Freedom of Thought, Conscience, and Religion in Nigeria: Constitutional Guarantees and Jurisprudential Gaps

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Abstract

This paper critically examines the legal framework governing the right to freedom of thought, conscience, and religion in Nigeria. Rooted in Section 38 of the 1999 Constitution (as amended), these rights are fundamental to personal dignity, democratic stability, and religious pluralism. Despite their constitutional and international legal recognition, enforcement remains uneven in Nigeria's multi-religious society. Tensions persist due to the coexistence of secular constitutional law and Sharia-based criminal codes in several northern states, particularly regarding the criminalization of apostasy and blasphemy. Adopting a doctrinal legal research methodology, the paper analyses constitutional provisions, relevant statutes, case law, and international instruments. It reviews key judicial decisions, including Medical and Dental Practitioners Disciplinary Tribunal v Dr. John Emewulu Okonkwo and Lagos State Government & Ors v Miss Asiyat Abdul Kareem & Ors, which affirm individual autonomy and religious freedom, contrasted with Provost, Kwara State College of Education, Ilorin & Ors v Bashirat Saliu & Ors, where institutional religious identity prevailed. Contemporary challenges such as religious discrimination, violence, weak institutional safeguards, and the targeting of non-believers are assessed within the broader context of Nigeria's international obligations under the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. Comparative references to India, South Africa, and the United States further illuminate these tensions. The paper concludes by advocating for legislative clarity, judicial activism, stronger rights enforcement mechanisms, and a renewed constitutional commitment to secularism as essential for safeguarding religious liberty in Nigeria.

1. Introduction

The right to freedom of thought, conscience, and religion is a cornerstone of democratic governance, fundamental human dignity, and pluralistic societies. It encompasses the liberty of individuals to adopt a belief, change it, manifest it, or refrain from subscribing to any religion or belief system. In Nigeria—a country marked by deep religious diversity and, at times, tension – this right is not only constitutionally enshrined but also frequently contested in both public and private spheres.

Religion plays a powerful role in Nigeria's socio-political dynamics. According to the Pew Research Center, Nigeria has roughly equal proportions of Christians and Muslims, with indigenous African beliefs also playing a significant role in cultural practices.[1] Consequently, issues relating to religious freedom have often found themselves at the center of policy debates, electoral campaigns, and judicial scrutiny. This makes an appraisal of the legal framework surrounding this fundamental right both timely and necessary.

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[1] Pew Research Center, The Future of World Religions: Population Growth Projections, 2010–2050 (Pew, 2015) <https://www.pewresearch.org> accessed 31 May 2025

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides under section 38(1) that every person shall be entitled to freedom of thought, conscience and religion, including the freedom to change religion or belief and freedom to manifest and propagate such belief. [2] This provision is comprehensive in its scope, covering belief, worship, and proselytization. However, the lived realities of many Nigerians suggest that the constitutional guarantees are not always realized. From cases of forced conversions, violent religious extremism, blasphemy prosecutions, and discriminatory policies in some states, the implementation of religious freedom remains a work in progress.

The jurisprudence of Nigerian courts – particularly the Supreme Court – has both affirmed and, at times, limited the scope of these rights, often balancing them against national security, public order, and societal interests. This necessitates a legal analysis that not only examines the black-letter law but also engages with judicial interpretation and socio-political contexts. For example, in *Medical and Dental Practitioners Disciplinary Tribunal v Dr John Emewulu Nicholas Okonkwo,*[3] the Supreme Court of Nigeria upheld a patient's right to refuse blood transfusion based on religious belief, affirming the sanctity of individual conscience.[4] Yet in other instances, such as the controversial arrest and sentencing of alleged blasphemers in some Northern states, the enforcement of religious laws has generated human rights concerns.[5]

International human rights instruments, to which Nigeria is a signatory, also recognize the right to freedom of religion and conscience. Article 18 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) lay a global foundation for the right.[6] However, the extent to which these provisions are domesticated and enforceable in Nigerian courts remains a subject of legal debate.

This paper aims to provide a critical legal appraisal of the right to freedom of thought, conscience, and religion in Nigeria. It will evaluate the constitutional and international legal provisions, judicial attitudes, and challenges facing the practical enforcement of this right. The paper further explores the implications of religious pluralism, the tension between secularism and religious governance, and offers comparative insights from jurisdictions like South Africa, India, and the United States. Ultimately, the paper offers recommendations for reforms, with a view to strengthening constitutional protections and fostering peaceful religious coexistence in Nigeria.

2. Conceptual Clarification

A foundational step in analyzing the right to freedom of thought, conscience, and religion is a clear understanding of each term and their legal interrelationship. These concepts, though often grouped together in legal texts and human rights discourse, are distinct in meaning and implication(s).

