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**AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS: AN APPRAISAL OF THE FREEDOM TO
PRACTISE ANY RELIGION IN NIGERIA**

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AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS: AN APPRAISAL OF THE FREEDOM TO PRACTISE ANY RELIGION IN NIGERIA

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ABSTRACT

On 5 April 2022, a Kano State High Court sentenced Mubarak Bala, to twenty-four years' imprisonment for blasphemy. Nigeria is a multi-religious society consisting of Christians, Muslims, and the traditionally religious people of Nigeria. This article seeks to examine the relationship existing between society, the law, and religion. It analyses the study of society, the law, and religion putting into consideration the provisions of the African Charter on Human and People's Rights and that of the Nigerian Constitution. The question to be answered in this article is whether there is true freedom of religion in Nigeria considering the provisions of our criminal law on blasphemy. A further question that begs for an answer is who is the victim of the offence of blasphemy in Nigeria and why are there different sets of laws operating in Nigeria? This article observes that provisions of the Nigerian Criminal Code, the Penal Code, and the Northern Nigeria Sharia law on blasphemy negate the provisions of the Nigerian Constitution and the African Charter on Human and People's Rights on the freedom of religion. It concluded that religious tolerance is the major factor needed to ensure true freedom of religion in Nigeria.

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I.0 INTRODUCTION

Nigeria is a multi-religion nation with thirty-six states and the federal capital territory, Abuja. The Nigerian constitution provides that freedom of religion for the citizens is guaranteed. It is a known fact that without society there can never be law or religion. The law gave the members of the society their fundamental human rights which include the right to practice any religion and the right to protection against discrimination on the ground of religion, sex, or tribe.¹ These rights are recognised all over the world as also entrenched in the African Charter on Human and People's Rights which was adopted on 27 June 1981 and came into force on 21 October 1986. The Charter is the brainchild of the Organisation of African Unity (OAU) which is now known as the African Union (AU).² The Charter has three parts and 68 sections (known as Articles). The most relevant sections of this work are under Part 1 (Rights and Duties) which consists of Articles 1 to 26.

Article 2 provides that every individual is entitled to enjoy the rights and freedoms which are recognised under the Charter irrespective of any status such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or another status. It means that everyone must be free from any form of discrimination. Article 3 provides that every individual shall be equal before the law and every individual shall be entitled to equal protection of the law. Article 4 provides that every human being shall be entitled to respect for his life and the integrity of his person.³ Article 6 provides for rights to personal liberty and Article 7 provides for the right to a fair trial.

¹ Section 38 and 42 1999 Constitution as amended in 2018.

² The African Union (AU) is a continental body consisting of the 55 member states that make up the countries of the African Continent. It was officially launched in 2002 as a successor to the Organisation of African Unity (OAU, 1963-1999).

³ The Article 4 full provision states that "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

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Article 8 specifically provides for the right to practice religion. It provides that “Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms”. All these provisions had been codified in the Nigerian 1999 Constitution.

On 5 April 2022, a Kano State High Court sentenced Mubarak Bala, to twenty-four years' imprisonment for blasphemy. Bala, the president of the Humanist Association of Nigeria,⁴ became popular in 2020 when he was arrested in Kaduna for blasphemy against Allah and Prophet Muhammad and was locked up in a correctional facility for about two years.⁵ During his incarceration, the United Nations rights experts on 28 July 2020 called on the Nigerian authorities to immediately release him. They expressed their shock when they stated that:

*“We are deeply concerned over the serious lack of due process in Mr. Bala’s case. He has reportedly not had access to a lawyer nor been allowed family visits and has been transferred and detained in Kano state, without charge, since his arrest in neighbouring Kaduna on 28 April 2020.”*⁶

The call went unanswered. The question begging for an answer is whether there is truly freedom to practise religion of one's choice in Nigeria?

⁴ Humanists Association of Nigeria is registered with the Nigerian Corporate Affairs Commission as an incorporated trustee with registration number IT – 102255 on 27 October 2017. It aims to provide a sense of community to all non-religious persons nationwide and ensure their respectful and dignified treatment. It will strive to give a sense of family and fellowship to all Nigerians who seek to live morally and meaningfully without God or religion, whether they are young or old; rich or poor; artisans or technocrats, whether they live in rural or in urban areas. HAN will campaign to end all forms of discrimination based on religious belief or unbelief. It will work to ensure the abolition of all harmful traditional, religious and cultural practices. In addition, the Humanists Association of Nigeria will also promote critical thinking in society, combat superstitious beliefs, and advocate for STEM (Science, Technology, Engineering, and Mathematics) in schools and other public institutions.

