

## **NIGERIA AS A SECULAR STATE: ANALYSIS OF THE IMPACT OF ISLAMIC LAW ON MUSLIMS IN NIGERIA**

**Mohd Jamiu Ayinla-Edun\*\***

**Adekunle Saheed Abiola\***

### **ABSTRACT**

The debate over whether Nigeria is a secular state has persisted for a long time. This debate is often grounded in the assumption that Nigeria, influenced by its colonial masters and other Western jurisdictions that explicitly declare their secularism in their constitutions, should also be secular. While this declaration suits the cultural composition of these Western countries, Nigeria's cultural and religious composition is complex and dynamic. This complexity creates a challenging environment for declaring Nigeria a secular state. The recognition and integration of Islamic Law (Shar'ia) within the country further complicate this issue, as Shari'ah law fundamentally opposes secularism. Therefore, the doctrinal methodology was employed in this paper to examine Nigeria's laws and other relevant literature to determine the nation's stance on secularism. The paper concludes that based on constitutional evidence and prevailing practices, Nigeria is not a secular state but a multi-religious one, where no single religion holds supremacy over the others.

**Keywords:** Secularism, Nigeria, Islamic Law, Religion, Constitution

### **1.0 Introduction**

The evolution and development of secularism and secularisation occurred over generations.<sup>1</sup> In the West, secularism emerged as a result

---

\*Lecturer, Department of Islamic Law, Fountain University, Osogbo.  
[Jamiu2greats@gmail.com](mailto:Jamiu2greats@gmail.com)

\*\*Lecturer, Department of Public and International Law, Fountain University, Osogbo. [abiola.saheed@fuo.ed.ng](mailto:abiola.saheed@fuo.ed.ng)

of a shift from religion as the dominant force in both private and public life to a focus on reasoning, knowledge and science.<sup>2</sup> This concept originated with the formation of the humanist movement in Europe during the pre-science age.<sup>3</sup> The humanist movement encouraged people to scrutinize religious teachings, rules and precepts through the lenses of reasoning, knowledge and science.<sup>4</sup>

The diverse nature of Nigeria's culture and religion presents a unique case for the connection between secular governance and religious law. As a secular state, Nigeria is constitutionally committed to maintaining neutrality in religious affairs, ensuring that no religion is given preferential treatment by the State. However, the coexistence of this secular framework with the implementation of Islamic law, particularly in the predominantly Muslim northern region, raises significant questions about its impact on the Muslim population.

The introduction of Shari'ah law in twelve northern states in Nigeria since the early 2000s has had profound social, legal and political implications on the Nigerian legal system. This dual legal system, where Islamic law operates alongside the national legal framework, influences the daily lives of millions of Nigerian Muslims.<sup>5</sup> The enforcement of Shari'ah has affected various aspects of life, including family law, criminal justice, and personal conduct. For instance, issues such as marriage, divorce, inheritance, and criminal penalties are governed by Islamic principles in these regions, which sometimes conflict with the national legal standards.<sup>6</sup>

The implementation of Islamic law has brought about debates on its compatibility with Nigeria's secular constitution and the implications

---

<sup>1</sup> Casanova José *Public Religions in the Modern World* (University of Chicago Press, 1994).

<sup>2</sup> Ibid

<sup>3</sup> Taylor Charles. *A Secular Age* (Belknap Press of Harvard University Press, 2007)

<sup>4</sup> Davie Grace *Religion in Britain since 1945: Believing without Belonging* (Wiley-Blackwell, 1994)

<sup>5</sup> I.O Oloyede, 'Secularism and Religion: Conflict and Compromise (An Islamic Perspective)' *Islam and Modern Age* <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjlupbrjOODAxWyUUEAHVi\\_DkMQFnOECAGQAQ&url=https%3A%2F%2Fuilspace.unilorin.edu.ng%2Fhandle%2F20.500.12484%2F11565&usg=AOvVaw0B7LzRu5SESVIaR-qe0D4I&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjlupbrjOODAxWyUUEAHVi_DkMQFnOECAGQAQ&url=https%3A%2F%2Fuilspace.unilorin.edu.ng%2Fhandle%2F20.500.12484%2F11565&usg=AOvVaw0B7LzRu5SESVIaR-qe0D4I&opi=89978449)> accessed 16 January 2023

<sup>6</sup> Ladan, Mohammed Tawfiq *Constitutional Law in Nigeria: Text, Cases, and Materials* (Nigerian Educational Research and Development Council, 2017)

for religious freedom and human rights. Proponents argue that Shari'ah law reflects the cultural and religious values of the Muslim population, providing a legal system that aligns with their beliefs and practices. They contend that it fosters social cohesion and moral conduct within the community.<sup>7</sup> However, critics highlight concerns about gender inequality, discrimination against religious minorities, and potential human rights violations under Shari'ah law. The tension between upholding religious traditions and adhering to international human rights standards is a central theme in this discourse.