Freedom of thought refers to the absolute liberty of the human mind to hold, develop, or reject beliefs, opinions, or convictions. It is the inner sanctum of individual liberty – protected from any form of coercion or interference by the state or society. This aspect of human rights is non-

[2] Constitution of the Federal Republic of Nigeria, 1999, s. 38(1).
[3] (2001) 7 NWLR (Pt. 711) 206 (SC); (2001) LPELR-1856(SC) pp. 45-46, paras. G-F
[4] *Ibid.*
[5] BBC News, 'Nigerian Singer Sentenced to Death for Blasphemy' (10 August 2020) <https://www.bbc.com/news/world-africa-53726256> accessed 31 May 2025
[6] Universal Declaration of Human Rights (UDHR) 1948, art 18; International Covenant on Civil and Political Rights (ICCPR) 1966, art 18.

derogable and cannot be limited under any circumstances.[7] The European Court of Human Rights (ECtHR), interpreting Article 9 of the European Convention on Human Rights (ECHR), has affirmed that freedom of thought includes the right not to disclose one's beliefs and to be free from indoctrination.[8]

In the context of Nigerian law, although Section 38 of the 1999 Constitution ensures the right to freedom of thought, there is limited judicial interpretation or analysis of its independent application. Courts and legal scholars frequently address it in conjunction with conscience and religion, which may lead to the oversight of its distinct significance as a foundation for intellectual autonomy, academic freedom, and freedom of expression.

Conscience is defined as the moral compass or inner sense that guides an individual's understanding of right and wrong. It is closely linked with ethical decision-making, personal integrity, and the exercise of moral responsibility.[9] Freedom of conscience protects individuals from being compelled to act contrary to their deepest moral convictions, even if these are not tied to organized religion. This has profound implications in fields such as medical ethics, military conscription, and whistleblowing.Nigerian jurisprudence has recognized the importance of this right, albeit more implicitly. In *Medical and Dental Practitioners Disciplinary Tribunal v Dr John Emewulu Nicholas Okonkwo*,[10] the Supreme Court of Nigeria held *inter alia* as follows:

> *…The sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary. Law's role is to ensure the fullness of liberty when there is no danger to public interest. Ensuring liberty of conscience and freedom of religion is an important component of that fullness."*[11]

Freedom of religion is perhaps the most visibly exercised and litigated of the three freedoms. It includes: the right to adopt or change one's religion or belief; the freedom to manifest religion in worship, teaching, practice, and observance; and the right to be free from coercion in matters of religion.[12]

Section 38(1) of the Nigerian Constitution aligns closely with international human rights instruments in its definition. However, in practice, manifestations of religion are subject to legal limitations justified on grounds such as public safety, order, health, or morals.[13]

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[7] UN Human Rights Committee, 'General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18)' (1993) UN Doc CCPR/C/21/Rev.1/Add.4 para 3 <https://www.refworld.org/legal/general/hrc/1993/en/13375> accessed on 31 May 2025

[8] *Kokkinakis v Greece* (1993) 17 EHRR 397 (ECtHR) <https://hudoc.echr.coe.int/eng?i=001-57827> accessed on 31 May 2025. See also *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293 <https://hudoc.echr.coe.int/fre?i=001-57455> accessed on 31 May 2025.

[9] MJ Perry, 'Freedom of Conscience as a Human Right' *Social Philosophy and Policy* Vol. 29 (2012) pp. 278, 279.

[10] *Supra.*

[11] Per Emmanuel Olayinka Ayoola, JSC in *Medical and Dental Practitioners Disciplinary Tribunal v Dr John Emewulu Nicholas Okonkwo* (2001) LPELR-1856(SC) p. 45, paras. E-G.

[12] Constitution of the Federal Republic of Nigeria 1999, s 38(1); International Covenant on Civil and Political Rights (ICCPR) 1966, art 18(1)

[13]); International Covenant on Civil and Political Rights (ICCPR), art 18(3); Constitution of the Federal Republic of Nigeria 1999, s 45(1).

Religious freedom is both individual and collective in nature. It covers private belief and public expression, and extends to religious communities' rights to establish institutions, acquire property, and organize according to their doctrines. This dual nature – individual and institutional – poses complex legal questions, especially in multi-religious societies like Nigeria where the religious rights of one group may appear to infringe upon the rights of another.

Although thought, conscience, and religion are often bundled together in legal texts, they are conceptually distinct and should not be conflated. The right to thought is absolute and inward-looking. Conscience bridges internal belief and outward conduct. Religion, on the other hand, often manifests externally, thereby attracting greater regulatory interest by the state.

Understanding the distinctions helps courts and policymakers draw more precise legal boundaries. For example, while a state may restrict public demonstrations of religion (such as proselytizing in schools or wearing religious symbols in public institutions), it cannot regulate an individual's private thoughts or moral convictions.[14]

Moreover, this triad of rights reflects a progression of human autonomy—from internal belief to public expression. This progression demands a layered approach in legal regulation: absolute protection of internal freedoms (thought and conscience) and cautious balancing of manifest expressions of belief (religion) with competing societal interests.

