

The Secularism Debate and Its Implication for Religious Human Rights in Nigeria.

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Abstract

Secularism is a philosophy, which interprets life on principles taken solely from the material world without recourse to religion¹. The debate on secularism in Nigeria arises from the constitutional provision on subject matter² from where the notorious expression that Nigeria is a secular state stems; on the one hand, and the constitutionally guaranteed freedoms of the Nigerian citizen on the other. Is the clause on secularism a means to draw a veil on free expression of faith? What is the position of the fundamental right of the Nigerian citizen to freedom of religious expression in the face of this provision? Does it justify the abuse and violation of rights to freedom of religion and other related rights? These are some of the questions that this research seeks to answer. The methodology of research is doctrinal. It draws largely on content analysis of primary sources such as statutes, case laws, local and foreign legislation, secondary sources such as scholarly texts, internet materials, theses and journal articles which are relevant. The aim is to draw attention to the yawning gap between the law as stated by the texts, the law as interpreted by courts, and the law as practiced. The paper concludes by emphasizing that the constitutional provision on fundamental rights and freedoms should not be threatened by any claim to secularism and it offers recommendations on how to bridge this yawning gap.

Key words: Secularism, Fundamental Human Rights, Religion, Freedom

INTRODUCTION

In recent decades, virtually every nation has committed itself to international and domestic covenants that declare freedom of religion to be a fundamental right³. On the global scene, the major wars taking place today and those of the past has shown that a failure to accommodate religious and ethnic differences is one of the foremost catalysts of violence. Bosnia-Herzegovina, Sudan, Syria and the Boko-Haram war in Nigeria are few of the examples of conflicts oiled by religious and ethnic differences. The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the right to freedom of religion. It 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’⁴. The key points of this constitutional provision are freedom to manifest and propagate, in public and private, alone or in community with others.

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¹ Livingstone E. A *The Concise Oxford Dictionary of the Christian Church* (2006) (2nd Edition)Oxford University Press

² S. 10 The Constitution of the Federal Republic of Nigeria 1999 (as amended)

³ Carter J “The Carter Centre, Emory University” in John Witte, Jr. and Johan D. van der Vyver, eds. *Religious Human Rights in Global Perspective*, ix (the Hague, Netherlands, 1996)

⁴ S. 38 The Constitution of the Federal Republic of Nigeria 1999 (as amended)

An individual may express the right to manifest belief in different ways and forms ranging from fashion to festivals, education to sport as well as politics. Countries such as Angola⁵, Cameroon⁶, Benin⁷ France⁸, Namibia⁹, Niger¹⁰ are some of the countries of the world that laid claim to secularism in their constitution. Nigeria's claim to secularism stems from the provision of s.10¹¹ of the constitution of Federal Republic of Nigeria (1999) as amended. Nigeria is a society where the cultural and philosophical legacies of euro-American imperial colonialism triumphed to become the underlying organizing premises of public institutions such that the emergence of Nigeria into nationhood is very much in doubt. This is because, the principle upon which it seeks to build is foreign and incompatible with the ideological leanings of its people. What happens where a country's political ideology is so much in conflict with the people that make up such a country? What is likely to be the outcome of an imposition of a state's political ideology which seeks to destroy the fundamental freedoms of its citizens and why is the freedom of religion determined as a human right- inalienable and fundamental?

The threat to the peace and unity of Nigeria, posed by religiously related ethnic conflicts, which arise out of the cultural, religious, political and geographical diversity of the country, cannot be ignored. Several acts of discrimination and intolerance of religious expression by individuals and government agencies in Nigeria are done under the cover that Nigeria is a secular state. What is the position of the law on this and what is the interpretation given by the courts on this issue? The nature of religious rights and fundamental freedoms which are very clearly stated in documents such as the Universal Declaration of Human Rights¹², International Covenants on Civil and Political Rights¹³, United Nations Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief¹⁴, African Charter on Human and Peoples Rights and a host of others; forms the basis for discussion in this paper. The paper found that secularism as proclaimed by the Nigerian constitution is not a restriction of religious freedom rather it is a unifying force for difference therefore an understanding that the protection of basic rights and freedoms is important for the general stability and unity of every nation.

