim marriage, family relationships, guardianship of an infant, wakf, gift, will or succession, maintenance of a person with physical or mental disability.

Thus the Nigerian Constitution has tried to interweave the law of the land with the different religions or belief system of the generality of the people. The Constitution is an embodiment of the spirit of Chapter 1 of the Magna Carta, Articles 18 and 19 of the 1948 Universal Declaration of Human Rights. The African Charter on Human and Peoples Rights adopted in Nairobi on 27/6/81 which entered into force on 21/10/86 and was domesticated in Nigeria by the promulgation of the African Charter on human and peoples' rights (Ratification and Enforcement Act, Cap A9 Laws of the Federation).

The question now arises as to how the elaborate provisions of the Nigerian Constitution has helped to promote social cohesion and stability since the interest of every religious and cultural group had been recognised. In my complex country, there are many Christians in the predominantly Muslim North and there are many Muslims in the predominantly Christian South.

In 1978, I travelled from Ibadan to Yola Ibadan in the Fourth War while Yola is in the North East. I found the largest Catholic Church I had ever seen in Nigeria in Yola. I lived in Sokoto in the North West from 1983-1987. There was a vibrant Christian community there and the Sultan of Sokoto gave land to any sect of the Christian faith which required it. There were no religion tensions of any sort that I can recollect at that time and everyone seemed

satisfied with the status quo. This was well before the elaborate provisions in the 1999 Constitution.

Some of the successive military government condoned and encouraged the illegitimate influence of religion on state matters. This was for the purposes of political legitimacy and religious sanctity. However, since 1999 and the entrenchment of democracy and the rule of law, overt religious incursions into governance has decreased considerably. The courts have also played a notable part in the entrenchment of the rule of law by deciding controversial constitutional issues relating to law and religion in a way that left everyone in no doubt as to the separation of law and religion. In 2009, the Court of Appeal, Ilorin division decided that the university was right to refuse the wearing of the full ijab by female students which covered their faces and prevented examiners from seeing their faces before they entered the examination halls.

In 2006 the Federal Ministry of Defense published the Nigerian Defense Policy. The document identifies Nigeria's security interests as including strengthening the Federal Republic of Nigeria, advancing her interests and objectives, containing instability, controlling crime, eliminating corruption, enhancing development, progress and growth and improving the quality of life of every citizen.

One would hope that the elaborate provisions in the 1999 Constitution would suffice to satisfy every religious and ethnic group and the issue of exclusion would not rear its head.

That hope has been dashed by the activities of the Boko Haram sect which reared its head about ten years ago. Boko Haram means Western Education is “Haram” meaning “forbidden.” At the onset it was thought that the sect seeks a pristine Islamic State. However its motives and actions are now shrouded in mystery as its actions no longer have rhyme or reason. The sect attacks both Muslims and Christians alike and sends young girls as suicide bombers to the markets, churches and mosques. To date more than 20,000 Nigerians have been killed in the so-called Sharia motivated violence which has become the nation’s priority security challenge.

The killing of thousands of Nigerians has jerked from inertia all the politicians and religious leaders in Nigeria to dialogue and cooperative action in order to stem the excesses of that sect. I work with 89 other justices of the Court of Appeal. At least half of them are Muslims. Most Muslims, both the common people and the elite agree that there is no justification for the criminality perpetrated by Boko Haram on the Nigerian people. The over 300 secondary school girls preparing for their exams who were abducted from Chibok in North East Nigeria in April last year are yet to be returned to us. It is

an open sore which weeps daily to the consciousness of Nigerians. Reports from the various refugee camps where the women have been interviewed show that some of those rescued were raped and forced to convert to Islam in order to survive.

However, the Nigerian people are determined not to allow religious conflict to divide us and will continue to maintain the cohesion and social stability of the Nigerian Nation. It is our fundamental right to live in peace and we are determined to claim and maintain that right.

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