

# Sharia Criminal Law and State Secularity Principle in Nigeria: Implications of Section 10 of 1999 Constitution (as Amended)

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## Abstract

This paper analyses the problem of the application of Islamic criminal law in Nigeria. Though Nigeria is constitutionally a secular state, Islamic religion more than any other seeks to cast a no mean shadow on the governance of the country. In a proselytist posture, Islam vows to dip the Koran in the Atlantic. From the fight over constitutional establishment of Sharia Court of Appeal in the late 1970s, through the heydays of OIC (organization of Islamic Conference) controversies in the 1980s, to the tension over Islamic banking and jurisdictional matters in relation to judicial authority of Sharia courts recently, Islamic praxis in Nigeria had really generated some national heat. It is needless to mention the faceless agitations of the members of Boko Haram sect by which mayhem had been unleashed on thousands of innocent lives and property. One question however remains salient. Are all these religious-oriented struggles in tandem with the features of state secularity principle provided for in Nigerian Constitution? Is secularity a liability rather than an asset in the socio-political processes of the Nigerian multi-religious state? This paper seeks to address just one of these scenarios, namely, the adoption of Sharia criminal law in much of Northern Nigeria today, and juxtapose it with the implications it has on the principle of state secularity and democracy in Nigeria.

**Keywords:** Sharia, Criminal Law, State Secularity, Nigerian Constitution, Human Rights, Islam

## 1. Introduction

The dawn of the new millennium witnessed an unprecedented resurgence in the implementation of Islamic law in Nigeria. In the name of democracy and the spread of its dividends, Zamfara State government and later governments of other eleven northern states (Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto, Niger, Bauchi, Bornu, Yobe, Gombe) respectively enacted, repealed and amended certain laws in order to pave way for the smooth enforcement of the criminal aspects of Sharia law in their various enclaves. While Sharia Court Laws were enacted to establish Sharia Courts, Sharia Court of Appeal (Amendment) Laws were made to add criminal causes to the jurisdiction and the supervisory roles of the Sharia Courts of Appeal of the relevant states. In the same vein, while the Area Courts (Repeal) Laws were enacted with a view to replacing Area Courts with the new Sharia Courts, the Sharia Penal Code Laws were passed to codify the Sharia offences. Finally, the practice and procedure in the prosecution of offences in the courts are regulated by Sharia Criminal Procedure Code Laws. With the legal structure and framework thus completed, the stage was indeed set for the adjudication of criminal causes and matters as dictated by Allah, and revealed in the Koran and other sources of Sharia, and as codified by relevant legislatures. Since 2000, Sharia criminal justice has been applicable in these states beyond what many think is allowed by the constitution. Attendant punishments such as amputation, haddi lashes, stoning to death, and so on are inflicted on those found guilty.

Ever since, hues and cries from national and international communities, human rights groups, legal luminaries and social commentators have been raised over the implications of the adoption of Islamic criminal law on liberty-sensitive practices such as constitutionalism, the rule of law, respect for fundamental rights, and democratic tenets generally amidst other concerns. Yet on the other rung of the ladder, the adoption is being justified paradoxically on these same standpoints. Certainly, the controversy rages on mostly along religious and ethnic lines. The resilient inter-ethnic and religious conflicts in certain parts of the country today may not be divorced from the aftermath of this recent Islamic pathos.

However, this paper is specifically concerned with the effect of the adoption of Sharia criminal justice system on the secularity of the Nigerian Nation as enshrined in the Constitution. Will the establishment and running of a religion's court and enforcement of such religion's laws not amount to adoption of that religion as state religion? How can the employment of only Muslims to work in the Sharia Courts not be seen as preferential treatment to Muslims and elevation of Islamic religious ethos with state machinery? Does the act of merely codifying a religion's law as forming part of the agenda of a state legislative business not tantamount to adopting that religion as state religion? Can these issues and more not be said to derogate from the very idea of Nigeria as a secular nation? What of the negative ripple effects the adoption would have on the lives and sensibilities of non-Muslims? Therefore this paper seeks to examine the implications of the adoption of Sharia criminal justice

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in a multi-religious and democratic Nigeria. As the principle of state secularity is normally a consequence of religious pluralism, the paper equally exposes the secularity debate that ensues over the application of Islamic criminal law in Nigeria. This study is capped with a personal response to the debate and some recommendations that may belly the ache. Our approach to this socio-religious and legal question is largely jurisprudential.

## **2. The State Secularity Principle in Nigeria**

The issue of state secularity in Nigeria pivots around 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 section states that “the Government of the Federation or of a state shall not adopt any religion as state religion”. Raging controversies have ensued on the interpretation of section 10 as it relates to extended application of Islamic law in Nigeria. 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. However that may be, secularity principle received correct judicial recognition and formulation in the United States in the case of *Everson v. Board of Education* (330 US1, 67 Sct 505 (1947)). 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.