Moreover, the introduction of Shari'ah has political dimensions, influencing power dynamics and governance in the northern regions. It has become a tool for political leaders to garner support from the Muslim electorate, sometimes leading to the politicization of religion and exacerbating regional and religious tensions. The coexistence of Shari'ah and secular laws also raises practical challenges for the judiciary, as legal practitioners navigate conflicts between the two systems and ensure fair and consistent application of justice.

This paper seeks to explore the concept of secularism within the Nigerian context and examine the connection between Islamic law and the socio-political and legal frameworks of the nation. By analysing constitutional provisions, historical contexts, and contemporary practices, this study aims to determine whether Nigeria can be accurately described as a secular state or if it is more appropriately characterised as a multi-religious entity. Through a doctrinal methodology, this paper will probe the legal and constitutional frameworks in Nigeria, comparing it with secular practices globally and evaluating the unique challenges posed by the integration of Islamic law.

## **2.0 Meaning of Secularism and Secularisation**

The terms 'secularism' and 'secularization' are almost synonymous. Secularism means an ideology while secularization means the process of socio-cultural and intellectual transformation.<sup>8</sup> Secularism originates

---

<sup>7</sup> Ibid

<sup>8</sup> Trevor Ling, *A History of Religion, east and West* (Macmillan Press: London, 1968) 5.

from the Latin word *saeculum*, which, according to Williams,<sup>9</sup> means 'of this age' or 'related to this world' in a temporal sense, rather than referring to physical space.

Secularism has attracted different interpretations and definitions from different scholars and schools of thought. Berkes<sup>10</sup> defined it as emphasis on the worldly regardless of what happens in the hereafter. Chamber's Twentieth Century Dictionary<sup>11</sup> defines secularism as the belief that the state, morals, education etc. should be independent of religion. The Oxford Advanced Learner's Dictionary<sup>12</sup> defines it as the belief that laws, education etc, should base on facts of science, rather than religion. The Lexicon Webster Dictionary<sup>13</sup> explains it as "a system of beliefs which rejects all forms of religious faith and worship. It has also been opined<sup>14</sup> that neither theism nor atheism enters into the secularist scheme because neither is provable by experience. In Hellenic culture, "secularization" referred to a transformation in the human mind, where the basis of conduct shifted to more mundane concerns.<sup>15</sup>

Further, secularism has been defined as mere formality, anonymity and impersonality which imply treating persons as persons, not as things and not as inanimate.<sup>16</sup> Some see it as '*mobility*' which implies socialization.<sup>17</sup> In other words, secularism means formality and socialisation. Cox<sup>18</sup> identifies other features of secularism as pragmatism, profanity, pluralism and tolerance. Cox stressed that secularism does not exclude religion rather it breeds religious peaceful co-existence. Wilson was said to have identified the elements of

---

<sup>9</sup> Williams Raymond *Keywords: A Vocabulary of Culture and Society* (Oxford University Press, 1983)

<sup>10</sup> N. Berkes, *Islam and the West Monton and Co* (Harvard, 1957) 43

<sup>11</sup> Kivkpartrick (ed) *Chamber's Twentieth Century Dictionary* (VII W.R. Chambers Ltd; London 1983)

<sup>12</sup> A.S Hornby, *Oxford Advanced Learner's Dictionary* (5<sup>th</sup> ed Oxford University Press 1995) 1062

<sup>13</sup> Bernard Cayne *The Lexicon Webster Dictionary* (V II, U.S.A., 1971) 869

<sup>14</sup> E. Waterhouse *Secularism in James Hastings (Ed): Encyclopaedia of Religion and Ethics* (VII New York, 1908). 348.

<sup>15</sup> Ibid

<sup>16</sup> Harvey Cox *The Secular City: Secularization and Urbanization in Theological Perspective* (New York: The Macmillan Company Press, 1966) 41

<sup>17</sup> Ibid

<sup>18</sup> Ibid

secularism as a rational procedure, technology and the absence of the sacred.<sup>19</sup>

Like secularism, the word "secular" has various definitions. It can be referred to as greater freedom of doctrinal interpretation for individual believers, whose commitment to transcendent values remains undiminished, or to the outright denial that a sacred order exists at all.

<sup>20</sup>

## 2.0 Islamic Perspective on Secularism and Secularisation

Secularism and secularization are often contentious topics within Islamic discourse. The concept originates from Western thought. Razek<sup>21</sup> argued that Islam does not mandate a specific form of government and that political authority should be based on rational and secular principles. He suggested that the Caliphate was a historical institution without a direct religious mandate. An-Na'im advocates for a secular state that ensures religious freedom and protects individual rights. He argued that a secular state is necessary for Muslims to practice their faith freely and authentically without state interference.<sup>22</sup>

On the other hand, scholars like Qutb<sup>23</sup> argued that secularism is incompatible with Islam because it separates religion from state affairs leading to moral decay. He believed that Islamic law (Shari'ah) should

---

<sup>19</sup> Proceedings of The (Nigerian) Constituent Assembly, Vol. II, Federal Ministry of Information; Lagos, 1978, p. 148.

