

'ADOPTION OF STATE RELIGION' IN THE INTERPRETATION OF SECTION 10 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED)

Abstract

Nigeria is a religiously diverse nation with Islam and Christianity as the key ones. Without prejudice to the sensibilities of the adherents of traditions religion, followers of these two main religions take divergent views on the issue of secularity of the Nigerian state. Whereas most Christians in Nigeria argue for separation of state from religion, most Muslims advocate for union of religion, the state and the law. These arguments as to whether or not the Constitution harbours the secularity principle ensued especially with some northern states' adoption of Sharia Criminal law from the dawn of the Millennium. Yet studies reveal that just as previous constitutions, the Constitution of the Federal Republic of Nigeria 1999 (as amended) does not explicitly declare Nigeria a secular state. It, however, prohibits states and the Federal Government, or any part thereof, from adopting any religion as state religion; and guarantees to every person the right to freedom of thought, conscience and religion as well as the right to freedom from discrimination on grounds, inter alia, of religion. This study examines the concept of state secularity in historical, grammatical and etymological perspectives in response to the various positions. Ultimately, the study takes a comprehensive look at the Constitution with a view to construing its intendment with regard to the notion of state secularity.

Keywords: State Secularity, Secularism, State Religion, 1999 Nigerian Constitution, Section 10

1. Introduction

Intense controversies have ensued on the interpretation of section 10 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which is a verbatim recopy of section 10 of the 1979 Constitution. The provision gives rise to the debate on the issue of state secularity in Nigeria. The section states that 'the Government of the Federation or of a state shall not adopt any religion as state religion'. Ever since, the various approaches to the construction of the legal provision have pitched scholars and stakeholders into debating camps. While some simply see section 10 as inaugurating an atheistic society in Nigeria in which governance is seen as diametrically opposed to religion, others understand the provision as a self-contradiction maintained by a supreme legal framework, the Constitution, that paradoxically harbours a good chunk of provisions on religious practices and sensibilities. Some others view section 10 as declaring neutrality in approaches to religious matters as a result of the multi-religious and pluralistic nature of Nigeria. This study interrogates these varied views and gives a response.

2. Positions on State Secularity in Nigeria

Constitutions of many African countries respectively proclaim the respective countries as 'secular' states in explicit terms. This is applicable to the constitutions of Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Chad, Congo (Brazzaville), Cote D'Ivoire, Central African Republic, Congo (Leopoldville), Mali, Niger, Sao Tome and Principe, Senegal and Togo. In Guinea-Bissau, the term used is 'lay' state, which, according to its dictionary definition, has the same meaning as 'secular'. Without using either term, the Constitution of Gabon affirms 'the separation of religion from the state'. In addition to proclaiming the country a secular state, the Constitutions of Chad, Cape Verde, Sao Tome and Principe, and Guinea-Bissau also affirms 'the separation of religion and the state'. Congo (Leopoldville) provides additionally that 'there is no state religion in the Republic'¹. Nwabueze observed that the constitutions of the remaining twenty-five African countries, excluding Nigerian, make no explicit characterization of their state as Christian, Islamic, secular or lay, nor an explicit affirmation of the separation of religion and state. But it appears that not having expressly characterized themselves as either Christian or Islamic states, the constitutional position of the twenty-five countries in the matter must be taken to be that of neutrality. By this constitutional provision, the equality of all religions in relation to the government is guaranteed. Not only must the government not establish or adopt a particular religion, it must also treat all religions equally, showing no favouritism or preference of any kind for one against the others by way of special promotion of, or protection for, its institutions, doctrines and observances or any kind of state sponsorship.

It goes without saying that any state action having as its purpose or practical effect the advancement, encouragement or inhibition of any particular religion, is clearly derogatory of the equality of all religions vis-a-vis the state. An instance is where the injunctions of one religion are enforced through the machinery of the state. This is so even where no coercion is used to achieve the purpose, as in where instructions or practices based on the doctrines and observances of a particular religion are given in public schools². Responding to the debate on state secularity in Nigeria, Tobi observes that there is the general notion that section 11(of the 1989 constitution which is the equivalent of section 10 of 1999 constitution) makes Nigeria a secular nation. He immediately retorted that that this notion is not correct. For him, 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 in the state, morals, education, and the

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¹ BO Nwabueze, *Ideas and Facts in Constitution Making*, Lagos: Academic Press Plc, 2001

