Secularism and Fundamentalism: An Examination of the Prospect of Implementation of Sharia in Southwest Nigeria.

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Abstract

Secularism and fundamentalism are words at opposite ends in their connection with religion. While secularism emerges as a politico-religious ideology which advocates for the complete removal of religion from state administration, fundamentalism is a strict adherence and maintenance of traditional orthodox religious beliefs. Unlike the Muslim dominated Northern Nigeria, where the full implementation of sharia in eleven states was to a large extent successful, its implementation in south west Nigeria with a more apparent mixes of Islam-western culture poses a greater challenge. This paper, while examining the prospect and challenges of the implementation of Sharia in South-west Nigeria, explores the potent interplay of fundamentalism and secularism involved in this exercise. The paper adopts the historical research methodology and draws largely on content analysis of primary and secondary sources by highlighting the political and constitutional development. This work also appraises some of the achievements made in the North and submits that a multicultural society like Nigeria benefits more from a system that accommodates the plurality of the Nigerian religious and cultural composition while at the same time recommending the need for the protection of the right to religious freedom.

Key words: Fundamentalism, Secularism, Sharia, Religious freedom, South-west Nigeria

Introduction

The preamble to the Constitution of the Federal Republic of Nigeria 1999 (As Amended) stated that the people of the Federal Republic of Nigeria firmly and solemnly resolved to live in unity and harmony as one indissoluble sovereign nation under God. A nation which prides itself as secular (s.10 Constitution of the Federal Republic of Nigeria (CFRN) 1999) has within her borders multi-religious groups and a constitutional acknowledgement of a God sovereign (Preamble to the 1999 Constitution). Historically, before the encroachment by the British, the geographical enclave now known as Nigeria was home to hundreds of distinct ethnic and linguistic groups where each group had its own unique culture and system of governance. While the Northern part of what is now known as Nigeria was more politically and administratively centralised, the independent kingdoms and autonomous community in the south were more pronounced in their differences of culture and system of governance. (Hassan-Bello, 2019).

The sharia debate in Nigeria dates as far back as Nigeria which was pronounced into being by Great Britain. Islam was introduced into Nigeria through the commercial interactions of traders

across the trans-Sahara trade routes and it has been a major religion long before colonisation of Nigeria. (Kumo, 1986) It is as a result of this that the establishment of the sharia has generated so much debate and while establishing it in full is not a novelty in Northern Nigeria, the opposite is the case in the southwest. To Muslims, sharia is the measure by which a society is judged to be Islamic. In countries lacking cohesive or credible political structure, sharia provides a way of life, as the Talmud did in Ancient Israel and the canon laws did in the Christian Middle Ages. In a secular and pluralistic setting, not only does sharia offer a way to resolve commercial dispute and family issues, it assumes a major importance for Muslims. (Quinn and Quinn, 2003)

The Nigerian constitution (1999 as amended) provides for the establishment of Sharia Courts of Appeal in states which demands it and appointment of sharia judges into the Federal Courts of Appeal (sections 6(5), 230, 260, 262, and 275-6) with jurisdiction in Islamic Personal Law such as inheritance, marriage and divorce. This paper examines the prospects of the full implementation of sharia in southwest Nigeria drawing from the Northern experience and consolidating on the challenges and the lessons thereof. The paper argues for a secular state which plays the role of a neutral arbiter, mediator and adjudicator among religious and cultural forces and expectations. A secular state, not for the secularisation of the society but rather to maintain independence from any religious influence, uphold religious freedom and provide a level playing field for adherents of religion.

This paper reviews the agitations for the implementation of sharia by the Muslims in the South-western Nigerian states of, Ogun, Oyo and Lagos and while examining the background to this agitation, finds that the constitutional provisions on the establishment of the sharia courts empowers the states of the southwest to provide courts for sharia adjudication. That the constitutional provision on right to freedom of religion legitimises these agitations. Drawing upon these findings, the paper concludes that denying a place for sharia adjudication in Southwest Nigeria is denying the right to religious freedom of Muslims in that region.