<sup>20</sup> I.O Oloyede, 'Secularism and Religion: Conflict and Compromise (An Islamic Perspective)' *Islam and Modern Age* <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjIupbrjOODAxWyUUEAHVi\\_DkMQFnoECAGQAQ&url=https%3A%2F%2Fuilspace.unilorin.edu.ng%2Fhandle%2F20.500.12484%2F11565&usg=AOvVaw0B7LzRu5SESVIaR-qe0D4I&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjIupbrjOODAxWyUUEAHVi_DkMQFnoECAGQAQ&url=https%3A%2F%2Fuilspace.unilorin.edu.ng%2Fhandle%2F20.500.12484%2F11565&usg=AOvVaw0B7LzRu5SESVIaR-qe0D4I&opi=89978449)> accessed 16 January 2023

<sup>21</sup> A.A Razek *Islam and the Foundations of Governance* (2013) [https://ecommons.aku.edu/uk\\_ismc\\_series\\_intranslation/1](https://ecommons.aku.edu/uk_ismc_series_intranslation/1) accessed 12 July 2024

<sup>22</sup> A Nehaluddin 'The Modern Concept of Secularism and Islamic Jurisprudence: A Comparative Analysis' (2009) 15 (1) Annual Survey of International & Comparative Law 75

<sup>23</sup> Sayyid Qutb 'Milestones and its impact on Arab Spring' <https://smallwarsjournal.com/jrnl/art/sayyid-qutb%E2%80%99s-%E2%80%9Cmilestones%E2%80%9D-and-its-impact-on-the-arab-spring> accessed 12 July 2024

govern all aspects of life, including politics.<sup>24</sup> While Maududi<sup>25</sup> asserted that Islam provides a complete way of life, including governance. He argued that secularism undermines the divine guidance of Shari'ah and that an Islamic state is necessary to implement God's laws fully. Khomeini<sup>26</sup> leader of the Iranian Revolution, strongly opposed secularism. In his view, an Islamic state is essential to ensure that laws and governance align with Islamic principles. His ideas were instrumental in establishing the theocratic system in Iran.

It must be clearly stated that the connotation of secularism as atheism or the negation of God is considered an act of *shirk* (associating partners with God). Secularism, in this context, denies the fundamentals of Shari'ah and monotheism.<sup>27</sup> Such a belief is condemned in Shari'ah and is believed to lead to eternal doom. This is evident in the argument of the proponents that necessitates the relegation of religious rules for that of reasoning and manmade rules. This is a grave sin in Islam; and makes anyone that consciously or willingly permits and legalise this notion an unbeliever.<sup>28</sup> The Qur'an says:

Or have they associated (such as reasons and whims) who have proclaim for them any religion (or law) that Allah does not sanction? And were it not for the fact that there would be judgement, decision would have certainly been given between them, and surely the unjust shall have a painful punishment.<sup>29</sup>

And it behoves not a believing man and a believing woman that they should have any choice in their matter when Allah ad His Apostle have decided a matter (or made a law). And

---

<sup>24</sup> Ladan, Mohammed Tawfiq. *Constitutional Law in Nigeria: Text, Cases, and Materials*. Nigerian Educational Research and Development Council, 2017.

<sup>25</sup> Maududi, *Sayed Abu'l A'la Fundamentals of Islam (reprint ed.)* (1978) p. 21.

<sup>26</sup> John Kifna 'Khomeini Terms Critic of Secularism enemies of Islam' *The New York Times* <<https://www.nytimes.com/1979/05/25/archives/khomeini-terms-secular-critics-enemies-of-islam-dictatorship-of-the.html>> accessed 12 July 2024

<sup>27</sup> Modood Tariq 'Is There a Crisis of Secularism in Western Europe?' (2012) 73(2) *Sociology of Religion* 130-149.

<sup>28</sup> Quran, Surah Ma'idah (The Table) 5:50

<sup>29</sup> Quran, Surah Ash-Shuraa (The Poet) 42:21

whoever disobeys Allah and His Apostle, he surely strays off a manifest straying.<sup>30</sup>

It is important to note that the Shari'ah does not allow any law to be placed on the same level of authority, let alone prevail over it. Instead, all man-made laws must derive their validity from the Shari'ah and must not contradict its principles.<sup>31</sup> Stressing that secularism is not permitted in any form by the Shari'ah, Sulaiman<sup>32</sup> argues that secularization is a development unique to Christian civilization. Historically and in practice, secularism has been utilized as a tool to undermine Muslims and hinder the progress of Islam, reducing it to a mere earthly ideology. This perspective underscores that secularism is used to impede the growth of Islamic principles.<sup>33</sup>

In further support of this stance, Joseph Schacht<sup>34</sup> argues that secularism is alien to Islamic doctrine. Islam encompasses a comprehensive way of life, integrating both the spiritual and temporal realms under its guidance. He further stated that Islam necessarily regulates the conduct of its adherents in political, social, and economic spheres. It is both a religious and political structure that must be adhered to. This holistic approach means that any separation of religion from public life, as advocated by secularism, is fundamentally incompatible with the teachings of Islam.

