



THE ROLES OF THE STATE IN THE REGULATION OF FREEDOM OF RELIGION IN NIGERIA

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ABSTRACT

Freedom of religion in Nigeria is enshrined in section 38, 1999 Constitution of the Federal Republic of Nigeria, in a tripartite provision; Freedom of Conscience, Thought and Religion. In addition, section 10 of the same Constitution provides that Nigeria is a secular state. However, it would be unsafe to leave said right to freedom of religion, as sensitive as it, unregulated. Therefore, the state has the duty to regulate and checkmate the exercise of the said right. This paper aimed at appraising the duty of the state in regulating the freedom of religion in the country. We adopted the doctrinal method in carrying out the study, which included the use of primary and secondary sources. We discovered that, though Nigeria is a secular state, it is involved in the affairs of the two predominant religions in the state, Christianity and Islam. This bias has created a lot of loopholes in the system, which has paved way to corruption, loss of lives and property, amongst others. We recommended that the State should maintain a neutral status as a secular state as stated in her Constitution. This will help her regulate and checkmate religious activities without bias, by so doing, majority of the problems caused by religion will be solved once and for all.

KEYWORDS: Freedom, Worship, State, Regulation, Freedom of Worship, Nigeria

1. INTRODUCTION

Religion and its exercise are among the most sensitive discourses in different parts of the world, especially in Nigeria.¹It goes beyond one's belief, up to the person's perception of himself. That's why one can do all sorts of things in defence and protection of his religion. Nigeria, as a case study, protects the right to Freedom of Religion. It is therefore the duty of the country to regulate the manner in which the said right is practiced, professed and propagated. In appraising these duties of the state to regulate the right to freedom of religion, this paper shall

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¹A A Oba, 'The Legal Relevance of Religion in Nigeria' [1997] (54) *Punjab University Law Journal* 23.



therefore; discuss the conceptual and legal frameworks of the study; review related literatures, examine judicial attitudes towards regulation of freedom of religion in Nigeria; do a comparative perspective on the regulation of freedom of religion in selected jurisdictions such as Canada, UK, South Africa; and finally, discuss the summary of findings and make recommendations.

2. CONCEPTUAL CLARIFICATIONS

State

A state is a form of political association,² a modern political construction which has a government but not in itself the government.³ It is an institution through which individuals and groups seek to exercise power, but it is also an institution that exercises power over individuals and groups.⁴ A state is a formal group that is sovereign over its members and occupies a well-defined territory. It is the formal apparatus of authoritative roles and law norms through which sovereignty is exercised.⁵ It is a political structure made up of political elites, bureaucracy and public armed force endowed with the power to legislate and to tax.⁶

Regulation

Regulation is the diverse set of instruments through laws, formal and informal orders, and subordinate rules by which all levels of governments use to intervene in the economy and life of their citizens.⁷ It is a form of government intervention in economic activities and interference with the working of the free-market system.⁸ Regulation is used to prescribe conduct, calibrate incentives, or change preferences through which an institution can formally control her subjects and a state runs through the same practice. Regulation is also seen as all efforts of state agencies to steer the economy. It includes all mechanisms of social control – including unintentional and

²C Kukathas, 'A Definition of the State' [2014]33(2) *University of Queensland Journal Law Journal* 357.

³ Ibid

⁴ Ibid

⁵ R J Rummel, 'The State and Political Systems' <www.hawaii.edu> accessed on 29 October 2025.

⁶ B Pereira, 'The Concept of State' <<https://bressrpereira.org>> accessed on 29 October 2025.

⁷M N Moment, 'Governance and Regulations' <https://doi.org/10.1007/978-3-319-31816-5_1783-1> accessed on 31 October 2025.

⁸I A Moosa, 'Good Regulation and Bad Regulation' *Definition and Theories of Regulation* <<https://link.springer.com>> accessed on 31 October 2025.



non-state processes. It is the sustained and focused control exercised by a public agency over activities that are valued by the community.⁹

Freedom

According to Chanley and Chanley,¹⁰ there are different categories of freedom, first is the five ‘strands’ or ‘elements’ of freedom: Political freedom—the right of people to participate in public affairs; Civil liberties—the rights that individuals can assert against authority; Christian ideal—the capacity to act according to an ethical standard; Personal freedom—the ability to make crucial individual choices free from outside coercion; and Economic freedom—various meanings, for example, economic autonomy, liberty of contract, industrial freedom, economic security.¹¹

To Illarionov,¹² there are 2 types of freedom; positive and negative types of freedom. Positive freedom is considered primarily to be the physical ability to do something, such as having physical control over ability, strength, resources, information, knowledge, technology, and so on. Negative freedom is primarily a legalistic concept dealing with someone’s rights, and involves the absence of subversion of a person’s rights by somebody else.¹³ Freedom, simply put, is the liberty to carry out one's will or the liberty from being compelled to go against one’s will.

