# CONSTITUTIONAL DISCRIMINATIONS AGAINST CHRISTIAN MARRIAGE IN NIGERIA: A CALL FOR REDRESS*

**Abstract**
*The 1999 Constitution of Nigeria by virtue of item 61 of the Exclusive Legislative List recognizes only three forms of marriage in the country. These forms are statutory marriage, Islam law marriage and customary law marriage. Correspondingly it recognizes also only the matrimonial causes of these systems of marriage. Taking cognizance of the fact that Islamic law and customary law marriage systems are religious systems of marriage, this paper finds item 61 of the Exclusive legislative list discriminatory against Christian marriage and by extension against Christians. In establishing this fact this paper ex-rayed the religious nature of Islamic law marriage, customary law marriage and also Christian marriage. The paper calls for the redress of this constitutional discrimination. The methodology is doctrinal.*

**Keywords:** Constitution, Discrimination, Christian Marriage, Nigeria

## 1. Introduction

Equality of citizens rooted in the equality of their rights, such as the right to freedom of thought, conscience and religion, is the benchmark of Nigeria's constitutional democracy. Equality of citizens is also a major contributor to national stability and a reason for the moral obligations of citizens to be patriotic and active agents for nation building. If the religions of citizens are treated equally, they have no reason not to work for the greatness of the country. But discrimination on the basis of religion, the opposite of equality of religions, produces the opposite result of dissuading citizens from giving their best to their fatherland. The need for true freedom of religion cannot be more needed anywhere else than in the treatment of religious marriages in the Nigeria constitution. Nigeria, a multi-religious country that has continued to witness increasing religious tensions, cannot afford to fan the embers of religious discontent by the discriminatory posture of the 1999 Constitution towards Christian marriage when compared with the privileges it accords other religious marriages, such as Customary and Islamic marriages. Unfortunately, the discrimination of the 1999 Nigeria Constitution against Christian marriage contradicts the constitution's provisions on the right to freedom of religion, equality of citizens, national integration and harmony, and other such provisions. This discrimination is hatched by Item 61 of the Exclusive Legislative List,[1] which recognizes customary law marriages and Islamic marriage without according such recognition to Christian marriage. This paper explores the religious nature of Islamic marriage, customary marriage, and Christian marriage and thus stresses that these religious marriages need to be treated equally as means of getting 1999 Constitution to be consistent with itself, and to live up to its dictates on the right to freedom from religious discrimination thereby making Christians feel that they are not second-class citizens in relation to Muslims and Traditional religionists whose marriage systems enjoy constitutional recognition and support.

## 2. Constitutional Provisions against Discrimination on religion basis

### The Right to Freedom from Discrimination on Religious Basis

Before getting to the constitutional provision on the right to freedom from discrimination on religious grounds, it is important we understand the meaning of 'equality', a term that is very crucial for understanding the concept of discrimination. Equality comes from the Latin word *aequalitas.* The adjective 'equal' comes from the Latin *aequalis*, which means 'even'. But the exact meaning of the term depends on the context where it is used. If 'aequalis' is employed in the context of ground surfaces or places, it means 'level'. Thus, the sentence 'the field is equal' means that the field is level. *Aequalitas* connotes 'evenness' and its exact meaning is similarly contingent on the circumstance in which it is applied. In the context of ground surfaces or places it means smoothness.[2] In socio-political and legal milieu, it is used to convey the idea of treating people evenly and fairly by the state.[3] As such it is a relational ideal which is core to the concept of justice.[4] Distributive Justice is classically defined as treating equals equally.[5] The American philosopher, H. L. A. Hart takes this idea of justice further by defining it as treating like cases alike, and treating different cases differently.[6]

*** By Jude O. EZEANOKWASA, PhD (Law), PhD (Canon Law), LLM, BL, BTh, BPhil,** Senior Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Awka, jo.ezeanokwasa@unizik.edu.ng, joseloka11@gmail.com

[1] Item 61, Exclusive Legislative List, 1999 Constitution of the Federal Republic of Nigeria

[2] D. P. Simpson, D. P. Simpson, *Cassell's Latin dictionary*, Wiley Publishing, Inc., New York 1968, 25.

[3] Ben O. Nwabueze, 'Equality before the Law' in *Essentials of Nigerian Law*, Nigerian Institute of Advanced Legal Studies Lagos, N.I.A.L.S. Law Series No. 2, 1989, 39.

[4]Jude O. Ezeanokwasa, *The Legal Inequality of Muslim and Christian Marriages in Nigeria: Constitutionally Established Judicial Discrimination*, Edwin Mellen Press, New York 2011, 42.

[5]*See* Norman E. Bowie & Robert L. Simon, *The Individual and the Political Order: An Introduction to Social and Political Philosophy*, 4th ed., Rowman & Littlefield, 2008, 72.

[6]H. L. A. Hart, *The Concept of Law*, 2nd ed., Clarendon Press, Oxford 1997, 159. *See also* F. D'Agostino, *FilosofiadelDiritto*, G. GiappichelliEditore, Torino-Italia 2000, 19-20.