3.0 Legal Framework Governing Freedom of Thought, Conscience and Religion in Nigeria

The right to freedom of thought, conscience, and religion in Nigeria is protected under a complex legal framework that includes domestic constitutional law, regional human rights instruments, and international treaties. These sources form a matrix of rights and responsibilities, shaping how religious liberty is conceptualized, exercised, and enforced in Nigeria's multi-religious context.

The principal legal basis for freedom of religion in Nigeria is found in Section 38(1) of the Constitution of the Federal Republic of Nigeria 1999, which provides that:

> *Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.*[15]

The above constitutional provision is sweeping in scope. It guarantees not only the internal freedom to believe but also the external liberty to manifest those beliefs. The provision also includes the right to change religion, a controversial issue in some parts of Nigeria, especially the North where apostasy is frowned upon under Islamic jurisprudence.

In addition, Section 38(2) of the Constitution of the Federal Republic of Nigeria 1999 prohibits the compulsion of individuals to receive religious instruction or participate in religious ceremonies not of their own faith, especially in educational institutions.

Meanwhile, Section 10 of the Constitution of the Federal Republic of Nigeria 1999 reinforces state neutrality in religious matters by stating that "The Government of the Federation or of a

[14] *Lautsi v Italy* (2011) 53 EHRR 3 (ECtHR) <https://hudoc.echr.coe.int/eng?i=002-592> accessed on 31 May 2025. See also R Ahdar and I Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford: Oxford University Press, 2013) pp. 144 – 146.

[15] Constitution of the Federal Republic of Nigeria 1999, s 38(1).

State shall not adopt any religion as State Religion."[16]This is the basis for Nigeria's claim to secularism, though this claim is frequently challenged by the widespread religious involvement of public officials and the existence of Sharia law in twelve northern states.[17]

The Nigerian judiciary has played a central role in interpreting and enforcing fundamental rights including the right to freedom of thought, conscience, and religion which rights are constitutionally guaranteed. The landmark case of *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* is particularly instructive. In that case, the Supreme Court upheld the right of a Jehovah's Witness to refuse blood transfusion, holding that individual autonomy, rooted in religious belief, must be respected.[18]

In contrast, the courts have also upheld limitations on religious expression when they conflict with public order or institutional discipline. In *Provost, Kwara State College of Education v Bashirat Saliu*,[19] the Court of Appeal of Nigeria ruled that Muslim students could not wear hijab in a Christian mission school, citing the need to preserve the identity and ethos of the institution.[5] The balance between individual rights and institutional autonomy remains a contested legal area even as the Supreme Court of Nigeria in *Lagos State Government & Ors v Miss Asiyat Abdulkareem (Minor) & Ors*held *inter alia* that:

> *"The wearing of the hijab by a female Muslim is a manifestation, practice and observance of her religion of Islam. A perusal of all the processes filed by the parties and submissions thereon shows that it is not in dispute that wearing of the hijab by a female Muslim is a religious injunction prescribed in the Holy Quran…Suffice it to say that the wearing of the hijab, described as a mark of modesty for female Muslims who have attained the age of puberty, has not been shown to be an act that infringes on or is likely to infringe on the rights and freedom of other students..."*[20]

Another controversial case was that of Mubarak Bala, a self-professed atheist and humanist who was sentenced to 24 years' imprisonment for blasphemy in Kano State. This raised serious constitutional questions regarding the limits of free expression and the legality of criminalizing religious dissent.[21]

While the Constitution is the supreme law in Nigeria, some state-level laws, particularly in the North, have introduced Sharia-based criminal codes. These laws, applicable to Muslims, criminalize actions like blasphemy, apostasy, and non-conformity with Islamic tenets. While the Constitution permits states to legislate on matters of religion (especially personal law), such laws must conform to constitutional guarantees of fundamental rights.[22]

The inconsistency between Sharia-based laws and the constitutional provisions on freedom of religion remains a legal and political dilemma in Nigeria. Courts have sometimes sidestepped the

[16]*Ibid.*, s 10.
[17]*Ibid.*, s 1(3)
[18]*Medical and Dental Practitioners Disciplinary Tribunal v Dr John Emewulu Nicholas Okonkwo* (supra)
[19] (2008) 2 NWLR (Pt 1071) 511 (CA).
[20] Per Kekere-Ekun, J.S.C (now CJN) in Lagos State Government &Ors v Miss Asiyat Abdulkareem (Minor) &Ors (2022) LPELR-58517(SC) pp. 44 – 55 paras. D-D
[21] BBC News, 'Nigerian Atheist Mubarak Bala Jailed for 24 Years for Blasphemy' (5 April 2023) <https://www.bbc.com/news/world-africa-60997606> accessed on 31 May 2025.
[22]Constitution of the Federal Republic of Nigeria 1999, ss. 1(3), 10, and 38(1)

issue, preferring to resolve cases on procedural or jurisdictional grounds rather than substantively engage with and resolve the conflict between religious penal codes and the Constitution.[23]

