

Abstract

The paper is motivated by the insertion of sharia in the Nigerian Constitution in Sections 6(5), 260 – 264 which contravenes Section 10 of Nigerian State. The work will adopt doctrinal methods. The primary source will be direct interaction with people, Nigeria Constitution, The Holy Scripture, Daily news both in print and electronic media. The secondary source will be the use of library materials: Books, Encyclopedia, Journals and Internet sources. Historical, sociological and analytical approaches will be utilized. The essay findings are religious violence and insecurity; the marginalization of Christians in Nigeria in; sharia is an infringement on citizens Religious and Human rights as contained in Chapter 4 of the Nigerian Constitution. How can Christians thrive and preach gospel in such society? The recommendations: introduction of Ecclesiastical laws/courts in the Constitution; strengthening ecumenical movement; increase in Christians political participation; building strong defense framework; good welfare; strong evangelical movements, rebuilding the unity of world council of Churches, training of militant and apologetic ministers, praying fervently; advancement of the academic training of ministers; practical Christianity; increasing the support to Northern Christians etc., Government establishing, good security framework and enforcement of the terror and criminal laws in order to achieve justifiable, peaceful, Sustainable, Nigeria.

Keywords: Christian Law, Sharia, Nigerian Constitution, Religious Violence, Nigeria

1. Introduction

Religion ordinarily should have been an instrument of societal development which ought to play significant role in Nigerian society governed by view of laws, morals and politics. Recently, the introduction of sharia into the sections of the 1999 Constitution of the Federal Republic of Nigeria has turned religion to be instrument of destabilization and destruction of lives and properties by the Islamic fundamentalists that have declared jihad and Islamic terror and violence attacks to divide the Nigeria society which is inimical to the growth, peace, unity and stability of the Nigeria State. In Nigeria, Sharia has been instituted as a main body of civil and criminal law in twelve Muslim-majority states since 1999, when then-Zamfara State governor Ahmad Sani Yerima¹ began the push for the institution of Sharia at the state level of government. A 'declaration of full Sharia law' was made in the twelve states in that year, and the states created Islamic legal institutions such as a Sharia Commission, and Zakat Commission, and a hisbah (a sort of an Islamic police).² According to some critics (Leo Igwe, chair of the board of trustees for the Humanist Association of Nigeria), the adoption of Sharia law violates section 10 of the Nigerian constitution guaranteeing religious freedom.³ To promote Islamic virtue and discourage vice, each of the twelve states has a Hisbah group, but each of these hisbah is 'unique'⁴ For example, as of 2016: 'Kano and Zamfara hisbah have their foundations in state law', 'have a legally sanctioned board or commission with state-wide powers', and get state funding to pay the salaries of 'thousands of people'. The hisbah in Gombe state 'has no legal backing', no supporting legislation, no 'state funding', and is made up of volunteers' who 'sometimes have to contribute financially to the running of the organization'. Borno states hisbah 'exists only on paper.'⁵ In 2002, negative light was brought to Sharia in northern Nigeria when Amina Lawal, a single mother in Katsina State, was accused of adultery and sentenced to death by stoning by a state Sharia court for conceiving a child out of wedlock; the father was released without conviction for lack of evidence. Lawals conviction provoked outrage both in southern Nigeria and the West, with many national and international NGOs lobbying the federal government to overturn her conviction. In 2004, the conviction was overturned by the Sharia court of appeal. It ruled that pregnancy was insufficient evidence for the sentence to be carried out and Lawal returned to private life.⁶

2. Sharia, Positive Law and Constitutionalism

Declarations on Islamic Conferences particularly, Abuja 1989⁷ and Cairo 1990⁸ Declarations are targeted against non-Muslims and both Declarations are instruments of political/religious oppression and dominance by the Islamic group against others. The Declarations are Jihad against rival religions. In Articles 2 and 24 of the Cairo Declaration (CDHRI) states: 'All rights and freedoms stipulated in the Universal Declarations (UN Declaration 1948 are subject to the Islamic Sharia.' Article 19 also states: 'There shall be no crime or punishment except as provided for in the Sharia.'⁹ The CDHRI has been criticized for failing

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¹ Nigeria Sharia architect defends law, *BBC News*, 21 March 2002

² Mustapha, Abdul Raufu; Ismail, Mustapha (2016). Sharia Implementation in Northern Nigeria Over 15 Years. *Policy Brief No.2 The Case of Hisbah*. Nigeria Stability and Reconciliation Program. Retrieved 21 July 2021.