Religion

The word, “Religion” is derived from the Latin word, religare which means, ‘to bind’, ‘to bring together’, ‘to come together’, ‘to exist side-by-side’, and ‘to fuse’.¹⁴ Religion is a system of beliefs and practices by means of which a group of people struggles with the ultimate problems of human life”.¹⁵ It is a system which relates men to ultimate values, whether God or something else, and which embodies a creed, a code, and a cult.¹⁶ Religion was also defined as a

⁹C Koop and M C Lodge, ‘What is regulation? An Interdisciplinary Concept Analysis’ [2015] 11(1) *Regulation and Governance*.

¹⁰J Chanley and S Chanley, ‘What does Freedom Mean?’ [2015] <doi:10.13140/RG.2.1.1532.9449> accessed on 31 October 2025.

¹¹ Ibid

¹²A Illarionov, ‘Conditions for Freedom’ *Towards a Worldwide Index of Human Freedom* <www.fraserinstitute.org> accessed on 31/10/25.

¹³ (n 12).

¹⁴J Richmond, *Faith and Philosophy* (SCM Press 1966).

¹⁵ J M Yinger, ‘Structural Examination of Religion’ (1969) 8 *Journal for Scientific Study of Religion* 112.

¹⁶ J K Ayantayo, ‘The History of the Living Faiths’ (2002) Monograph, Department of Religions Studies, University of Ibadan, Oyo State.



"collective delusion, a symbolic thinking and an unstable behavior, an imagination and powerful behavior",¹⁷ as an institution which consists of culturally patterned interactions with culturally postulated spiritual beings, as a cord that binds people together in order to promote social cohesion and communal well-being, or as socially organized beliefs and activities offering solutions to questions of ultimate meaning.¹⁸ More technically, religion is the belief in and worship of a superhuman controlling power, especially a personal God or gods; a particular system of faith and worship, or a set of beliefs concerning the cause, nature and purpose of the universe, especially when considered as the creation of a superhuman agency or agencies, usually involving devotional and ritual observances, and often containing a moral code governing the conduct of human affairs.¹⁹

In a nut-shell, freedom of religion is the right to adopt or change one's religion or belief; the freedom to manifest religion in worship, teaching, practice, and observance; and the right to be free from coercion in matters of religion. Religious freedom is often used interchangeably with and/or confused with religious toleration. However, while the latter can give effect to aspects of the former, religious freedom – both from the perspective of the religious group and that of the wider civil society and polity, has a different "flavour", and often a different substance.²⁰

3. LEGAL AND INSTITUTIONAL FRAMEWORK FOR PROTECTION OF FREEDOM OF WORSHIP IN NIGERIA

Domestic Legal Framework

Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The 1999 Constitution provides as follows:

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.²¹

No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious

¹⁷ A Comte, *The Positive Philosophy* (Bell and Sons 1986).

¹⁸ R Stark, *A Theory of Religion* New Jersey (Rutgers University Press 1987).

¹⁹ C O Chijioke, 'State Control of Religion in Nigeria: The Dilemma of a Secular State' [2021] (9)1 *Global Journal of Politics and Law Research* 1.

²⁰ P Weller, 'Religious Minorities and Freedom of Religion or Belief in the UK' [2018] (13)1 *RHRJ* 76.

²¹ Constitution of the Federal Republic of Nigeria 1999 (as Amended), s 38(1).



ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.²²

No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.²³

Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.²⁴

The Child Rights Act 2003

The Child Right Act provides as follows:

Child has a right to freedom of thought, conscience and religion.²⁵

Parents and, where applicable, legal guardians shall provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child.²⁶

The duty of parents and, where applicable legal guardians to provide guidance and direction in the enjoyment of the right in subsection (1) of this section by their child or ward shall be respected by all persons, bodies, institutions and authorities.²⁷

Whenever the fostering, custody, guardianship or adoption of a child is an issue, the right of the child to be brought up in and to practice his religion shall be a paramount consideration.²⁸

Public Order Act

By virtue of section 1 of the Public Order Act, the governor of each state is to regulate public assembly meetings and processions on public roads and places of public resort in the state by issuing licences in this regard. Subsection (2) of the Act provides that any person desirous of convening an assembly, meeting or procession must apply to the governor of the state not less than 48 hours before the event. Section 2 of the Public Order Act empowers a police officer to stop any assembly, meeting or procession for which no licence has been issued or which violates any condition in an issued licence. Section 4 of the Act permits police officers to issue

²²Ibid, s 38(2).