² *Ibid*

like should be independent of religion. What section 11 is out to achieve is that Nigeria cannot, for example, adopt either Christianity or Islam as a state religion. But that is quite different from secularism. Okeke published a seminal paper in which he defines secularism as a system of social organisation or that which does not allow religion to influence the government. It is the belief that religion should not influence the government. He explains further that a secular state is therefore a state or country that purports to be officially neutral in matters of religion, supporting neither religion nor irreligion. A secular state also claims to treat all its citizens equally regardless of religion, and claims to avoid preferential treatment for a citizen of a particular religion/non-religion over other religions/non-religion. Although secular states do not have a state religion or equivalent, the absence of a state religion does not guarantee that a state is secular. He opines that secularism is commonly regarded as an ideology that holds that religious issues should not be the basis of politics, or, in the extreme, that religion has no place in public life. Secularism, therefore, seeks to preserve the religious neutrality of government and cultures.³

Pam argues that the 1999 Nigerian constitution provided for religion and secularity at the same time in four sections. These are: (1) section 10, which attempts to establish the secularity of the Nigerian state by providing that, 'The government of the federation or of a state shall not adopt any religion as state religion.' (2) Section 38, which re-enforces the rights of Nigerians to freedom of thought, conscience and religion in its 4 sub-sections. (3 and 4) Sections 275 and 280, which make a volt-face and contradict the two earlier quoted sections. Section 275 provides for the creation of states Sharia courts of appeal while section 280 provides for the creation of states customary courts of appeal. First, the provisions found in sections 10 and 38 are completely negated and rendered void by the provisions found in sections of 275 and 280. Second, the adherents of other religions apart from Islam have been relegated to an inferior status and discriminated against by the provisions in section 275 because their religions have not been given equal recognition by the same constitution. Third, while these provisions recognise the important place of religion in our national life, they pretend that we can operate some modicum of secularism and not pluralism.⁴

Section 38 positively confers freedom of thought, conscience and religion upon every person. Section 10 prohibits the government of the Federation or of the state from adopting any religion as a state religion. Jamo observes that this principle has been erroneously described as 'secularism'.⁵ According to him, secularism is, no doubt, an anti-thesis of theocracy. Theocracy is a government of a country by religious leaders. He observed that the 1999 Constitution does not use the word 'secularism'. According to this opinion, secularism means that, 'in matters of religion the state must adopt an attitude of neutrality'⁶, that is, it should not favour any particular religion or discriminate against any particular religion. For Jamo, secularism is a doctrine developed by Christianity during the times of Holy Roman Empire. The Christianity is, on matters of state philosophy and governance, generally apolitical and therefore separates the state from the Church.

The separation of the Church from the State was seen as the culmination of the long years of criticism of the philosophers, writers of the medieval and beginning of modern times and in some cases open rebellion of members of the Church. Jamo holds that this separationist philosophy is a total contradiction to Islamic philosophy of politics and state which propounded an integrated approach to life of a citizen in an Islamic state whether or not such a citizen is a Moslem or not. He observes that in Christian faith, people are required to 'give unto Ceaser what is Ceaser's, and unto God what is God's'. It is this understanding that laid the foundation for complete separation of the state (politics) from religion and it came to be known as secularism. This seems to be the foundation upon which Western Civilization was based and still operates in Western countries. Thus, by the doctrine of secularism, Christianity has no theory of state or society. He concludes that secularism is a fundamental tenet of Christian faith. It must however be observed that further development in England introduced a new concept of state ownership of the Church by which the Church belonged to the state. Accordingly, the King or Queen is the Head of Church of England notwithstanding the position of the Archbishop of Canterbury as the 'spiritual head'.

The above view is convinced that as far as the Nigerian Constitution is concerned one can assert that the Preamble makes exception to this idea of the so-called secularism. The Constitution itself has accepted the existence of God vide the Preamble to the 1999 Constitution and the Seventh Schedule which prescribed the Oath of Office of all Public Officers that ended with expression, 'so help me God'. Therefore, the state cannot be completely neutral even as it does not mean that the state should discriminate against any religion. The prohibition against the establishment of state religion does not mean that the state should hate religion or show careless indifference towards religions or prefer those who do not believe over those who believe. The prohibition only means that the state should adopt the position of neutrality between the various religions. The separation between religion and the state cannot be total because the state cannot completely disassociate itself from the people, their belief and their morality most of which is based on religion. The laws made by the state can serve their purpose only when they are effectively enforced. Legislations can only have

³GN Okeke, 'The Ambivalence of the 1999 Nigerian Constitution in Matters Relating to Secularism: A Case for a Constitutional Review'. *International Journal of Humanities and Social Science Invention*, Volume 2, Issue 3 of March 2013, 65-69.