⁵ G Olominiran, ‘Kano court sentences atheist Mubarak Bala to 24 years for blasphemy’ 5 April 2022 <<https://punchng.com/kano-court-sentences>> [Accessed 6 April 2022]

⁶ ‘UN Rights Expert Urge Nigeria to Immediately Release Humanist Accused of Blasphemy’ <<https://www.ohchr.org/en/press-releases/2020/07/un-rights-experts>> [Accessed 12 January 2023]

The first section of this article is the introduction, the second section discusses society and different theories related to it, the third section discusses the theories of law, the fourth section talks about theories of religion, the fifth section discusses the freedom to practice religion in Nigeria as entrenched in the Nigerian 1999 Constitution, the sixth section discusses the present status of the law in guaranteeing freedom of religion in Nigeria and the seventh section which is the last section is the conclusion and recommendation.

2.0 THE CONCEPT OF 'SOCIETY'

Society can be described as a group of people living in a particular country or region having in common shared customs, laws, and organisations. The study of society is known as sociology. Hoebel describes sociology as it relates to law when he opines that the sociology of law is a "pure theoretical science" concerned with social facts and the relation of law to them. It provides the data and principles that the workmen in the field of sociological jurisprudence are to apply to their practical problems.⁷ Oliva, in describing the universality of sociology opines that an interdisciplinary study is crucial. On the one hand, for those engaged in the study and practice of law to understand fully the interaction of law and religion, it is essential to take into account sociological considerations. On the other hand, sociologists of religion cannot be indifferent to legal responses to social change and their impact on the practice of religion.⁸

Rosen, in describing the relationship between sociology and the law opines that sociology has always been linked with the study of Law, he opines that there is a possibility that sociology emerged from the study of Law. He mentioned that some of the 18th century Sociologists were directly involved in the practice or

⁷ E A Hoebel, 'Sociology of Law' (1942) 42(7) *Columbia Law Review* 1241.

⁸ J G Oliva, 'Sociology, Law, and Religion in the United Kingdom' (2004) 152 *Law & Justice - The Christian Law Review* 8.

teaching of Law. These Sociologists were Montesquieu, Adam Smith, Vico, and Herder.⁹

Ansems and Kees van den Bos further corroborate the close relationship between sociology and the law and explain that reflections on social and societal issues about the law have been circulating for decades, if not hundreds of years. These reflections take place within fields including, but not limited to, the sociology of law, the social psychology of law, and other social and behavioural sciences. The relevance of studying the relationship between law and society is evident. After all, the law ultimately is related to what is happening in society, forms the backbone of society's structure, and can play an important role in promoting societal changes (as has been the case in recent climate justice trials, for example).¹⁰ Research on law and society is central to the sociology of law. After all, legal sociologists focus on the relationship between law and society and the law's societal meaning. As such, they study how societal changes affect the law and, vice versa, how the law affects society. In the field of legal sociology, the law is broadly defined as encompassing both official or state law and unofficial or non-state law.¹¹

From the works of Hoebel, Oliva, Rosen, Ansems and Kees van den Bos as discussed above, society cannot be studied in isolation. Sociology as a study of the society involves understanding rules and regulations sustaining human endeavours. Society is held by the pillars moulded with law, the law is an instrument of orderliness. It means that the study of society must be done with law and religion to arrive at the right conclusion.

3.0 THE CONCEPT OF 'LAW'

⁹ M Rosen, 'Classical Sociology and the Law' (1985) 5(1) *Oxford Journal of Legal Studies* 61.

¹⁰ Lisa F M Ansems and K van den Bos, 'Empirical Research on Law and Society: Advanced Introduction to Empirical Legal Research; Research Handbook on the Sociology of Law; the Routledge Handbook of Law and Society' (2022) 49(1) *Journal of Law and Society* 218.

¹¹ *Ibid*, 219.