Islamic doctrine asserts that Shari'ah is the ultimate source of law and moral guidance.<sup>35</sup> Any man-made law must derive their validity from Shari'ah and must not contradict its principles. Thus, secularism, which advocates for the separation of religion from state affairs, cannot be reconciled with the Islamic way of life. This viewpoint emphasizes that the Shari'ah is comprehensive and supreme, leaving no room for

---

<sup>30</sup> Quran, Surah Al-Ahzab (The Confederates) 33:36

<sup>31</sup> Modood Tariq 'Is There a Crisis of Secularism in Western Europe?' *Sociology of Religion* (2012)73(2) 130-149.

<sup>32</sup> Sulaiman, Sunday Triumph 'The Political Activism of the Chritian Association of Nigeria'

<[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiw54CUIOODAxXMT0EAHc4tB1cQFnoECBAQAQ&url=https%3A%2F%2Fbooks.openedition.org%2Fifra%2F418%3Flang%3Den&usg=AOvVaw3uaMD5dq5TjXJx\\_wXwKgiN&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiw54CUIOODAxXMT0EAHc4tB1cQFnoECBAQAQ&url=https%3A%2F%2Fbooks.openedition.org%2Fifra%2F418%3Flang%3Den&usg=AOvVaw3uaMD5dq5TjXJx_wXwKgiN&opi=89978449)> accessed 16 January 2024

<sup>33</sup>Ibid

<sup>34</sup> J Schacht. *An introduction to Islamic Law* (Oxford University Press, 1964) 1

<sup>35</sup> Ibid

secular ideologies that seek to separate the spiritual from the temporal. Flowing from the above arguments, it is, therefore, clear that secularism, with its roots in Christian civilization and its tendency to marginalise religious principles, is fundamentally at odds with Islamic doctrine. Islam's integration of religious and worldly affairs means that any attempt to adopt secularism would undermine the very foundations of Islamic governance and societal structure.

### **3.0 The Nigerian Law and the Concept of Secularism**

Unlike in the nations of Europe, the establishment of the concept of secularity in Nigeria remains a subject of debate. The reason is that the grundnorm of the country does not specifically declare Nigeria as either secular or non-secular. Proponents of the view that secularism forms the basis of the Nigerian legal system argue that the 1999 Constitution, in some of its provisions, implicitly declares the country a secular state. They point to Section 10 of the Constitution,<sup>36</sup> which they interpret as an explicit declaration of Nigeria's secular status. This section prohibits the selection of any religion as a state religion, and the marginal note of this provision further supports their assertion.

However, this interpretation is contested, as other constitutional provisions and the recognition of religious laws, such as Shari'ah law in certain states, complicate the assertion that Nigeria is a purely secular state. Furthermore, proponents argue that the provisions of Section 38,<sup>37</sup> particularly subsections 2 and 3, further strengthen the argument that Nigeria is a secular state. These subsections ensure freedom of thought, conscience and religion, and protect individuals from being compelled to receive religious instruction or take part in religious activities without their consent, reinforcing the secular principles within the Nigerian legal framework.<sup>38</sup>

---

<sup>36</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended 2023

<sup>37</sup> Ibid

<sup>38</sup> The provision says 'Every person shall be entitled to freedom of thought, conscience and 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;' 2. 'No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian' 3. No religious community or denomination shall be prevented from providing religious



The debate over whether Nigeria can be considered a secular state often revolves around the interpretation of constitutional provisions and the absence of an explicit declaration of secularism. Ladan<sup>39</sup> explores the Constitutional provisions and concludes that while Nigeria's legal framework includes principles that could support secularism, there is no explicit constitutional mandate for a secular state. He argued that the presence of Shari'ah law in some states further complicates the claim that Nigeria is a secular state.

Abubakar<sup>40</sup> argued that Nigeria's Constitution does not explicitly declare the country as a secular state, which undermines claims that Nigeria is secular. He further pointed out that the absence of an explicit secular status in the Constitution means that secularism is not a foundational principle of the Nigerian state. He argues that the constitution's prohibition of a state religion in Section 10 is insufficient to establish Nigeria as a secular state because it does not mandate a separation of religion from state affairs.

Yadudu<sup>41</sup> while opposing the secularisation in Nigeria posed a number of rhetorical questions which includes; is it the English, where Anglican Church is the official religion that must be professed by the Crown? Or the Indian, where Hindu is all but the official religion? Or American where judicial attitude is confused between maintaining a clear separation of the Church from the state or a non-discriminatory treatment of all religions?"