Still on the legal framework, it is instructive to note that Nigeria is a party to several international and regional human rights treaties that protect freedom of religion, including:

1. The Universal Declaration of Human Rights (UDHR), specifically Article 18 thereof, affirms the right to freedom of thought, conscience, and religion, which encompasses the freedom to change one's religion and to express one's beliefs.[24]
2. The International Covenant on Civil and Political Rights (ICCPR)whereby Article 18 thereof mirrors the UDHR and further outlines permissible limitations to religious expression.[25]
3. The *African Charter on Human and Peoples' Rights (ACHPR)* whereby Article 8 thereof protects freedom of conscience and the free practice of religion, while also prohibiting state coercion.[26]

Notably, in line with Section 12 of the Constitution of the Federal Republic of Nigeria 1999, Nigeria has domesticated the African Charter through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,[27] giving it the force of law under Nigerian jurisprudence.

Unfortunately, while the legal framework exists, institutional weaknesses and social realities continue to impede the full realization of religious liberty in Nigeria.

4. Judicial Attitudes and Case Law Analysis

Judicial powers in Nigeria are vested in the Courts.[28] The judiciary encompassing courts and tribunals established by law plays a pivotal role in interpreting constitutional guarantees and shaping the scope and application of rights, including the freedom of thought, conscience, and religion. Over the years, Nigerian courts have developed a body of case laws reflecting a spectrum of judicial attitudes – ranging from liberal to conservative – in dealing with religious freedom claims. This section examines key cases and trends that reveal how courts have approached issues of religious expression, institutional autonomy, and state neutrality.

4.1 Liberal Interpretations Upholding Individual Rights

A prominent example of the judiciary's forward-thinking approach is the case of *Medical and Dental Practitioners Disciplinary Tribunal v Dr. John Emewulu Nicholas Okonkwo (supra).* The Supreme Court held that a patient's right to refuse medical treatment based on religious belief (in this case, a Jehovah's Witness rejecting blood transfusion) must be respected as a manifestation of the right to freedom of thought, conscience, and religion under Section 38 of the Constitution. Likewise in *Lagos State Government & Ors v Miss Asiyat Abdulkareem (Minor) & Ors.* (supra), the Supreme Court of Nigeria per Kekere-Ekun, JSC (now CJN) held *inter alia* that:

[23] *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC)
[24] Universal Declaration of Human Rights (UDHR) 1948, art 18.
[25] International Covenant on Civil and Political Rights (ICCPR) 1966, art 18.
[26] African Charter on Human and Peoples' Rights (ACHPR) 1981, art 8.
[27] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004.
[28] Constitution of the Federal Republic of Nigeria 1999, s. 6.

> *…Adopting a liberal interpretation of Section 38 of the 1999 Constitution, as amended,…it amounts to a breach of the 1st and 2nd respondents' right to freedom of thought, conscience and religion to forbid the wearing of the hijab, by those who wish to do so, on their school uniform.*

The foregoing Supreme Court decisions reflect a rights-based approach, prioritizing personal autonomy over communal or state interests. It affirms that the individual's belief, no matter how unpopular, is protected under the Constitution.

Similarly, in *Adamu v The State*,[29] the Court of Appeal invalidated a conviction for participating in a religious procession without a permit, stating that the mere absence of permission does not negate the constitutional guarantee to freely manifest religion, provided public order is not threatened.

4.2. Conservative Decisions Favoring Institutional or Public Order Concerns

In contrast to liberal interpretations, several rulings have taken a more restrictive approach, particularly when religious rights appear to conflict with institutional policies or public interest. In *Provost, Kwara State College of Education, Ilorin & Ors v Bashirat Saliu & Ors*,[30] the Court of Appeal ruled in favour of a Christian mission school's authority to prohibit the wearing of the hijab by Muslim students. The court held that while the right to religion is protected, it does not grant the right to alter the uniform policy of a voluntary institution that has a distinct religious identity. This decision introduced a limitation on the manifestation of religious belief, reinforcing the idea that freedom of religion is not absolute and may be curtailed where necessary to maintain institutional coherence and discipline. This case seems to reveal the judiciary's readiness to restrict religious manifestations when there are competing interests like institutional order, secularism in state-run facilities, or the prevention of religious conflict.

However, it appears that the Supreme Court of Nigeria vide *Lagos State Government & Ors v Miss Asiyat Abdulkareem (Minor) & Ors.*, has somewhat disagreed with the Court of Appeal of Nigeria thereby creating room for conjecture and/or confusion as to what the law is on this point. Perhaps, the distinction between the two judicial positions can be found in the facts that while in *Provost, Kwara State College of Education, Ilorin & Ors v Bashirat Saliu & Ors.,* the institution in question was a private cum Christian Institution while in *Lagos State Government & Ors v Miss Asiyat Abdulkareem (Minor) & Ors.*, the institution in question was a public School.