It is difficult to define the word "Law" because law means different things to different people. Robson, in describing how difficult it is to define law state that:

*“For at least twenty-five centuries, and perhaps for hundreds of years before that, men have discussed the nature of Law. The question "What is Law?" has been asked by all sorts and conditions of men: by priests and poets, by seers and kings, by the masses no less than by the prophets. Many different kinds of answers have been given, yet the question remains one of the most insistent and elusive problems in the entire range of thought. The whole gamut of human life, both in thought and in action, is comprised of the simple word Law.”*¹²

Goitein¹³ in describing the wide intellectual definition of the law states that the study of jurisprudence came into existence to answer the question of what Law is and there has never been a straight answer to this question. He believes that Law is an encompassing phenomenon that attracts intellectuals who are not only lawyers but social scientists. He went further to say that Law is a many-sided thing with which one can never be sure to exhaust the sources of interest it can have for men.

Pound, in describing the universal nature of the law states that the law is a term of many meanings., the word goes back in all languages to the time of undifferentiated social control, when one word had to cover ethical custom, religious rites, the dictates of morals, the customary modes of adjusting relations in a politically organised society, the enacted rules of a city-state, custom in general, and social control as a whole.¹⁴ Alberca de Castro & Oliva¹⁵ are of the view that the law moves slower than the society, they opine that law is made to accommodate new realities and as soon as it accommodates this new reality,

¹² W A Robson, *Civilisation and the Growth of Law; A Study of the Relations between Men's Ideas about the Universe and the Institutions of Law and Government* (The Macmillan Co., 1935)

¹³ H Goitein, *Primitive Ordeal and Modern Law* (G. Allen & Unwin., 1923)

¹⁴ R Pound, *Task of Law* (Franklin and Marshall College., 1944)37.

¹⁵ J A Alberca de Castro & J G Oliva, 'Sociology, Law, and Religion in Italy and Spain' [2004] 152 *Law & Justice - The Christian Law Review* 44.

another issue emerges, making it outdated as soon as it is enacted.¹⁶ This is the true position of our law today, the society is always ahead of the law.

Cuyugan¹⁷ in defining the universality of law opines that law has other dimensions which may excite the sociologist of law. He stated that Common law, judicial decisions, statutory law, the legislative process, and the administrative apparatus, are problem areas of the social order. Often, when they are treated in this light, they leave the domain of technical law and enter sociology properly. Of crucial importance in the future partnership between sociology and legal studies is the growing power and sophistication of sociological research methodology and techniques, but even more important, a realization among legal scholars of the need to come to terms with the problems of a changing society.¹⁸

Cairns, in describing the importance of law, opines that one of the great passages in the literature on the law is Plato's justification of the law's necessity. Mankind must make laws and follow them, or its life would be no better than that of the wildest of wild beasts. We know this because no man has the natural gift both of being able to see what is good for a nation, and upon seeing it, always be both able and willing to do what is best. It is hard to see that true political art is concerned with the nation and not with the individual.¹⁹ Sandberg in relating law to religion states that law on religion is the study of both secular and religious law. It may be defined as the study of State law on religions and of the internal laws or other regulatory instruments of religious organisations.²⁰

4.0 CONCEPT OF 'RELIGION'

¹⁶ *Ibid*

¹⁷ R S Cuyugan, 'Sociology and Law' (1965) 40 *Philippine Law Journal* 612-617.

¹⁸ *Ibid.*

¹⁹ H Cairns, 'What is Law' (1970) 27(2) *Washington and Lee Law Review* 193.

²⁰ R Sandberg, 'The Sociology of the Law on Religion' (2017) available at <<https://www.researchgate.net/publication/255699003>> [Accessed on 2 April 2022]

There is no universal definition of religion. Eisgruber & Sager are of the view that:

“The problem goes roughly like this: to protect religious liberty we have to define what religion is, and once we are in the business of saying that some beliefs, commitments, and projects are entitled to special treatment as “religious” while others are not, we are creating a sphere of the orthodoxy of exactly the sort that any plausible understanding of religious liberty should deplore.”²¹

They went on further to show the uncertainties in defining what religion is when they wrote that the distinction between religion and non-religion is a significant ethical guidepost in many people's lives.²²

There are certain ingredients of religion, they are faith and belief, religion operates in such a way that its existence is based on faith and belief from such religious adherents. The question to which an answer must be provided is; what is faith and belief? Rusch opines that a belief is a reference to what a person thinks about a fact and faith is a trust that is based upon a hope that if the beliefs are true and the values are promoted, the world will be a better place.²³

Herde, in describing faith and belief in the United States of America, opines that belief in God or other universal spirit is a central tenet of most faiths and traditions in the United States of America (USA).²⁴ She went on to say that another revealing aspect of faith is belief in the Bible or other holy books. In her words; "Perhaps one of the most telling indicators of religiosity is the belief that one's faith is the only path to "salvation" or "eternal life," as opposed to multiple paths"²⁵

²¹ C L Eisgruber and L G Sager 'Does It Matter What Religion Is' (2009) 84(2) *Notre Dame Law Review* 807.