Clarification of Key Concepts

Fundamentalism

Fundamentalism is a concept that advocates for the literal interpretation of the religious texts. It emphasises a strict adherence to the fundamental principles of faith and a belief in historical accuracy and purity of religious scriptures. Islamic fundamentalism, like other religious fundamentalism advocates a strict adherence to the pure Islamic texts as established by the messenger and prophet of Allah (Muhammad SAW). In the belief of Islamic fundamentalist, the Quran and the hadith are the guides upon which the government, legal system and social ethics are based. The background to the rise of Islamic fundamentalism in Nigeria is rooted in the reaction to the imposition of the colonial ideals of Britain which is rooted in Christianity, where state functions as bequeathed by colonisation is clearly attached to the religion of the colonising state. In South west Nigeria, most adherents to fundamentalist Islam are at the fore front of the

agitation for the full implementation of sharia while some with more liberal attachment prefers a constitutional recognition of the right of Muslims in this region to access sharia as a recognition of their right to religious freedom.

Secularism

Secularism asserts the right to freedom from the rules and teachings of religion and the freedom from government imposition of such. It is the consensus of most scholars that secularism is basically a separation of religion from state affairs and not a total ban on the practice of religion and removal of religion from public space. It advocates religious neutrality in the administration and political affairs within a state; that no state privileges be assigned to religion. This paper aligns itself with the view of the contemporary French scholar of secularism, Jean Bauberot that:

Secularism is made up of three parts;

1. Separation of religious institutions from the institutions of the state and no domination of the political sphere by religious institutions;
2. freedom of thought, conscience and religion for all with everyone free to change their beliefs and manifest their beliefs within the limits of public order and right of others;
3. no state discrimination against anyone on ground of their religion or non- religious world view, with everyone receiving equal treatment on these grounds .(Copson (2017:2)

The submission of the French scholar, Jean Bauberot, above, represents the views of those who subscribe to liberal secularism as against the views of strict secularism, for example, '*Laik'* is the Turkish model of strict secularism, (Olaniyan, (2019:10).

Maclure J. and Taylor C.(2011) believes that secularism is an essential component of any liberal democracy composed of citizens who adhere to a plurality of conceptions of the world and of the good, whether these conceptions be religious, spiritual or secular. A constitutional provision for such separation is formal and official while an informal claim to secularism; though not official, is a practical reality in the operation of government. Maclure J and Taylor C. (2011) went on to differentiate political secularism from social secularisation stating that: '…Whereas political secularism finds its expression in the positive law, social secularisation is a sociological phenomenon embodied in peoples' concepts of the world and mode of life.'

Such a claim of secularism (sociological) is the manifestation of hostility to religion, a total ban of religion from the public space enforced by the apparatus of the state. In post-colonial Nigeria where the state cannot boast of a complete separation from religion, a sociological secularism will be an indirect bias towards the dominant religion. The Constitution of the Federal Republic of Nigeria (1999:10) recognises and affirms a political and official secularism.

Sharia

Sharia, an Arabic word which literally means a door or a path, is in popular discourse translated into English to mean the Islamic Law. It is a legal tradition which regulates not only personal status, criminal and civil matters but also a worshipper's relationship to God. Even though it is seen and used in present Islamic discourse as if it were synonymous to Islam, it is not the totality of what Islam is. (An'Naim, 2009). It is a system of laws which is distilled from the primary sources of the Quran and the traditions of the prophet Muhammad (PBUH), this tradition expounded the meaning and application of the divine revelation and it is referred to as the *sunnah*. Abdullah AnNaim further states that sharia is often used to determine the obligations of Muslims in their private and personal life, in relation to their obligation in political, legal norms and institutions (2009:10-11). Sharia in its broad sense includes the totality of the beliefs and duty of Muslims as well as the perception of it through specific human methodology. An interpretation of the Qur'an and the *sunnah,* as school or *madhab* that a Muslim is raised to accept. In an Islamic state, where sharia is fully implemented, the state affiliation to a particular school of interpretation becomes an imposition on all Muslims within that state.

Religious Freedom

This is part of a wider freedom of thought and conscience. It is freedom to adhere to a faith or not to adhere to one. According to Copson (2017:2), it has been a feature of a number of societies and legal regimes in history but it was first elaborated as a legal right in the modern west, having evolved from the official policies of religious toleration that developed in parts of Europe. He further states that religious freedom became a legal right following the advent of the formal universal human right in the 1940's and is fully recognised as freedom of religious beliefs where beliefs include non- religious worldview.