In socio-political and legal settings, equality, as treating people evenly, has been held to be applicable in three levels.[7] First is in the administration of public institution.[8] At this level, equality is principally justice as regularity in the interpretation and application of the rules in such a way as to treat similar cases similarly.[9] In other words, the interpretation and application of rules should not be arbitrarily done. They must be done consistently. Second is at the substantive structure of institutions;[10] that is, at the level of the formulation of rules or laws governing an institution.[11] At this level, rights and privileges recognized by an institution are created. Equality demands here that equal basic rights be given to all persons. The unequal treatment of Christian marriage obtains at this level; in the substantive structure of the Nigerian constitution, since the constitution does not recognize it just as it recognized other religious marriage systems, viz Islamic and customary law marriages. The third level at which equality is discussed is that of the subjects of equality. This level seeks to answer the question; who or what kind of being should be treated equally with others? John Rawls, the renowned American philosopher stated that it is moral persons that should be treated equally.[12] Moral persons are distinguished by two features: first they are capable of having a conception of their good (as expressed by a rational plan of life), and second, they are capable of having a sense of justice. The fact that equality is for moral persons means that it does not extend to treatment of animals. Equality, as an ideal, therefore, is for human beings. In socio-political and legal settings, the opposite of equality is inequality in treating people who should otherwise be treated equally. The unequal treatment is usually without a legitimate justification. Another name for it is discrimination. Based on the dehumanizing effects of religious discrimination in a politythe 1999 Constitution, following international law,[13] recognizes for her citizens the right to be free from religious discrimination.[14] Section 42 the 1999 Constitution states:

> (1) 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-
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> (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
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> (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 accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinion.
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> (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
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> (3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to 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 corporate established directly by any law in force in Nigeria.

Section 42(1)(b) provides, *inter alia*, that a citizen of Nigeria of a particular religion shall not, by reason only that he is such a person, be accorded either expressly by, or in the practical application of any law in force in Nigeria any privilege or advantage that is not accorded to citizens of Nigeria of other religions. Two features of the religious discrimination prohibited by this subsection emerge: (1) the discrimination could be manifest in the letters of the law or adopted in the application of an otherwise fair law; (2) The substance of the discrimination lies in conferring a privilege or advantage to members of a particular religion, which advantage or privilege is not conferred to the members of other religions. This leg of the discrimination is met even if the preferential advantage or privilege is conferred to more religions than one provided there is, at least, a religion that is not so treated. Section 42(2) states that 'no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. 'Circumstance', from the Latin words '*circum*' (around) and '*stans*' (standing) is defined as 'the logical surrounding of an action; an attendant fact'.[15] The circumstance of birth in this context refers to the logical facts surrounding the birth of a Nigerian citizen. Things that could be found within the circumstance of the birth of a citizen are many. They include one's religion, ethnicity, tribe, sex, whether a citizen is born within wedlock or outside of it. Section 42(3) gives an exception to the right to freedom from discrimination. With respect to religion, it will not amount to discrimination pursuant to section 42(1) of the 1999 Constitution concerning the restrictions imposed by any of the following employments: (1) appointment to an office under the State, or (2) membership of the armed forces of the Federation, or (3) membership

[7] J. Rawls, *Justice as fairness,* (ed. by E. Kelly), The Belknap Press of Harvard University Press, Massachusetts 2001, 441.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Art. 18, Universal Declaration of Human Rights, 10 December, 1948 which declares the right to thought, conscience, and religion; art 18 Internal Convention on Civil and Political Rights, which, also recognizes the right to freedom of thought, conscience, and religion.
[14] S. 42, 1999 Constitution.
[15] A. M. Macdonald, *Chambers Twentieth Century Dictionary*, with suppl., W & R Chambers Ltd, Edinburgh 1977, 237.

of the Nigeria Police Force, or (4) appointment to an office in the service of a body corporate established directly by any law in force in Nigeria.

**Other Constitutional Provisions against Discrimination on Religious Basis**

Other provisions of the 1999 Constitution, which though not up to the rank of fundamental rights as is section 42, also espouse the idea of the equality of the religions of Nigerian citizens. Chapter II of the Constitution (from section13 through 24) deals with the Fundamental Objectives and Directive Principles of State Policy. It sets out the socio-political ideology of the state and the channels for reaching the set goals. Though the provisions of this chapter are not directly justiciable,[16] they represent the aims of the Nigerian state. They inform the jurisprudence of the written state laws; and their interpretations and applications.[17] Section 14 deals with the Directive Principle on the Government and the People. In subsection 1 it declares that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. No other principle is more native to democracy and social justice than that of equality of the citizens, which covers the equality of their religions. This is evident in the popular definition of democracy as government of the people, by the people and for the people. Democracy truly belongs to the *demos* (people) when the religions of the people are equally treated by the constitution. Section 15 presents the Political Objective of the state. Subsection 1 states the motto of the Federal Republic of Nigeria to be 'Unity and Faith, Peace and Progress'. For the purpose of realizing this motto, subsection 15(2) dictates that '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.' This subsection recognizes that discrimination on the basis of religion is antithetical to national integration which is the base on which unity, faith, peace, and progress can be built. It is clear that religious discrimination undermines national harmony and stability. Section 17 presents the social objectives of the country. Section 17(1) states that 'the state social order is founded on ideals of freedom, equality and justice.' To achieve social order, the constitution provides that 'every citizen shall have equality of rights, obligations and opportunities before the law….'[18] Still on furthering the social objectives, the state is bound to direct its policy towards ensuring that 'conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life….' This section recognizes the ideal of equality as *sine qua non*for social order. This is an equality that extends to the religions of citizens. The best facility for Christian marriage is to recognize it constitutionally as are recognized Islamic and customary law marriages. Section 21 provides the directive on Nigerian Cultures. It commands that 'the State shall protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter; and encourage development of technological and scientific studies which enhance cultural values'.

The Constitution did not define Nigerian cultures. The *Webster's Third New International Dictionary* defines culture as the ideas, customs, and art of a particular society.[19] Understood in this way, it is the whole way of life of a people, which embraces the beliefs, values, moods, language, artifacts and skills of a people.[20] Thus, religion as a system of belief is part of culture. That the 1999 Constitution talks of 'Nigerian cultures' rather than 'Nigeria culture' as in the 1979 Constitution[21] points to the awareness of the drafters of the Constitution of the fact that the country is multi-religious and these many religions deserve equal treatment. The section circumscribes the cultures to be protected and promoted as those 'Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter.' Christian marriage is neither anti-human dignity nor against any fundamental objectives provided in this chapter.