## **3. Arguments in Favour of State Secularity**

It must be noted that the immediate spark that engendered the secularity debate in recent times in Nigeria is the adoption, at the dawn of this democracy, of Islamic criminal law by most Northern states, which practice is condemned by many scholars as having the potentials of, if not actually, affecting non-Muslims in these states. Members of this school of thought therefore see this application of Islamic criminal law as a violation of section 10 of the 1999 Constitution. Agbede (1989) earlier declares:

In a country that is professed to be secular, the Islamic law as a distinct third system is hardly compatible with the express provisions of the constitution which prohibits any law that discriminates on grounds inter alia of religion..

But the fieriest protagonist of this view is the distinguished constitutional law expert, Nwabueze. Nwabueze (2000) holds that section 10 of the 1999 Constitution in all its spirit and letters does not permit for the adoption of state religion by any constituent part of the federation. He warns that the adoption if not withdrawn would have the effect of compromising the federal states as a whole. The scholar is of the view that the withdrawal from the introduction of the Sharia by the Zamfara state is the only panacea to the continued existence of Nigeria as a Federal State. In a lengthy paragraph, Nwabueze (2000) states:

The question is whether the power of the federal or state government can, comfortably with the provision of section 10 of the constitution, be employed to codify Sharia criminal law in all its plenitude as order by the Quran, the Sunna and other Islamic books, as to enforce it against Moslem and non-Moslem offenders alike by arrest, detention and prosecution. To restrict the application of such a code to Moslems alone will lay bare its character as the law albeit in a codified form, of the religion of Islam, and expose it as a state sponsorship of that religion. The conclusion is thus inexorable that the prohibition in section 10 of the constitution stamps with an indelible taint of unconstitutionality, the Sharia criminal law, whether in its original form as contained in a codified form to be enacted by the National Assembly or State House of Assembly.... If the states in the North are bent on adopting Sharia Criminal law, and refuse to be persuaded to drop the idea, they must be taken to have opted for a confederal arrangement or a complete break-up of the association. It is better to pull apart or break-up in peace than fight over the issue.

Further, arguments against the adoption of criminal aspect of Sharia have been grounded on three other

fundamental Archimedean points, namely, the manner of the reception of Sharia Criminal law, the idea of enforcement of offences and punishments under the Sharia by a democratic state, and the limits of the jurisdiction of Sharia Court of Appeal of a state. An expose of the arguments on these points would be made one after the other.

It is apt to examine the manner of the reception of sharia criminal law under the Koran. It is argued that a competent legislature can distill rules or principles of law from any sources it likes and enact them specifically as law. Surely, many rules or principles of law embodied in Nigerian statutes, both Acts of the National Assembly, and decrees and edicts of the military governments, are distilled from customs, religion and usages, and also from sources that may be traced to various countries of the world, notably Britain (Obilade, 2002). That was also the approach of the *Penal Code*, Cap. 89, Laws of Northern States of Nigeria, which has been in force in the northern states since 1960. Thus, not less than 20 offences enacted specifically by the *Penal Code* are derived, in part at least, from the sharia. Hence, these offences, although distilled from the sharia, apply in Nigeria as offences created by legislature, and with punishments prescribed by the code, and not by the Koran and the Sharia. Under this approach, therefore, the sharia as ordained in the Koran serves only as a source, not a form, of law. Thus, Nigeria has lived for over forty years with offences derived from the sharia but enacted as such specifically by the *Penal Code*.

However, it is also possible for rules or principles of law originating from a given source to be adopted by a competent legislature not by enacting them specifically and directly, but by a method known as “incorporation by reference” or what is more commonly called “reception of law”. It is in this way that the English Common Law, Principles of Equity, and Statutes of General Application were received as law in Nigeria by the colonial legislature and its indigenous successors. Thus also was Roman law received in many countries of the world. By this reception, these laws became a form of law in Nigeria, and not just a source from which rules or legal principles could be distilled and enacted specifically into law by the legislature. This is equally the method by which an Islamic Constitution in a pure Islamic state is fashioned.

There is, however, no gainsaying that the Koran is the holy book of the religion of Islam. Its reception as law in Zamfara and other states, with its legal prescriptions, injunctions and punishments, clearly is tantamount to the adoption of Islam as the religion of those states. To deny this is to render the phrase, “adoption of a particular religion as state religion” meaningless. It is observed that although the Constitution of Sudan does not explicitly establish Islam as state religion, as do the constitutions of eight other African countries (Algeria, Comoros, Egypt, Libya, Mauritania, Morocco, Somalia, and Sahrawi Arab Democratic Republic), yet the provision making the “Islamic sharia and custom” part of the law of the country is seen by non-Muslim Southern Sudan, and is treated by Muslim North, as having that effect. He holds that this is the main cause of the never-ending religious conflict and war in which the country was engulfed for so many years. This has eventually led recently to the secession and independence of the southern part of the country to become South Sudan without however the struggles abating.