The United Nations Human Rights Committee in 1993 stated in their general comment on Article 18 of the CCPR that:

> The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency…. (UNHRC:1993)

It encompasses freedom of thought on all matters, personal convictions and the commitment to religion or belief whether manifested individually or in community with others. It is the oldest

of the internationally recognised human rights which protection was established in a number of international human rights instruments like the Universal Declaration of Human Rights. By the late 18th century and over the two centuries that followed, particularly in the period following World War II, it had found its way into most of the world's constitutions. (Durham, 1996:1)

Makam wa Mutua (1996:417) posited that in most colonised states, messianic religions have either been forcibly imposed or their introduction was accomplished as part of the cultural package borne by colonialism which scenario played out perfectly in south west Nigeria. The white man, as in most parts of Africa, where Christian missionaries' proselytization rode on the back of colonisation did not simply offer Jesus Christ as the saviour of benighted souls; his salvation was frequently a precondition for services in education and health, which were quite often the domain of the church and the colonial state.

Cole Durham argues that the establishment and enforcement of the right to the freedom of thought, conscience and religion is to a large extent, dependent on the political instrument of the state as well as the power of the state in that regard. It is assumed that this varies from country to country depending on political stability; the nature and history of legal system and place of religion; the degree of religious pluralism at the local level; the nature of the dominant religion(s) and their internal commitment to religious liberty and tolerance; the history of interaction between religious groups; and a variety of other factors. (1996:4).

With political secularism imposed by the constitution, (s.10:1999), the repression of freedom of thought, conscience and religion within the state would amount to the extent that can be referred to as friendly or hostile. A hostile imposition of separation of religion will seek a repression of religion without allowing for open religious practices. The constitution of the Federal Republic of Nigeria affirms the right to religious freedom as a component of the right to freedom of thought, conscience and religion. It states in section 38(1) that:

> Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or believe, and freedom (either alone or in a community with others, and in public or in private) to manifest or propagate his religion or belief in worship, teaching, practice and observance.

The freedom to maintain or change religion or belief is less prone to restriction while the right to manifest it is often the subject of state regulation and limitation (Lerner: 2000). The two major religions in the south west Nigeria are Islam and Christianity whose population are almost equal halves. The interaction of secularism with the freedom of thought, conscience and religion is considered friendly as both are constitutional provisions. Sociologically however, state apparatus and western trained state officials as well as the legal system which are all relics of the colonial legacy have put the freedom of religion in this part of Nigeria into question especially in the area of education where quite a large number of public primary and secondary schools in most state of the region are bequeaths of the colonial Christian missionaries.

South west Nigeria

The south west region of Nigeria is made up of six states of, Ogun, Ondo, Ekiti, Lagos, Oyo, and Osun. These are the core Yoruba speaking states in the country and the population of Muslims ranges from 20% (Ekiti, Ondo) to 59%(Lagos, Ogun,Oyo and Osun) (Afrobarometer: 2012). Historically, Islam came to Nigeria through Kanem-Borno in 1085 C.E. during the reign of Mai Hume Jilmi. As early as the 14th century, Ibn Batuta confirmed the existence of Sharia in some parts of Northern Nigeria, which was reinforced during the reign of Mai Idris Alooma, he reigned between 1570 and 1602, and set up sharia courts. Again, Muhammad Rumfa who reigned between 1493 and 1499 also set up sharia courts in Kano. (Ambali, 1998:15). All these predates colonisation. Islam was introduced to the Yorubaland during the reign of King Mansa Musa of Mali (1337 C.E) through the contact of the Malian traders and ambassadors with the people of the old Oyo empire, (El-Ilori, 1965:147). It is evidently clear that the Yoruba speaking states is the south west and is the region where Islam was most entrenched after the northern part of pre-colonial Nigeria. Historically, the first mosque in Yoruba land was built in Oyo- Ile (in the present day Oyo state of Nigeria) in 1550 A.D. during the reign of Alaafin Ajiboyede. In Lagos (in the present Lagos State of Nigeria) the first mosque was built during the reign of King Adele 1 in 1775. Idumagbo and Okunnu (also in the present Lagos State) were built in 1776 while that of Tinubu also in Lagos state was built in 1819. Again in Iseyin (a town in the present Oyo State had its first mosque in 1770) (El-Illory 1965:12) All these, again, predate colonialism. At the beginning of colonisation, the colonial government classified the sharia as part of native law and custom being the culture and religion found on their arrival. It is an established fact that while native law and customs vary in practice amongst the many ethnic groups in Nigeria, the sharia is uniform and universal. There is a visible overlap of cultures and identities between persons and groups in this region, that however, does not imply that there is a homogenous culture(s) or identities or that such vision be imposed. The reality of diversity within cultures underscores the need for tolerance and acceptance of the differences within and among cultures (An'Naim:2009.23)