The next provision of Chapter II of the 1999 Constitution is section 23, which is the directive principle on National Ethics. The National Ethics is presented to be 'Discipline, Integrity, dignity of Labour, Social Justice, Religious Tolerance, Self-reliance and Patriotism.'Ethics refers to the moral principle or code of behavior.[22] Again, the principle of social justice occurs. This time it is stated as a principle of behavior for every citizen. But can the Constitution expect citizens to obey this principle when it violates it by its discriminatory provisions on marriage. This is a kind of constitutional hypocrisy. Religious tolerance is another element of the National Ethics. The infinitive, *to tolerate,ordinarily means to allow to exist or happen*, *to endure patiently*. *To tolerate* therefore, conveys the idea of accommodating what one ordinarily does not like. The reasons for such accommodation vary. It could be altruism, philanthropy, piety or law. The religious tolerance called for by this section cannot be based on altruism, philanthropy

[16] S. 6(6)(c) 1999 Constitution. All the same the court can indirectly rely on the provisions of Chapter II of the Constitution in deciding a case. *See INEC&Anor. v. Balarabe Musa & 4 Ors*., (2003) NWLR (pt. 806) 72 at 150 where the Supreme Court relied on the jurisprudence of section 14(1) of the 1999 Constitution in interpreting section 222 of the same Constitution; and on the authority of the jurisprudence of the said section 14(1) it declared unconstitutional INEC's (Independent National Electoral Commission) guidelines for the registration of political parties. Section 14(1) comes under chapter II of the 1999 Constitution.

[17]*See INEC&Anor. v. Balarabe Musa & 4 Ors*., (2003) NWLR (pt. 806) 72 at 150.

[18] S. 17(2)(a), 1999 Constitution.

[19]P. B. Gove, ed., *Webster's Third New International Dictionary,* Unabridged, Konemann, Cologne 1993, 552.

[20]*See* 'Culture' in Encyclopedia Britannica, 15th ed., vol. 3, 784; J. O. Ezeanokwasa, *Towards Understanding the Bible*, Rex Charles & Patrick Ltd., Nimo-Anambra Nigeria 2002, 7.

[21] S. 20, 1979 Constitution of the Federal Republic of Nigeria.

[22]*See* P. B. Gove, ed., op. cit., 780

or piety. It is based on the legally enforceable right of every citizen to practice his religion to the extent allowed by law. And this extent is generally determined by the principle that one's right begins from where the rights of others stop. One natural feature of an effective constitution is integrity. All the provisions of a constitution should cohere into one big legal statement for the existence, stability and progress of the state. Unfortunately, the 1999 Constitution lacks this quality when considered from its provisions against discrimination on basis of religion. While the foregoing provisions present a constitution that is poised against religious discrimination, its mandate to the National Assembly in item 61 of the Exclusive Legislative List regarding enacting laws on marriage says a different thing. Item 61 of the Exclusive Legislative List discriminates against Christian marriage.

**3. Item 61 Exclusive Legislative List: A Discriminatory Mandate**

The constitutionality of a marriage in Nigeria is hinged on item 61 of the Exclusive Legislative List of the 1999 Constitution which while reserving the competence for making laws on marriage for the National Assembly, empowers it to make laws for the 'The formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto.' In other words, the National Assembly cannot make any law relating to the formation, annulment and dissolution of Islamic and customary law marriage together with the matrimonial causes arriving from them which by the strength of the item 61 are accorded automatic constitutional validity. A marriage entered into by a Muslim or a follower of customary law is *ipso facto* valid constitutionally, without the necessity of going through statutory marriage. The same is true of matrimonial relief provided by Islamic law and customary law. For instance, a divorce decreed by a Sharia court or obtained under customary law is enforceable by the state whereas an annulment or dissolution decreed by an ecclesiastical tribunal is not so enforceable. In the final analysis, in Nigeria there are only three constitutionally valid systems of marriage, the statutory, Islamic, and Customary systems of marriage. While the statutory system is secular,[23] the Islamic[24] and customary[25] systems are religious. The privilege or advantage accorded to these religious systems of marriage is not accorded to other religions in the country, such as Christianity. A marriage entered into solely in accordance with Catholic canon law is not constitutionally valid.[26] The same is true of a marriage annulment decreed by a Catholic marriage tribunal.

To have a constitutionally valid marriage, members of the non-exempt religions are compelled to go through statutory marriage. This is a marriage entered into, lived and possibly dissolved according to the rules[27] set by the National Assembly, a legislature composed of Nigerians of all belief systems; Agnostics, Atheists, Christians, Traditional religionists, Muslims, e.t.c. As a secular marriage institution, statutory marriage reflects the secularity of the state which is anchored on the constitutional provision prohibiting either the federation or state, or both from adopting any religion as state religion.[28] As such, statutory marriage does not project any belief system in particular. The closest it comes to the non-exempt religions, Christianity and others, is that it allows wedding parties to celebrate their marriage, after it has been authorized by the state, in a licensed place of worship and in the manner prescribed by the state. In matrimonial causes, statutory marriage laws have no similar accommodation for the non-exempt religions. For the marriages of the members of these other religions to be, for instance, constitutionally dissolved, recourse must be had to state High Court. That the privileges accorded to Islamic law marriage and customary law marriage are not extended to other religious marriages makes item 61 contradict section 42(1)(b) of the same 1999 Constitution, which prohibits according citizens that belong to one religion a privilege or advantage that is not accorded to citizens that belong to other religions. It goes also contrary to the fundamental objectives and directive principles of state policy set by the Constitution concerning religious equality and toleration. Christian marriage is just as religious as Islamic and customary marriages. The discrimination hatched by item 61 is unjustifiable. This is more discernible from the exposition of Islamic marriage, customary law marriage, and Christian marriage, all as religious marriage forms.