⁴J Pam, 'A Review of the Secularity of the Nigerian 1999 Constitution', *The Cable*, <https://www.thecable.ng/review-secularity-nigerian-1999-constitution>, Accessed 14 March 2024

⁵NM Jamo, 'The Nature and Scope of the Freedom of Thought, Conscience and Religion under the Section 38 of 1999 Nigerian Constitution' (2007-2009) 2 & 3 *Ahmadu Bello University Zaria Journal of Private and Comparative Law*, 5-15.

⁶ *Ibid*

a chance of being effectively enforced when they give effect or conform to the prevailing rules of morality, social conduct, sense of justice and fair play in the society. As the major parts of these values prevailing in the society are religiously based, the state cannot in the governance of the country totally ignore these religious beliefs as observed by the United States Supreme Court in the case of *Zorach v Calus*.⁷ The Court observed that the Americans are religious people whose institution presupposes the existence of a supreme being. Under this principle the Supreme Court upheld the constitutionality of religious based laws like Sunday laws, laws punishing blasphemy and laws exempting Churches from payment of taxes notwithstanding the First Amendment. In such measure whenever or wherever possible the state should not discriminate between one religion and another but as far as the dominant religion was concerned it must have some direct influence on the laws and the lives of the people which cannot be completely eliminated. The law must take into account the rules and a requirement of such dominant religion at the same time accommodating other religions as far as that is practicable. However, there appears to be a real problem in a country like Nigeria where there are two or more dominant religions competing with each other to have a say over the lives of the people and the condition of the society. Under the United States Constitution, the Supreme Court had a difficult problem to solve, namely, the freedom of religion claimed by the conscientious objectors. The Court did not allow the objectors to affect the wider social interest. For instance, in the *Hamilton's Case*⁸, the U.S Supreme Court held that the two Methodist students who refused to take course in military science at a State University cannot claim freedom of religion and conscience because they were not compelled to go to the university.

It is argued that under the Nigerian Constitution, section 34, which confers the right to dignity of human person and subsection (2) (c) provides for an exception in respect of conscientious objectors who can be required to render substituted service in the armed forces and such substituted service will not be regarded as forced or compulsory labour. This provision appeared to have recognized conscientious objectors as a religious creed and therefore justified its exemption according to the tenet of its religious beliefs or principles e.g. The Jehovah Witness Sect. In Jamo's opinion, even if it is argued that the prohibition against the establishment of state religion extends to prohibiting states from providing religious instructions in their educational institutions, the state cannot shut its eyes to the rules of ethics and morality prevailing in the society. The U.S. constitution has used the word 'religion' but it has been given a wider connotation when applied to societies professing a faith different from Christianity. Perhaps, it was to avoid this controversy that Section 38 does not stop with the word religion but added the words 'thought and conscience'. Freedom of religion cannot be confined to mere holding of belief or conscience; this has to be expressed objectively and that means practicing or professing or propagating or teaching one's own religion, belief and thoughts.

3. Personal Response

The points of the respective arguments above have been duly considered and reflected upon. It now remains for this study to offer some responses. The first question to address is that of the meaning of 'secularity'/'secularism'. This exercise is all the more important as the debate is fundamentally centered on the respective understanding or misunderstanding of the terms. At this juncture, one may ask of which particular term is used in referring to a secular state: secularity or secularism? While some scholars have confused and suffused the terms as if they are synonymous or interchangeable, the fact still remains that they are not. Even as they have the same etymology deriving, as it were from the Latin '*saeculum*' meaning 'temporal' or 'worldly', yet grammatically 'secularism' and 'secularity' respectively denote different levels of attitude to religion. Byang sharply draws the distinction: While 'secularity' is the attitude of neutrality and indifference to religion and religious considerations, 'secularism' is a philosophy that positively seeks to eradicate the concept of religion and all religious considerations in public life.¹⁰