An overview of the Sharia debate and Nigeria Constitutionalism

There have been a series of political changes which were brought by colonisation and the impact of western culture as well as the different cultural affiliations and ideologies of the people within the boundary of the Nigerian state. Prior to the British invasion and the imposition of their version of a political system in the region, there were several nation states and kingdoms occupying both the Northern and the Southern region of Nigeria which were connected mainly by trade (Sulaimon, 1986).

In terms of religion, culture and ideology the kingdoms and empires in the north were predominantly influenced by Islam while the south were mainly animists and pagans. The presence of Islam in the south at this period was heavier in the south west of Nigeria (as compared to other southern states) where the main Yoruba kingdoms were in trade interactions

with Songhai, Mali and Nupe- there have been an evidence of Islamic presence in the southwest of Nigeria as far back as the 17th century alongside the worship of idols and gods (Adelowo, 1982).

At the beginning of the British presence in this region, the administration of law was through Islamic and customary law which were later joined by the English law. After colonisation, the British introduction of the English law put certain limitations on the application of the existing Islamic law which was then classified under native law and custom. (Oba, 2009) Through the system of indirect rule, the British colonialist kept the application of Islamic law intact but subject to supervision and control of colonial administrative officers and later by new courts established by the British (Tabi'u, 1986). This led to a gradual erosion of the Islamic law which continued through the introduction of various legislations to enhance the English law. One of such means is where customary law and Islamic law were subjected to the validity and repugnancy test, a situation where the application of both Islamic and Customary law was dependent on the twin test of repugnancy and incompatibility which interpretation was subjected to the court's discretion (*TsofoGubba v. Gwandu Native Authority*, (1947) 12 WACA 141, *Adesubokan v. Yinusa* (1971) 1 All NLR 226).

By the Northern Nigerian Order in Council of 1899, Northern Nigeria was to be ruled by proclamation and in 1900, the Native Courts Proclamation allowed the application of sharia in Criminal cases in Northern Nigeria (Oloyede, 2000). Native Courts Ordinance of 1916 was proclaimed following the amalgamation of south and northern Nigeria wherein the permission to apply the sharia in the North and the British Law in the south was granted. The introduction of the Penal Code (for Northern Nigeria) granted to native courts the power to apply sharia to both criminal and civil cases until the 1933 amendment. That amendment discontinued the extension of sharia to criminal cases and limited it only to laws on personal status (Amananbu,, 2017). The institution of sharia as a body of civil and criminal law in 11 northern states in 1999 increased the fervour of the sharia debate and brought the agitations of Nigerian Muslims (both north and south) to the political front which many believed is actually a revival and fruition of an agitation that has been on-going since the settlement of 1960(Ostien, 2007).

Further historical evidence which points to the pre-colonial and early colonial existence of the practice of sharia in the southwest are the examples that the first Muslim ruler of Ede, (Osun State) *Oba* Abibu Lagunju who reigned during the second half of the nineteenth century, was instrumental to the establishment of a sharia court in the town in 1913(Dokun& Abdullah:1989), Oba Lamuye of Iwo, (1860-1906) another town in Osun State and *Oba* Aliyu Oyewole, the seventh reigning monarch of Ikirun also in Osun state. Professor Bolanle Awe in her book, 'History of Ibadan as a World Power in Yoruba Land' (cited in T. Abdulwahab, 2006) confirmed the role played by sharia in the dispensation of Justice in Ibadan (Oyo state). Furthermore, sometimes in 1948, a memorandum was sent to the Brooke committee which was set up to review the law administered in Native courts (Karibi-Whyte: 1993).The agitation for the

institutionalisation of sharia was also witnessed in Lagos state where the Muslim community petitioned the governor on the application of sharia in cases involving Muslims as far back as 1894. The Muslim Congress, another Muslim group with the headquarters at Ijebu Ode (Ogun state) forwarded a letter to the same committee through its chief secretary to recognise the right of Muslims to sharia courts to administer matrimonial cases and inheritance law. In effect the agitation in Ibadan, Ijebu ode and Lagos was to the effect that cases involving Muslims especially in matrimonial cases and inheritance be taken from native courts to be assigned properly to sharia courts. (Abdulwahab: 2006).