³ McSweeney, Eoin (22 January 2021). 'Nigerian teen jailed for blasphemy has sentence quashed'. KCTV-5. Retrieved 23 July 2021.

⁴ Mustapha, Abdul Raufu; Ismail, Mustapha (2016). Sharia Implementation in Northern Nigeria Over 15 Years. *Policy Brief No.2 The Case of Hisbah* (PDF). Nigeria Stability and Reconciliation Program. Retrieved 21 July 2021.

⁵ Mustapha, Abdul Raufu; Ismail, Mustapha (2016). Sharia Implementation in Northern Nigeria Over 15 Years. *Policy Brief No.2 The Case of Hisbah* (PDF). Nigeria Stability and Reconciliation Program. Retrieved 21 July 2021.

⁶ Koinange, Jeff. 'Woman sentenced to stoning freed'. CNN. Retrieved 30 September 2014.

⁷ 'OIC rightly changes its name'. *Pakistan Observer*. 30 June 2011. Archived from the original on 23 October 2014. Retrieved 23 October 2014.

⁸ Brems, E (2001). 'Islamic Declarations of Human Rights'. Human rights: universality and diversity: *International studies in human rights*. Volume 66, Martinus Nijhoff Publishers, Pp 241–84

⁹ Kazemi, F (2002). 'Perspectives on Islam and Civil Society'. In Hashmi SH (ed.). *Islamic Political Ethics: Civil Society, Pluralism and Conflict*. Princeton University Press, 50.

to guarantee the freedom of religion, in particular, the right of everyone to change their religion, as a 'fundamental and non-derogate rights'¹⁰. The above declarations instigated religious tension and violence in Africa states particularly in Nigeria.

Moreover, Muslims claim that Christian Laws are recognized in the Constitution based on the role and impact of Christianity in the development of the Nigerian Society. The assertion is unacceptable; since the Constitution mentioned Islam, Sharia, Khadi, Grand Khadi etc. in the multiple sections of the 1999 Constitution of the Federal Republic of Nigeria. Christians need to be represented in the Constitution. But the Church, Christian nor Ecclesiastical Law are not mentioned in any section of the Constitution. It is very important to note that in the colonial eras of the country, the super-imposed Constitutions based on the imperial English legal system have reigned supreme over the citizenries for over a century now with the existence of native or customary laws. This in all spheres shows that the legal system of Nigeria is a hybrid of English common and statutory law, customary law, and Islamic law (Sharia) subsumed into the customary law. Crucial in the consideration of religious liberty is the question of whether religious practices and religious motivated actions that would otherwise violate secular law should be permitted due to the safeguarding freedom of religion. All the efforts to persuade Muslims to remove the inserted Islamic law in the Constitution is disregarded. So, there is a strong need to also include the Christian law in the Nigeria Constitution to change the narrative of secularism of Nigeria to a multi-religious state.

