A LEGAL EVALUATION OF PERMISSIBLE LIMITS TO FREEDOM OF RELIGION IN NIGERIA*

Abstract
The right to freedom of religious is a fundamental right enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended) The right is also provided in some prominent regional and international instruments. This is unarguably due to the importance and sensitivity of this right to citizens and government. As important as this right is, all the laws that made provision for it also have provisions on how and when there can be some derogation and limits to this right. This has to a large extent cause some abuses against this right while attempts are made to limit or derogate from this right. To evaluate these limits, the researcher adopted the doctrinal research methodology whereby primary source materials such as; statutes and case law and secondary sources including journal articles and text books are extensively considered in this work. It is the findings of this work that; there exist some misapplications of some statutory limitations for derogation on the right to freedom of religion. That these abuses are usually part of the efforts by those in positions of authority to limit or derogate from this right. It is recommended that; precautions must be applied whenever attempts are made to limit or derogate from this right.

Keywords: Freedom of Religion, Permissible Limits, Nigerian Constitution, Legal Evaluation

1. Introduction

The right to freedom of Thought, Conscience and Religion is one of the fundamental rights enshrined in the Nigeria Constitution.[1] This right is also provided for in several international and regional treaties, conventions, protocols and laws which make the right an international Human rights law concern.[2] Like every other human rights apart from some right such as the right to the dignity of the human person and right to fair hearing provided in sections 34 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), there are usually some limits attached to each right. However, the issue is not about whether the right to freedom of religion should or can be limited or derogated from but how this limitation and derogation are handled by those in position of authority

2. An Evaluation of the Permissible Limits to the Right to Freedom of Religion

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Granted that, must human rights provisions at all levels have one limitations, restrictions or derogations or the other, this is usually done according to the provisions of the law whether municipal or international and in accordance with International best practices and democratic standards.

The right to freedom of thought, conscience and religion is one of the rights that are not absolute in their enforcement in the sense that, they can be limited, restricted or derogated from in certain circumstances and under certain conditions according to law[3].

Section 45 (1) – (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides:

> 1. Nothing in Sections 37, 38, 39, 40 and 41[4] of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society
> (a) In the interest of defence, public safety, public order, public morality or public health or
> (b) For the purpose of protecting the rights and freedoms of other persons
> 2. An Act of the National Assembly shall not be invalidated by reason only that it provides for the faking during periods of emergency, of measures that derogate from the provisions of Section 33, or 35[5] of this Constitution, but no such measures shall the derogate from the provision of Section 33 or 35 of this Constitution in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:
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> Provided that nothing in this Section shall authorize any derogation from the provision of Section 35 of this Constitution, except in respect of death resulting from acts of war and authorized any derogation from the provision of Section 36 (8) of this Constitution.

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[1]CFRN 1999 (as amended) s 38(1)

[2]Article 18 Universal Declaration of Human Right (UDHR) 1948

[3]CFRN, 1999 (as amended) s. 45 (1) & (2).

[4]Section 37 is the right to private and family life, Section 38 is the right to freedom of thought, conscience, religion, Section 39 is the right to freedom of expression and to hold opinions and to receive and impart information, Section 40 is the right to freedom of assembly and association and Section 41 is the right to freedom of movement.

[5]Section 33 is the right to life and 35 the right to personal liberty.

Since Nigerian Independence, the provisions as to the right to freedom of thought, conscience and religion were provided in the Nigerian Constitutions to address problems associated with ethnic and religious minorities existing in various parts of Nigeria.[6] And to prevent the majority ethnic and religious groups from dominating the minority groups[7]

African Charter on Human and Peoples' Rights 1987

The African Charter on Human and Peoples' Right also have Similar provisions as to when and how and under what circumstances the rights contained therein particularly the right to freedom of religion can be limited or restricted or derogated from when its expressly provided, in its Article 8 as follows; 'Article 8: Freedom of conscience, the profession and free practice of religion shall be granted. No one may subject to law and order, be subjected to measures restricting the exercise of theses freedoms'

Similarly, Article 10 (1) & (2) of the Charter has restricting or derogating provisions on the right to freedom of association and assembly which are provided under some conditions. Rights of association impliedly enhance the right to choose a religion or belief to hold. The Charter provides:

> Article 10:
> 1. Every individual shall have the right to free association provided that, he abides by the law.
> 2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.
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> Article 11:
> Every Individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restriction as provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedom of others.

These derogating, restricting or limiting provisions of the Charter particularly the one on the right to assemble are similar to the provision on derogation of the right to freedom of religion contain in Section 45 of the constitution of Nigeria which include, national security, safety, health morals etc.

International Covenant on Civil and Political Rights 1966

Likewise, the International Covenant on Civil and Political Rights also have similar derogatory provisions on the right to freedom of religion. Article 4 (1) of the Covenant provides:

> 1. In time of emergency which thereafter the life of the nation and the existence of which is officially proclaimed,[8] the state parties to the present covenant many take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

Unfortunately, the covenant did not give a meaning to what can be said to be the 'exigencies of the situation' and when can it be said that, measures taken are consistent with other obligations under international law and do not involve discrimination solely on ground of race, colour, sex, religion etc. Does this mean that, people rights can be discriminated against by the authorities that be while derogating from this right on grounds of sex, colour, race and religion etc if the discrimination while derogating from the right is based on the above ground in addition to other grounds? This provision is open to various meaning being given to it and also to abuse by some party states as it is open ended.

International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Economic, Social and Cultural Right as well have similar provisions on how the rights enshrine in the covenant can be provided by party states who are developing countries. It provided in Article 2 (3) as follows: 'Developing Countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present covenant.' And more importantly, party state can derogate from the rights provided in the covenant as provided in Article 4 of the Covenant as follows:

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[6]AS Garba, 'Permissible Limitation to Freedom of Religion and Belief in Nigeria, [2020] (15) (1-2) *Religion & Human Rights Journal*, 57-76.