The goal of the colonialists in Nigeria and in several other places in Africa is to obliterate, wherever possible, the existing culture, law and the legal system of the colonised people and replace it with the western culture, law and legal system. Customary law, which was not generally as well developed and universalised as the sharia and common law, was easily replaced by the common law. This is because a great vacuum was created in customary law application as there were several transactions that were unknown to customary law which the common law had to fill; this was not the case with sharia. At the constitutional conference, preceding the compilation of the 1979 constitution, the sub- committee on National objectives and Public Accountability of the Constitution Drafting Committee echoed the colonialist ideal of 'uniting the society into one nation bound together by common attitudes and values, common institutions and procedure and above all, an acceptance of common social objective and destiny'(Report of the Constitutional Drafting Committee, cited in Oba, 2009:257) the plurality of culture and religion in Nigeria was ignored and undermined making the western and colonising culture the 'unifying force'

The rise of fundamentalism and the agitation for sharia law in south west Nigeria was premised on the constant violation of the right to freedom of religion owing to the incompatibility of the state structure fashioned by colonisation. The legal and political consequences of this were intensified in the field of general education and professional training of state officials. The Nigerian Constitution (1999) provides that Nigeria is a Federal Republic with a three level government (section 2(1)) which it describes as the government of the Federation, of state (36 states) and local governments (774 local governments). Any law which is inconsistent with the provision of the constitution is null and void to the extent of its inconsistency. (Section 1(2)).

The Constitution of the Federal Republic of Nigeria 1979(s.240) and 1999(ss.260 and 275) made provision for the establishment of the Sharia Courts of Appeal for states which require it. Prior to the 1979 Constitution, the sharia court of Appeal existed only in ten Northern states, having been originally established under the Sharia courts of Appeal Law, 1960 which was subsequently amended by the Sharia Court of Appeal Law, CAP 122, Laws of Northern Nigeria, 1963. The law had established a Sharia Court of Appeal for the whole of Northern Region as superior court

of record with appellate jurisdiction to hear and determine appeals from the then Native Courts in cases involving Moslem Law (Abdul-Wahab, 2006).

Prospects and challenges of sharia in the South West

The background to the agitation for sharia in the south west is established on the fundamental right to freedom to practise and manifest religion which has been constantly denied the Muslims in the south west by the Christianised colonial legal structures which has never been able to address the legal needs of Muslims in the region. These agitations swing between the proponents of a unification of legal systems where all other legal systems must all but disappear for the English legal system and a harmonisation of laws through a system of parallel courts from the lowest to the highest level. The current position of the constitution sanctioned the provision of sharia courts only at the appellate level. Muslims are forced to submit to the jurisdictions of customary courts where matters of importance to the Muslims' right to manifestation and practice of religion such as marriage, divorce, inheritance, custody and maintenance of children are completely taken away. Muslims are further denied this right in the High Courts where only the common law is administered, therefore, even though the Nigerian legal system boasts of a plural set of law which include the sharia, there are no courts for sharia adjudication in south west Nigeria because the only system of law administered by southern courts are customary law and the common law. The persistent shut down of an avenue for the law to accommodate the sharia emerge from a place of consistence arrogance and intolerance of the inheritors of colonial legacy who have conveniently forgotten that the Islamic civilisation had been a peaceful coexisting one with the African culture in Nigeria long before the European Imperialism (Kumo:1986).

The prospect of sharia in the south of Nigeria is a subject that has been addressed by several scholars and jurists in their writings. AbdulwahabTijani made a critical analysis of the deliberate exclusion of the sharia in the laws of all courts in the south. The customary, Magistrate and the High court laws of Oyo state for example contain provisions for native law and customs but not sharia. He established that sharia is never and can never be described as native law and customs, while customary law consists of a body of customs, which varies from community to community the sharia is not. He cited the supreme court of Nigeria in the case of AlhajiIlaAlkamawa v. Alhaji Hassan Bello &Anor (1998) 6 S.C.N.J 127 where Honourable Justice A. B Wali J.S.C (as he then was) stated that: 'Islamic law is not the same as Customary law as it does not belong to any particular tribe, It is a complete system of universal law more certain and permanent and more universal than English Common Law'. He recommended an amendment of the constitution to make room for not only the customary courts but also a sharia court where cases of Muslims civil law are heard, noting that the sharia court of appeal does not have original jurisdiction on sharia (1999: s. 277) (Abdulwahab: 2006).