²² *Ibid* at p 808

²³ L J Rusch 'Bankruptcy Reorganization Jurisprudence: Matters of Belief, Faith, and Hope - Stepping into the Fourth Dimension' (1994) 55(1) *Montana Law Review* 9.

²⁴ G W Herde 'The ABCs of Religiosity: Attitude, Belief, Commitment, and Faith' (2014) 26(1) *Jury Expert* 4.

²⁵ *Ibid*

Some authors attach physical well-being to the practice of religion. According to Ellison & Sherkat, drawing on insights from epidemiology, psychiatry, gerontology, and other fields, sociological research indicates that religious involvement promotes mental and physical well-being in at least four distinct ways: (1) by shaping behaviour patterns and lifestyles in ways that reduce exposure to certain social stressors (e.g., illness and serious accidents, marital disruption); (2) by generating social resources and social support; (3) by enhancing psychological resources, particularly positive self-regard (i.e., self-esteem); and (4) by providing specific cognitive frameworks for coping with stress.²⁶ They went further that some aspects of religious belief and participation can also undermine well-being by exacerbating social stressors²⁷ and their effects, by eroding positive self-regard, and by encouraging inappropriate or self-defeating coping strategies.²⁸

Martin in connecting religion to health is of the view that religion and health have been connected both positively and negatively. There is evidence that being closely involved with religion and a religious community can have positive health benefits, because of the associated structured lifestyle and regulated lifestyle behaviour, access to social resources, promotion of emotional values such as love, forgiveness, and caregiving, and belief in the ability of a higher power to provide health solutions.²⁹

5.0 FREEDOM TO RELIGION IN NIGERIA

²⁶ C G Ellison and D E Sherkat 'Is Sociology the Core Discipline for the Scientific Study of Religion' (1995) 73(4) *Social Forces* 1255-1256.

²⁷ Social stressors are defined as behaviours and situations, social in nature, that are related to physical and psychological strain. Examples of social stressors include verbal aggression from customers or superiors. co-worker conflict. negative group environments.

²⁸ Ellison and Sherkat (n 26)

²⁹ R Martin 'Implementing Public Health Policy and Practice within a Legal Framework: Constraints of Culture, Faith and Belief' (2008) 9(4) *Medical Law International* 311.

Discussion in this section is around the 1999 Constitution of the Federal Republic of Nigeria³⁰ which is the *grundnorm*.³¹ Section 39(1) provides that every person is entitled to freedom of expression which include freedom to hold opinions and to receive and impart ideas and information without interference, Section 40 guarantees the right of every person to assemble freely and associate with other persons. These are the enabling provisions that give the citizens of Nigeria the constitutional right to engage in religious propagation within the shores of Nigeria among other rights; to associate and to hold opinions or to impart ideas without any hindrance.

The Constitution provides under section 10 that “the Government of the Federation or a State shall not adopt any religion as State Religion.” Section 38(1) of the Constitution provides that:

“Every person shall be entitled to freedom of thought, conscience, and religion, including the freedom to change his religion or belief, and freedom (either alone or in community with others, and public, or in private) to manifest and propagate his religion or belief in worship, teaching, practice, and observance.”

The provision is the enabling law that specifically provides for the freedom of persons to practise their religion. This provision further provided that no person should be forced against his will to practise any religion.³² The law also allows a

³⁰ As amended in 2018.

³¹ The term "grundnorm" is commonly used to describe a country's constitution which simply means that the constitution is the basic and the highest law of the land and no law must be contrary to its provisions. It is a German word and a concept in the Pure Theory of Law created by Hans Kelsen, a jurist, and legal philosopher. Kelsen used this word to denote the basic norm, order, or rule that forms an underlying basis for a legal system.

Section 1(1) to (3) of the Constitution provides that:

(1) This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.

(2) The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except by the provisions of this Constitution.

(3) 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.