²³ (n 22), s 38(3).

²⁴CFRN 1999 (n 21), s 38(4).

²⁵CRA 2003, s 7 (1).

²⁶CRA 2003, s 7 (2).

²⁷CRA 2003, s 7 (3).

²⁸CRA 2003, s 7 (4).



proclamations banning any public assembly meeting or procession for up to a period of 14 days.

Advisory Council on Religious Affairs Act

This law establishes an Advisory Council on Religious Affairs and charges the Council in section 3 with serving as an avenue for articulating cordial relationships amongst the various religious groups and between them and the federal government; assisting the federal and state governments and the populace by stressing and accentuating the position and roles religion should play in national development; serving as a forum for harnessing religion to serve national goals towards economic recovery, consolidation of national unity and the promotion of political cohesion and stability; considering and making recommendations to the federal government on matters that may assist in fostering the spiritual development of Nigeria in a manner acceptable to all religious groups.

National Christian Pilgrim Commission (NCPC) Act 2007

This Act establishes the Christian Pilgrim Commission as a government agency responsible for coordinating and regulating Christian pilgrimages in Nigeria. The objectives and functions of the NCPC under section 3(22) include organizing and coordinating Christian pilgrimages to Holy sites in Nigeria and abroad, promoting interdenominational cooperation, ensuring the safety and welfare of pilgrims, and providing necessary facilities and services for pilgrimage activities. The Act empowers the CPC to make regulations regarding the conduct of Christian pilgrimages

National Hajj Commission of Nigeria (NAHCON) Act of 2006

Section 2 (24) of the Act establishes the NAHCON as a body corporate with perpetual succession and a common seal. The objectives and functions of NAHCON are outlined under section 4 (25) of the Act. These include organizing and coordinating Hajj operations, ensuring the welfare and safety of Nigerian pilgrims, negotiating and regulating the cost of Hajj packages, providing education and training to pilgrims, and promoting unity among Nigerian Muslims.



Federal Character (Establishment) Act, 2004

This Act²⁹ establishes the Federal Character Commission and provides guidelines for ensuring equitable distribution of public offices, facilities, and socioeconomic amenities among the diverse ethnic, religious, and other groups in Nigeria [28]. It aims to prevent marginalization and ensure fair representation. Faith-based government agencies are expected to adhere to the principles of federal character in their composition and appointment of personnel.

Companies and Allied Matters Act, 2020

The Act³⁰ provides in section 823(1) provides that where two or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, they may, if so authorised by the community, body or association, apply to the Commission in the manner provided for registration under this Act as a corporate body.

Nigerian Tax Act, 2025

Section 55(1) of the Act provides that any property held in trust for (a) a religious or charitable institution of a public character... shall not be subjected to” tax.

4. LEGAL FRAMEWORK FOR PROTECTION OF FREEDOM OF RELIGION IN NIGERIA

International Legal Framework

Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR), specifically Article 18 thereof, affirms the right to freedom of thought, conscience, and religion, which encompasses the freedom to change one’s religion and to express one's beliefs.

International Covenant on Civil and Political Rights (ICCPR) 1966

²⁹Federal Character (Establishment) Act, 2004

³⁰Companies and Allied Matters Act, 2020



Article 18(1-2) of the Declaration provides: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching” & “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

African Charter on Human and Peoples'Rights, 1981

Article 8 of the Charter provides that freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Domestic Institutional Framework

African Commission on Human and Peoples'Rights

This commission is established by the African Charter on Human and People's Rights.³¹ The function of the Commission is to promote Human and Peoples' Rights which includes the rights to freedom of religion.

Corporate Affairs Commission

This commission is established by the Companies and Allied Matters Acts,³² The functions of the Commission shall be to administer the Act, including the registration, regulation and supervision of incorporated bodies under CAMA. Religious centres are registered under part C of CAMA as incorporated trustee thereby falling within the scope of the powers of this commission

National Human Rights Commission

The National Human Rights Commission was established by the National Human Rights Commission Act³³ under the resolution of the United Nations enjoining her member states to set up Human Rights Institutions, to guarantee and promote human rights, which are inherent

³¹African Charter on Human and People's Rights 1981, art 45.

³²Ibid, s 1(1) and 8(1).

³³National Human Rights Commission Act 1995.



and universal rights to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.