3. Sharia and Human Rights

The introduction of Sharia law in Northern Nigeria has significant implications for the Nigerian Constitution, primarily concerning the principle of secularism and the protection of fundamental rights, particularly religious rights of Christians. For instance, Hisbah¹¹ have targeted the playing of music as un-Islamic. In Kano State, on 30 May 2003, a group of about twenty hisbah disrupted a wedding party on the basis that it was an 'immoral gathering'¹² and that music was being played. Several guests, musicians and members of the wedding ceremony were beaten and injured. Musical instruments and a windscreen of a vehicle parked at the house were smashed as well. According to the police, the hisbah were armed with knives, sticks, and various swords.¹³ In an example of a clash between police and hisbah, local police arrested about thirty members of the hisbah, however, they were all released without charge.¹⁴ Political aspects of the religion of Islam are derived from its religious scripture (the Quran holy book, hadith literature of accounts of the sayings and living habits attributed to the Islamic prophet Muhammad, and sunnah),¹⁵ as well as elements of political movements and tendencies followed by Muslims or Islamic states throughout its history.¹⁶ Shortly after its founding, Islam's prophet Muhammad became a ruler of a state,¹⁷ and the intertwining of religion and state in Islam (and the idea that 'politics is central' to Islam),¹⁸ is in contrast to the doctrine of rendering 'unto Caesar what belongs to Caesar and to God what belongs to God',¹⁹ of Christianity, its related and neighboring religion. Traditional political concepts in Islam which form an idealized model for Islamic rule, are based on the rule of Muhammad in Mecca (629–632 CE) and his elected or selected successors, known as *rāshidūn* ('rightly-guided') caliphs in Sunni Islam, and the Imams in Shi'a Islam. Concepts include obedience to the Islamic law (*shari'a*); pledging of obedience by the ruled to rulers (*al-Bay'ah*), with a corresponding duty of rulers to rule justly and seek consultation (*shūrā*) before making decisions; and the importance of rebuking unjust rulers,²⁰ and the supremacy of unity, solidarity and community, over individual rights and diversity.²¹ Classical Islamic political thought focuses on advice on how to govern well, rather than reflecting 'on the nature of politics'.²² Muslih and Browers identify three major perspectives on democracy among prominent Muslims thinkers who have sought to develop modern, distinctly Islamic theories of socio-political organization conforming to Islamic values and law:²³ The Islamic perspectives on governance and democracy vary significantly.²⁴ The rejectionist view, promoted by thinkers like Sayyid Qutb and Abul Ala Maududi, opposes Western ideas, emphasizing Sharia and the concept of *shura* (consultation) as central to Islamic governance. This view, dominant in the 1970s and 1980s, advocates for the establishment of an Islamic state but has lost popularity in recent years

¹⁰ Kazemi, F (2002). 'Perspectives on Islam and Civil Society', p. 50.

¹¹ Hisbah, an Arabic term, signifies the duty of enjoining good and forbidding evil. It's a concept rooted in Islamic principles, emphasizing the importance of upholding moral values and promoting societal well-being. In essence, hisbah involves actively encouraging righteous actions and discouraging harmful ones within a community: M. Berger, *Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases from Egypt's Highest Courts*, Human Rights Quarterly, Volume 25, Number 3, August 2003, pages 720-740

¹² Mustapha, Abdul Raufu; Ismail, Mustapha (2016). *Sharia Implementation in Northern Nigeria Over 15 Years*. Policy Brief No.2 The Case of Hisbah (PDF). Nigeria Stability and Reconciliation Program. Retrieved 21 July 2021.

¹³ Human Rights Watch interviews with Hoto Divisional Police Officer and police investigator, Tarauni, Kano, 30 July 2003.

¹⁴ The enforcement of Shari'a and the role of the hisbah'. Human Rights Watch. 2004.

¹⁵ Zimney, Michelle (2009). 'Introduction – What Is Islam?'. In Campo, Juan E. (ed.). *Encyclopedia of Islam*. Encyclopedia of World Religions. New York: Facts On File. pp. xxi–xxxii.

¹⁶ Ayoub, Mohammed; Lussier, Danielle N., eds. (2020). 'Islam's Multiple Voices'. *The Many Faces of Political Islam: Religion and Politics in Muslim Societies* (2nd ed.). Ann Arbor, Michigan: University of Michigan Press. pp. 26–44. doi:10.3998/mpub.

¹⁷ Lewis, Bernard (1993). *Islam and the West*. Oxford, New York: Oxford University Press.

¹⁸ Siraj Islam Mufti (27 September 2013). 'The Muslim Vision of Religion and Politics'. *Islamicity*. Retrieved 12 April 2025.

¹⁹ Brown, L. Carl (2000). *Religion and State: The Muslim Approach to Politics*. New York: Columbia University Press. pp. 1, 19–31 Retrieved 12 April 2025.

²⁰ Abu Hamid al-Ghazali quoted in Mortimer, Edward, *Faith and Power: The Politics of Islam*, Vintage Books, 1982, p.37

²¹ Chamieh, Jebran (1992). *Traditionalists, Militants and Liberal in Present Islam*. Research and Publishing House.