The Nature of Religious Human Rights

The rights guaranteed under existing international as well as national human rights instruments and constitutions of sovereign states for protecting legitimate interests as well as prohibiting special biases that are associated with holding religious and similar beliefs are collectively referred to as religious human rights¹⁵. This will include among others, the provisions for the **protection**

⁵ Article 7 of the Constitution of the People's Republic of Angola(1980)

⁶ Article 1(2) of the Constitution of the Republic of Cameroon(1961) as amended by Law No 84-1(1984)

⁷ Article 2 of the Constitution of Republic of Benin(1990)

⁸ Article 2 of the Constitution of France(1958)

⁹ Article 1(1) of the Constitution of the Republic of Namibia.(1990)

¹⁰ Article 6 of the Constitution of Niger(1960)

¹¹ " The government ofd mm the Federation or of a state shall not adopt any religion as a state religion"

¹² Article 18

¹³ Article 18

¹⁴ Article 1 and Article 2

¹⁵ David Little, "Studying Religious Human Rights: Methodological Foundations" in J. D. van der Vyver and J. Witte Jr.(eds) *Religious Human Rights in Global Perspective*, (Netherlands 1996) 45

of legitimate religious interest such as freedom of beliefs and conscience, freedom to manifest one's beliefs in 'teaching, practice, worship and observance'¹⁶ and the provisions that **prohibit** discrimination based on religious beliefs and affiliations¹⁷

The Universal Declaration of Human Rights states in its Article 18 that "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 a community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance"¹⁸. The Universal Declaration of Human Rights happens to be the foundation of the chapter on fundamental rights of most countries including Nigeria. The critical role of the Universal Declaration of Human Rights in the development of the legal and political philosophy of the second part of the twentieth century is beyond controversy¹⁹. It is the most important single legal document of our time, and most of its contents constitute present customary international law²⁰. Religious freedom is the first fundamental right that was incorporated into political instruments "long before the idea of systematic protection of civil and political rights was developed".²¹ John Humphrey writes; "Freedom of religion is indeed the oldest of the internationally recognized human freedoms and therefore the one with which the international community has had the longest experience"²². The early stages of the development of international law covered the protection of religious groups by bilateral treaties, before the actual commencement of international human rights law. At the beginning, the emphasis was more on tolerance rather than rights in order to protect specific religious groups or minority until the period between World War I and II²³. It was not surprising, given that religion and religious intolerance were and still are one of the main causes of conflict in the history of humankind. The components of the rights in this class will include those stated by several conventions and legislations and which are:

¹⁶ Article 18 of Universal Declaration of Human Rights and International covenants on Civil and Political Rights.

¹⁷ David Little, "Studying Religious Human Rights: Methodological Foundations" in J. D. van der Vyver and J. Witte Jr.(eds) *Religious Human Rights in Global Perspective*, (Netherlands 1996) 49

¹⁸ This provision is echoed by s. 38(1) of Constitution of Federal Republic of Nigeria 1999 (as amended) which states: "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 a community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."

¹⁹ David Little, "Studying Religious Human Rights: Methodological Foundations" in J. D. van der Vyver and J. Witte Jr.(eds) *Religious Human Rights in Global Perspective*, (Netherlands 1996) 49

²⁰ Natan Lerner "Religious Human Rights Under The United Nations" in J. D. van der Vyver and J. Witte Jr.(eds) *Religious Human Rights in Global Perspective*, 45-77 (Netherlands 1996), 83

²¹ Karl Josef Partsch, " Freedom of Conscience and Expression, and Political Freedoms, in Louis Henkin, ed, The International Bill of Rights(New York, 1981) 209 cited in J. D. van der Vyver and J. Witte Jr.(eds) *Religious Human Rights in Global Perspective*, (Netherlands 1996), 48

²² John P. Humphrey, "Political and Related Rights," in Theodor Meron, ed., *Human Rights in International Law*(Oxford, 1985),176 cited in Natan Lerner "Religious Human Rights Under The United Nations" in J. D. van der Vyver and J. Witte Jr.(eds) *Religious Human Rights in Global Perspective*, 45-77 (Netherlands 1996), 83

²³ David Little, "Studying Religious Human Rights: Methodological Foundations" in J. D. van der Vyver and J. Witte Jr.(eds) *Religious Human Rights in Global Perspective*, (Netherlands 1996) 49

Freedom of thought, conscience and religion- this is the freedom of the individual to have and hold an opinion about God and the supernatural. To be able to profess to a belief in a divine and otherworldly being or phenomenon and to have a divine control of his conscience and thoughts and to see himself as a subject of a divine being expressed in a religion.