There is no doubt that the method of enactment as of the Penal Code is certainly preferable since it poses no insurmountable difficulty. In respect for a constitutional democracy, any state government wishing to create more criminal offences based on the Koran, should as did Ahmadu Bello in 1959, assemble in a democratic manner, a team of jurists learned in Islamic law to draft the necessary code, taking care, of course, that the Constitution and the rights it guarantees are not thereby infringed upon.

Furthermore, consideration has been given to the issue of enforcement of offences and punishments under the Koran by a democratic state. The point of consideration here is whether the state’s legislative, executive and judicial powers may constitutionally be employed to adopt as part of the law of a state in Nigeria, offences and punishments under the Koran, to arrest, detain and prosecute those alleged to have committed those offences, to try and convict such offenders and to sentence them to the punishments prescribed by the Koran. An instance of this is located in Zamfara State Sharia law which provides that the Police, a federal executive agency, can sometimes be authorized by a sharia court to execute certain duties in pursuance of the proceedings before the court including court orders and judgements (Zamfara State Sharia Courts (Administration of Justice and Certain Consequential Changes) Law No. 5, 1999, Section 17iii.). This point is certainly pivotal to the Sharia Controversy in Nigeria.

Related to this issue too is the Muslim claim that antagonists of total sharia implementation in Nigeria are depriving Muslims of their right to religious freedom and expression. This argument seems to be reinforced by the fact that sharia under the Koran is coterminous with or inseparable from the religion of Islam. Moreover, the Koran’s moral precepts and its injunctions against, for instance, prostitution, sexual promiscuity, drunkenness, official corruption, theft and other social misbehaviours are encouraged as salutary and necessary to check the growing moral decadence and criminality in Nigeria.

Yet like religion itself, the practice of sharia and the observance of the moral precepts and injunctions in the Koran are a personal matter for the individual, to be inculcated by teaching and preaching in the Koranic schools and mosques, by individual self-abnegation and self-discipline, not by enforcement through the coercive

machinery of government belonging in common to Muslims and non-Muslims alike. Yet all staff of the Sharia Courts are deemed to be public officers in the public service of the state of Zamfara, for instance, in spite of the non-Muslim stakeholders (Zamfara State Sharia Courts (Administration of Justice and Certain Consequential Changes) Law No. 5, 1999 sections 8iii & 15i).

It is discovered that the distinction between civil and criminal law jurisdiction has an important bearing on the issue of state enforcement. In civil law, the state, through its judicial arm, the courts, merely interposes its machinery as an impartial, disinterested arbiter between parties in dispute. It lacks the power to initiate the process of adjudication and must wait until it is moved by one of the disputants (Nwabueze, 2001). This is the main kernel of adversarial legal culture that is the mainstay of Nigerian judicial system. So the enforcement, through the courts, of the civil aspect of Sharia does not involve the support, promotion or sponsorship, by the state. The controversy does not therefore concern much of the application of sharia civil law.

In the case of criminal law jurisdiction, however, the position is entirely different. The state invokes its coercive power to arrest and detain an alleged offender to initiate a criminal charge against him in court, and to see to the effective prosecution of the charge. Thus, the complainant as the initiator of the criminal process, and the prosecutor as the state, are interested parties. Accordingly, the enforcement by the state of the sharia criminal law under the Koran involves the use of its machinery to aid, support and sponsor the Islamic religion in preference to other religions. But state enforcement is nevertheless posited as an inexorable requirement of sharia under the Koran. This is particularly true as Islam rejects the dichotomy between religion and the state. It follows from this that the religion of Islam, with its legal prescriptions, injunctions and punishment as ordained in the Koran, is necessarily in conflict with the Nigerian Constitution which, by prohibiting the adoption by government, federal or state, of any religion as state religion, clearly entrenches the religious secularity of the Nigerian state.

Besides, it must be noted that constitutions of many African countries respectively proclaims the respective countries as “secular” states in explicit terms –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. Needless to say that some of these countries, for instance, Niger, Cameroon, Chad and Senegal, are predominantly Muslim in population. How then can one be convinced that Islam rejects secularity or the separation of the state and religion. 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 constitution in 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” (Nwabueze, 2001). He also 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.

More still, it is argued that enforcement of sharia criminal law is inconsistent with the secularity of 1999 Nigerian Constitution. 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. Thus, an observation has been made:

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, as 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, eg. Where instructions or practices based on the doctrines and observances of a particular religion are given in public schools (Nwabueze, 2001).

It appears that Nigerian secularity is in no way negated by the establishment of a Sharia Court of Appeal in the Constitution, a provision which is counter-balanced by a similar recognition and establishment of Customary Court of Appeal. To buttress this fact, note shall be taken that the jurisdiction of a Sharia Court of Appeal is limited to questions of Islamic personal law which relates to issues of marriage, inheritance, succession, gifts, custody of infants, and so on (Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 277(2)).