**4. Islamic Marriage as Religious Marriage**

A marriage is religious when the rules governing its formation, rights and obligations of parties, the position of children, and its dissolution are determined by religious rules. That Islamic marriage is a religious marriage can be established from the sources of Islamic law which regulates Islamic marriage. Islamic marriage is thus a marriage entered into, lived, and possible ended according to Islamic law. Islamic law is a law according to Islam, a religion 'believed by

[23]Cfr. s. 10.1999 Nigerian Constitution.

[24]Honourable Alhaji Abubakar Mahmud, Grand Khadi of the then Gongola State (now Adamawa State and Taraba states) Sharia Court of Appeal and an Islamic Scholar wrote: 'It should first of all be borne in mind that Islam is not only a religion but as a way of life, inherent therein is a legal system the compliance with which is an act of devotion to Allah.' Abubakar Mahmud, 'The fundamentals of Islamic Law: The Role and Essence of Islamic Law of Evidence and Procedure within the Nigerian Legal System' in *Fundamentals of Nigerian Law*, (ed. By M. Ayo Ajomo), N.I.A.L.S. Law Series No. 2, 1989, 173. In page 174 Abubakar Mahmud stated further that 'Islam, being a religion as well as a way of life, does not create a line of separation between legality and morality as found in many of the modern legal systems.'

[25]*See*Aylword Shorter, African Culture, An Overview: Socio-cultural Anthropology, Paulines Publications Africa, Kenya 1998.

[26]*Obiekwe v. Obiekwe*, (1963) 7 ENLR 196.

[27] The two substantive statutes regulating marriage in Nigeria are the Marriage Statute, Cap M6, Laws of the Federation (LFN) 2004 and the Matrimonial Causes Act, Cap M7, LFN 2004.

[28] S. 10 1999 Constitution.

Muslims to have been sent by God the Almighty Allah through his Messenger, the Holy Prophet Mohammed, [29] who by divine power disseminated the message of Islam from its immediate Arab home and world to African, Asia and Europe.'[30] The regulation of marriage in Islam comes directly under Islamic family law, which is a branch of the broad Islamic legal system, otherwise referred to as the Sharia.[31]According to A.R.I Doi, an Islamic scholar, Islamic law or Sharia is '…the path not only leading to Allah, the Most High, but the path believed by all Muslims to be the path shown by Allah, the creator Himself through His Messenger, Prophet Muhammad'.[32]Another renowned Islamic scholar, A. A. Fyzee, defined the Sharia in relation to Christianity as 'the Canon law of Islam'.[33] Canon law ordinarily refers to the body of laws in Christianity.[34] The first contact of Islam with the area consisting of Nigeria dates back to the 7th century through combined channels of raids and commerce when the raids into the central Sahara by 'Uqba ibn-Nafi' in 667 created the route to Kanem and Bornu.[35] But Islam did not grow into prominence until the 16th century after Hausa kings, (for instance Kano king) converted to Islam through military forces of the Mali and Songhay empires.[36]

The four principal sources of Islamic law are: the Holy Koran, the practice of the Prophet Mohammed (the Sunna), the consensus of scholars (Ijma), and the analogical deductions from the Holy Koran and the practice of the Prophet.[37] The Holy Koran is the Holy Scripture of Islam, which according to Muslims is the 'Book of Allah' sent through the last of the Prophets, Mohammed.[38] These sources are further classified into primary (the Holy Koran and Sunna) and secondary (consensus of scholars and analogical deductions from the Holy Koran and the practice of the Prophet).[39] The Holy Koran is taken by Muslims to be God's words[40] and for that, it is considered as the 'Book of Allah' sent through the last of the Prophets, Mohammed.[41] Its legal importance is hinged on the Muslim belief that Allah is the law-giver.[42] The Sunna, the second primary source of Islamic law, is the exemplification of the principles in the Koran, exhortations and laws in life-situation by the Prophet.[43] The Sunna therefore, refers to the traditions from and deeds of the Holy Prophet, which however, derived from the Holy Koran.[44] *Ijma* means the consensus or concurrence or opinion or agreement of all Muslim jurists of a particular age after the death of the Holy Prophet on a particular question of law.[45] The Ijma as a source of Islamic law has been viewed as representing the ability of Islam to adapt to changes in time. According to Niki Tobi:

> Islam is a dynamic religion. It is also a very practical religion in the sense that it reflects the dynamics, dogmas and tenets of the society. It is not a theoretical religion. In an effort to ensure that the principles in the Qur'an as expounded and expanded by the life style, general pronouncements and activities of the Holy Prophet, Muslim jurists put their pious heads together to conduct detailed studies of the two sources. After very comprehensive and critical studies, they come out with some fundamental agreements, some fundamental consensus of opinion and some fundamental concurrence on a particular point or question of law.[46]

That the *Ijma* represents the ability of Islam to adapt to changes in time does not mean that the consensus of the scholars could be a liberal one that is arrived at from thoughts and reasoning unconnected to the Koran and *Sunna*. The consensus of the scholars has to draw from these two primary sources. The fourth source of Islamic law is the analogical deductions from the Holy Koran and from the practice of the Prophet, otherwise known as *Qiyas*. Qiyas denotes the process of deduction by which the law of the text is applied to cases which may not be covered by the language of the text, or