There is, no doubt, that from the above distinction, 'secularism' just as so many other 'isms' connotes the extremity of not only abandoning religion but also opposing any form of religion or religious sensibilities. This is surely not what a secular state desires. On the other hand, 'secularity' far from being a tendency to atheism is only a concept of convenience that enjoins neutrality in attitude to religions especially in multi-religious societies. Thus, the Webster's New Collegiate Dictionary's definition of 'secular' as 'of or relating to the worldly or temporal concerns, not overtly or specifically religious...' ¹¹ does not evoke an idea of positively eliminating every religious consideration. In the same vein, countries that are described as 'secular' are not by that meant to be irreligious. They are seen as taking no particular religion as state religion according to which they seek to adopt a neutral attitude to all religions. This is certainly the intendment of section 10 of the 1999 constitution of Nigeria. Hence, the existence of some religious issues in the constitution such as the 'so help me God' clause in the oath of office or the 'nation under God' clause in the Preamble, and the establishment of Sharia and Customary Courts of Appeal, and other religious concerns of some other legislations and regulations, do not detract from the secular posture of Nigeria. After all, the oath of office just as the judicial oath does not compel anybody to take the oath either by the Bible or the Koran. Nor does any mention of God in the constitution refer to either the Muslim God or the Christian God. But are there really different Gods? The only issue is that in the spirit of equity, there is need to provide for the constitutional establishment and inclusion of Christian canonical courts at par with the Sharia and customary courts. The alternative would be to expunge all the provisions

⁷ 343 US 306, 72 Sct 679 (1952)

⁸ 231 US 112, 32 Sct 765 (1982)

⁹ DP Simpson, *Cassell's New Latin-English English-Latin Dictionary*, London: Cassell, 1962, p. 852

¹⁰ D Byang, *Sharia in Nigeria: A Christian Perspective*, Jos: Challenge Publishers, 1988.

¹¹ Webster's New Collegiate Dictionary, 2007 <https://www.merriam-webster.com/dictionary/secular> Accessed 20 March 2024.

regarding the courts of all religions from the constitution. This 'All or None principle' is necessary given the multi-religious nature of the country.

Let it suffice that the idea of state secularity does not aim at inaugurating a religionless or anti-religious society. Its principal aim is the entrancement of peaceful co-existence of citizens of a nation professing various religions. Secularity is distinct from secularism. Scholars such as Ryu¹², Okeke¹³, Omotola¹⁴, Li-ann¹⁵, Haruna¹⁶, Chukwumaeze¹⁷, Jamo¹⁸ and others who use the terms 'secularism' and 'secularity' as if they are synonymous with each other, must check their semantics. 'Secularity' is simply a safeguard against anarchy and conflict in a pluralistic society. It does not matter how much percentage of a population that practise a particular religion. The freedom and conscience of the minorities are as important as those of the majority.¹⁹ Assuming without conceding this to be true, yet evidences abound that some secular states remain so in spite of the high population of particular religious adherents, Muslim or Christian' in those states. Illustrations gathered from Statemaster Encyclopedia²⁰ may be helpful. Tunisia harbours 98 percent of its population as followers of Sunni Islam, and yet it maintains its secularity. In the Americas, such countries as Bolivia, Ecuador, Brazil, Honduras, Venezuela in which well over 90 percent of the respective populations are Catholics, neutrality in religious matters remains the practice. This is equally true in some European countries. Over 95 percent of the population of Armenia is adherents of the Armenian Apostolic church, and 98 percent of Moldova's population is members of Eastern Orthodox Church, and yet the constitutions of Armenia and Moldova respectively provide for their secularity. Similarly, Article 2 of Turkey's constitution insists on the country's neutrality to religious matters even as more than 99 percent of the population is Muslim.