²² Roy, Olivier (1994). *The Failure of Political Islam* [Echec de l'Islam Politique]. Translated by Volk, Carol. Cambridge Massachusetts: Harvard University Press.

²³ Diamond, Larry Jay and Plattner, Marc F. (2006). *Electoral systems and democracy*. p. 168. Johns Hopkins University Press.

²⁴ Living Database of Democracy with Adjectives Gagnon, Jean-Paul. 2020. 'Democracy with Adjectives Database, at 3539 entries'. Latest entry April 8. Provided by the Foundation for the Philosophy of Democracy and the University of Canberra. Hosted by Cloudstor / Aarnet / Instacluster.

There have been numerous riots over the implementation of Sharia, primarily involving non-Muslim minorities in the states that implemented the system. One riot against 'the decision of the Kano state government to adopt Sharia law'²⁵ led to the death of over 100 people in October 2001 in Kano State.²⁶ In theory, the sharia legal system and hisbah enforcement apply only to Muslims, but according to the BBC, 'in reality, non-Muslims come under pressure to adhere to the hisbah's rulings'. In 2020, trucks carrying alcoholic beverages belonging to non-Muslims were destroyed and bars were raided by the hisbah after it accused owners of 'corrupt acts'.²⁷

In 2002, negative light was brought to Sharia in northern Nigeria when Amina Lawal, a single mother in Katsina State, was accused of adultery and sentenced to death by stoning by a state Sharia court for conceiving a child out of wedlock; the father was released without conviction for lack of evidence. Lawal's conviction provoked outrage both in southern Nigeria and the West, with many national and international NGOs lobbying the federal government to overturn her conviction. In 2004, the conviction was overturned by the Sharia court of appeal. It ruled that pregnancy was insufficient evidence for the sentence to be carried out and Lawal returned to private life.²⁸ Sharia used to be categorized as a customary law in Nigeria.²⁹ This position has changed given the judicial pronouncement in the case of *Alkamawa v Bello*.³⁰ Hence, Sharia is now seen as a distinct and universal legal system.

Religious terror and violence have a direct impact on human rights of the citizens of Nigeria, with consequences for the enjoyment of the right to life, liberty and physical integrity of individuals, especially victims of terrorism³¹. Islamic violence and terror attacks can destabilize and undermine entire society, jeopardize peace and security and threaten social and economic development. It seeks to impose upon the majority the views of a minority and stops at nothing in the pursuit of its aims. Such attacks the pillars of democracy and the rule of law upon which respect of human rights is based. Nigerian states have a duty to protect the lives of the citizens and the integrity of the state and must be able to take appropriate measures to fight religious terrorism. Ezeanokwasa³² critically reviewed the provisions of Nigeria's 1999 Constitution regarding freedom of religion and the limitations imposed by the country's long history of religious tensions. The scholar examined the persistent conflicts between the two dominant religious groups, Christians and Muslims, exacerbated by the violent activities of Boko Haram, which sought to Islamize the nation. These conflicts led to widespread loss of lives, internal displacements, and heightened national anxiety, as exemplified by the abduction of the Chibok girls³³. The paper assessed whether the constitutional guarantees of religious freedom were sufficient to curb religious extremism and maintain national stability. Drawing from international legal instruments, Ezeanokwasa found that the constitutional provisions on religious freedom aligned with global human rights standards. It argued that these provisions, if properly enforced, should have been adequate to prevent religious extremism. However, a fundamental challenge arose from the refusal of certain Islamic groups to recognize the supremacy of the Nigerian Constitution over Islamic law. This rejection undermined the constitutional framework's ability to enforce religious freedom effectively, leading to continued religious friction and extremism. To address this issue, Ezeanokwasa recommended internal reforms within the Muslim community to align Islamic law with constitutional supremacy. It emphasized that fostering acceptance of the Constitution as the ultimate legal authority would have strengthened religious freedom in Nigeria. The study underscored the need for legal and societal initiatives to bridge the divide between constitutional provisions and religious practices, promoting a more peaceful coexistence among Nigerias religious groups.