National Christian Pilgrim Commission

The National Christian Pilgrim Commission (NCPC) Act³⁴ establishes the Christian Pilgrim Commission as a government agency responsible for coordinating and regulating Christian pilgrimages in Nigeria. Section 1 [21] of the Act establishes the Christian Pilgrim Commission as a body corporate with perpetual succession and a common seal.

National Hajj Commission of Nigeria (NAHCON)

Section 2(24) of the Act³⁵ establishes the NAHCON as a body corporate with perpetual succession and a common seal, whose responsibility is to regulate and coordinates Islamic pilgrimages.

Advisory Council on Religious Affairs

Advisory Council on Religious Affairs establishes an Advisory Council on Religious Affairs whose function is to serve as an avenue for articulating cordial relationships amongst the various religious groups and between them and the federal government.

Federal Character Commission

Federal Character (Establishment) Act 2004 establishes the Federal Character Commission to ensure equitable distribution of public offices, facilities, and socioeconomic amenities among the diverse ethnic, religious, and other groups in Nigeria.

Truth and Reconciliation Commission

The Truth and Reconciliation Commission, widely known as the Oputa Panel, was an Ad hoc Commission established in the wake of the collapse of decades of military government in Nigeria. Set up by the former President Olusegun Obasanjo, the mandate of the Commission

³⁴National Christian Pilgrim Commission (NCPC) Act 2007.

³⁵National Hajj Commission of Nigeria (NAHCON) Act 2006



was to inquire into human rights abuses between 1984 to 1999.³⁶ Although the Commission forwarded its findings to the President in 2002, no major action has been implemented regarding the report submitted till date. Commendably, however, the Commission is known to have helped reconcile Nigerian communities in conflict such as several Ogoni communities' issues.³⁷

Other institutions include the following: Federal Ministry of Internal Affairs which houses the Advisory Council on Religious Affairs; Ministry of Culture which advocates for religious and ethnic tolerance; Nigeria Inter-Religious Council (NIREC); Nigerian Christian Pilgrims Commission; and so on.

5. JUDICIAL ATTITUDE TOWARDS REGULATION OF FREEDOM OF WORSHIP IN NIGERIA

By virtue of section 6(6)(b) of the 1999 Constitution, the judiciary has the power to entertain 'all matters'. This gives the courts the jurisdiction to try all matters including religious matters. In the same vein, according to Section 10 of the 1999 Constitution, the government of the federation or of a state shall not adopt any religion as state religion. However, in practice, Christianity and Islam, being the dominant religions in Nigeria³⁸ have always swayed the feet of the state to her favour, while other minor religion groups blackmail and point accusing fingers to the state, and the judiciary is not left out in this dilemma. While the jurisprudence of Nigerian courts, particularly the Supreme Court, has both affirmed and, at times, limited the scope of these rights, often balancing them against national security, public order, and societal interests,³⁹ in other occasions, they seem to side either of the dominant religions in their pronouncements. There has always been the problem of the length at which one is allowed to exercise this freedom of religion.

In *Shodeinde v Registered Trustees of the Ahmadiyya Movement in Islam*,⁴⁰ Kayode Eso JSC said now it appears to me that matters of faith are hardly matters for a court of law, but once there, the court should deal with them without passion, but only with justice according to the

³⁶ P Hayner, *Unspeakable Truths Transitional Justice and the Challenge of Truth Commissions* (2nd ed, Routledge 2010).

³⁷ A A Oba, The Legal Relevance of Religion in Nigeria [1997] 54 *Punjab University Law Journal* 23.

³⁸ E S Nwauche 'Law, Religion and Human Rights in Nigeria' [2008] *African Human Rights Law Journal* 8.

³⁹ O E Okeke, C G Umeobika and E S Ahanwa, 'Freedom of Thought, Conscience, and Religion in Nigeria: Constitutional Guarantees and Jurisprudential Gaps' [2025] (2) *Journal of Customary and Religious Law* 2.

⁴⁰(1983) NSCC 523.



law being a guide. Tobi JCA in *Registered Trustees of the Ifeloju Friendly Union v Kuku*.⁴¹ stated; ‘in our democracy where the rule of law both in its conservative and contemporary constitutional meaning operates, the doors of the courts should be left wide open and I mean really wide open throughout the day for aggrieved persons and the generality of litigants to enter and seek any form of judicial redress or remedy.’