On the interpretation of the provisions of section 10 of the 1999 Constitution which prohibits any state or federal government from adopting a state religion, the Supreme Court of Nigeria in *Registered Trustees of Apostolic Church of Christ v Registered Trustees of Grace Church of Christ*,[31] held *inter alia* that:

> *…under the Constitution, religion is not a business or purpose any Government in Nigeria should engage itself in. Section 10 of the 1999 Constitution provides clearly and unambiguously- 10. The Government of the Federation or of a State shall not adopt any religion a State religion.*[32]

[29] Adamu v The State (1986) 3 NWLR (Pt 32) 865 (CA).
[30] (2008) 2 NWLR (Pt 1071) 511 (CA).
[31] (2021) LPELR-55340(SC) pp 46 – 47, paras E – A.
[32] Per Ejembi Eko, JSC.

In *Mr. Paul Okafor & 5 Ors. v Obi Victor Ntoka & 5 Ors*.,[33] the Court of Appeal of Nigeria held *inter alia* that while the Government of the Federation or of a State shall not adopt any religion as a state religion, every person has a right to practice his religion in Nigeria.[34] It is trite that any custom, law or policy that is inconsistent with the foregoing constitutional provisions on the prohibition of state religion and right to freedom of religions shall be null and void to the extent of such inconsistency.[35]

In the light and in pursuance of the aforesaid relevant provisions of the Constitution, it has been submitted elsewhere[36] that Nigeria is a secular state and that:

> *If there is one thing which is so openly essential for ensuring the forging of national cohesion, it is separating the Nigerian State clearly and unambiguously from religion and ensuring that its function is to protect the right of citizens to practice the religious belief of their choice.*[37]

In the premises of the foregoing, one may wonder whether the Lagos State government policy that prohibited the wearing of hijab should not have been upheld in view of Section 10 of the Constitution of the Federal Republic of Nigeria 1999. It is herein opined and posited that Section 38 of the Constitution of the Federal Republic of Nigeria 1999 should not be read or interpreted or enforced in isolation, Section 10 of the Constitution of the Federal Republic of Nigeria 1999 should equally be kept in view for practical equilibrium.

4.3 The Challenge of Blasphemy and Apostasy

The judicial handling of blasphemy and apostasy cases especially under the Sharia Law in the Northern part of Nigeria highlights one of the most contentious dimensions of religious liberty in Nigeria. In northern states operating under Sharia criminal codes, blasphemy remains a criminal offence, leading to prosecutions such as in the *Mubarak Bala* case.[38]

Bala, an atheist and President of the Humanist Association of Nigeria, was sentenced to 24 years in prison for social media posts deemed blasphemous. His case was prosecuted in Kano State, and while he eventually pleaded guilty, the legal process raised deep constitutional questions. Critics argue that his conviction violates Sections 38 and 39 of the Constitution of the Federal Republic of Nigeria 1999 and the African Charter on Human and Peoples' Rights, both of which Nigeria is bound to uphold.

Unfortunately, Nigerian courts have rarely ruled directly on the constitutionality of such Sharia-based blasphemy laws. Most cases involving religious expression in the North are handled quietly or settled through plea bargains. This judicial evasion perpetuates legal uncertainty and emboldens parallel religious legal systems.

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[33] (2017) LPELR-42794(CA) pp 27 – 27, paras A – C.
[34] Per Helen Moronkeji Ogunwumiju, JCA (as he then was).
[35] *Constitution of the Federal Republic of Nigeria 1999, s 1(1) & (3).* See also *Elesie Agbai & 5 Ors. v Samuel I. Okogbue* (1991) LPELR-225(SC) pp. 89 – 89, paras. A – C.
[36] YB Usman, *The Manipulation of Religion in Nigeria: 1977-1987* (Kaduna: Vanguard Publishers Ltd, 1987) 31.
[37] *Ibid.*
[38] United States Commission on International Religious Freedom, 'Mubarak Bala' <https://www.uscirf.gov/religious-prisoners-conscience/forb-victims-database/mubarak-bala> accessed on 31 May 2025.

4.4 The Problem of Judicial Inconsistency and Uncertainty

An underlying issue is the inconsistency in judicial approaches. Courts have often adopted divergent standards when adjudicating religious rights based on geography, religion of the litigants, or the nature of the institution involved. This has eroded the predictability of outcomes and undermined public confidence in judicial neutrality.

5.0 Contemporary Challenges and Human Rights Concerns

The enjoyment of freedom of thought, conscience, and religion in Nigeria today is fraught with multiple challenges. These challenges are not merely theoretical or abstract but manifest in tangible violations of rights, discriminatory state practices, inter-religious tensions, and legal ambiguities. This section critically analyses these contemporary issues, focusing on how they affect the practical realization of religious freedom and intersect with broader human rights concerns in Nigeria.