Freedom to change his religion or belief- this is the freedom that the individual has to change a previously held opinion about God and the supernatural and to profess to a different religion.

Freedom to manifest his belief or religion in teaching, practice, worship and observance- this is the freedom that the individual has to go beyond having an opinion or belief. The individual can and is able to show physical manifestations of such belief in his conduct and appearance. He can teach his belief, practice and observe the doctrines and principles of his belief. This, he is allowed to do alone, in community with others, in public and in private.

These freedoms are stated and its protection guaranteed by the other side of the scale of justice by prohibiting discrimination on basis of religion. No one shall be subject to discrimination by the state, institution, group of persons or any person on the grounds of religion or belief.²⁴

In a simplified way, the physical manifestation of religion may come in different forms; unlike either practice and/or observance, which can readily be attached to worship, privately, or in a group with others. Physical manifestations of beliefs or faith may include symbols and codes that are universally associated with such belief, such as the cross for Christianity, the Crescent and the Star for Islam²⁵, Star of David²⁶ for Judaism, Aum²⁷ for Hinduism and the Khanda²⁸ for Sikhism²⁹. The manifestation and practice of religion may also be expressed in mode of dressing or the wearing of particular form of clothing, such as the Muslim headscarf, the Sikh turban, and the Jewish skullcap or yarmuk³⁰. The right to freedom of thought, conscience and religion is a religious human right, which is guaranteed by section 38 of the constitution of the Federal Republic of Nigeria, 1999(as amended). This section of the constitution was interpreted by the courts in various cases³¹.

²⁴ Article 2 of UN Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief. , s. 42 of Constitution of Federal Republic of Nigeria . states at length “ A citizen of Nigeria of a particular community... religion or political opinion shall not, by reason only that he is such a person- (a)be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restriction to which citizens of Nigeria of other...religion or political opinions are not subject.

²⁵ Although the Arabic form of the Allah was the original symbol for Islam, the use of the crescent and the star adopted by the Ottoman empire has been used alongside as the universal symbol of Islam

²⁶ The Star of David is an interlock of two triangles, which is believed to represent the two tribes of Judah and Benjamin and represents the line of David, the prophet of Judaism.

²⁷ The aum is an important symbol of Hinduism because it represents the name of God or the echo of the supreme, shakti.

²⁸ The khanda is represented by a double-edged sword, two curved sword interwoven within a circle each representing the belief of the Sikh about God.

²⁹ The Meaning of some Religious Symbols. Retrieved from <https://exemplore.com/misc/common-religious-symbols-what-do-they-mean> on 5th Dec 2019

³⁰ Retrieved from <https://en.wikipedia.org/wiki/religiousclothing> on 5th Dec. 2019

³¹ In *The Provost, Kwara State College of Education, Ilorin & 2 ors v. Bashirat Saliu & ors* CA/IL/49/2006, *Fatimah Abidemi Razak & 3 ors v. Commissioner for Health, Lagos State* , ID/424M/2004., *Sheik Salaudeen Ade Olayiwola & ors v. Governor of Osun State & ors* HOS/M17/2013 and a host of other cases, the courts decided that the right to freedom of religion is a fundamental human right which cannot be taken away from the individual.

The nature of the constitution and the status of constitutional provision itself has been the subject of vigorous interpretation by the judiciary.³²

The Nature of Secularism and the Nigerian constitution.