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[29] P.B.U.H.
[30]Niki Tobi, *Sources of Nigerian Law*, MIJ Professional Publishers Limited, Lagos 1996,135.
[31]*See*Ruxton, F.H., *Maliki Law*, Luzac and Company, London (1916) in Niki Tobi, *Sources of Nigerian Law*, MIJ Professional Publishers Limited, Lagos 1996,136.
[32] A. R. I. Doi,*Shariah: The Islamic Law*, Ta Ha Publishers, London 1984, iii-iv..
[33] A. A. Fyzee, *Outlines of Muhammadan Law*, 2nd ed., repr., Oxford University Press, London 1960, p. 15.
[34] Canon Law is 'Any church's or religion's laws, rules, and regulations; more commonly, the written policies that guide the administration and religious ceremonies of the Roman Catholic Church. Since the fourth century, the Roman Catholic Church has been developing regulations that have had some influence on secular (non-church-related) legal procedures. These regulations are called canons and are codified in the Code of Canon Law (in Latin, *Codex juris canonici*).' http://legal-dictionary.thefreedictionary.com/Canon+Law, accessed November 19, 2014.
[35] Joseph Kenny, *The Spread of Islam in Nigeria: A Historical Survey*, (Paper given at Conference on Sharî`a in Nigeria) Spiritan Institute of Theology, Enugu, 22-24 March 2001. http://www.dhspriory.org/kenny/Sist.htm; accessed Nov. 24, 2014.
[36] Ibid.
[37]Niki Tobi, *Sources of Nigerian Law*., 140-149.
[38]Abubakar Mahmud, 'The fundamentals of Islamic Law', 174.
[39] Jude O. Ezeanokwasa, *Legal Inequality*, 262.
[40]Niki Tobi, *Sources of Nigerian Law*, 141; A.R.I. Doi, op. cit., 21.
[41]Abubakar Mahmud, 'The fundamentals of Islamic Law', 174.
[42] Jude O. Ezeanokwasa, *The Legal Inequality*, 262-3.
[43] I. Sulaiman, 'Islamic Law and Law Reform in Nigeria' in *The Nigerian Association of Law Teachers Proceedings for the 19th Annual conference*, 8th-11th April, 1981, 243.
[44]*See*Niki Tobi, *Sources of Nigerian Law*, 143.
[45] A. B. Mahmud, *A Brief History of Shariah in the Defunct Northern Niger*, Jos University Press Ltd, Jos-Nigeria 1988, 178.
[46]Niki Tobi, *Sources of Nigerian Law*, 147,

governed by reason of the text.[47] Again the analogical deductions must be based on the other three sources of Islamic law: Koran, *Sunna,* and *Ijma*. Besides the four principal sources, Islamic law has secondary source which supplement and amplify these four sources.[48] They include juristic preference (Istihsan)[49], public interest (*Istislah*),[50] and reasoning (*Istidlal*).[51] However, scholars like A. A. Fyzee regard these as modes of reasoning alternative to *Qiyas.*[52]Other subsidiary sources of Islamic law include pre-islamic customs (*urf*)[53] and English law embodied in the principle of justice, equity and good conscience.[54] Custom as a subsidiary source of law is recognised by all Islamic schools of jurisprudence[55] but the Maliki school, which most Nigerian Muslims adhere to,[56] attaches more importance to it than other schools.[57] Customary rules are valid as long as they do not contradict the Koran and the Sunna.[58] It can also be inferred that the principle of *justice, equity and good conscience* will be equally applied to the extent that it does not go against the Koran and *Sunna.* In the end the Holy Koran and the practice of the Prophet constitute the bedrock on which every other source of Islamic law is built. Islamic law, therefore, is religious regardless of the fact that it may provide rules, as a comprehensive way of life,[59] for ordering a civil society.[60]As the Holy Koran and the practice of the Prophet constitution the primary source of Islamic law as a system, it follows that all Islamic rules derive ultimately from them and not from any secular civil authority. Islamic marriage law comprises rules regulating the capacity[61] to marry, consent,[62] and form of the celebration of marriage.[63]

**5. Customary law marriage in Nigeria as Religious Marriage**

Custom is the accepted way of life of a community. Accordingly, customary marriage law refers to the body of rules accepted by a community for regulating marriage. In the context of Nigeria, customary marriage law refers generally to the body of rules accepted by the different ethnic communities of Nigeria for regulating their respective marriages. Due to the many ethnic groups that compose Nigeria and their respective customary marriage laws, customary law marriage is not homogenous. Thus, customary marriage law is an umbrella term for all the rules governing marriage in the different ethnic communities. It is these rules that governed marriage in the territories that compose Nigeria before the advent of the British-type rules of marriage as well as the Christian and Muslim religious marriage rules. It is this aboriginal marriage rules that the 1999 Constitution, like the preceding constitutions, recognize as customary marriage law in item 61 of the Exclusive Legislative List. The nature of customary law marriage in Nigeria as religious is not as clear-cut as the natures of Islamic and Christian marriage systems because of the overall nature of the Traditional religion, the religion ordinarily projected by customary law. Before the advent of the colonialists, Christianity and Islam, Traditional religion was the religion that reigned. Christianity and Islam are theistic religions which recognize the divine as living in a separate world (heaven) from the world or human beings (earth).[64] On the other hand, for African Traditional religion, which Nigerian Traditional religion is a part of, the divine is immanent in the world of human beings, the earth, and forms an integral part of it. As such through his activities, man is in communion with the divine. Man is one with the divine through his actions.