Moreover, the origin of the concept of state secularity is another issue in point. While Sulaiman notes that 'secularism' is a 'purely western solution to western problem'²¹, Li-ann traces the principle of secularity back to the Roman Empire.²² According to him, the principle derived from the teaching of Jesus to render unto Caesar the thing that are Caesar's and to God the things that are God's according to whose interpretation the principle suggests that Caesar did not wield absolute authority. Let it be noted that these views are not immediately correct. They do not fully represent the denotation and evolution of the concept, as it is understood today. Ozigbo observes that the idea that secularity is a western Christian concept seems to portray a crass ignorance of history.²³ He writes that 'that secularity is not the creation of the Christian Church. He summarizes the story of how the concept emerged in Europe in the following six stages: (i) Christianity's founder (Christ) insisted that his kingdom was not an earthly one. It is in the world but not of the world. Christianity was for separation of the church and the state. (ii) For the first 300 years of Christianity's history, the church existed independently of the state that saw in Christianity its bitterest threat. (iii) It was the first Christian empire under Emperor Constantine that witnessed the first marriage of the state with the Christian church. The emperor now came to be recognized as the 'Vicar of Christ' in secular matters and began to intervene directly in all church affairs excepting the sacraments and rituals. But this was a marriage of convenience. (iv) All through the Middle Ages (6th - 16th C. AD), church and state worked together with the Church often exercising greater power over the state since it was believed the spiritual represented by the church, is superior to the temporal order, represented by the state. (v) The Renaissance sowed the seeds of humanism and materialism. The problem of religious toleration in the now multi-confessional Europe became acute (16th-18th C. AD). (vi) The Age of Reason demanded for democracy and liberalism which believed that the welfare of mankind was best furthered by giving each individual the greatest possible opportunity and liberty. United States of America became the first to set up a secular state under a liberal constitution. European states followed suit. Today, over 100 countries have entrenched in their various constitutions the idea of state secularity²⁴ This is without prejudice to other countries which are not at any time secular such as Saudi Arabia or those that abandoned secularity at a time and adopted a religion as a state religion such as Bangladesh, Iran, Iraq, Madagascar,

¹² S Ryu, *Limits on Secularism in Korean Constitution*, Korea: Pusan University of Foreign Studies, 2009

¹³ GN Okeke, 'The Ambivalence of the 1999 Nigerian Constitution in Matters Relating to Secularism: A Case for a Constitutional Review'. *International Journal of Humanities and Social Science Invention*, Volume 2, Issue 3 of March 2013, 65-69.

¹⁴ JS Omotola, *Secularism and the Politics of Religious Balancing in Nigeria*, Mowe: Redeemer's University Redemption City, 2009

¹⁵ T Li-ann, Religion & the Secular State. <<http://www.we-are-aware.sg/2009/05/28/religion-the-secular-state/2009>>. Accessed on 7 March 2024.

¹⁶ BA Haruna, 'The Application of the Sharia Penal System: Constitutional and Other Related Issues' in JN Ezeilo, MT Ladan, & A Afolabi-Akiyode (eds.), *Sharia Implementation in Nigeria: Issues & Challenges on Women's Rights and Access to Justice*, Enugu: Women's Aid Collective & others, 2003, 138-163.

¹⁷ UU Chukwumaeze, 'The Legality of the Shariah Courts: Analytical Study of the Recent Actions of Zamfara State Government' (2000) 1(2) *UDUS Law Journal*, 34-50.

¹⁸ NM Jamo, 'The Nature and Scope of the Freedom of Thought, Conscience and Religion under the Section 38 of 1999 Nigerian Constitution' (2007-2009) 2&3 *Ahmadu Bello University Zaria Journal of Private and Comparative Law*, 5-15.

¹⁹ I Zarifis, 'Rights of Religious Minorities in Nigeria', 10 (1) *Human Rights Brief*. <<http://www.statemaster.com/encyclopedia/secular-state>>. Accessed on 7 March 2024.

²⁰ Statemaster Encyclopedia, <http://www.statemaster.com/encyclopedia/seularstate>, Accessed on 16 March 2024.

²¹ BA Haruna, 'The Application of the Sharia Penal System: Constitutional and Other Related Issues' in Ezeilo, Ladan, & Afolabi-Akiyode (eds.), *Sharia Implementation in Nigeria: Issues & Challenges on Women's Rights and Access to Justice*, Enugu: Women's Aid Collective & others, 2003, 138-163.

²² T Li-ann, Religion & the Secular State. <<http://www.we-are-aware.sg/2009/05/28/religion-the-secular-state/2009>>. Accessed on 7 March 2024.

²³ IRA Ozigbo, *An Introduction to the Religion and History of Islam*, Enugu: Fourth Dimension Publishers, 1988

²⁴ Statemaster Encyclopedia, <http://www.statemaster.com/encyclopedia/seularstate> Accessed on 16 March 2024.

Pakistan, and so on.²⁵ Be that as it may, with the secularity of the Euro-American states in place, the cycle was completed.