³² Section 38 (2) provided that no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or

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religious community or denomination to provide religious instruction for pupils of that community.³³ This freedom of religion does not include joining a secret cult.³⁴

The 1999 Constitution also provides for the right from discrimination in sections 42(1) to (3). This right includes the right against discrimination on the ground of religion.

Section 42(1) provides that:

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 a 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, religion or political opinions are not made subject; or*
- (b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.*

Section 42(2) further provides that no citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth. The "circumstance of his birth" can be interpreted as circumstances of birth to a religious group. Section 42(3) provides that the provision in section 42(1) shall not render invalid, any law that restricts the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body

observance if such instruction, ceremony, or observance relates to a religion other than his own, or a religion not approved by his parent or guardian

³³ Section 38(3) provides that: "No religious community or denomination shall be prevented from providing religious instruction for pupils of that community nor denomination in any place of education maintained wholly by that community or denomination."

³⁴ This can be seen in section 38(4) which provides that: "Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society."

corporate established directly by any law in force in Nigeria. Section 45(1) to (3) of the 1999 Constitution provides for a situation under which infringement of these fundamental human rights may be justified. It provides as follows:

(1). Nothing in sections 37,³⁵ 38,³⁶ 39,³⁷ 40³⁸ and 41³⁹ 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. to protect the rights and freedom of other persons.

Section 45(2) further provides that:

An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33⁴⁰ or 35⁴¹ of this Constitution; but no such measures shall be taken in pursuance of any such activity during any period of emergency save to the extent that those measures are reasonably justifiable to deal with the situation that exists during that period of emergency: Provided that nothing in this section shall authorise any derogation from the provisions of section 33 of this Constitution,⁴² except in respect of death resulting from acts of

³⁵ Section 37 provides that "The privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications is hereby guaranteed and protected."

³⁶ Section 38 provides for freedom of religion, freedom of opinion, thought, and conscience.

³⁷ Section 39 provides for freedom of expression, and freedom of the press.

³⁸ Section 40 provides that Every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union, or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission concerning political parties to which that Commission does not accord recognition.

³⁹ Section 41 provides for freedom of movement.

⁴⁰ Section 33 provides for the right to life.

⁴¹ Section 35 provides for protection from unjustified restraint.

⁴² Section 33 provides that Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary

a. for the defence of any person from unlawful violence or for the defence of property;
b. to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
c. to suppress a riot, insurrection, or mutiny.

war or authorise any derogation from the provisions of section 36(8)⁴³ of this Constitution.

Section 45(3) defines a "period of emergency" as follows:

In this section, a "period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in the exercise of the powers conferred on him under section 305⁴⁴ of this Constitution.

The period of emergency can only be declared by the President in accordance with the Constitution. The Constitution provides that any person who alleges that any of the provisions of the fundamental human rights has been contravened in any state concerning him has the right to apply to a High Court in that state to seek redress.⁴⁵

6.0 THE CURRENT POSITION OF THE RIGHT TO PRACTISE RELIGION IN NIGERIA

The objectives of the statutes on freedom of religion are to guarantee individual and group freedom to hold and practise their belief and to secure that freedom by preventing the forceful conversion of individuals and groups into dominant beliefs.⁴⁶ By creating a different legal system in the northern part of Nigeria, the state has adopted a religion that is contrary to section 10 of the 1999 Constitution and the African Charter on Human and People's Rights.

With the adoption of Sharia law in the northern part of Nigeria, there is an absence of national integration as provided for under section 15 of the 1999 constitution. Section 15(1) and (2) provides that

⁴³ Section 36(8) provides that "No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed."

⁴⁴ Section 305 provides for emergency provisions.

⁴⁵ Section 46 1999 Constitution of the Federal Republic of Nigeria.

⁴⁶ Through jihad, Muslim leaders forcefully converted most of the Northern part of Nigeria to Muslims and created a legal system known as sharia law rooted in the tenets of the Islamic religion. The Arabic term jihad means a "struggle" or "striving."

the motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress. Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

The issue of separate criminal laws for the northern part of Nigeria is a clear indication that there is no freedom to practice religion in Nigeria. The northern states are governed by the Penal Code Act⁴⁷ while southern Nigeria is governed by the Criminal Code Act⁴⁸ section 1A of the Criminal Code Act makes the Act subject to the Penal Code Act when it provides that “The provisions of this Act shall take effect subject to the provisions of the Penal Code (Northern States) Federal Provisions Act.”