Imam and Mustapha<sup>42</sup> contended that the country is not a secular state they posited that it is therefore not a gain saying to observe that the Nigerian constitution, like the constitution of any other civilised

---

instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

<sup>39</sup> Ladan, Mohammed Tawfiq *Constitutional Law in Nigeria: Text, Cases, and Materials* (Nigerian Educational Research and Development Council, 2017)

<sup>40</sup> Abubakar, Khalid Nigeria's Secularism and the Challenges of Religious Pluralism, *Journal of African Constitutional Studies* (2019) 3(2) 45-62.

<sup>41</sup> A.H. Yadudu 'The Shaira Debate in Nigeria: Time for reflections' Paper delivered at the National seminar on the place of women under the Shaira organized by constitutional rights project 1st-3rd March, 2000, Abuja, 39.

<sup>42</sup> I Imam and M. A. A. Mustapha 'The unending crisis on the status of shari'ah in Nigerian constitution: the past present and future of shari'ah in focus' <[unilorin.edu.ng/publications/SHARIAH%20IN%20NIGERIA%20IMAM%20AND%20MARIAM.htm](http://unilorin.edu.ng/publications/SHARIAH%20IN%20NIGERIA%20IMAM%20AND%20MARIAM.htm)> assessed 10 May 2024

country of the world is not perfect, thus inevitably expedient to have an acceptable constitution for the society, which must take into cognizance the conglomeration of the multi religious, ethnic and dimensional structures of the Nigerian society.

Furthermore, the opponents of Nigeria as a secular state rely on several constitutional provisions that recognize and give credence to religious matters within the public and political spheres of the country. For instance, Section 275 of the 1999 Constitution allows for the establishment of a Shari'ah Court of Appeal in any state that desires it. Similarly, Section 280 of the same constitution establishes the Customary Court of Appeal. The duality of the country's legal system further supports the argument that secularism is not embedded within Nigeria's legal framework. Each region's criminal laws are often designed in accordance with the predominant religion of the region.<sup>43</sup>

For example, states in the northern part of Nigeria, where Islam is the predominant religion, implement Shari'ah law for personal and criminal matters, while southern states, where Christianity and traditional beliefs are more prevalent, apply customary and common law.<sup>44</sup> This dual legal system highlights the significant influence of religion on the country's legal and political structures.<sup>45</sup> Some Northern states in the country such as Zamfara, Yobe, Taraba, Sokoto, Kebbi, Katsina, Kano, Kaduna, Jigawa, Gombe, Bauchi and Niger have adopted Shari'ah Penal Law with little or no modification as their criminal law.<sup>46</sup> In holding the view that although, the constitution prohibits making any religion a state religion but did not in any manner declare the country as secular, Niki Tobi -JCA as he then was- asserted;

---

<sup>43</sup> See the case of *Aoko vs Fagbemi* 1961ANLR 400

<sup>44</sup> See generally the provisions of the Criminal Code and the Penal code.

<sup>45</sup> Criminal Code is applicable in the Southern part of Nigeria, a region predominantly occupied by Christians, while the Penal Code is applicable in the Northern part of Nigeria, a region predominantly occupied by Muslims. Penal Code incorporate some Shari'ah offences in the criminal laws of the religion

<sup>46</sup>G. N. Okeke 'The Ambivalence of the 1999 Nigerian Constitution in Matters Relating to Secularism: a Case for a Constitutional Review' [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj7rdeCk-ODAxVuQEEAHb0IALQQFnoECAkQAQ&url=https%3A%2F%2Fwww.ijhssi.org%2Fpapers%2Fv2\(3\)%2Fversion-3%2FJ236569.pdf&usg=AOvVaw0xg6hJDZnBrsh8itCnHrns&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj7rdeCk-ODAxVuQEEAHb0IALQQFnoECAkQAQ&url=https%3A%2F%2Fwww.ijhssi.org%2Fpapers%2Fv2(3)%2Fversion-3%2FJ236569.pdf&usg=AOvVaw0xg6hJDZnBrsh8itCnHrns&opi=89978449) PDF accessed 16 January 2024

There is the general notion that section 11 (of the 1989 constitution which the equivalent of s.10, 1999 constitution) makes Nigeria a secular nation. That is not correct. The word secular etymologically means pertaining to things not spiritual, ecclesiastical or not concerned with religion. Secularism, the noun variant of the adjective, secular, means the belief that the state, morals, education, etc. should be independent of religion. What section 11 is out to achieve is that Nigeria cannot, for example adopt either Christianity or Islam as State religion. But that is quite different from secularism.<sup>47</sup>