In Nigerian Supreme Court in *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*⁴² on the issue of blood transfusion to a member of Jehovah’s Witness, Ayoola JSC, who read the unanimous judgment of the Court, stated that the right to freedom of thought, conscience or religion implies a right not to be prevented without lawful justification from choosing the course of one’s life, fashioned on what one believes, and the right not to be coerced into acting contrary to one’s belief. The limits of these freedoms, as in all cases, are where they impinge on the rights of others or where they put the welfare of society or public health in jeopardy. Law’s role is to ensure the fullness of liberty when there is no danger to public interest. Ensuring liberty of conscience and freedom of religion is an important component. The courts are the institutions society has agreed to invest with the responsibility of balancing conflicting interests in a way to ensure the fullness of liberty without destroying the existence and stability of society.⁴³ However, in *Esabunor v Fayewa*⁴⁴ the Court of Appeal entertained the question of whether a parent could object to life-saving treatment for their child based on the former’s belief. The Court held that a mother could not object to such a lifesaving treatment thus the mother’s freedom of religion was suppressed by the interest of the state in the protection of her child’s right to live.

In *Registered Trustees of the Rosicrucian Order, AMORC (Nigeria) v Awoniyi*,⁴⁵ Iguh JSC declared that it cannot be seriously suggested that there was anything secret in the teachings of Jesus Christ which in my view is entirely public and properly documented in the scriptures. Clearly to assert, as the plaintiff unequivocally did, that Jesus Christ was a member of secret societies and that he was an advocate of occult teaching is speaking for myself, satanic, blasphemous and entirely unacceptable. In *Adamu v Attorney-General of Borno State*⁴⁶ where

⁴¹(1991) 5 NWLR (Pt 189) 65.

⁴²[2001] FWLR (Pt 44) 542.

⁴³E S Nwauche, ‘Law, Religion and Human Rights in Nigeria’ [2008] *African Human Rights Law Journal* 8.

⁴⁴(2019) LPELR-46961(SC).

⁴⁵(1994) 7 NWLR (Pt 353) 154

⁴⁶(1996) 8 NWLR (Pt 465) 248



the appellants as plaintiffs instituted an action in the High Court of Borno State, claiming a declaration that the practice whereby they paid for the teaching of Christian religious knowledge to their children in the same school where their local government (the Gwoza Local Government Council) paid teachers of Islamic Religious Knowledge was unconstitutional as such a practice is discriminatory. They also sought an order directing the Gwoza Local Government Council to pay the salaries of teachers of Christian Religious Knowledge. The trial judge dismissed the action on a preliminary motion that the subject matter of the suit is not justiciable, because it fell within chapter two of the 1979 Constitution. The Court decided that the matter was justiciable and that, had the trial judge gone to trial and the facts established, it would have amounted to the appellant's fundamental right of freedom from discrimination based on religion. Consequently, the Court of Appeal remitted the case to another High Court judge for trial.

In *Inspector-General of Police v All Nigeria Peoples Party*⁴⁷ the Court of Appeal considered whether the Public Order Act, requiring a licence to hold assemblies, permits and processions, was constitutional and justifiable under section 45 of the 1999 Constitution. The issue was whether such a law is reasonably justifiable in a democratic society, or an unwarranted substantial conditionality for the exercise of the freedom of assembly and association. The Court held that the requirement of a licence by the Public Order Act was unconstitutional, as it stifles the right of citizens to assemble freely and associate with others. The Court recognised the right of the government to safeguard law and order in a society, but held that the means of doing this should not stifle fundamental personal liberties.

The wearing of hijabs in public institutions in recent times has become a discourse which has called into question the supposed secular compass of the Nigerian state following the decision of the Supreme Court in *Lagos State Govt. and Ors v Asiyat Abdulkareem*,⁴⁸ wherein the court in a split five-two judgement, held that “wearing of the hijab was an Islamic injunction and an act of worship required of Muslims and as such a fundamental right guaranteed to Muslim women.⁴⁹ However, in *Provost, Kwara State College of Education v Bashirat Saliu*,⁵⁰ the Court

⁴⁷ (2007) 18 NWLR (Pt 1066) 457

⁴⁸ (SC/910/16)

⁴⁹C M Elikwu, O J Olujobi, E T Yebisi, ‘The Legal and Institutional Framework for the Protection of Religious Rights in Nigeria and the Right to Wear Hijab in Public Institutions’ (2023) *FIOORResearch*

⁵⁰ (2008) 2 NWLR (pt 1071) 511 (CA)



of Appeal of Nigeria ruled that Muslim students could not wear hijab in a Christian mission school, citing the need to preserve the identity and ethos of the institution.