> Ethnic customary law, strictly speaking, is religious. It is bound up within the integrated traditional African worldview in which man and his world constitute one undivided sacred reality….African societies do not have a purely theistic view of life. There is some immanence of the divine in man's activities. The universe is one organic whole. The physical environment furnishes African ethnic religion not only with religious symbols, but also a 'sacramental' channel of communion with the spiritual

[47] A. B. Mahmud, *A Brief History of Shariah* , 180.
[48]Abubakar Mahmud, 'The fundamentals of Islamic Law….', 173.
[49] Ibid., 174
[50] Ibid.
[51] Ibid.
[52] A. A. Fyzee, *Outlines of Muhammadan*, 19.
[53]Abubakar Mahmud, 'The fundamentals of Islamic Law', 174.
[54] A. A. Fyzee, *Outlines of Muhammadan*, 19.
[55] A. R. I. Doi,*Shariah: The Islamic Law,* 84.
[56]SalauSuleOmotoso, 'Islam in Nigeria',
*http://www.nou.edu.ng/NOUN_OCL/pdf/pdf2/Isl%20056%20Islam%20in%20Nigeria.pdf*, accessed Nov.25, 2014.
[57] A. R. I. Doi,*Shariah: The Islamic Law*, 84.
[58] Ibid.
[59]Abubakar Mahmud, 'The fundamentals of Islamic Law', 173-174.
[60] Ibid.
[61] The rules regulating the capacity to marry cover consanguinity, affinity, fosterage, religious affiliation, and state of the woman. Jude O. Ezeanokwasa, *Legal Inequality*, 268-269.
[62] Under Maliki jurisprudence a father has the power to conclude marriage on behalf of his minor sons or his virgin daughters of any at his unilateral discretion. Ibid., 269.
[63] Although Islamic law marriage has a lot of religious connotations, no religious ceremony is deemed absolutely necessary for its solemnization. However, it is recommended that a sermon be given informing and advising the bride and bridegroom of their marriage responsibilities in Islam. There is the order of prayers to be said and they consist of blessings and recitations from the Koran. *See* ibid., 270.
[64]Ibid., 13-14.

> realities they symbolize or represent. In effect, the entire world is seen from an organic or biological viewpoint. Thus, it is not so much a cosmology as a 'cosmobiology.[65]

In other words, for a Traditional believer, even if he may not go to any shrine to perform a particular religious marriage ritual, his marriage conforms with Traditional religion if he complies with the general rules governing marriage. In effect, through his belief and practice of Traditional religion, his actions and activities become 'sacramental' channels of communion with the divine. It is in this way that the entire life of a Traditional believer becomes an organic communion with the divine, a cosmobiology. Consequently, Nigerian customary law marriage, which as an institution is embedded in the Nigerian Traditional religion, is religious. In spite of many Nigerians being Christians, Muslims, or of any other religious faith, there are still many who practice Traditional religion. A practice that calls for attention and distinction is that in which some Christians perform customary law marriage before going on to celebrate their wedding in a licensed place of worship as prescribed by the Marriage Act. Because Christian marriage is not constitutionally recognized in Nigeria and because of the preponderant rights men enjoy under customary law, a lot of inculturation has taken place in some areas with the effect that key customary law marriage rites that are not particularly against Christianity are performed by Christians. In this way Christians try to support their Christian marriage with constitutional validity tapped from customary law marriage without essentially being Traditional religion marriages like other customary law marriages. In the final analysis, the inherent nature of customary law marriage as a religious marriage of the family of Nigerian Traditional religion remains intact**.**

**6.** Ch**ristian Marriage as Religious**

Christian marriage is a marriage under Christianity, and Christianity is a religion established by Jesus Christ,[66] who though was born in time in this world by Virgin Mary,[67] was God before taking flesh in the womb of the Virgin Mary,[68] was God during his incarnation,[69] and remained so after resurrection.[70] As God, he is the Second person of the Holy Trinity: God the Father, God the Son, and God the Holy Spirit.[71] So Jesus was and is divine.[72] Christian marriage, therefore, is that marriage entered into, lived, and possibly annulled in accordance with Christian norms derived from the teaching of Christ and the testimonies of his apostles and disciples, which are principally contained in the Holy Bible. His teaching is the *fons, origoet culmen* (source, origin and culmination) of Christian marriage norms. They constitute the primary source of the Christian marriage laws. Christianity came into Nigeria first in 1487 in Warri and Benin areas through Portuguese missionaries.[73] By the 16th century, Warri had a flourishing Christina community at the Olu's palace. But this initial effort did not stick so deep and longer because it remained an elite religion of the royal courts without strong roots amongst the locals. Its impacts waned before the advent of the colonialist and with the disappearance of the Itsekiri kingdom.[74] A re-enkindlement of Christian missionary activities in Nigeria came between 1841 and 1891 with the missionary activities of the British Wesleyan Methodists in the West African Sub-region before the arrival of the British colonial lords.[75] This second period of missionary activities saw also the arrival of missionaries of other denomination apart from the British Wesleyan Methodists: Catholics, Anglicans, Baptists, and Presbyterians, Salvation Army, Seventh Day Adventist and others.[76] The result of this second missionary effort blossomed into the present dynamic presence of Christianity in Nigeria.[77]

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[65]Ibid., 234; *see also* Alward Shorter, African Culture, An Overview: Socio-cultural Anthropology, Paulines Publication Africa, Kenya 1998, 46-47.

[66] Call of the apostles: Mt.4:18; mission of the apostles to the whole world: Matthew 28:18-19

[67]Lk. 2: 1-20; Heb. 1:1-3 At many moments in the past and by many means, God spoke to our ancestors through the prophets; but n our time, the final days, he has spoken to us in the person of his Son, whom he appointed heir of all things and through whom he made the ages. He is the reflection of God's glory and bears the impress of God's own being, sustaining all things by his powerful command. *See* par. 65, Catechism of the Catholic Church.