The issue whether Nigeria is a secular state or not is not the focus of this paper. However, it is necessary to determine what the secular concept is all about. The words secularity and secularism are used interchangeably in various discourses. The terms secular, secularism and secularization have a range of meanings- these are words which are derived from the latin word *Saeculum*³³ which means this age/ this world. In the Middle Ages, secular is used to describe priests who worked among the people in local parishes while those who took vows of poverty and secluded themselves in monasteries were called religious³⁴. A constitutional declaration of secularity means that the state does not wish to invoke religion as a justification for its authority, actions and decisions.³⁵ The term secularization also has additional meanings, primarily historical and religious, it applied to church property, and historically it refers to the seizure of church lands and building³⁶. In all of these instances, the secular indicates a distancing from the sacred, the eternal and the otherworldly. In contemporary sociological sense secularity refers to individual and their social and psychological character, that is, individual's personal behavior and identification with secular ideas while secularism connotes the character of social institutions, that is, it involves organization and social constructs that reflect the institutional expressions of the secular in a nation's politics and public life.³⁷

Secularity being an individual and personal expression ranges from liberal religionist to agnosticism to atheism while the range of secularism is measured by the degree of institutional expression of secular sentiments in a nation's political and public life. Secularity and secularism have been identified as soft and hard/ moderate and strict- a distinction which relates to the

³² S1(1) of the Constitution which states that the constitution is supreme and its provisions shall have a binding force on all persons and authorities throughout the Federal Republic of Nigeria. S1(3) of the constitution which also states that if any other law is inconsistent with the provisions of the constitution, the constitution shall prevail and all the other law shall to the extent of its inconsistency be void.

³³ Zachhuber, J. *Max Weber on Religion: Beyond Secularisation* (2015) [https:// marginalia. lawreview of books.org/Max Weber-on-religion-beyond-secularisation](https://marginalia.lawreviewofbooks.org/Max-Weber-on-religion-beyond-secularisation). Assessed on 11th Nov, 2019.

³⁴ Cassanova, J. *Public Religions in the Modern World.* (1994)) University of Chicago Press, 13 cited in [https://en .wikipedia.org](https://en.wikipedia.org) accessed on 11th Nov 2019.

³⁵ Temperman “*State Religious Relationship and Human Rights Law: Towards a Right to Religiously Neutral Governance*”(2010) retrieved from <https://en.wikipedia.org/wiki/state/religious/relationship>

³⁶ During the reformation era, secularization denoted the seizure of Catholic ecclesiastical properties by the state and their conversion to non-religious use. Henry VIII dissolution of Monasteries in England, 18th Century French Revolution³⁶ Cassanova, J *Public Religions in the Modern World.*(1994) University of Chicago Press, 13 cited in [https://en .wikipedia.org](https://en.wikipedia.org) assessed on 11 Nov 2019. . Gould, A *Origins of Liberal Dominance: State, Church and Politics in Nineteenth Century Europe.* (1999) University of Michigan Press

³⁷ Norris, Pippa, Inglehart and Ronald. *Sacred and Secular; Religion and Politics Worldwide.* (2004) Cambridge University Press cited in [https://en.wikipedia.org wiki/secularisation](https://en.wikipedia.org/wiki/secularisation) assessed on 11th Nov. 2019.

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attitudes towards the degree of separation of the religious and the secular as well as the relationship between them.³⁸

In any nation state, the historical antecedents often play a major role in their expression of level of secularism in line with this distinction. For example the historical antecedents from the French Revolution which was anchored on a joint struggle against despotism, religion, monarchy and the Roman Catholic church³⁹ was without reservation, antagonistic to religion and therefore promoted atheism. This French tradition grew out of Max Weber's transformation of Consciousness as popularized by other philosophers⁴⁰. The former USSR and other communists' nations leveraged on the atheistic ideological viewpoint to infuse secularization into the socio-political lives of people in their societies, which aims at a total eradication of religion by state apparatus to bring about a hard/strict secular society⁴¹. On the other end of the divide is the American tradition which also emerged from the American Revolution, which was anchored on the protestant heritage of the reformation whereby religion individualism and autonomy predated any concept of political autonomy⁴², hence Americans, adopted a moderate approach which is manifested by indifference towards religion or promotion of religion pluralism. The American version can be described as the soft or liberal secularism; it is seen not to be hostile to religious beliefs and institutions. The soft secularist unlike the hard secularist is willing to adopt a live and let live approach towards religion; he allows religion as long as it does not impinge on his freedom of choice.⁴³