The underlying issue is the inconsistency in judicial approaches. Courts have often adopted divergent standards when adjudicating religious rights based on geography, religion of the litigants, or the nature of the institution involved. This has eroded the predictability of outcomes and undermined public confidence in judicial neutrality.⁵¹ This judicial evasion perpetuates legal uncertainty and emboldens parallel religious legal systems.⁵²

6. LITERATURE REVIEW

The Constitution, being the supreme law in Nigeria, permits states to legislate on matters of religion (especially personal law), such laws ought to conform to constitutional guarantees of fundamental rights. However, while the Constitution is, some state-level laws, particularly in the North, have introduced Sharia-based criminal codes. These laws, applicable to Muslims, criminalize actions like blasphemy, apostasy, and non-conformity with Islamic tenets. In 2000, Zamfara State enacted the first Shari'a Penal Code in Northern Nigeria. In due course, 11 other northern states followed this example and at present Islamic criminal law is enforced in 12 northern states of Nigeria by the enactment of new Penal Codes or the amendment of the existing Penal Code. The Shari'a Penal Codes contain provisions on (i) Qur'anic offences (hudûd), such as unlawful sexual intercourse (that is, between persons who are not married) (zinâ); theft (sariqa); robbery (hirâba); drinking of alcohol (shrub al-khamr); false accusation of unlawful sexual intercourse (qadhf); (ii) provisions on homicide and hurt; and (iii) corporal punishment (caning or flogging) as penalty for many offences. The punishments contained in the Shari'a Penal Codes include death, forfeiture and destruction of property, imprisonment, detention in a reformatory, fine, restitution, reprimand, public disclosure, boycott, exhortation, compensation, closure of premises, retaliation, death by stoning, amputation, caning, a blood price, the closure of premises and a warning. The Penal Code also contains a provision to the effect that any act or omission that is not specifically mentioned in the Code, but is otherwise declared to be an offence under the Qur'an, Sunnah and Ijtihad of the Maliki School of Islamic

⁵¹ O E Okeke, C G Umeobika and E S Ahanwa, 'Freedom of Thought, Conscience, and Religion in Nigeria: Constitutional Guarantees and Jurisprudential Gaps' (2025)(2)(2) *Journal of Customary and Religious Law*.

⁵² Ibid



Thought, shall be an offence under the Code and shall be punishable with a term of imprisonment or caning or with a fine or any combination of any two punishments.⁵³

Following are other provisions were the government of Nigeria regulated for the 2 dominant religions, Christianity and Islam, not minding her purported claim of being a secular state. The 1999 Constitution in its Preamble refers to ‘God’, as do oaths of office in the Seventh Schedule to the 1999 Constitution; taking of oaths by section 5 of the Oaths Act.⁵⁴ Section 8 of the Oaths Act allows persons to affirm rather than swear to an oath; Christian and Islamic holidays are mentioned by the Public Holidays Act;⁵⁵ section 35 of the Marriage Act prohibits the possibility of any person married under the Act from contracting a subsequent customary law marriage; a ‘husband’ and ‘wife’ by section 10 of the Criminal Code as meaning respectively the husband and wife of a Christian marriage, while section 1(2) of the Evidence Act defines husband and wife as meaning husband and wife of a monogamous marriage; section 10, which exculpates a wife for becoming an accessory after the fact for assisting or helping the husband escape punishment; section 33 which provides that a wife of a Christian marriage is not criminally responsible for doing or omitting to do an act which she is actually compelled by her husband to do or omit to do; and section 34 which provides that a wife and husband of a Christian marriage are not criminally responsible for a conspiracy between themselves alone. In addition, section 162 of the Evidence Act provides that a husband and wife of a monogamous marriage, including an Islamic marriage, cannot be compelled to disclose any communication made between them in the course of the marriage.⁵⁶

Nigeria public sees religion mostly as a "Nigercentric" affair which influences policy making and decision taking.⁵⁷ Religious freedom in contemporary Nigeria is increasingly undermined by systemic violence, pervasive discrimination, conflicting legal frameworks, and state inaction or complicity.⁵⁸ The inconsistency between Sharia-based laws and the constitutional provisions on freedom of religion remains a legal and political dilemma in Nigeria. Even the courts have sometimes sidestepped the issue, preferring to resolve cases on procedural or

⁵³ Zamfara Penal Code, s 92; Enyinna S Nwauche ‘Law, religion and human rights in Nigeria’ (2008) (8) *African Human Rights Law Journal*.

⁵⁴ Ch O1 Laws of the Federation of Nigeria 2004.

⁵⁵ Ch P40 Laws of the Federation of Nigeria 2004.