[7]*ibid*

[8]In Nigeria, there exist instances where the Federal Government had declared states of emergency and a proclamation issued by the National Assembly where it is convincingly shown that, any situation that portray emergency situation do not exist. See OI Usang and O Enemuoh, 'A Legal Appraisal of Emergency Rule in Nigeria and South Africa: A Comparative Approach' [2022] (4) (1) *Law and Social Justice Review, Journal*, 172.

> The State parties to the present covenant recognize that in enjoyment of those rights provided by the state in conformity with the present covenant, the state may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nations of these rights and solely for the purpose of promoting the general welfare in a democratic society.

This provisions also seems to be directory and leaves each party state with some degree of discretion to exercise. The States in enforcing these rights, have to consider the nature of the rights, their municipal laws, and the promotion of the general wellbeing of the people. This provision is very likely to be abused by governments especially in the developing countries and those countries where democracy is not well established with inconsistencies and instabilities in government and their policies and with very high propensities of human right abuses[9] The tendencies to also abuse this provision of the law is also very high and in most cases the abuses are alreadily in existence where there are increasing insecurity in the society. Government is very like to abuse these rights while purporting to fight insecurity[10]

Granted that no right is absolute as it is in the common saying that, the extent of every individual or group right, is determined by the point where other individuals and group rights start. The restriction or limitation or derogation from the right to freedom of worship, religion or belief or to practice same in any way or means, is not the issue here. What is in issue is the way and extent these limitations, restrictions or derogations from these rights are carried out.

Government and its agencies limit, derogate and restrict these rights with so much bias, malice, violence and subjectivity. Political, ethnic and religious sentiments guide and control their actions. In most cases, those who are not from the same political arrangement, religion, ethnic groups and beliefs are commonly seen as enemies, competitors and rivals who should be done away with by all means[11]

3. Conclusion and Recommendations

There are some religious beliefs and groups; especially those in the minority, like the African Traditional Worshippers and other native religions that have been seen, held and even classified are fetish, Juju worshippers, diabolic and uncivilized because of their ways and means of worship or practices. These religious groups, are in some instances being silenced or discriminated against and treated with a lot of hatred and some of them may soon go into extinction or near extinction because, government and even individuals attempt to, restrict, condemn or control their rights to freedom of religion or belief while purporting to enforce the laws on derogation of this right. [12]

Some of these minority religious groups members, have been rightly or wrongly in some cases, accused of serious criminal offences and even tried in law courts because of their religious practices and in some cases, just to silence them or intimidate and force them out of their religions or beliefs.[13] It would be unlawful and even an abuse or a provocation, for one to expect or even argue that, the right to religion or belief should be absolute or without limits or restrictions. It is safer to state that, restrictions or limitations to some rights including the right to freedom of religion, promote the right itself because where every person is allowed or has the right to enjoy and practice his or her religion or belief absolutely or better still without limitations or restrictions then, anarchy is very likely to occur.[14]

It is recommended that where it becomes necessary that, this right must be limit or derogated from, some constraints must be applied to avoid infringement on this right. Derogations from this right should not be done under bias and subjective considerations but on grounds provided by law and under international best practices and basically for public benefits only.

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[9]See 'About Extreme Poverty and Human Rights' in Special Rapporteur on Extreme Poverty and Human Rights, United Nations Human Rights Office of the High Commissioner, at https://www.onchir.org accessed 29th August, 2024. See also, K Abas and R Kurachi 'Human Right in Developing Countries and its Relationship with Country's Economic Development' [2018] (2) (3) May-June, *International Journal of Rural Development, Environment and Health Research*, 31-36.

[10]OI Usang and OJ Enemoh, 'An Appraisal of the Legal Nexus between National Security and the Protection of Human Right Standards in Nigeria' [2022] (3) (1) *Law and Social Justice Review Journal* (LASJURE) 36-43 and IKE Oraegbunam 'Sharia Criminal Law, Islam and Democracy in Nigeria' [2010] (8) (1) *OGIRISI*: *A New Journal of African Studies*, 181-209.

[11]J V. Montvilled (ed) *Lexington* (Lexington Books 1977) p129: N Okwudiba, *Ethnic Politics in Nigeria* (Enugu: Fourth Dimension Publishers (1978) pp 1-278; J Rolschild, *Ethnopolitics: A Conceptual Framework* (New York, Columba University Press 1981) pp 1-213; I Jubrin,'The Politics of Religion in Nigeria, the Parameters of the 1987 Crisis in Kaduna State' [1989] (45-46) *Review of African Political Economic*, 65-82; L Arend, *The Power Sharing Approach, Conflict and Peace-making in Multiethnic Societies*.

[12] IKE Oraegbunam, 'A Philosophical Critique of Some Judicial Attitudes to Juju Related Crimes in Nigeria' [2005] (2) *Essence: International Journal of Philosophy,* 188-203.

[13]*ibid* and see also, L Adekunle Abiona and P O Abiole. 'The Challenges Facing African Traditional Religion as a Minority Religion in Nupe land, Kwara State, Nigeria' [2021] (2)(1) *Ilorin Journal of Religious Studies,* 1-14; T Robinson *et al*, *Religious Minorities in Nigeria; Westminster Hall Debate on Religious Minorities in Nigeria*, 19 April, 2023.

[14]Ezeonakwasa, *et al,* 'Religious Freedom and its Limitation Under the 1999 Constitution of Nigeria [2016] (7) *UNIZIK J.I.L.J* 55-69.