Suleiman³⁴ in his work explored the tendency of adherents of Islam and Christianity to prioritize religious beliefs over state laws when conflicts arose between the two. The study highlighted cases such as *Geron Ali v. Emperor*³⁵ and *Ashiruddin v. King*,³⁶ where extreme religious devotion led individuals to commit acts that violated legal and moral principles. The author argued that religious extremists often refused to subordinate their faith-based practices to constitutional provisions, choosing instead to uphold divine mandates as they understood them. Using an analytical approach, the Suleiman examined the relationship between Islamic faith, particularly Sharia law, and the Nigerian Constitution of 1999 (CFRN). It reviewed legal precedents, historical records, and scholarly materials to assess how deeply Islamic faithful regarded the Constitution in contrast to their religious obligations. The study revealed that some followers of Islam perceived Sharia as superior to secular laws,

²⁵ Orjinmo, Nduka (16 August 2021). 'Nigeria's Kano state moves to ban mannequin heads on Islamic grounds'. BBC News. Retrieved 30 August 2021.

²⁶ 'Kano: Nigeria's ancient city-state'. BBC News. 20 May 2004. Retrieved 12 July 2007.

²⁷ Orjinmo, Nduka (16 August 2021). 'Nigeria's Kano state moves to ban mannequin heads on Islamic grounds'. BBC News. Retrieved 30 August 2021.

²⁸ 'Concept of democracy in Islam - Islam Question & Answer'. islamqa.info. January 22, 2015. Archived from the original on April 28, 2022. Retrieved August 4, 2022; Trauthig, Inga Kristina; Eyre, Guy Robert (October 29, 2023). 'Quietist' Salafis after the 'Arab revolts' in Algeria and Libya (2011–2019): Between insecurity and political subordination'. *Mediterranean Politics*. 30: 78–101. doi:10.1080/13629395.2023.2272474;

²⁹ Oba, A.A (2002). 'Islamic Law as Customary Law: The Changing Perspective in Nigeria'. *The International and Comparative Law Quarterly*. 51 (4): 817–850. doi:10.1093/iclq/51.4.817. JSTOR 3663189.

³⁰ 'ALHAJI ILA ALKAMAWA v. ALHAJI HASSAN BELLO & ANOR'. LawPavillion. Retrieved 8 September 2018.

³¹ al-Ahsan, Abdullah (2009). 'Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC's Cairo Declaration of Human Rights'. *Journal of Law and Religion*: 571.

³² J O Ezeanokwasa, 'Religious Freedom and Its Limitations under the 1999 Constitution of Nigeria' *NAUJILJ* (2016) 1(1), 55-68.

³³ Lopate, Leonard (30 November 2016). 'Returning to the Chibok Girls, and the Boko Haram Kidnappings | The Leonard Lopate Show'. *The Leonard Lopate Show*. WYNC. Retrieved 22 October 2021.

³⁴ ES Nwauche, 'Law, religion and human rights in Nigeria' *African Human Rights Law Journal* (2008) 8(1), 568-595.

³⁵ <https://indiankanon.org/doc/1747149/>

³⁶ AIR 1949 Cal 182 5. *Ratan Lal v. State of ...* wikipedia.com. Statement of Jurisdiction The Petitioners have approached the ..

leading to instances where constitutional authority was undermined in favor of religious directives. He recommended that both private and public schools integrate civic education into their curricula to instill a sense of allegiance to national laws. The study ultimately emphasized the need for a balanced approach that respected religious beliefs while ensuring adherence to the Nigerian Constitution to promote national unity and legal order. Nwauche³⁷ examined the relationship between law, religion, and human rights in Nigeria, emphasizing the necessity of a framework that guarantees freedom of religion while effectively managing religious conflicts. The study was driven by the persistent religious strife in Nigeria, particularly within its multi-ethnic and multi-religious setting. The author underscored the significant role of religion in Nigeria's socio-political landscape, particularly in the wake of the introduction of Islamic criminal law in twelve northern states. The development, he argued, underscored the undeniable influence of religion on Nigeria's governance and legal structures, necessitating a critical exploration of the state's approach to religious coexistence. At the core of Nwauche's argument was the assertion that Islam and Christianity functioned as de facto state religions, despite Nigeria's constitutional commitment to secularism. He contended that these two dominant religions exercised disproportionate influence over legal and political institutions, leading to the marginalization and neglect of other religious beliefs. This unacknowledged dominance, according to the author, shaped the country's religious and legal dynamics, contributing to tensions and conflicts. He highlighted that the failure to acknowledge this reality resulted in a misunderstanding of constitutional obligations regarding religious freedom and equality. Furthermore, the paper analyzed the implications of this religious imbalance on human rights and legal governance in Nigeria. Nwauche argued that the denial of religious plurality and the lack of a comprehensive legal framework to address religious disparities perpetuated systemic discrimination. He stressed the importance of recognizing and addressing these issues to ensure a more inclusive legal and political system. Ultimately, the study called for a re-evaluation of the Nigerian states approach to religion, advocating for policies that genuinely uphold religious freedom and manage religious diversity in a manner that fosters national unity and stability.