The Penal Code (Northern States) Federal Provisions Act⁴⁹ in section 6 repealed the Criminal Code Act when it provides that:

The Criminal Code Act, in so far as it has effect as if it were a law enacted by the legislature of the Federation and as it applies in the Northern States is repealed:

Provided that such repeal shall not, in respect of proceedings taken outside the Northern States, affect the operation of the Criminal Code solely because some element or elements of the offence are alleged to have occurred within the Northern States.

By the above provisions of the Penal Code Act, the Criminal Code Act is restricted to Southern Nigeria. In examining the provision of section 2(1) of the 1999 Constitution, it provides that "*Nigeria shall be one indivisible and Indissoluble Sovereign State to be known by the name of the Federal Republic of Nigeria.*" There is no doubt that there is a legal divide in the country as it is unthinkable for a sovereign state to run a federal law in the south separate from the federal law in the north on the same subject matter.

⁴⁷ Cap P3 Laws of the Federation of Nigeria 2004. The full description of the law is “Penal Code (Northern States) Federal Provisions Act” the preamble describes the law as “An Act to supplement the Penal Code of the Northern States in respect of matters within the exclusive legislative competence of the National Assembly, and for purposes ancillary thereto.”

⁴⁸ Cap C38 Laws of the Federation of Nigeria 2004.

⁴⁹ Cap P3 Laws of the Federation of Nigeria 2004.

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As mentioned in the introduction of this article, a Kano State High Court sentenced Mubarak Bala, the president of the Humanist Association of Nigeria to twenty-four years' imprisonment for blasphemy. Bala became popular in 2020 when he was arrested in Kaduna for blasphemy against Allah and Prophet Muhammad. He was locked up in a correctional facility for about two years.⁵⁰

According to the prosecutor, the offence contravened is in the provisions of Sections 114 and 210 of the Penal Code. Section 114 of the Penal Code provides that:

Whoever does any act with intent to cause or which is likely to cause a breach of the peace or disturb the public peace shall be punished with imprisonment which may extend to three years or with a fine which may extend to six hundred naira or with both.

And section 210 of the Penal Code provides that:

Whoever by any means publicly insults or seeks to incite contempt of any religion in such a manner as to be likely to lead to a breach of the peace shall be punished with imprisonment for a term which may extend to two years or with a fine or with both.

However, the Criminal Code Act⁵¹ provides under section 204 that any person who does an act which any class of persons considers as a public insult to their religion, with the intention that they should consider the act such an insult, and any person who does an unlawful act with the knowledge that any class of persons will consider it such an insult, is guilty of a misdemeanour and is liable to imprisonment for two years.

With the current situation, there is no total freedom of religion in Nigeria as provided for in the Constitution. This can be seen in the way some states in Nigeria created their religious laws and punishments to apply to any person who is on trial in that state such as was done to Mubarak Bala.

⁵⁰ Gbenga Olominiran, 'Kano court sentences atheist Mubarak Bala to 24 years for blasphemy' 5 April 2022 <<https://punchng.com/kano-court-sentences-atheist-mubarak-bala-to-24-years-imprisonment>> [Accessed 6 April 2022]

⁵¹ Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004.

1.6 CONCLUSION

Firstly, religious freedom is not absolute in Nigeria, this means that while some states respect personal religion, some do not. The creation of different legal systems operating in different parts of the country has defeated the rights to the religion of one's choice in Nigeria. Religion is a personal belief that should not be forced on citizens through law. Secondly, as Sharia law is allowed to operate in northern Nigeria, the other part could agitate for the principles of Episcopal Law or Customary Law of the indigenous people to be codified in the Nigerian laws. All pro-religious laws can co-exist in the country where they respect each other's fundamental human rights guaranteed by the Constitution.

Lastly, a sovereign multi-religious country like Nigeria does not have to run two separate criminal law systems, this is a double standard and negates the principle of freedom of religion as entrenched in the African Charter on People and Human Rights and the 1999 constitution of Nigeria. Though, it may be a herculean task to have a unified criminal law devoid of any religious principles in Nigeria, it is possible to operate these laws without infringing on the fundamental rights of the citizens as entrenched in the African Charter on People and Human Rights and the 1999 constitution of Nigeria. Religious tolerance is the major factor needed for co-existence in the country.

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