5.1 Religious Intolerance and Violence

Religious intolerance remains one of the gravest threats to freedom of religion in Nigeria. The country has witnessed recurring ethno-religious conflicts, particularly in states such as Kaduna, Plateau, Benue, Borno, and Zamfara. These clashes often stem from underlying socio-economic and political grievances but are framed along religious lines, resulting in loss of lives, destruction of properties, and displacement of communities.[39]

A striking example is the 2000 Kaduna crisis, where an estimated 2,000 people died following violent clashes over the proposed implementation of Sharia law in the state.[40] Such episodes create a climate of fear that restricts free religious expression and polarizes communities. Meanwhile, the Nigerian government has been criticized for failing to prevent or respond adequately to these outbreaks of religious violence. The selective prosecution of perpetrators and perceived bias in security enforcement erode public trust and reinforce the perception of state complicity or negligence.[41]

5.2 Discrimination against Religious Minorities

Although the Nigerian Constitution guarantees equality before the law, religious minorities frequently encounter systemic discrimination. In predominantly Muslim northern states, Christians often complain of being denied permits to build churches, denied access to government jobs, or excluded from policymaking.[42] Conversely, in southern Christian-majority states, Muslims may face obstacles in establishing Islamic schools or wearing religious attire in public institutions.[43]

The 2020 report by the U.S. Commission on International Religious Freedom noted that Christians in the North faced harassment and difficulties obtaining permits to construct places of

[39] Human Rights Watch, *"They Do Not Own This Place": Government Discrimination Against "Non-Indigenes" in Nigeria* (2006) pp. 17–19 <https://www.hrw.org/sites/default/files/reports/nigeria0406webwcover.pdf> accessed on 1 June 2025

[40] International Crisis Group, *Northern Nigeria: Background to Conflict* (Africa Report No. 168, 2010) 7–8.

[41] U.S. Commission on International Religious Freedom (USCIRF), Annual Report 2020: Nigeria Chapter (2020) p. 3.

[42] EI Nwogugu, 'Legal Protection of Religious Minorities in Nigeria' *Journal of African Law* Vol. 48(1) (2004) p. 85.

[43] AG Adebayo, 'Ethno-Religious Conflicts and the Travails of National Integration in Nigeria's Fourth Republic' *Journal of Sustainable Development in Africa* 4(3) (2010) pp. 45, 47–48.

worship.[44] Similarly, the hijab controversy in states like Lagos, Osun, and Kwara has shown that Muslim girls face challenges in freely expressing their religion in public schools, often resulting in prolonged legal battles.[45]

Such discrimination is in direct conflict with Sections 42 and 38 of the extant Nigerian Constitution and violates Nigeria's international obligations under instruments like the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.[46]

5.3 State Involvement in Religious Affairs

Although Nigeria is constitutionally a secular state,[47] the boundaries between religion and state are frequently blurred. Government sponsorship of pilgrimages (both Hajj and Christian pilgrimages) through state-funded agencies, religious influence in lawmaking, and state recognition of religious holidays suggest a form of soft theocracy.[48]

This entanglement of the Nigerian government with religion and religious commitments commands both practical and symbolic effects. It often privileges dominant religious groups while marginalizing others. For instance, the establishment of Hisbah Corps in many northern states to enforce Islamic morals – even among non-Muslims – raises questions about the impartiality of the state and its respect for secular principles.[49]

Moreover, political office holders often use religion to mobilize support, inflaming sectarian divisions. The absence of a clear constitutional guideline on the extent of permissible state involvement in religious affairs fuels confusion and contestation.[50]

5.4 Inadequate Legal Protections for Non-Believers and Apostates

One of the least protected categories in the discourse on religious freedom in Nigeria is the group of non-believers and apostates. Nigerian society generally views atheism and apostasy with disdain, and those who openly identify as such face severe social ostracism and, in some regions, legal sanctions.[51]

As seen in the Mubarak Bala case, persons who renounce religion or question dominant religious narratives can face prolonged detention, charges of blasphemy, or worse.[52] Apostasy, while not a crime under federal law, is punishable under the Sharia penal codes of several northern states.

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[44] U.S. Commission on International Religious Freedom (USCIRF), Annual Report 2020: Nigeria Chapter (2020) p. 3.

[45] O Bolarinwa, 'The Legal Dimension of the Hijab Controversy in Nigeria: A Conflict Between Religious Freedom and School Uniform Policy' *African Journal of Law and Human Rights* Vol. 8(1) (2021) pp. 25, 29.

[46] African Charter on Human and Peoples' Rights (ACHPR), Art. 2 and 8; Constitution of the Federal Republic of Nigeria 1999, ss. 38 and 42

[47] Constitution of the Federal Republic of Nigeria 1999, s. 10

[48] KSA Ebeku, 'Can State Sponsorship of Religious Pilgrimages be justified under the Nigerian Constitution?' (2011) 12(2) *African Human Rights Law Journal* 123, 131–133.

[49] P Ostien, *Sharia Implementation in Northern Nigeria 1999–2006: A Sourcebook*, Vol. I (Ibadan, Spectrum Books 2007) 15–18.