In some cases, Christian Religious Education is removed from the education curriculum. In Nigeria, for example, the National Council of Education (NCE) has approved that Christian Religious Knowledge and Islamic Studies be separated from Religion and National Values and handled as stand-alone subjects. Private schools (Christian and Muslim) give mandatory religious classes, reflecting their religious identification. Students from other religions don't take any classes during the religious ones, but they always can sign up for the RE class. Catholic schools give only Catholic classes, mandatory for Christian students, but can be signed up for by Muslim students. If not, Muslims do not take any classes in parallel to Christian ones. Public schools have a somewhat more liberal religious program. This indicates a move away from a combined religious studies approach. Other countries may have a 'secularist option' where religion is not included in the curriculum at all, reflecting a strict separation of religion and state. Some countries opt for 'confessional religious education' where religion is a mandatory subject, often reflecting its role in national identity. While the Constitution allows for religious courts, the application of Sharia, particularly in criminal matters, raises concerns about its compatibility with secular state principles and human rights protections.

In the debates on sharia, Section 10 of the constitution has often been juxtaposed with Section 38, on freedom of religion, which has been interpreted differently by different parties. Section 38 (1) of the constitution states: 'Every person shall be entitled to freedom of thought, conscience and religion and freedom to manifest and propagate his religion or belief in worship, teaching, practice and observance.' Non-Muslims have argued that the imposition of Sharia violates the right to freedom of religion and affects non-Muslims, even though they are supposed to be exempt from the law. Advocates of Sharia have referred to the same provision to justify the application of Sharia as an integral part of Islam.

Some have described attempts to stop or curb the implementation of Sharia as a violation of their own right to freedom of religion as Muslims. There has also been an intense argument over whether state governors have the powers to extend the jurisdiction of Sharia courts to criminal law or to create new courts. The constitution mentions Sharia state courts of appeal (sections 275 to 279) but refers to their jurisdiction only in 'civil proceedings involving questions of Islamic personal law' and does not mention that they have powers to try criminal cases. Critics of Sharia have therefore argued that it is unconstitutional for Sharia courts to try criminal cases. Northern state governors, however, have insisted that they have the powers to do so. The legislative power of the government in Nigeria is divided between the federal and state governments, as specified in Section 4 of the constitution. Section 6 of the constitution empowers states to establish courts 'to exercise jurisdiction at first instance or on appeal on matters with respect to which a [state] House of Assembly may make laws;' and Section 4 (7) gives state houses of assembly the power to 'make laws for the peace, order and good government of the State' for any matters not included in the Exclusive Legislative List, any matter included in the Concurrent Legislative List,²⁷⁹ and 'any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.' State governments have argued that these provisions give them the right to introduce Sharia legislation, and to create courts, on the grounds that these are intended for good governance of their states.