Professor Abdurrahman Oba on his own part, examined the bid for unification of laws in Nigeria and called instead for the harmonisation of laws in such a way that the place of sharia is established at all levels in the south as it is in the North. He concluded by recommending an overhaul of the constitution on provision of the establishment of a sharia court of appeal drawing out the defect and disadvantages it posed to Muslims' access to sharia. He, like most of the other writers, called for a parallel system of law where courts administering sharia is established not only at appellate levels but at lower levels as well. (Oba:2009)

Professor. O.S Noibi, started his appraisal from the intense debate over the sharia provision in the Draft Constitution from 1977-1979 and the 1999 implementation of sharia in Northern states. He emphasised that the major challenge to the establishment of courts for sharia adjudication in southern Nigeria stemmed mainly from deliberate opposition from the non- adherents to the faith who continually revelled at denying the rights of Muslims to freedom to manifest religion. According to him, an alternative to establishing sharia courts alongside the already existing customary courts is the review of the constitution of the panel in customary courts to include jurists learned in sharia.(Noibi:2015).

Despite all the demands for sharia adjudication in southern Nigeria, there is no state in the southwest of Nigeria which has a sharia court. In certain states such as Oyo, Osun, Lagos and Ogun states, private Muslim organisation took the issue up by providing independent panels for sharia adjudication on Muslim personal law. These independent sharia panels perform the function of arbitration over matters that cover the jurisdiction of the sharia court of appeal outlined in the constitution; matters relating to marriage, maintenance, divorce, custody of children, paternity, inheritance, contract, gif, will, *wakf*(endowment) trust, gift (*hibah*) etc. This idea for sharia adjudication is an initiative of the Supreme Council for Sharia in Nigeria.

In 2002, Muslim activists in Lagos State took it upon themselves to set up what amounts to a private arbitration tribunal—the Independent Sharia Panel ("ISP") of Lagos State—to which Muslims are invited to submit their disputes for adjudication under Islamic law. It was established to provide the opportunity to Muslims to enjoy sharia adjudication on matters of concern to them. The initiative was replicated in other southwest states like Oyo, Ogun and Osun states. These sharia panels sit at designated venues and certain days of the week. Their proceedings are documented and accessible only to Muslims who voluntarily submit to the jurisdiction of the tribunal. The Independent sharia panels do not have any input from the government and do not enjoy the backing of the law. Access to sharia adjudication by Muslims in southwest Nigeria is a religious right which forms part of the body of rights referred to as fundamental human rights. The right to religious freedom is guaranteed by s.38 of the constitution of the Federal Republic of Nigeria(1999), it is unfortunate that several years after independence from colonisation, systematic repression and violation of Muslims' rights continues in the south west.

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Having examined the opinion of different writers on how the sharia can be implemented in the south west Nigeria, this paper, insisting that the sharia which is already recognised as a part of the legal system in Nigeria requires adjudication by courts in the south west Nigeria finds as follows:

1. The administration of law in Nigeria is totally controlled by the common law, even where native law and customs are applied, and the application is measured by the standard set by the common law. The common law is a variant of the English law which is totally alien to the Islamic law.
2. Legal education in Nigeria at professional training level continues to be a monopoly of the common law. The Nigerian Law School where legal procedure is taught to aspiring legal practitioners does not allow for the teaching of Islamic law and procedure. Persons with requisite training in sharia from other jurisdiction are not eligible to be called to the Nigerian bar and cannot undergo the training which is accorded to law graduates from common law countries aspiring to be called to the Nigerian Bar.
3. The misrepresentation of secularism as provided in the constitution has been used many times in Nigeria to suppress the rights of Muslims to religious freedom. It must be clear that a separation of state from religion as envisaged by the constitution is not a repression of religion.
4. A reluctance by the Nigerian people and government to recognise that colonisation in Nigeria is over and as such the insistence in some quarters by non- adherents to the Islamic faith that the Sharia not be practiced is a violation of Muslim's right to religious freedom.