It is important to stress emphatically that interpreting Section 10 of the Constitution as a pronouncement of Nigeria as a secular state is a total negation of the literal rule of interpretation. This rule suggests that the ordinary or technical meaning of words should be strictly adhered to in the absence of any ambiguity in the words forming the content of the legislation, and no unnecessary or extraordinary meaning should be read into such legislation. Therefore, Section 10 cannot be interpreted as a declaration of Nigeria as a secular state.<sup>48</sup>

The Christian origin of the common law of England which is still in operation in the country further make true the assertion that the country is not a secular but a religious state, the postulation of Lord Sumner in the case of *Attorney General v. Christian Council* supports the Christian origin of the common law:

Ours is and always has been a Christian state. The English family is built on Christian ideas, and if the national religion is not Christian there is none. English law may well be called a Christian law, but we apply many of its rules and most of its principles, with equal justice and equally good government in heathen communities and its sections even in courts of conscience...<sup>49</sup>

---

<sup>47</sup> N. Tobi (JCA) "Law, Religion and Justice" in fundamental legal issues in Nigeria, Essays in Honour of Andrew Obaseki, JSC (Trd) Edited by Wole Owaboye (1995) 139.

<sup>48</sup> N. Tobi 'Law, Religion, and Justice in Owaboye, ed, *Fundamental Legal Issues in Nigeria: Essays in Honour of Andrew Obaseki* (Lagos: Patlink Publishers, 1999) 97

<sup>49</sup> Ibid

The constitution by virtue of section 6(1) (2) vested the judicial power of both the Federation and the state in the courts established for the federation and the states respectively, it in the preamble contemplates the vital role of religion in the scheme of public and political affairs and as well recognised the religious inclination of the Nigerian citizenry by providing thus;

We the people of the federal republic of Nigeria having firmly and solemnly resolve, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God...

The constitution, in some of its provisions, recognizes the religious nature of the country. It provides that the Court of Appeal shall consist of such a number of justices not less than forty-nine, of which not less than three shall be learned in Islamic (personal) law.<sup>50</sup> Although this provision limits the jurisdiction of the court in respect to Islamic law to personal matters, the fact remains that it acknowledges the influence of religion (Islam) in the adjudication of matters.<sup>51</sup> The above constitutional provision contradicts the characterisation of Nigeria as a secular state.<sup>52</sup> To buttress this, the practice of observance of half closing day on Fridays to ensure Muslims observe their weekly jumu'ah congregational prayer,<sup>53</sup> and Sunday closing law as Sabbath day<sup>54</sup> for Christians and observance of holidays on religious festive days including but not limited to Eid, Easter, Christmas. etc.<sup>55</sup>

It must be stated at this end that while the Nigerian Constitution includes provisions that could be interpreted as supporting secularism, the broader legal and societal context reveals a multi-religious state where secular and religious elements are deeply intertwined. The presence of Shari'ah and Customary Courts of Appeal within the judicial system, along with constitutional requirements for justices

---

<sup>50</sup> See Section 248 of the Constitution of the Federal Republic of Nigeria, 1999, as amended 2023

<sup>51</sup> Ibid

<sup>52</sup> A. O Abiodun 'The State, Sectarian Violence, and Freedom of Association in a Secular Context: The Case of the Islamic Movement in Nigeria' (2018) <<https://doi.org/10.31743/spw.185>> accessed 16 January 2024

<sup>53</sup> It is a compulsory congregational prayer on matured Muslim males while matured females are at liberty to observe it.

<sup>54</sup> *Bowanan v Secular Society* (1917) A C 406

<sup>55</sup> *Eid-l-adhah* and *eid-l-fitr*, they are the only established festivals in Islam

knowledgeable in Islamic law, illustrates this integration. These provisions indicate an acknowledgment of religious influences and suggest that Nigeria's legal framework accommodates and respects its diverse religious nature.

### **5.0 Impacts of the Nigerian Law on Muslims in Nigeria**

The Nigerian legal framework significantly impacts the lives of Muslims in the country. Given Nigeria's diverse religious nature and dual legal system, which includes both secular and religious laws, the intersection of these laws forms various aspects of Muslim life.<sup>56</sup> This section explores these impacts, referencing relevant constitutional provisions, scholarly opinions, and practical outcomes.

- i. Recognition and Practice of Shari'ah Law: Sections 275-279 of the 1999 Constitution of Nigeria<sup>57</sup> allow for the establishment of Shari'ah Courts of Appeal in states that require them. These courts handle matters related to Islamic personal law, including marriage, divorce, inheritance, and endowments (waqf). The recognition of Shari'ah law within the Nigerian legal system allows Muslims to resolve personal and family matters in accordance with their religious beliefs. This legal accommodation reinforces the cultural and religious identity of Nigerian Muslims. Scholars like Assad<sup>58</sup> argue that this dual legal system respects the religious diversity of Nigeria and provides a framework for Muslims to practice their faith fully within the bounds of the law.
- ii. Right to Freedom of religion, conscience and thoughts: Section 38 of the Constitution guarantees the right to freedom of thought, conscience, and religion, including the freedom to change one's religion, manifest and propagate religious beliefs. This provision ensures that Muslims can practice their faith openly, establish places of worship and propagate their religious beliefs without state interference. According to legal scholars, this fosters a sense

---

<sup>56</sup> A. O Abiodun 'The State, Sectarian Violence, and Freedom of Association in a Secular Context: The Case of the Islamic Movement in Nigeria' (2018) *STUDIA Z PRAWA WYZNANIOWEGO*, DOI:

<<https://doi.org/10.31743/spw.185>> accessed 16 January 2024

<sup>57</sup> Constitution of the Federal Republic of Nigeria.