In the above Constitutional provisions, certain important points need be noted. In the first place, the jurisdiction of the Sharia Court of Appeal is limited to Islamic personal law that is merely an aspect of civil jurisprudence. The whole realm of criminal and penal justice is by implication excluded from the adjudicatory

concerns of the Sharia Court of Appeal. Secondly, the jurisdiction is equally restricted to situation where the parties to the proceeding are all Muslims or where the parties choose to be governed by sharia.

It is again needless to state that the entire gamut of the provision must be read together with section 10. Hence such words as “in addition to such other jurisdiction as may be conferred upon it by law of the state” must be so read. Otherwise, if the meaning were such that the state can at random add to the jurisdiction of the Sharia Court of Appeal without any restriction, then the prohibition in section 10 would virtually be rendered nugatory. Moreover the words in subsection (2) to the effect that “for the purpose of subsection (1) of the section the Sharia Court of Appeal shall be competent to decide” only on those matters from (a) to (e), constitutes a further limitation.

Be that as it may, the fact that the jurisdiction of the Sharia Court of Appeal is restricted only to matters involving Islamic personal law as set out in section 277 of the 1999 Constitution does not mean that other aspects of Sharia civil law are denied constitutional recognition. The continued application of such other aspects as part of existing laws is recognized but the recognition is subject to their not being inconsistent with any provision of the Constitution, including the prohibition in section 10. Thus section 315 (3) of 1999 constitution provides:

Nothing in this constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with any provision of this constitution.

Therefore, section 315 of 1999 Constitution impliedly recognizes the existing laws but certainly not criminal laws as enforced by, for instance, Sharia and Customary Courts of Appeal which practice have long since been abolished

#### **4. Arguments against State Secularity**

While the above views represent the kernel of the positions of those who think that adoption of full Sharia law in Nigeria is a violation of section 10 of 1999 constitution, there are many scholars who oppose these views and argue that the Sharia practice is constitutional and does not do any violence to the correct interpretation of section 10 or any section of the constitution for that matter. First and foremost, they argue that section 10 cannot be read as to oppose religious practices in the country, and that in fact Nigeria is not a secular state. A number of instances have been given to buttress this claim. Haruna (2003) holds that the non-secularity of the Nigeria state is crystallized in the manner in which the oath of office required to be taken by certain public office holders is couched and administered. For him the holding of the Bible or the Koran and the expression “so help me God” which normally ends the oath taking are indicative of the fact that Nigeria is not a secular state. Other constitutional instances that give fillip to this claim are the phraseology of the Preamble to the constitution, which places Nigeria as a “sovereign nation under God” (Said, 2003; Zubair, 2003), and the guarantee of fundamental right to freedom of religion in section 38 of 1999 constitution. There is also no gainsaying the state sponsorship of pilgrimages to holy lands and places, the adoption of Sundays and certain religious feast days as work free and public holidays. Nor do the constitutional establishment of Sharia Court of Appeal and various governmental advisory councils on religious matters not go to show that the framers of the constitution and demands of the multi-religious nature of Nigeria do not intend that Nigeria should not be indifferent to religious affairs (Abikan, 2003).

Nevertheless, it has equally been argued that the adoption of Islamic criminal law in the Northern states is done in a manner that is permissible by the constitution (Ibrahim 2003). The adoption is seen as consistent with the powers of a state House of Assembly to make laws for the peace, order and good governance of the state or any part thereof by virtue of section 4 (7) of the constitution, and to establish courts for those purposes in line with the provisions of sections 6(4) (b) and (6) (5) (k) of the constitution (Said, 2003). Again, many Islamic scholars maintain that the widening of the jurisdiction of Sharia Court of Appeal from personal law to include criminal justice is in tandem with section 277 (1) of the constitution by which the wordings, “...in addition to such other jurisdiction as may be conferred upon it by the law of the state...” is regarded as a support (Said 2003; Ibrahim 2003). Moreover, the requirement in Nigeria of a written crime and punishment by virtue of section 36 (12) of the constitution is seen as met by the process of codification of Sharia offences by the respective Houses of Assembly of relevant northern states (Said, 2003). Responding to the idea of state secularity proper, Tobi (1995) writes:

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. 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 a state religion. But that is

quite different from secularism.

No wonder Ibrahim (2003) maintains that the introduction of Sharia legal system in the northern states does not amount to adoption of Islam as state religion since it does not apply to non-Muslims except on voluntary consent. He writes:

The application of the Sharia legal system has been limited to Muslims in northern states, and is not applicable to the non-Muslims living in those states, because the Penal Code is to apply to the non-Muslims in the magistrate, and High Courts. It will therefore be wrong to assume that the application of the Sharia Penal Law by the northern states is contrary to section 10 of the constitution since they have not yet declared or adopted Islam as the religion of their respective states.