Conclusion

The right to freedom of thoughts, conscience and religion is a fundamental right which like other fundamental human rights is entrenched in the constitution of the Federal Republic of Nigeria. The south west of Nigeria is a clear multi-cultural enclave with the practice of pluralism in matters of religion and legal system. Inability of the large number of Muslims in this region to access adjudication by sharia as it is provided to native law and customs and the common law is therefore a clear violation of the right to freedom of religion. Having examined the interplay of the concepts of fundamentalism and secularism surrounding the issue of sharia adjudication and implementation in south west Nigeria, this paper concludes by stating that in a constitutional democracy with plurality of culture and religion, there cannot be a secularism that project hate for everything religion while at the same time there also cannot be a complete institution of a sharia as it is in an Islamic state. It is therefore recommended as follows:

1. That in recognition of the multicultural nature of south west Nigeria, it is imperative that equal treatment is accorded to the three system of laws in Nigeria in form of adjudication. As there are established customary courts where adjudication on native law and customs

is carried out, there ought to be sharia courts at that level of jurisdiction where matters of Muslim personal law such as marriage, divorce, will, succession, contract, custody and maintenance can be adjudicated upon.

2. The constitution should make provision for the establishment of state sharia courts with original jurisdiction as well as appellate jurisdiction in the south,
3. That the Supreme Court of Nigeria, which is the apex court be empanelled to include judges learned in sharia.

References

- Abdul-wahab, T. J.(2006). Application of Sharia in Southern Nigeria: The Hoax, The Truth. *Al-Furqan Publishers.*
- Adam Abdullahi El-Ilory. (1965), Mujiz Tarikh, Nigeria, Beirut
- Adelowo, E.D.(1982). Imperial Crises and their Effect on the Status of Islam in Yoruba Land in the Nineteenth Century. *Journal of the Historical Society of Nigeria.*(11)1/2. (Pp 128-137)
- Ahmad, I.K (2019). Constitutionalism and Democracy in Nigeria. *Global Scientific Journal* (7)12. https://www.globalscientificjournal.com/researchpaper/constitution_and_constitutionalism_issue_the_democratic_consolidation.pdf accessed on 2/7/22
- AfrobameterSurvey(2012) Percentage distribution of the Muslim population in Nigeria.
- Amanambu, U.E. (2017). The introduction of Sharia Law in Nigeria and the Nigerian Constitutional Challenges and Prospect. *International Journal of Innovative Research and Advanced Studies 4 (6*)
- Ambali, M.A. (1998) The Practice of Muslim Family Law in Nigeria, Tamaza publishing Company, Zaria
- Averill, L.J.(1989). *Religious Right, Religious Wrong: A Critique of the Fundamentalism Phenomenon.* The Pilgrim Press, New York
- Copson, A (2017). Secularism: Religion, Politics, and Freedom. Oxford University Press. Oxford

- Crenshaw, M. (1990).The Logic of Terrorism in W Reich. (Eds.). *Origins of Terrorism: Psychologies, ideologies, theologies, states of mind* (pp7-22). Washington, Woodrow Wilson.
- Duku, M. (2022). The Aftermath of 21st Century Sharia Implementation in Northern Nigeria. *Media of Law and Sharia* (3) https:?//journal.umy.ac.id//index.Php/mls
- El Fadl, K. A. (2001). *Rebellion and Violence in Islamic Law.* Cambridge University press USA.
- Ericksen, T. H. (2015) *International Encyclopedia of Human Geography*
- Fazlur, R. (1982). Islam and Modernity: Transformation of an Intellectual Tradition. University of Chicago Press Chicago.
- Fazlur, R. (2000). *Revival and Reform in Islam: A study of Islamic Fundamentalism. Oxford.* Oneworld Publications
- Gbadamasi, G.O.(2019) The Growth of Islam among the Yorubas (1841-1908) cited in *Al-Ahkam.* (29)1 pp 1-26*http://dx.doi.org/10.21580/ahkam.2019.29.1.3158*
- Gurr, T. R. (1990). Terrorism in Democracies: Its Social and Political Bases. in W. Reich. (Eds) *Origins of Terrorism: Psychologies, ideologies, theologies, states of mind* (pp86-100). Washington. Woodrow Wilson.
- Hassan-Bello, A. Sharia in the Nigerian Constitutional Conferences and the Sharia Debates in the Drafts
- Hurd, E.S. (2004). The Political Authority of Secularism in International Relations. *NorthwesternUniversity European Journal of International Relations (10)2 pp. 235-262. Sage.*(ECPR).*https://faculty.wcas.northwestern.edu/esh291/Elizabeth_shakman_Hurd/publications_files?EJIRfinal.pdf* . accessed on 2/8/22
- Juergensmeyer, M.(2002). The Global Dimensions of Religious Terrorism in Rodney B. Hall and T. J. Biersteker (Eds.).*The Emergence of Private Authority in Global Governance*. (pp 141-158) Cambridge University Press
- Kumo, S.(1985). The Application of Islamic Law in Northern Nigeria in S. Khalid Rashid (Eds.).*Islamic Law in Nigeria: Application and Teaching (*pp 42-51). Lagos. Islamic Publication Bureau.
- Ladan, T. M. (2002) The Development and Application of Sharia in Northern Nigeria: issues and Challenges. (Delivered at a Two-Day Expert Group Meeting on Women's Rights Under Sharia Law in Nigeria, Held at Women Development Center, Agege, Lagos under the Auspices of Women Advocates Research and Documentation Center (WARDC)). A Publication of the Friedrich Ebert Stiftung.
- Lerner, N. (2000). *Religion, Beliefs, and International Human Rights.*Orbis Books.