<sup>58</sup> Assad, Talal *Formations of the Secular: Christianity, Islam, Modernity*. (Stanford, CA: University Press, 1994)

of religious security and community among Nigerian Muslims, allowing them to engage freely in religious practices and institutions. It is important to note that the right to freedom of religion is the grand right given to a Muslim by the constitution<sup>59</sup> which encompasses other rights. The right to freedom of religion is so fundamental to the extent that it forms part of the fundamental Human rights, which every government, municipal or international body passionately sought to guard, and protect. Therefore, shari'ah, being part of the religion aspect of Muslim life ought to be guaranteed.<sup>60</sup>

- iii. The court has given pronouncement in favour of the religious right enjoyed by Nigerians in the case of *Nkpa v Nkume*<sup>61</sup> the fact of the case was that, the plaintiff sued the defendant for trying to make his (plaintiff) wife join an association of women in their village, or at least contribute to their community development efforts, she would do neither because her religious beliefs forbade her to (the plaintiffs were Jehovah witnesses), seeing that they could not make her change her mind by gentle persuasion and other forms of gentle cajoling, they employed the services of armed soldiers. The soldiers not only roughened him and his wife, they equally made it known to them that they were prepared to press their guns into service if the recalcitrant duo did not play ball, fearing for their lives, and to avoid further molestation, the plaintiff paid the sum of N40 demanded by their tormentors. The plaintiff wants his money back, plus a compensation for the inconveniences he and his wife had been put through. At trial, the court found for the defendants, however at the court of appeal, the claim of the plaintiff was granted on the ground that no one can be coerced to belong to any association that contravene his/her religious belief

It will be pertinent to produce a list of some of the subordinate rights that are accorded to Muslims by the constitution, the

---

<sup>59</sup> Section 38(1) Constitution of the Federal Republic of Nigeria, 1999 as amended CAP C23 L.F.N.2020

<sup>60</sup> Imam and M. A. A. Mustapha, 'the unending crisis on the status of shari'ah in Nigerian constitution: the past present and future of shari'ah in focus', <[unilorin.edu.ng/publications/SHARIAH%20IN%20NIGERIA%20IMAM%20AND%20MARIAM.htm](http://unilorin.edu.ng/publications/SHARIAH%20IN%20NIGERIA%20IMAM%20AND%20MARIAM.htm)> assessed 10 December 2023.

<sup>61</sup> (2003) AHRLR 208 (NCA 2000)

constitution by the provision of section 38(1)<sup>62</sup> grants the right of manifestation and propagation of religious believe -either alone or in community with others, and in public or in private- to the Muslim citizens. This provision in clear terms, allow a Nigerian Muslim to observe and practice all aspect of his religion without any hindrance. It is important to avert our mind to some unconstitutional practices that are prevalent in some public places and educational arena, such as the law school, experiences have shown that some students are being denied this right of manifestation and propagation of religion, the use of hijab by a woman is a religious commandment and as such a religious practice, thus, a ban or restriction on its use by a Muslim is a gross contravention of section 38(1)<sup>63</sup> and can as well lead to the denial of the educational right of a Nigerian Muslim. A Muslim attending any place of education, by virtue of section 38(2)<sup>64</sup> has the fundamental right not to receive any religious instruction or take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own. This provision renders the activities of some educational institutions that unduly subjects Muslim students to some other religious practices. For instance, some Baptist secondary schools do compel Muslim female students to cut low their hair, a practice peculiar to the Baptists. Also, a Nigerian Muslim citizen, by the provision Section 42(1)(a),<sup>65</sup> is granted the right not to be discriminated against by the law in force in Nigeria or any executive or administrative action of the government on the ground of been a Muslim.

- iv. Educational Rights: The Constitution promotes education without restricting the establishment of religious schools. Muslim communities are thus permitted to establish and run Islamic schools that offer both religious and secular education. The ability to establish Islamic schools allows Muslim children to receive education in an environment that upholds Islamic values. These schools integrate religious teachings with secular education, ensuring that students receive a holistic education that

---

<sup>62</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended CAP C23 L.F.N.2020

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid

respects their religious identity. Assad highlights that this dual educational approach nurtures well-rounded individuals who are knowledgeable in both religious and secular matters.