Christianity had started in the first century with the state separate and hostile, and ended in the 20th century, after a long marriage of convenience, with the state equally separate and disinterested. Therefore, rather than tracing the origin of the secularity concept to Christ and Christianity, the idea should rather be sourced from the historical evolution of the then Europe which increasingly became multi-religious and pluralistic. It can be said that it is indeed Islam that, coming later in time, copied from the medieval marriage of convenience between church and state, and which practice was never *ab initio* advocated for by Christ who otherwise stood for a safe separation between church and state. Far from condemning the genuine ideals and policies of the state, Christ insists that his kingdom, though in the world and for the service of the world, is not of the world. This does not mean that Christ's kingdom is cut away from the world. It is rather separated from the world to enable it serve the world and uplift its good values and condemn the disvalues. This Christian ideal is surely different from the modern understanding of 'state secularity'. Christianity knows its mission and limits already. It is the state that proclaims itself secular in the light of its composition and sociology so as to meet its goals and objectives.

It is in the light of her fundamental objectives and directive principles and policies clearly outlined in chapter II of her constitution that Nigeria prohibits the adoption of any religion as state religion *vide* section 10. Hence, every other provision in the constitution that guarantees the application of religious laws in its entirety must be read in conjunction with this secularity clause. The above last assertion answers those who argue that adoption of Sharia criminal law in the northern states is constitutional and valid. No doubt, apparently, it is so. But on a more jurisprudential consideration, it is not. Aside the fact that the constitution was doctored and hurriedly promulgated by the military junta, and thus harbouring a lot of compromises, contradictions and inconsistencies, yet it should not be read as to dispense with the nation's secularity.

Although the word 'secular' does not appear in any of Nigeria's constitutional provisions including section 10, yet the word 'secular' need not appear in a nation's legal framework for that nation to be regarded as secular. It suffices that the words used in the relevant provision convey the idea of state secularity. It appears to us that once the constitution of any nation guarantees the fundamental right to freedom of religion, then that nation invariably wears a secular look. It equally means that any governmental action, legislative or otherwise, which derogates, directly or indirectly, from this right in favour or against a particular religion is a counterpoint to the secularity of the state. Although the secularity clause in Nigeria is not so couched as in United States' constitution which enjoins the Congress 'to make no law, respecting the establishment of religion or prohibiting the free exercise thereof'²⁶ by which provision Nwabueze seems to be partly influenced, yet the fact that Nigerian constitution guarantees freedom of religion is evidence of its intendment to create a secular state.

A federal union, such as is established by the Nigerian Constitution, gives every citizen of the country an interest and a stake, not only in the government of his state, but also in the government of every other state in the federal union, notwithstanding that he is not a voter in the latter state. But it is clear that state enforcement of the law of any religion would certainly impinge on the citizenship rights conferred by membership in the federal union: the right to move about freely throughout the territory of the union and to live wherever he chooses without molestation based on his religious application²⁷, to earn a livelihood in his chosen place of residence by means permitted by law, and the right to be treated alike by the state with other citizens, especially in a matter like religion, so fundamentally important to his life. Thus, the judicial dictum of Justice Douglas of United States Congress is quite germane: '... freedom of movement is important for jobs and business opportunities- for cultural, political and social activities- for all the commingling which gregarious man enjoys.... It is the very essence of our true society, setting us apart. Like the right of assembly and right of association, it often makes all the other rights meaningful- knowing, studying, exploring, conversing, observing and even thinking.'²⁸

However, secularity principle received correct judicial recognition and formulation in the United States in the case of *Everson v. Board of Education*²⁹. The Supreme Court held that, neither a state nor the Federal Government can set up a Church. Neither can pass law which aid one religion, aid all religions, or prefer one religion or another. Neither can force or influence a person to go to or to remain away from Church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing any religious beliefs or disbeliefs...Neither a state or Federal Government can openly or secretly, participate in the affairs of any religious organizations, or groups and vice versa... In what immediately follows, this paper shall consider the various points of the controversies and draw a response.

²⁵ Ozigbo, *An Introduction to the Religion and History of Islam*, Enugu: Fourth Dimension Publishers, 1988

²⁶ First Amendment, US Constitution.

²⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) section 41.

²⁸ *Aptherker v. Secretary of State* (1963) U.S. Supreme Court Judgement.