A further argument advanced by critics of Sharia is that Sharia discriminates against Muslims. Section 42 (1) of the constitution guarantees the right to freedom from discrimination: 'A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such as person – a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject.' Since the introduction of Sharia, Muslims have no choice as to which jurisdiction will try them, whereas non-Muslims do. Furthermore, Muslims are likely to be affected negatively by some of the significant

³⁷Nwauche, ES, 'Law, religion and human rights in Nigeria' *African Human Rights Law Journal* (2008) 8(1), 568-595.

differences between the Sharia and the common law systems. Some of the punishments provided for by the Sharia legislation, for example death by stoning or amputation, are much harsher than those provided for in the Criminal Code. There are also certain acts, such as adultery, which are capital offenses under Sharia but are not considered crimes under the Criminal Code applied in the rest of the country. As described above, several provisions of Sharia also discriminate against women. The consequences of all these differences in terms of sentencing could be severe. Separately from arguments about the limits of jurisdiction of the Sharia courts, punishments provided for by Sharia, such as death by stoning, amputations, and floggings, are violating the right to dignity of the human person, enshrined in Section 34 of the constitution, which explicitly prohibits torture and inhuman or degrading treatment. Likewise, the failure of Sharia court judges to observe due process during trials has violated the right to a fair hearing, provided for in Section 36 of the constitution. The inequality between men and women under Sharia violates the right to freedom from discrimination, provided for in Section 42 of the constitution.

4. Sharia and the Constitution

There has also been a more fundamental argument about the scope of the constitution and the extent to which it is binding across the country—even though the very first provision of the constitution states clearly that it is. Section 1 (1) states: ‘This Constitution is supreme, and its provisions shall have binding force on all authorities and persons through the Federal Republic of Nigeria,’ and Section 1 (3) states: ‘If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.’ Some state government officials and judges in Sharia courts have disregarded these provisions; they have argued that Sharia has supremacy over the Nigerian constitution, because it has its source in religion, and have therefore claimed that they are not bound by constitutional requirements. One of the most hotly debated, and so far unresolved, questions in relation to Sharia has been whether Sharia courts have the jurisdiction to try criminal cases under the Nigerian constitution. But in the case of Safiya Hussaini Tungar Tudu (born 1967) is a Nigerian woman condemned to death for adultery in 2002. She gave birth to a child as a single woman in Sokoto, a Nigerian state under Sharia law. She was sentenced to be stoned but was acquitted of all charges in March 2002 after a retrial by the intervention of the then Governor of Sokoto State.³⁸ To date, the federal government has avoided taking a clear position on the matter and it has been left to lawyers, academics and non-governmental organizations to debate the issue. Meanwhile, criminal cases have continued to be brought before the Sharia courts, and people have continued to be sentenced. Section 10 of the constitution specifies: ‘The Government of the Federation or of a State shall not adopt any religion as State Religion.’ Many Nigerians have described the adoption of Sharia as the equivalent of adopting a state religion in the northern states. Northern state governors, however, have argued that this is not the case, as Sharia applies only to Muslims, not to Nigerians of other faiths. But in so many situations, sharia courts have been assuming jurisdiction over criminal matters that concern non-Muslims. For instance, on 12 May 2022, Deborah Samuel Yakubu, a second-year Christian college student, was stoned to death by a mob of Muslim students in Sokoto, Nigeria, after being accused of blasphemy against Islam.³⁹ The Muslim suspects arrested were charged with ‘Criminal conspiracy and incitement of public disturbance’, bailable offences with a maximum 2-year jail time. A team of 34 lawyers led by Prof. Mansur Ibrahim defended the suspects who were subsequently acquitted by the court citing non-showing of prosecution lawyers.⁴⁰

5. Conclusion

The international community under United Nations Security Council should compel the Organization of Islamic Corporation (OIC) and other religious organizations to revisit their conferences and resolve to remove the anti-human rights provisions as contained in Articles 2 and 24 of the Cairo Declarations that subjected the Universal Human Rights under Sharia. Religionists and adherents should preach what religion is meant for: peace, good governance, integrity, morality and others that help the society achieve sustainable development.

³⁸ Lawyers, non-governmental organizations protest sharia court death sentence on a pregnant divorcee and mother of four

³⁹ Oyero, Kayode, (12 May 2022). ‘Killing of student barbaric, NBA must cancel Sokoto event –SAN’. *The Punch*. Archived from the original on 13 May 2022. Retrieved 25 May 2022.

⁴⁰ ‘Deborah Samuel's Suspected Killers Were Charged To Court For 'Inciting and Disturbance,' Got Acquitted – Nigerian Police Admit’. *Sahara Reporters*. 5 July 2023. Retrieved 4 February 2024.