[68] Jn. 1:1-3In the beginning was the Word, and the Word was with God, and the Word was God. He was with God in the beginning. Through him all things came into being, not one thing came into being except through him. Jn. 17:5 Now, Father, glorify me with that glory I had with you before ever the world existed.

[69]Jn 10:30 'I and the father are one'.

[70]Matthew 28:18-19: Jesus came up and spoke to them. He said, 'All authority in heaven and on earth has been given to me. Go, therefore, make disciples of all nations; baptize them in the name of the Father and of the Son and of the Holy Spirit.

[71] Jesus referred to himself as the Son of God. Jn. 1:51; 3:13-18. The followers of Jesus knew he was the Son of God. Jn. 1:49;

[72] In John 10:30 he declared: 'I and the father are one'.

[73]D. B. Barrett, G. T. Kurian and T. M. Johnson, eds., op. cit., 550. See also I. Gambari, 'The Role of Religion in National Life' in *Religion and National Integration: Islam, Christianity, and politics in the Sudan and Nigeria*, (ed. by J. O, Hunwick), Northwestern University Press, Evanston-Illinois U.S.A 1992, 86; and the Catholic Bishops' Conference of Nigeria website: http://www. cbcn.org/aspscripts/page1.ASP.

[74] Jude O. Ezeanokwasa, *Legal Inequality*, 285.

[75] E. Iwuji, *Marriage Forms in Nigeria*, Tipolitografia Bella, Rome 1983, 36.

[76] Ibid.

[77] Jude O. Ezeanokwasa, *Legal Inequality*, 285.

**Sacrament/Non-sacrament Theologies**

The religious nature of Christian marriage remains despite the differences witnessed in the marriage norms of the different Christian denominations. The differences in marriage rules derive from their different doctrines on marriage, which can be summed into two: marriage as a sacrament, and marriage, not a sacrament but a divine institution. The Catholic Church teaches that marriage is a sacrament.[78] On the other hand, the Church of Nigeria (Anglican Communion) [CNAC], following the European reformation Churches, does not take marriage as a sacrament even though it is a divine institution. Generally, the other Christian denominations such as the Pentecostals and Evangelicals are closer to the CNAC than to the Catholic Church on marriage theology.[79] The Catechism of the Catholic Church defines a sacrament as 'an efficacious sign of grace, instituted by Christ and entrusted to the Church, by which divine life is dispensed to us. The visible rites by which the sacraments are celebrated signify and make present the graces proper to each sacrament. They bear fruit in those who receive them with the required dispositions.'[80] In defining marriage juridically, the Code of Canon law states in canon 1055 §1 that 'the marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptised, been raised by Christ the Lord to the dignity of a sacrament'. The same canon goes on in paragraph 2 to state that a valid marriage contract cannot exist between baptised persons without its being by that very fact a sacrament. According to the Canons of the Church of Nigeria (Anglican Communion) [CCNAC], the regulatory code of the Church, Anglicans believe that '. . . Marriage, by Divine institution is a lifelong and exclusive union and partnership between one man and one woman. Its law and regulations are based upon this belief.'[81] From the above definition, certain features of marriage according to the CNAC emerge: (1) it is divine institution; (2) it is lifelong; (3) it is exclusive; (4) it is a partnership between one man and one woman; (5) its law and regulations are based on points (1) through (4). There is a juridical fallout from the sacrament/non-sacrament conception of marriage. Because marriage is a sacrament the Catholic Church claims for herself the jurisdiction over the marriage of her members and has developed a body of rules and institutions regulating marriage and handling matrimonial causes.[82] Canon 1671 states that 'Matrimonial cases of the baptized belong by their own right to the ecclesiastical judge'. By implication this authority covers the formation of the marriage of her members. Explaining further the above canon, canon 1672 enacts: 'Cases concerning the merely civil effects of marriage pertain to the civil courts, unless particular law lays down that, if such cases are raised as incidental and accessory matters, they may be heard and decided by an ecclesiastical judge'. Although the CNAC does not believe in marriage as a sacrament, it appears to believe in exercising jurisdiction over the marriage of its members. This is evident from the provision of Canon XVII(1), CCNAC, which states to the effect that the law and regulations governing marriage are to be based on the facts that marriage is a divine institution, life-long, exclusive and partnership between one man and one woman. This idea comes out in the canonical prerequisites for Anglican marriage which states that: 'Solemnization of Holy Matrimony by the Rites of the Church is reserved to those who are baptized unless in the case of a marriage proposed between a baptized person and an unbaptized person, a dispensation be granted by the Bishop'.[83] That a bishop has to grant a dispensation before a baptized person and an unbaptized person could solemnize Holy Matrimony according to the Rites of the Church indicates that the Church exercises some measure of jurisdiction over the marriage of its members. In the final analysis, whether Christian marriage is a sacrament –per Catholics- or a Divine institution –per CNAC-, it is a religious reality.

**Further Indications that Christian Marriage is Religious**

**Baptism**

In spite of Christians believing in the natural right of individuals to marry and form families, both Catholics[84] and Anglicans stipulate baptism as a precondition for marriage according to their rites. Jesus Christ instituted baptism for his believers and followers. He stated: 'Whoever believes and is baptised will be saved; whoever does not believe will be condemned.'[85]Baptism is 'the basis of the whole Christian life, the gateway to life in the Spirit (*vitae spiritualisianua*), and the door which give access to the other sacraments. Through Bapitsm we are freed from sin and reborn as sons of God; we become members of Christ, are incorporated into the Church and made sharers in her mission:

[78]*See* par. 48, 1*Gaudium et Spes, Vatican Council II;* No 1601 Catechism of the Catholic Church; Can. 1055 § 1, 1983 Code of Canon Law.

[79] E. Iwuji, *Marriage Forms in Nigeria*, 36.