For the soft secularist, religion is a private lifestyle option, which must not threaten liberty and social harmony in a differentiated and pluralistic society. It connotes the right to be free from religious rules and teachings, the right to freedom from governmental imposition of religious beliefs upon the people in a multi religious state, the right to the security of political decisions and actions from biased religious influence as well as freedom of worship and religion on all persons. A nation could adopt the hard secularism or soft secularism. Hard secularism in its contemporary

³⁸ Cassanova, J *Public Religions in the Modern World*. (1994) University of Chicago Press, 13 cited in <https://en.wikipedia.org> assessed on 11 Nov 2019. . Gould, A *Origins of Liberal Dominance: State, Church and Politics in Nineteenth Century Europe*. (1999) University of Michigan Press

³⁹ French Jacobin Tradition

⁴⁰ Gollin, G. L “ *The Religious Factor in Social Change: Max Weber and The Moravian Paradox*” (1967) *Aechives de Sciences Sociales des Religion*. 23. Retrieved from <https://www.persee.fr/doc> on 14th Nov. 2019

⁴¹ This form of secularization was most often referred to as the atheistic agenda because of its hard stand against religion. Yuacov, Ro'i “*The Task of Creating the New Soviet Union Atheistic Propaganda in the Soviet Muslim Areas*” (1984) *Soviet Studies* 36(1) retrieved from www.jstor.org/stable/151855

⁴² Davis, D (1994) EDITORIAL: *Religion and the American Revolution*. *Journal of Church and State*, 36(40). Retrieved from www.jstor.org/stable/23919416 on 13th Nov. 2019.

⁴³ The first Amendment and fourteenth amendment to the Constitution of the United States; the Free Exercise Clause and The Establishment Clause. It represents the incorporation of the Bill of Rights into the Constitution.

form is associated with French *laicite*⁴⁴. In its classical form, it prohibits the use of and display of religious symbols in public institutions, while religious references are generally considered out of place in mainstream politics and vice versa. *Laikik*⁴⁵ the Turkish model of hard secularism, and *laicite*, the French model were practised in most liberal democracies⁴⁶, attempts to separate government affairs from religious dogmas while divesting religious leader of authority over political decisions.

Nigeria inherited moderate/soft secularism from the colonial government. This has however been influenced and considerably whittled down by the historical religious sectarianism brought about by deep politicization of religion. The true character of state-religion relationship is therefore not as clear-cut as a distinction into hard or soft secularism. The social and political reality of Nigeria is that religion is put at the fore- front and depicted as culture in most cases. Nigeria as a nation has government institutions in charge of religious activities⁴⁷ such as the pilgrimage to Mecca for Muslims and Jerusalem for Christians.

In order to locate the position of Nigeria in a secular- non secular spectrum and its implication for religion human rights, the relevant provisions of the constitution and other applicable laws are examined in line with the attributes of secularism as discussed above. In secular regimes, sovereignty belongs to the state and not to a divine body, religion is separate from the state, religion does not affect government affairs that is, laws and regulations are not based on religion. A secular government is neutral towards all religion and as such cannot have an official religion and does not protect one religion over another; all individuals irrespective of the religion are equal before the law. A secular regime fashions out a legal system, which does not contain laws, based on religion, it requires freedom of religion and conscience. Considering the provision of section 14(1)

⁴⁴ French for 'secularity'. A French concept of secularism which disallows religious involvement in government affairs especially religious influence in determination of government policies. It however does not prevent free exercise of religion.

⁴⁵ Turkish version of hard secularism established since the defeat of the Ottoman caliphate in the early 20th century.

⁴⁶ In Belgium, *laicite* refers to the separation between church and state, although under the Belgian constitution ministers of religion are paid with government funds. The constitution was amended in 1991 to give the same right to persons fulfilling secular functions. Public schools must now offer pupils the choice between religion and secular courses. Public discourse in Quebec, the only predominantly French-speaking province in Canada, has been greatly influenced by the *laicite* of France since the 1960s. Prior to this time, Quebec was seen as a very observant Catholic society, where Catholicism was a *de facto* state religion. Quebec then underwent a period of rapid secularization called the quiet revolution. In Mexico, the Constitution was amended in 2010, the lower house of the Mexican legislature introduced legislation to amend the Constitution to make the Mexican government formally "*laico* – meaning "lay" or "secular".