⁵⁶ Enyinna S Nwauche ‘Law, religion and human rights in Nigeria’ (2008) (8) *African Human Rights Law Journal*

⁵⁷ Gabriel Salifu, ‘The Influence of Religion on Nigeria’s Public and Foreign Policy Making’ (2025)(3)(1)(No 2) *Journal of Political Discourse* Vol. 3, Issue 1, No. 2

⁵⁸ O E Okeke, C G Umeobika and E S Ahanwa, ‘Freedom of Thought, Conscience, and Religion in Nigeria: Constitutional Guarantees and Jurisprudential Gaps’ (2025)(2)(2) *Journal of Customary and Religious Law*.



jurisdictional grounds rather than substantively engage with and resolve the conflict between religious penal codes and the Constitution.⁵⁹ The wearing of religious garbs such as the hijab in public institutions is a slippery slope that would usher in chaos as the ardent of other faiths would equally in the light of the decision, adorn their religious attires in total disregard for the dress codes formulated by public institutions.⁶⁰

The requirement of protecting individuals' religious identity by extension entails the undisputed right of the individuals to challenge laws of the state which violate their constitutional rights of freedom of religion. This right should be enjoyed in Nigeria and nothing should stop a citizen from challenging any state law or policy which violates or threatens to violate his right to freedom of religion,⁶¹ therefore, legislating on behalf of two religions smacks of breach of the constitution.⁶² The role of the state when it comes to freedom of religion as a secular state is absolute neutrality. Taking sides with any one or two of the religious groups has always led to unfavourable outcomes.

7. COMPARATIVE PERSPECTIVES ON REGULATION OF FREEDOM OF RELIGION IN SELECTED JURISDICTIONS:

Canada

Much of Canada's early commitment to religious freedom was simply a pragmatic compromise to ensure social peace and political stability, in a succession of judgments in the 1950s, concerning the Jehovah's Witness community in Quebec, the Supreme Court of Canada sought to articulate a principled account of religious freedom. In *Saumur v City of Quebec*,⁶³ the Court struck out a bylaw that forbade the distribution of literature in the streets of Quebec City without the prior consent of the chief of police – a bylaw that was understood by all as intended to limit the proselytizing activities of the Jehovah's Witness community.⁶⁴

The requirement that the state remain neutral in religious matters was affirmed in later judgments of the Supreme Court of Canada. Deschamps J, writing for the majority of Court in

⁵⁹ Ibid

⁶⁰ Oba, Abdulmumini Adebayo, 'The Legal Relevance of Religion in Nigeria' (1997)(54) *Punjab University Law Journal*.

⁶¹ C O Chijioke, 'State Control of Religion in Nigeria: The Dilemma of a Secular State' (2021) *Global Journal of Politics and Law Research* Vol.9, No.1, 1-11, 2021

⁶² G O Antai, 'Appraisal of the Legality of the Laws Establishing Faith based Government Agencies in Nigeria' (2024) 9(1) *Idosr Journal of Arts And Management*, 32-42

⁶³ [1953] 2 SCR 299 [Saumur]

⁶⁴ R Moon, 'Freedom of Religion in Canada – The Principled and the Pragmatic' (2023) 39 *WYBAJ* 513



*SL v Commission scolaire des Chênes*⁶⁵ accepted that: “Religious neutrality is now seen by many Western states as a legitimate means of creating a free space in which citizens of various beliefs can exercise their individual rights...” According to the Court, the state is precluded from supporting or preferring the practices of one religious system over another (or religious belief over atheism and vice-versa) and from restricting religious practices unless there is good reason to do so, or put more positively, the state has a duty to make some accommodation for religious practices.⁶⁶

Section 2(a) of the Canadian Charter of Rights and Freedoms guarantees freedom of conscience and religion. In interpreting the Charter, the courts have interpreted this provision to prevent the legislatures from discriminating against religious minorities by promoting particular religious practices. Judges have been much less willing to protect religious minority groups from secular laws that interfere with their religious convictions.⁶⁷

Canada has an international reputation as an egalitarian nation.⁶⁸ For example, in *President of South Africa v Hugo* (1997)⁶⁹, Justice Kriegler of the South African Constitutional Court made favourable mention of the Canadian Supreme Court's decisions in *Miron v. Trudel*⁷⁰ and *Egan v. Canada*⁷¹ when arguing that the government could not rely on stereotypes to justify discriminatory policies⁷²

United Kingdom

In the absence of a written constitution, the law establishes the Church of England as England's state church, with the monarch as its head.⁷³ Scotland, Wales, and Northern Ireland do not have state religions. The law establishes the Church of Scotland as Scotland's national church, but it is not dependent on any government body or the monarch for spiritual matters or leadership.⁷⁴

⁶⁵ 2012 SCC 7, at para 17

⁶⁶ (n 65).