[50] J Fashina, 'Religion and the Challenges of Democratic Consolidation in Nigeria' (2013) 6(2) *African Journal of International Affairs* 11, 16

[51] B Akintola, 'The Legal Status and Rights of Atheists in Nigeria: Between Social Hostility and Legal Silence' (2019) 10(1) *Nigerian Journal of Human Rights* 33, 35–36.

[52] M Makinde, 'Freedom of Religion and Belief in Nigeria: The Case of Mubarak Bala' (2023) 6(1) *African Human Rights Yearbook* 189, 190–192.

This criminalization is at odds with the Constitution, which affirms that the right to change religion is part of the freedom of conscience.[53]

The lack of federal protection for non-believers undermines Nigeria's commitments under the African Charter and the Universal Declaration of Human Rights (UDHR), which recognize the freedom to have, not to have, or to change one's religion or belief.[54]

5.5 Blasphemy Laws and Freedom of Expression

Blasphemy laws remain a major source of controversy and human rights violation in Nigeria. While not criminalized under federal law, these laws are enforced in the northern Sharia-implementing states. Individuals accused of blasphemy, especially on social media, face prosecution and even mob violence yet it has been submitted elsewhere that "Any religious belief that is to be meaningful must be freely accepted, not coerced or imposed by law or social pressure".[55]

In addition to Mubarak Bala's widely reported case, there have been instances such as the lynching of Deborah Yakubu, a Christian student in Sokoto, over alleged blasphemy.[56]The lack of accountability for such extrajudicial killings sends a troubling message about impunity and the weakness of the rule of law.[57]

Blasphemy laws are frequently used to suppress dissent, silence religious minorities, and enforce orthodoxy. International human rights bodies, including the UN Human Rights Committee, have consistently condemned such laws as incompatible with the right to freedom of religion and expression.[58]

5.6 Lack of Judicial Activism and Institutional Response

The courts, which ought to be bastions of rights protection, have often been passive or inconsistent in protecting religious liberty. Few judgments have addressed the constitutionality of Sharia criminal codes or ruled definitively on the legality of religious policing.[59]

This lack of judicial activism weakens human rights enforcement and emboldens state and non-state actors to violate constitutional freedoms. Furthermore, national human rights institutions like the National Human Rights Commission (NHRC) have limited capacity and often lack the political will to intervene decisively in religious rights cases.[60]

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[53] Constitution of Nigeria 1999 (as amended), s 38(1); see also International Covenant on Civil and Political Rights (ICCPR), Art. 18

[54] ACHPR, Art. 8; Universal Declaration of Human Rights (UDHR), Art. 18.

[55] A A An-Na'im, 'Islamic Foundations of Religious Human Rights' in J Witte Jr and J D van der Vyver (eds), *Religious Human Rights in Global Perspective: Religious Perspectives* (The Hague: Martinus Nijhoff 1996) 337, 340–345.

[56] Amnesty International, *Nigeria: Authorities Must Ensure Justice for Lynching of Deborah Samuel* (2022) <https://www.amnesty.org/en/latest/news/2024/10/nigeria-escalation-of-mob-violence-emboldens-impunity/> accessed on 1 June 2025.

[57] *Ibid.*

[58] United Nations Human Rights Committee, General Comment No. 34, CCPR/C/GC/34 (2011), paras 48–50 <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> accessed on 1 June 2025.

[59] M Ayoob, *The Many Faces of Political Islam: Religion and Politics in the Muslim World* (Ann Arbor MI: University of Michigan Press, 2008) p. 174.

[60] CA Odinkalu, 'Why More Nigerians Don't Use the National Human Rights Commission' in V Ayeni (ed), *The National Human Rights Commission in Nigeria: Milestones and Challenges* (Abuja, Human Rights Law Service (HURILAWS), 2010) 65 at 67.

5.7 Insecurity and Religious Extremism

Nigeria continues to battle religious extremism, particularly in the North-East, where groups like Boko Haram and the Islamic State West Africa Province (ISWAP) operate. These groups have committed grave atrocities against both Muslims and Christians, including killings, abductions, forced conversions, and destruction of religious institutions.[61]

The long-term impact of religious extremism has been to shrink civic space and limit the freedom of belief. Many citizens are now afraid to openly express dissenting religious views or participate in interfaith activities for fear of reprisal.[62]

6.0 International Obligations and Comparative Perspectives

Nigeria's legal framework for freedom of thought, conscience, and religion is shaped by its Constitution and international human rights law. Nigeria has subscribed to several treaties protecting religious freedom, including the *International Covenant on Civil and Political Rights* (ICCPR),[63] the *African Charter on Human and Peoples' Rights* (ACHPR),[64] and the *Universal Declaration of Human Rights* (UDHR).[65] Although Nigeria, by virtue of the provisions of section 12 of her extant Constitution,[66] follows the doctrine of transformation, requiring treaties to be domesticated, courts often refer to these instruments when interpreting constitutional provisions.[67]