⁴⁷ The National Hajj Commission of Nigeria is established by law and funded from the Federation Account, the members of the commission are appointed by the president and remunerated by the federal government and are accorded with all the privileges of civil servants. The Nigeria Christian Pilgrim's Commission was established by an Act of the National Assembly. The Nigerian Christian Pilgrims Commission Establishment Act has similar provisions as in the National Hajj Commission Act.

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of the constitution,⁴⁸, this means that sovereignty even though residing with the state is actually derived from the people through the constitution, therefore state sovereignty is to the extent that the constitution permits.

The constitution of the Federal Republic of Nigeria 1999 a document, which has undergone several amendments, is seems to be undergoing an evolution as the Nigerian state itself. Nigeria evolved from an amalgamation of several nation states with several different ideological claims and cultural beliefs and practices. These ideological claims and beliefs go a long way in shaping the thoughts and actions of Nigerians. Section 10 of the constitution states that “the Government of the Federation or of a state shall not adopt any religion as state religion”. This provision mandates the government of Nigeria at all levels to be neutral in matters of religion and not to be unduly favorable to any particular religion. The sovereignty given by a people that are multi religious as stated by the constitution is to a government that will not favor any religion over another, a state that will ensure religious freedom and promotes the rights to religious expression and manifestation.

The Nigerian Legal system includes laws that are based on religion. The legislative activities of the National Assembly and its outcomes demonstrate deference to religious bias.⁴⁹ This, one can closely relate to the United States of America, another country that has a multicultural nature as Nigeria⁵⁰. In contrast to France, the wearing of religious insignia in public schools is largely noncontroversial as a matter of law and culture in the U.S.; the main cases where there have been controversies are when the practice in question is potentially dangerous for instance, the wearing of the Sikh *kirpan* (knife) in public places, and even then the issue is usually settled in favor of allowing the practice.⁵¹ In addition, the U.S. government regards religious institutions as tax-exempt non-profits,⁵²subject to limitations on their political involvement. Considering that the practice of secularism in Nigeria boldly profess a tolerance for religious practice, it is strange to see across the nation a fragrant violation of religious freedom by individuals, private and public institutions as well as key government functionaries. The manifestation of religion in wearing of religious symbols especially the Muslim headscarf or *hijab* can often be threatened. This is burdensome when the adherent has a sincerely held belief that wearing certain garb is required by a given religion, as it can lead to great tension between the person's duty to God and his or her duty

⁴⁸ S 14(1) Constitution of Federal Republic of Nigeria 1999 states that sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority.

⁴⁹ The recent attempt by senate to enact a law legalizing prostitution was condemned by legislators who cited religious reasons, enactment of laws such as the Same-Sex Marriage(Prohibition Act) 2006 were influenced by religious arguments. English Law runs concurrently with the customary and Islamic law in the Nigerian Legal system, the Penal Code Act fashioned after the Sudan Criminal law has considerable religious flavor.

⁵⁰ The US president and senior public servants often make proclamation of religious faith, US Congress typically open with a prayer by a minister of some faith or other.

⁵¹Somerville, C. J. *Secular Society, Religious Population: Our Tacit Rule for Using The Term Secularisation* (1998) *Journal for the Scientific Study of Religion* 34(2)249-53 as cited in “Secularization” <https://en.wikipedia.org/wiki/secularization> on 13/11/2019

⁵² <https://www.irs.gov/publication/p557>. Publication 557, Internal Revenue Service. Cited in <https://en.wikipedia.org> accessed on 10/11/2019

to follow the laws set forth by the government⁵³. It is especially tense in countries like Turkey and France, which have official policies of secularism, and even in the United States, which has a policy of separation of church and state.' A major world issue today is the extent to which women have the right to wear a Muslim headscarf-or *hijab*. In schools, the issue is paramount because the *hijab* symbolizes different things to different people, and some governments ascribe a meaning to the headscarf from which they wish to protect schoolgirls.⁵⁴ The crux of the *hijab* debate is whether wearing it is a human right and to what extent, and for what reasons, the government may ban it.