This observation is certainly derived from the provisions of, for instance, section 5 (ii) (a) & (b) of Zamfara State Sharia Courts Law No. 5 of 1999. The law thus provides.

5(ii) The Sharia Courts shall, subject to the provisions of this law have jurisdiction and power over following persons:

- (a) All persons professing the Islamic faith; and
- (b) Any other person (s) who do not profess the Islamic faith but who voluntarily consents to the exercise of the Jurisdiction of the Sharia Court under this law.

This legislation has even received a judicial stamp by the Court of Appeal in *AlhajiAgbebu v. ShehuBawa* [(1992) 6 NWLR (pt. 245) 80] in which it is held that Sharia is only applicable to Muslims. The argument has further been extended that since Sharia does not apply to non-Muslims, the application of Islamic criminal law does not approximate to adoption of Islam as state religion. (Haruna, 2003).

Be that as it may, other group of scholars validate the adoption of full Sharia law in Northern Nigeria on the basis of their argument that Sharia as commanded by Allah via the prophet Muhammad is “part and parcel of Islam” (Ibrahirm, 2003). Ibrahim (2003) holds that “Sharia is rooted in the religion of Islam (which) denotes the total, complete and unalloyed submission to the will of Allah. The Muslims see Sharia as a synonym of Islam. In other words, the two are the same and inseparable”. According to Shacht (1977),

Islamic law is the totality of God’s commands that regulate the life of every Muslim in all its aspects; it comprises on an equal footing ordinances regarding worship and ritual, as well as political and legal rules, details of toilets, formulas of greetings, table manners, and sick room conversations. Islamic law is the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself.

Because of this comprehensive coverage of Sharia on the entire life of a Muslim, members of this school of thought strongly maintain that denying Muslims the adoption of Sharia would tantamount to infringing on their fundamental right to freedom of religion as guaranteed by section 38 of the 1999 constitution. (Ibrahim, 2003; Ahmed, 2003). It is probably in respect of this religious freedom that apostasy (*ridaa*), which ordinarily attracts death penalty in strict Islamic practice, is not criminalized in any of the Sharia states in Nigeria (Ahmed, 2003; Abikan, 2003; Said, 2003).

More still, some are of the view that Islam should even not admit of any colouration or moderation by any other form of legal framework. Denying the supremacy of the constitution and popular sovereignty, they argue that Allah is sovereign and Sharia supreme. It would therefore not matter whether or not the adoption of Sharia in constitutional or not (cfHaruna, 2003:152). It is further claimed that, after all, preponderance of English law in Nigeria today due to colonialism amounts to Christianization of the Nigerian nation. In this connection, Adebite cites the dictum of Lord Sumner in *Bowman v. Secular Society Ltd* [(1916-17) all ER1, 30-31] before the House of Lords, the England’s Highest Court:

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 (Haruna, 2003).

By equal force of argument, it is held that the recent adoption of Islamic criminal law in most of Northern Nigeria is only the beginning of the full realization of obedience to the commands of Allah who alone shall be obeyed (Keffi, 2003). In this regard, Zubair (2003) poignantly puts it:

Sharia legal system is independent and practicable under our present set-up. We do not need the supervisory role of the common law. And its domination must be shunned. Sharia is a complete code of faith and practice; the Sharia covers Imam, Ibadat, and Mu’amalat, and is not negotiable.

Thus, apart from the comprehensive penal system applicable in the North today, Haruna (2003) warns fellow Muslims that “unless there is an establishment of social, economic, political and other dimensions of the

Sharia, the future is going to be more turbulent and those in authority will lose any justification in the quest for the establishment of only the Sharia penal system". The implications is that as Sulaiman (1996) puts it "Islam is a unitive system which advocates unity between physical and spiritual existence, between temporal and secular authorities, and between faith and disregard of the prevailing social and political norms of a people who need just general awareness to demand and struggle for their own identity and the implementation of their own principles and ideals" (cited in Haruna, 2003:154). Suleiman therefore argues that "secularism has no relevance to Islam as it has never been a Muslim problem". Seen as directly opposed to Islam, secularism is claimed to be a "purely western solution to western problems". Adegbite (2003) however regrets that the present situation in Zamfara and other Sharia states is merely that of *Islamic societies* with dominant Islamic environments, falling short of what should be in an *Islamic State* in which strict and full Sharia should be applicable (Abikan, 2003). Be that as it may, he still observes that the scenario in Zamfara and other sharia states is better than those of other states in the nation which are still mere *Islamic communities*, practising their Islam in environments overwhelmed by unIslamic institutions and practices. No wonder, serious attempts are now being made to extend to economic aspects by, for instance, establishment of banks and industries run in accordance with Islamic principles (Keffi, 2003).