- Lerner, N. (1996). Religious Human Rights Under the United Nations in J. Witte, Jr. and J. D. Van der Vyver*Religious Human Rights in Global Perspective: Religious Perspectives.* (pp79- 132). *Netherlands.* Kluwer Law International.
- Little, D. (1996). Studying 'Religious Human Rights: Methodological Foundations in J. Witte, Jr. and J. D. Van der Vyver (Eds.). *Religious Human Rights in Global Perspective: Legal Perspectives.* (pp 45-76). *Netherlands.* Kluwer Law International.
- Mousalli, A. S.(2001) *The Islamic Quest for Democracy, Pluralism, and Human Rights* University Press of Florida
- Musdapher, D. (2009). Application of Islamic Law in Northern Nigeria: Historical perspective and the Way forward in I. O. Oloyede, M. B. Uthman and I. Abikan (Eds.).*Al-'Adl(The Just) Essays on Islam, Islamic Law and Jurisprudence.* (pp 207-215).BookBuilders.
- Neera, C (1990) Beyond Secularism: The Rights of Religious Minorities. Oxford University Press. New Delhi https://globalsocialtheory.org/concepts/secularism/
- Noibi, D. O. S. (2015). Implementation of The Sharia in South Western Nigeria in K. A. Dawud, I. Abikan and A. Adeleke (Eds.)., *Islamic Law and Contemporary Issues in Nigeria* (pp17-30) Global ComputeRay
- Ostein, P. (2007) *Sharia Implementation In Northern Nigeria 1999-2006: A Sourcebook (1-4)* Spectrum Books
- Olaniyan, K.O. (2019) The Child Right to Education and Freedom of Religion in a Secular Nigeria State. A Paper presented at the International Sociological Association (ISA)Mid – Term Conference held at the University of Ghana between November 14 - 18,2019
- Roy, O. (1994) The *Failure of Political Islam.* trans Carol Volk I B. London. Tauris Publishers. London. (pp 23-60)
- Shittu, .A D. (2015). Towards Locating the Nigerian Shariah Penal Codes' Provisions for Willful homicide within the Shariah. *Ilorin Journal of Religious Studies* (5)(1). 103-117.https://ixtheo.de/Record/1767751508. Accessed on 23/7/22
- Shittu A. D. An Examination of the Trial of AminaLawal Under the Shariah Penal Code of Katsina State. *Ilorin Journal of Religious Studies*.https://uilspace.unilorin.edu.ng/handle/20.500.12484/4573. Accessed on 23/7/22
- Shittu, A. D. (2018) .Shariah and Social Justice in the North; Lessons for the South. The Experience of Shariah Practice in Nigeria.https://iwf.com.ng/2018_conference_papers/materials_2018/25.pdf.accessed on 23/7/22
- Shittu A. D.(2010) A Critique of the Trial of ShehuUsman for Homicide Under the Sharia Penal Code of Kano State *Journal of the Nigeria association of teachers of Arabic and Islamic studies* . (XIII). Pp29-40

- United Nations Committee on Human Rights General Comments No 22(1993) https://www.refworld.org/docid/453883fb22.html. Accessed on 15/8/22
- Zalta, N. E. (2020). Multiculturalism. *The Stanford Encyclopaedia of Philosophy. https://plato.stanford.edu/archives/fall2020/entries/multiculturalim*accessed on 1/8/22