- v. Cultural and Religious Practices: Section 21 of the Constitution<sup>66</sup> protects the right to participate in cultural life, which includes religious practices. This provision supports the preservation and practice of Islamic culture and traditions. It allows Muslims to celebrate religious festivals, follow dietary laws, and observe religious rituals and ceremonies. Legal experts note that this constitutional protection helps maintain the rich cultural heritage of Nigerian Muslims and promotes social cohesion by respecting cultural diversity.
- vi. Freedom against discrimination: Section 42 of the Constitution<sup>67</sup> prohibits discrimination on the grounds of religion, among other factors. This provision ensures that Muslims are protected against discrimination in various aspects of life, including employment, education, and access to public services. It promotes equality and inclusiveness, allowing Muslims to participate fully in the social, economic, and political life of Nigeria.

## **6.0 Challenges and Controversies Asasociated with Secular Principles**

Despite the constitutional protections, the practical implementation of these provisions sometimes faces challenges. Secularization in Nigeria, presents several challenges and controversies. These issues stem from the diverse religions, legal frameworks, and socio-political dynamics. For instance, the application of Shari'ah in certain states has led to controversies and tensions with secular legal principles. Additionally, there are debates over the extent to which religious laws should influence public policy and governance. Samuel and Amadi<sup>68</sup> examined the tensions between religious and secular laws, noting that while the dual legal system accommodates religious diversity, it also requires

---

<sup>66</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended, 2023

<sup>67</sup> Ibid

<sup>68</sup> Samuel, O. and Anadi, N. (2021) Religious Conflicts in Nigeria: Between Secularism and State Preference for Religions. *Open Journal of Social Sciences*, **9**, 20-37. doi: [10.4236/jss.2021.91002](https://doi.org/10.4236/jss.2021.91002).



careful balancing to avoid conflicts and ensure that the rights of all citizens are upheld.<sup>69</sup>

Secularization weakens community bonds as religious institutions lose influence, causing a sense of isolation for some individuals. It can result in moral relativism, where absolute moral standards are questioned and value clashes between religious and secular perspectives on issues like marriage and abortion. The erosion of cultural traditions and the potential homogenization of diverse practices are cultural concerns tied to secularization. Debates over religious symbols in public spaces and the balance between freedom of expression and respect for religious sentiments are common cultural controversies.<sup>70</sup>

Human rights issues, such as ensuring freedom of conscience and balancing equality with religious rights, are also contentious. Promoting gender equality and LGBTQ+<sup>71</sup> rights while accommodating religious practices seen as discriminatory can be particularly challenging. The dynamic nature of modern societies necessitates ongoing dialogue to navigate these complex issues.

Secularization in Nigeria is a complex and ongoing process surrounded with challenges and controversies. To balance the diverse religious beliefs with the principles of a secular state requires careful navigation and continuous dialogue. This issue cannot be addressed by only legal and policy reforms but also efforts to foster mutual understanding and respect among Nigeria's diverse religious communities. Nigeria can reconcile its secular aspirations through inclusive and respectful engagement with its rich religious heritage, ensuring peace and stability for all its citizens.

---

<sup>69</sup> Zuckerman Phil 'Atheism, Secularity, and Well-Being: How the Findings of Social Science Counter Negative Stereotypes and Assumptions' *Sociology Compass* (2009) 3(6):949-971.

<sup>70</sup>

<sup>71</sup> LGBTQIA+ stands for lesbian, gay, bisexual, transgender, queer (or sometimes questioning), intersex, asexual, and others. The "plus" represents other sexual identities, including pansexual and Two-Spirit.

## 7.0 Conclusion

The question of whether Nigeria is a secular state is both complex and contentious, with significant implications for its Muslim population. The Nigerian Constitution contains provisions that suggest a degree of secularism, also recognizes and accommodates religious laws, particularly Islamic law in certain states. This dual legal system reflects Nigeria's unique socio-religious nature, where secular and religious elements coexist. The impacts of this arrangement on Muslims in Nigeria are insightful. On one hand, the recognition of Shari'ah in personal and family matters allows Muslims to live according to their religious principles, fostering a sense of identity and community. On the other hand, the lack of an explicit constitutional declaration of Nigeria as a secular state has led to the ongoing debates, particularly in areas where religious laws might conflict with secular principles or the rights of other religious groups. The constitutional rights of Nigerian Muslims, such as the freedom to practice their religion, establish religious schools, and have their personal matters adjudicated under Shari'ah law, are significant. However, these rights come with challenges, including potential conflicts between Shari'ah and secular laws, and the risk of religious discrimination in public and political spheres.

Overall, the interplay between secularism and religion in Nigeria necessitates a nuanced understanding and careful navigation. The country must continue to strive for a balance that respects religious diversity while upholding constitutional principles and human rights. For Nigerian Muslims, this means advocating for their religious freedoms within the framework of the law, while also engaging in dialogue and cooperation with other religious and secular groups to promote national unity and social cohesion.