It has been argued that while 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 it is this principle which has been erroneously described as "secularism" (Jamo, 2009). According to this view, secularism is no doubt an anti-thesis of theocracy. Theocracy is a government of a country by religious leaders. The argument goes that the 1999 Constitution has not used the word "secularism" and one is at a loss as to the source of the view currently being peddled that Nigeria is a "secular state". It was wrongly argued that secularism means that, "in matters of religion the state must adopt an attitude of neutrality", that is, it should not favour any particular religion or discriminate against any particular religion.

It is argued that the so-called concept of doctrine of secularism in its origin and nature is a religious concept. Secularism for him is a doctrine of the Church evolved during the times of Holy Roman Empire. The Christian religion 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. It is held 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. In Christian faith people are required to "give unto Ceaser what is Ceaser's, and unto God what is God's". Hence, it is argued that this injunction laid the foundation in Christian societies 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. Therefore 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'.

This 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 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.*( 343 US 306, 72 Sct 679 (1952). 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 (231 US 112, 32 Sct 765 (1982)), 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.

## 5. Personal Response

Both sides of the arguments have been studied. They have their respective merits and basic assumptions. It is however observed that most of the views were canvassed between 2000 and 2004, a period coming immediately on the heels of the adoption of Islamic criminal law in the North. There is therefore no gainsaying that some of these opinions are coloured and doctored by religious sentiments, bigotry and intolerance. It now remains for the study to objectively look at the basic sources of these arguments and phenomenologically approach the question of secularity vis-à-vis the praxis of the application of Sharia law in Nigeria today.

The first question to address is that of the meaning of secularity / secularism lay. 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 the above and other 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' (Simpson, 1962:852), yet grammatically *secularism* and *secularity* respectively denote different levels of attitude to religion. Byang (1988) 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.

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..." (2007) 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 but are seen as taking no particular religion as state religion by way of adopting 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?

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 Ryu (2009), Omotola (2009), Li-ann (2009), Haruna (2003), Chukwumaeze (2001), Jamo (2009) 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 (Zarifis, 2010). No doubt, part of the argument of those who hail the adoption of Sharia criminal law in the North is that the Muslims constitute overwhelming majority of the population of the respective Sharia states. Assuming without conceding this to be true, yet evidence abounds that some secular states remain so in spite of the teamingness of the population of particular religious adherents, Muslim or Christian' in those states. Illustrations gathered from StatemasterEncyclopedia (<http://www.statemaster.com/encyclopedia/seularstate>) 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. Therefore, the fact that there may be over 90 percent Muslims in Zamfara or Sokoto state is surely not sufficient reason to Islamize the state. An eye must be had to how any practice would affect the about 10 percent non-Muslims whose freedom of thought, religion and conscience is guaranteed by the constitution.

Moreover, the origin of the concept of state secularity is another issue in point. While Sulaiman (1996) notes that 'secularism' is a "purely western solution to western problem" (cited in Haruna, 2003), Li-ann (2009) traces the principle of secularity back to the Roman Empire. 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 (1988) observes that the idea that secularity is a western Christian concept seems to portray a crass ignorance of history. He writes that "Muslims should understand 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 (6<sup>th</sup> – 16<sup>th</sup> 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 (16<sup>th</sup> – 18<sup>th</sup> 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 secularity (Statemaster Encyclopedia, 2007). 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, Pakistan, and so on.

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 20<sup>th</sup> 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 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 its 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" (First Amendment) by which provision Nwabueze seems to be partly influenced, yet the fact that Nigerian constitution guarantees freedom of religion is evidence of its intention to create a secular state.

Besides, in spite of the very powerful arguments by pro-Sharia scholars to prove the constitutional validity of the adoption of Sharia criminal justice in northern states, it still appears that the constitutional controversy is not yet laid to rest. This is more salient in the issue of some other fundamental rights provisions, which have been subtly breached by the adoption. A word or two on this assertion may be quite germane.

The chapter IV of the 1999 Constitution of the Federal Republic of Nigeria provides for the fundamental rights of citizens. No doubt, the Sharia criminal law, such as the type adopted by Zamfara State, is manifestly inconsistent with some provisions of those rights. Section 36 (12) provides that "a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State". This sort of law also was earlier provided for in *Penal Code Law* governing the northern states: No person is to be liable to punishment under any native law or custom [s.3 (2)]; and sharia law has been described as customary. This provision that came into existence in Nigerian laws highlights the difference between the method of the Penal Code and that of, for instance, the Zamfara Sharia Code Law. Whereas according to Nwabueze (2001) the twenty offences, which are derived from the Koran as a source, are specifically defined and the penalties for them prescribed by the Penal Code, the Zamfara Sharia Code Law, without itself spelling out the offences and the penalties in terms merely adopts them as defined or prescribed by the Koran. It may however be argued that the Koran may well conform to the term "written law", but it is one that is ordained or enacted by the Prophet Mohammed as revelations from Allah, not by Zamfara State legislature. Therefore, the Zamfara method, which has been duly imitated by some other northern Nigerian states, clearly derogates from the right of citizens to be governed by a *written law* enacted by legislature by virtue of section 36 (12).