²⁹ (330 US1, 67 Sct 505 (1947))

4. Conclusion

Nigeria is a religiously diverse country with several challenges related to freedom of religion or belief. Nigeria's population was estimated at 190.6 million as at July 2017.³⁰ Out of this number, 49.3 per cent are Christians and 48.8 per cent Muslims, and the remaining 2 per cent represents other faiths or no religion at all according to a 2012 survey by the Pew Research Center's Forum on Religion and Public Life.³¹ In reality however, neither Islam nor Christianity can claim to be bigger than the other in the country.³² There is no reliable census or statistics yet. However, it is to foster peaceful co-existence among adherents of different religions that Nigerian constitution provides for state secularity. By this principle, Nigeria ideally opts to be officially neutral in matters of religion, neither supporting nor opposing any particular religious beliefs or practices. Nigeria chooses to treat all citizens equally regardless of religion, and does not give preferential treatment for a citizen from a particular religion over others. This is the essence of the guarantee of freedom from discrimination on the basis of religion among other indices.³³ Secularity in Nigeria prevents religion from controlling government or exercising political power. The Constitution protects each individual including religious minorities from discrimination on the basis of religion. Be that as it may, Nigeria is not an atheistic state in which officially all religious beliefs and practices are opposed. At times, unlike in Korea where there are no state privilege or subsidies to religions³⁴, Nigerian government can offer financial support to religious bodies, or give or even proclaim public holidays on religious feasts, give appointments to some religious personnel, but not for one against the other. In Nigeria, there is no such practice as in United Kingdom where the Head of State is required to take the Coronation Oath swearing to uphold the protestant faith or where at least 26 senior clergymen of the established Church of England (spiritual peers) maintain positions in the House of Lords.³⁵ This mechanism of secularity is put in place in order not to allow the pluralistic and multi-religious nature of Nigeria to become a liability to national unity and development.³⁶ It therefore goes without saying that practice of any religion in Nigeria must adhere to the national spirit and objectives encapsulated in her supreme law.

Religion is a social institution.³⁷ As such, it enhances the social life of the society in which it exists. Therefore, any religion must be practised in a manner that it would be made to co-exist with other religions. This should be based on the awareness that religion and its laws are more a matter of morality and conscience rather than a thing of physical coercion. There is also the urgent need to de-politicize religion in Nigeria. No doubt, theocracy that was possible in time past is no longer fashionable today. Rather, the direct government of God or Allah had long since given way for democracy and other forms of government to thrive. Therefore, in a multi-religious state like Nigeria, religious harmony demands that separation of religion and politics seems to be the reasonable safe ground. Besides, it is unfortunate that the culture of violence and vengeance (tit-for-tat) that existed in olden days has survived till today with acts of religious intolerance.

There is equally no naysaying that for harmonious co-existence of all stakeholders, there is the urgent need for avoidance of religious fanaticism, fundamentalism and literalism. There is too the necessity for national and inter-religious dialogues, obedience to the rule of law and cultivation of patriotic attitude by citizens generally. All these needs are indispensable because religion by whatever mode it is practised is meant to not only ensure good relationship with the divine but also to engender good neighbourliness with humans.

³⁰ United States Center for International Religious Freedom (USCIRF), *Annual Report 2017*, Accessed on 19 March 2024

³¹ *The Future of World's Religions: Population Growth Projections (2010–2050)*, available at www.pewresearch.org. Accessed on 17 March 2024

³² IO Oloyede *et al.*, 'The Operational Complexities of the 'Free Exercise' and 'Adoption of Religion' Clause in the Nigerian Constitution', in P Coertzen *et al.*, *Religious Freedom and Religious Pluralism in Africa: Prospects and Limitations*, Stellenbosch: Sun Media, 2016, 86; M Tabiu, *Shari'a Federalism and Nigerian Constitution*, paper presented at the International Conference on Shari'a in London, 2004 (cited in J Tyus), 'Going Too Far: Extending Shari's Law in Nigeria from Personal to Public', 3 *Washington University Global Studies Law Review* (2004), 199. See also AH Yadudu, 'The Separation of Church and State: Nigeria's Constitution Contrivance', 1:2 *Lawyers Bi-Annual Journal of Nigerian and Comparative Law*, 1994, 14–37.

³³ Constitution of the Federal Republic of Nigeria 1999 (as amended) section 42.

³⁴ Ryu, *Limits on Secularism in Korean Constitution* Korea: Pusan University of Foreign Studies, 2009

³⁵ <http://www.statemaster.com/encyclopedia/secular-state>, Accessed on 16 March 2024.

³⁶ JS Omotola, *Secularism and the Politics of Religious Balancing in Nigeria*, Mowe: Redeemer's University Redemption City, 2009

³⁷ A Giddens, *Sociology*, Oxford: Polity Press, 1993, 387