⁶⁷ S. Smithey, 'Religious Freedom and Equality Concerns under the Canadian Charter of Rights and Freedoms' (2001) 34(01) *Canadian Journal of Political Science*, 85 - 107

⁶⁸ (n 67).

⁶⁹ *South Africa v Hugo* (1997),

⁷⁰ (1995)

⁷¹ (1995)

⁷² S. Smithey, 'Religious Freedom and Equality Concerns under the Canadian Charter of Rights and Freedoms' *Canadian Journal of Political Science* 2001 34(01):85 - 107

⁷³ United Kingdom 2023 International Religious Freedom Report

⁷⁴ (n 73).



According to Antai,⁷⁵ the United Kingdom has a mixed approach to faith-based government agencies. Faith-based organizations play a significant role in delivering public services, especially in areas like education, healthcare, and social welfare. While there is no explicit constitutional separation of religion and state in the UK, there are laws and guidelines that seek to ensure fairness, non-discrimination, and transparency in the funding and operation of faith based agencies.⁷⁶ These include; the 1948 UN Universal Declaration of Human Rights which states that everyone has the right to freedom of thought, conscience and religion, and the freedom to choose, change and practice their own belief or faith, or not to profess one.⁷⁷ Article 18 of the International Covenant on Civil and Political Rights⁷⁸ states that everyone has the freedom to have or adopt a religion or belief, and to manifest this through worship, observance, practice and teaching; *Human Rights Act 1998*, which incorporates the European Convention on Human Rights. In 1981, the UN General Assembly adopted without a vote a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; in Scotland, the Hate Crime and Public Order Act, a law the Scottish Parliament passed in 2021 that came into effect in 2024, criminalizes ‘stirring up hatred’ on the basis of, among other things, religion or perceived religious affiliation; UN declarations of 1948 and 1981, Article 18, which gives everyone 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; and The 1998 Human Rights Act states, ‘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 worship, teaching, practice and observance.’⁷⁹

South Africa

⁷⁵G O Antai, ‘Appraisal of the Legality of the Laws Establishing Faith based Government Agencies in Nigeria’ (2024) 9(1) *Idosr Journal Of Arts And Management*, 32-42

⁷⁶ *Ibid*

⁷⁷ Loft and T Robinson, ‘The UK and global freedom of religion or belief’ Commons Library Research Briefing, 9 July 2025 <<https://www.google.com>> accessed on 1/11/2025

⁷⁸ICPCRs 1966.

⁷⁹ (n 77).



From 1652 until 1994, during these times one cannot speak of freedom of religion for churches and religions in South Africa, it was much rather a case of denominations and religions being tolerated. But it was also a toleration that went just as far as the policy of the government in power.⁸⁰ Before 1994, freedom of religion was not a constitutionally guaranteed right in South Africa. After 1994 (1996), freedom of religion has been guaranteed by section 15 of the Constitution.⁸¹ After 1994, with the new Constitution, a new era with regard to freedom of religion came into existence in South Africa. Freedom of religion became a constitutionally guaranteed right. The question is what that means and how freedom of religion should be understood and managed in the new South Africa.⁸²

8. SUMMARY OF FINDINGS

This paper found that Nigeria as a secular state has not been able to maintain a neutral status when it comes to religion. She has always taken sides with one of the two dominating religions in the country, thereby, making it difficult to regulate or effect regulations on religious issues without bias. This failure has created loopholes for corruption, violence and all sorts of chaos in the country.

9. CONCLUSION AND RECOMMENDATIONS

It is the duty of the state to be neutral while regulating religion in the country, not by merely stating it in the Constitution. The state should desist from politicizing religion. As much as possible, maintain a neutral status as a secular state as stated in her Constitution. This will help regulate and checkmate religious activities without bias. By so doing, majority of the problems caused by religion will be solved once and for all. Religious tolerance should be a major anchor for agencies of government in charge of public enlightenment and orientation. In essence, agencies of government such as the National Orientation Agency should rise up to the challenge of social mobilization for religious tolerance and promote love, peace and unity among Nigerians.

⁸⁰ P Coertzen, 'Freedom of religion in South Africa: Then and now 1652 – 2008' (2008) 29(2) *JRG*.

⁸¹(n 80).

⁸² Ibid