Moreover, the fact that a person is outrightly disqualified from holding offices in Sharia Courts because he is not a Muslim (Zamfara State Sharia Court Law 1999, s.15i) is highly discriminatory in a system where the office holders are regarded as public officers in the public service of the state. This is a breach of section 42 of the Constitution. For Nwabueze (2001:112), the rationale for the above constitutional guarantee is that discrimination based solely on grounds of religion, ethnic groups, places of origin, sex, or political opinion is unfair, because of the "irrational, arbitrary or unreasonable nature of such grounds".

Furthermore, punishment is yet another area of conflict between Nigerian constitutional democracy and the Sharia. Section 34 (1) (a) of 1999 Constitution states that "every individual is entitled to respect for the dignity of his person and accordingly no person shall be subjected to torture, or to inhuman or degrading treatment". The Sharia penal law in the Koran prescribes such punishments like death (by stoning in public for offences of adultery by a married man or woman, incest, and rape), imprisonment, amputation for the offence of theft depending on the circumstances of the case, *Haddi* or symbolic lashing (100 lashes for adultery by any unmarried man and 80 lashes for consumption of alcoholic drink), and retaliation, *lex talionis*, among others. It should be well noted that most of these punishments could hardly stand the test of constitutionality in section 34 (1) of 1999 constitution. The fact that the section contains the guarantee of respect for the dignity of the human person is highly significant. It serves to demonstrate the fact that inhuman or degrading treatment is treatment that does not accord with human dignity judged by the opinion of contemporary society with regard to the

evolving standards of decency (*Furman v. Georgia* (1972) United States Supreme Court judgement). It is by this same force of argument that many today are advocating for the abolition of capital punishment generally despite latter's continued guarantee by Nigerian laws (section 33 of 1999 Constitution).

It is equally for the fact of this respect for human dignity that *haddi* or symbolic lashing as guaranteed by sharia is constitutionally impermissible. The difference between it and caning, which is still permitted in Nigerian criminal justice system is that while the object of caning is the infliction of physical pain, the purpose of *haddi* lashing is to humiliate and disgrace the offender. As a punishment for crime, it is therefore debasing and degrading to the dignity of the human person. This is so with amputation. Hence, the revulsion generated in the country and abroad by the amputation of the hand of a man whose stole a cow in Zamfara State as a punishment under the Koran shows it as not comporting to human dignity in our modern civilized society.

Besides, life experience has taught us that state enforcement of sharia in all the plenitude of its injunctions under the Koran, cannot in the multi-religious society of Nigeria co-exist with a truly federal form of political association. A federal union, such as is established by the Constitution of Nigeria 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 sharia 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 application (section 41 of 1999 Constitution), 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. (*Aptheker v. Secretary of State* (1963) U.S. Supreme Court Judgement).

There is therefore no doubt that any action by a state government impinging on these citizenship rights through the enforcement of the sharia under the Koran would have the practical effect of excluding from the state a non-Muslim Nigerian citizen who, for religious or other reasons, cannot live under the strict injunctions of, and punishments prescribed by the Koran, such as the injunctions against operating a hotel or a drinking place, the consumption of alcoholic drinks, certain modes of dressing, and the punishments it prescribes therefor.

Hardly can it convince anybody that these prohibitions and punishments apply only to Muslims without affecting the non-Muslims. For it hardly makes any sense to prohibit a Muslim from operating a drinking place while leaving a non-Muslim free to do so in the same area or street or to punish a Muslim who steels a cow by chopping off his arm, but not to do the same to a non-Muslim who steels a cow. The argument that non-Muslims are exempt from the application of sharia law under the Koran may to some extent be sustained as concerns Islamic personal law or sharia civil law generally but certainly not as concerns sharia criminal law. Therefore, a political arrangement in which Muslims and non-Muslims in the same state are governed by different criminal justice systems is simply inconceivable, and would be undesirable even if workable at all.

Yet the above is happening in a country in which all of its federating units, including the sharia enclaves, are maintained and sustained by oil revenue from the predominantly non-Muslim part, revenue that constitutes over 90 percent of the nation's earnings. Thus, such practice frontally and violently assaults the spirit of the multi-religious federal union whereby some states adopt as part of the laws of the states, the holy book of a particular religion, with its legal prescriptions and injunctions as well as punishments it prescribes for their infringement. This is particularly pathetic in a country where a large number of citizens resident in the states, even if in the minority, are not adherents of that religion.