Implication for Religion Human Right

The secularism debate revolves around whether secularism as stated in the Nigerian constitution is a veil over expression of religious beliefs or means to curtail religious freedom. By section 38 of the constitution, religious freedom is a fundamental right that cannot be taken away and by section 1(1) and (3) of the constitution, its provision is supreme, binding on all peoples and authorities in Nigeria. Any law that is inconsistent in any way is null and void therefore s 10 of the constitution cannot by interpretation take away the right guaranteed by section 38 and cannot by interpretation also be inconsistent with that provision. Another crux of this debate is also, whether the expression of religious beliefs in exercise of religious freedom should be restricted to private domain and not public space. S. 38 further states "every person shall be entitled to freedom... either alone or in community with others and in public or in private to manifest and propagate his religion in worship, teaching, practice and observance."(Underlining for emphasis). Is there a restriction on religious freedom? Yes and these restrictions are not based in any way on secularism as provided by section 10 of the constitution.⁵⁵ The questions arising from this are whether the provision of the constitution is binding on private organizations and bodies, can private organization and bodies be exempted from exercising and protecting the right to freedom of religion?, Can they by their regulation violate a provision of the constitution? Can such bodies or organization justify violation of fundamental right to freedom of religion outside the provision of section 45? The constitution provides the answer to these questions.⁵⁶

Conclusion and Recommendations.

⁵³ Oriana Mazza "The Right to Wear Headscarves and Other Religious Symbols in French, Turkish, and American Schools: How the Government Draws a Veil on Free Expression of Faith," (2017) *Journal of Catholic Legal Studies*: Vol. 48: No. 2 , Article 6.

⁵⁴ France banned the headscarf along with other "conspicuous" religious symbols in primary and secondary schools in controversial law No 2004-228 passed in 2004. Turkey has a longstanding ban on the *hijab* in schools and government building. The U.S has no such ban against *hijab*

⁵⁵ Restriction as provided by section 45 of the 1999 constitution which states that nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.

⁵⁶ S1(1)(3), s 38.

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As provided by several international Human Rights documents, the right to freedom of religion is a fundamental right, which is justifiable and enforceable. By the provision of the constitution of the Federal Republic of Nigeria, 1999 (as amended) the right to freedom of religion is a fundamental human right, which is enforceable and justifiable. A comprehensive definition of fundamental human rights is that fundamental human rights are:

“ those rights that are moral principles or norms that describe certain standards of human behaviour and are regularly protected as natural and legal rights in municipal and international law. They are commonly understood as inalienable, fundamental right "to which a person is inherently entitled simply because she or he is a human being" and which are "inherent in all human beings", regardless of their age, nation of origin, location, language, religion, ethnicity, or any other status.They are applicable everywhere and at every time in the sense of being universal and they are egalitarian in the sense of being the same for everyone.They are regarded as requiring empathy and the rule of law and imposing an obligation on persons to respect the human rights of others, and it is generally considered that they should not be taken away except as a result of due process based on specific circumstances”⁵⁷.

This definition covers every angle from which the status of religious right is to be viewed. Being a part of the group of rights called fundamental human right, a moral principle or norm, which described certain standards of human behavior. It is a legal right that must be protected in municipal as well as international law. It is therefore my conclusion that there is no contradiction whatsoever between sections 10 and 38 of the Constitution of the Federal Republic of Nigeria, 1999(as amended) rather, secularism is proposed for government to give all religion a level playing field in a multicultural society like Nigeria. It is a gross misunderstanding of the constitutional provision to claim that private organizations or businesses are exempt and can, with impunity, violate the right to freedom of religion on the basis that the rules of such organization dictate as such.

This paper reiterate that religious pluralism allows for the principle of live and let live and that no one belief or religion possess the prerogative to decide what others must do or say and how they live their lives. It is therefore recommended that the constitution of Nigeria, 1999 as amended should be made to work, especially in areas of fundamental rights and freedom. Private organization and corporation are to be aware that they are not exempt from the provisions of the constitution.

⁵⁷ Retrieved from <https://en.wikipedia.org/wiki/human-rights> on 13th Dec. 2019