The coexistence of Nigeria's secular constitutional framework with religious legal systems, particularly the Sharia criminal codes enforced in several northern states, has produced significant legal and human rights tensions. Notably, the criminalization of apostasy and blasphemy under Sharia law directly conflicts with Nigeria's obligations under international human rights instruments such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, both of which guarantee the right to freedom of thought, conscience, and religion, including the right to change one's religion or belief.[68] The Supreme Court has held that international law is persuasive but not overriding in cases where domestic law is clear.[69]

Comparatively, India protects religious freedom under Articles 25 to 28 of its Constitution and the Supreme Court has struck a balance between religious autonomy and fundamental rights in landmark cases such as *S.R. Bommai v Union of India*.[70] South Africa's Constitution robustly

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[61] International Crisis Group, *Facing the Challenge of the Islamic State in West Africa Province*, Report No. 273 (Dakar/Brussels, International Crisis Group, 2019) at 2 <https://www.crisisgroup.org/africa/west-africa/nigeria/273-facing-challenge-islamic-state-west-africa-province> accessed on 1 June 2025

[62] Human Rights Watch, *Nigeria: Boko Haram Attacks on Schools* (New York, Human Rights Watch, April 2016) <https://www.hrw.org/sites/default/files/report_pdf/nigeria0416web.pdf> accessed on 1 June 2025

[63] International Covenant on Civil and Political Rights 1966 (entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 18.

[64] African Charter on Human and Peoples' Rights 1981 (entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5 (ACHPR) art 8

[65] Universal Declaration of Human Rights GA Res 217 A (III), UN GAOR, 3rd Sess, Supp No 13, UN Doc A/810 at 71 (1948) art 18

[66] Constitution of the Federal Republic of Nigeria 1999, s. 12.

[67] *Attorney-General of the Federation v. Abubakar* (2002) 6 NWLR (Pt. 764) 228 (SC).

[68] P Ostien, *Sharia Implementation in Northern Nigeria 1999–2006: A Sourcebook,* vol I (Ibadan, Spectrum Books 2007) 15–18.

[69] Eze v State (2015) 10 NWLR (Pt 1473) 458 (SC).

[70] AIR 1994 SC 1918

protects religious freedom and emphasizes equality and non-discrimination.[71] The United States, through the First Amendment, maintains strict scrutiny of government restrictions on religion.[72]These examples highlight the importance of constitutional supremacy and judicial independence to safeguard religious freedom.

7.0 Conclusion and Recommendations

Religious freedom in contemporary Nigeria is increasingly undermined by systemic violence, pervasive discrimination, conflicting legal frameworks, and state inaction or complicity. Although the Constitution provides for such freedoms, the inconsistency and weakness in their enforcement have exacerbated an environment of growing intolerance. These challenges, compounded by institutional deficiencies, continue to threaten the right to freedom of thought, conscience, and religion. It has been reasonably submitted elsewhere and the researcher herein concurs with the said submission that:

> *no knowledgeable person has ever suggested that constitutional safeguards provide in themselves complete and indefeasible security. But they do make the way of the transgressor, of the tyrant, more difficult. They are so to speak, the outer bulwarks of defence.*[73]

Judicial attitudes toward religious freedom in Nigeria are evolving but remain marked by inconsistencies and doctrinal ambiguity. While some courts have adopted a liberal rights-based approach that prioritizes individual autonomy, others have preferred conservative readings that emphasize institutional integrity and public order. The challenge moving forward is to develop a coherent and principled jurisprudence that balances religious liberty with the realities of a pluralistic society. Significantly, Kayode Eso, JSC, underscores judicial activism in the following words:

> *It would be tragic to reduce judges to a sterile role and make an automaton of them. I believe it is the function of judges to keep the law alive, in motion, and to make it progressive for the purpose of arriving at the end of justice, without being inhibited by technicalities, to find every conceivable, but acceptable way of avoiding narrowness that spells injustice. Short of being a legislator, a judge, to my mind, must possess an aggressive stance in interpreting the law.*[74]

To align more effectively with its constitutional mandates and international human rights commitments, Nigeria must undertake comprehensive reforms. These should entail clearer legislative provisions, a more assertive and principled judiciary, enhanced mechanisms for the protection of human rights, and a reinforced adherence to secularism in public governance. Also, judges must put on the cloak of judicial activism and deliver prophecies of what the law ought to be vis-à-vis the right to freedom of thought, conscience, and religion without prejudice to the constitutional prohibition of state religion.

[71] S v Makwanyane (1996) 3 SA 1 (CC); South African Constitution 1996, s 15.
[72] Employment Division v Smith, 494 US 872 (1990).
[73] DV Cowen, *The Foundations of Freedom* (New York: Oxford University Press, 1961) p. 119 cited in B Nwabueze, *Constitutional Democracy in Africa Vol. 2* (Ibadan: Spectrum Books Limited, 2003) p. 11.
[74] Trans Bridge Trading Company Ltd. v Survey International Ltd. [1985] 4 NWLR (Pt. 37) 576 at 596 – 597.