Notwithstanding where the pendulum of the various debating opinions oscillates, certain points are crystal-clear. First and foremost, adoption of the criminal aspect of Sharia for a start and probably other aspects in the future is manifestly divisive and chauvinistic. For one thing, it truncates the socio-political consciousness of a people who are supposed to be guided unto one mind and one spirit by inaugurating dual penal code systems, one for Muslims, the other for non-Muslims. For another, even as apostasy (*ridaa*) is not literally criminalized in any of the Northern States' Sharia Penal Codes, yet in practice, the freedom of non-Muslims to enjoy their religions and what their religions do not prohibit is greatly hindered. For instance, selling and consumption of alcohol and certain types of meat and beverages are regarded as offences among others. The implication is that in a 'Sharia' area, dealers on these commodities will be forced to relocate with the attendant economic hazards. It is also this that triggers off a debate on whether the value added tax (VAT) tagged on those commodities, trade on which is practised in non-Sharia states will ever be used on the development of Sharia

states (Nzomiwu, 2000). Surely, it will not be equitable for profits from these goods produced in other areas to be used for the development of Zamfara, Kano, Sokoto or Kassina states. Really, the economic life of the Sharia states and its consequences for the entire nation will leave much to be desired. This practice may after all add a fillip to the endless cycle of servitude and poverty among much of northern population as experienced today.

Secondly, application of Sharia criminal law in the North curtails, if not outrightly violates, the enjoyment of people's fundamental rights. Right to human dignity and befitting punishment, right to freedom of religion or irreligion, right to freedom from discrimination, right to association, fair hearing, movement and residence in any part of Nigeria properly guaranteed in the constitution are either directly or indirectly on trial at the hands of Sharia criminal justice system operative in northern Nigeria today.

Thirdly, although there is a sing-song today especially among Islamic lawyers that adoption of Sharia criminal law is constitutionally valid (which we have seen of course is not), it is a common teaching in Islam that Sharia is above any national constitution (Maududi, 1960). This is normally premised on the claim that Sharia is a divine law while the constitution is man-made. Therefore, arguments on legality or illegality of Sharia criminal law enforcement make little or no sense to fundamentalist Islam. If Sharia criminal justice is guaranteed by the constitution like in officially Muslim countries like Saudi Arabia, Pakistan and many Arab nations, well and good; but if it is not, the hues and cries over its illegality do not even scratch it. For these reasons, the enforcement of Islamic criminal law as it is in Nigeria is undemocratic. The features of democracy such as observance of the rule of law, respect for fundamental rights, constitutionalism, separation of powers, and so on are kept at bay. For instance, the rule of law and the supremacy of the constitution which respectively require that nobody is above the law and that all other laws are subject to the national constitution for their effectiveness and validity, are frontally violated. Therefore, any practice of Sharia law that tends to displace these and other democratic principles is avowedly undemocratic.

Besides, if it is really true as Stamer (1995) holds that "ideal Islam can only be practised within an Islamic state", or that "refusal of full Sharia means the refusal of a fundamental right to the Muslims", or as maintained by Ahmad (1974) that "Sharia is the sole basis of the existence of a Muslim", then Islam and other religions in the multi-religious Nigeria cannot easily co-exist. Yet it is arguable whether Nigerian Muslims are more desirous of eternal salvation than those in Muslim dominated countries that nonetheless remain secular.

It is indeed 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. 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 religions (Ryu, 2009), 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 (<http://www.statemaster.com/encyclopedia/secularstate>). 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 (Omotola, 2009)

It therefore goes without saying that practice of Islam in Nigeria must adhere to the national spirit and objectives encapsulated in her supreme law. In order to do this, Sharia practice in Islam should endeavour to embrace modernization and reform. According to Adigwe (2000), MuhammedSaidel – Ashnawi, an Egyptian Muslim writer and judge had since 1978 advised fellow Muslims on the fact that Sharia is more a spirit than a letter, a programme of social change aimed at progress and liberation, not at preserving the status-quo. Certainly, at the time of prophet Muhammed, laws were made with regard to the circumstances of those times. Today, different circumstances call for different legislations. It may thus be necessary for Nigerian Muslims to adhere to legal flexibility sequel to the dynamic nature of human society rather than give blind obedience to what seems to be an anachronism to human development. In the same vein, Nigeria Islam must undergo a socio-religious rebirth. Religion is a social institution (Giddens, 1993:387). As such, it enhances the social life of the society in which it exists. Therefore, Islamic 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 Islam in Nigeria. No doubt, theocracy that was possible at the time of Prophet Mohammed is no longer fashionable today. Rather, the direct government of Allah had long since given way for democracy and other forms of government to thrive. Therefore, in a multi-religious state like Nigeria common sense 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 pre-Islamic Arabia and the Middle East has survived in Islamic law almost without modification. It may thus be necessary to inculturate Islam, like in the days of the Ummayyads (Nzomiwu, 1989:50), in such a way that by shedding the Arab garb and maintaining safe distance from politics, one can be authentically Nigerian and authentically Muslim. There is equally no gainsaying 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.

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