[80] Par. 1131, Catechism of the Catholic Church.

[81]Can. XVII (1), CCNAC.

[82] The current 1983 Code of Canon Law dedicates specially Title VII of Book IV (dealing on Sacraments) to the regulation the formation of marriage. This title runs from can. 1055 through can1165, covering 110 canons. Also Book VII that deals with Processes devotes particularly the entire

Title I of Part III to matrimonial processes. This title runs from canon 1671 through 1707, containing 36 canons.

[83] Canon XVII (2)(1), CCNAC.

[84] Canon 842 §1, 1983 Code of Canon law states: 'A person who has not received baptism cannot validly be admitted to the other sacraments.' *See also*cann. 96, 849 CIC.

[85]Mark 16:16. *See also,* Luke 3:7, Luke 3:21, and John 3:22 where crowds came to be baptized by Jesus Christ. In Acts 2:38, and Corinthians 1:16, the apostles baptized people in the name of Jesus Christ.

'Baptism is the sacrament of regeneration through water in the word.'[86] In other words, before a person can go through marriage in the form prescribed by Catholics and Anglicans in Nigeria, the person must have been initiated into Christianity through baptism. In consequence, an unbaptized person, unless duly dispensed, cannot validly enter into marriage whether under Catholic Church or CNAC. As earlier indicated, no such precondition exists under Nigerian statutory marriage.

**Pastoral Preparations for the Married State**

Due to the fact that Christian marriage is rooted in the person of Christ and his teaching, pastors are enjoined to see that persons going into that state are well prepared for the holiness of the institution. The Canons of the Church of England, the Mother-Church of Anglicanism provide that: 'It shall be the duty of the minister, when application is made to him for matrimony to be solemnized in the church of which he is the minister, to explain to the two persons who desire to be married the Church's doctrine of marriage as herein set forth, and the need of God's grace in order that they may discharge aright their obligations as married persons'.[87] For Catholics, the Code of Canon law dedicated ten canons to the pastoral care and prerequisites for the celebration of marriage.[88] The opening canon, canon 1603, enacts that:

> Pastors of souls are obliged to ensure that their own church community provides for Christ's faithful the assistance by which the married state is preserved in its Christian character and develops in perfection. This assistance is to be given principally:
> 1 by preaching, by catechetical instruction adapted to children, young people and adults, indeed by the use of the means of social communication, so that Christ's faithful are instructed in the meaning of Christian marriage and in the role of Christian spouses and parents;
> 2 by personal preparation for entering marriage, so that the spouses are disposed to the holiness and the obligations of their new state;
> 3 by the fruitful celebration of the marriage liturgy, so that it clearly emerges that the spouses manifest, and participate in, the mystery of the unity and fruitful celebration of the marriage liturgy, so that it clearly emerges that the spouses manifest, and participate in, the mystery of the unity and fruitful love between Christ and the Church;
> 4 by the help given to those who have entered marriage, so that by faithfully observing and protecting their conjugal covenant, they may day by day achieve a holier and a fuller family life.

**Impediments to Christian Marriage**

There are some diriment impediments peculiar to Christian marriage as a religious institution. A diriment impediment makes a person incapable of contracting marriage as long as the impediment exists and is undispensed.[89] Diriment impediments prevent a person from entering into marriage because of the particular Christian values they protect. They are Disparity of cult, Sacred Orders, and vow of chastity. Canon 1086 §1 prohibits a marriage, unless duly dispensed by the competent ecclesiastical authority, when one of the two persons was baptized in the Catholic Church or received into it and has not by a formal act defected from it, and the other was not baptized. This is referred to as the impediment of disparity of cult. The CNAC also has this impediment. It is contained in canon XVII (2)(1) which provides that a marriage between a baptized person and an unbaptized is possible only with a dispensation granted by the Bishop. Sacred Orders is another impediment. Those who are in sacred orders cannot validly enter into marriage.[90] This obtains in the Catholic Church. It refers to the law of celibacy by which bishops, priests and permanent deacons voluntarily accept this obligation for the love of God and service to the Church.[91] There is also in the Catholic Church the impediment of vow of chastity. By this, those who are bound by a public perpetual vow of chastity in a religious institute, such as nuns, invalidly attempt marriage. Like the Sacred Orders, this is an obligation freely accepted and, this time for the total self-gift and consecration to God in Jesus Christ through the vow of chastity.[92]

**Quality of Consent for Christian Marriage**

For the Catholics, on account of the fact that marriage is a covenant by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children,[93] any person intending to enter marriage must both internally and expressly intend the marriage to be open for procreation, for the well-being of the other spouse, and for the indissolubility of the union. Consent given is vitiated and the resultant marriage is invalid if these elements are excluded. Equally due to the fact that marriage is a sacrament,[94] a person who while entering into it does not accept marriage as a sacrament gives a vitiated consent which cannot bring about a valid marriage. The exclusion of these properties and essential elements of marriage is technically referred to as simulation.

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[86] Art. 1213, Catechism of the Catholic Church.
[87] Can. B. 30(3), Canons of the Church of England (CCE).
[88]Cann. 1063- 1072, 1983 Code of Canon Law.
[89]Can. 1073, 1983 Code of Canon Law.
[90]Can. 1087, Ibid.
[91]*Presbyterorum Ordinis* (PO) No. 16, Vatican Council II.
[92]*Perfectae Caritatis* (PC) No. 1, ibid.
[93]Can. 1055 §1, 1983 Code of Canon law.
[94]Ibid., Can. 1055 §2, 1983 Code of Canon law.

**Canonical Form for Christian Marriage**

As a religious marriage Christian marriage requires that it be celebrated according to prescribed forms for validity. However, like in many areas, a fundamental difference exists between the position of the Catholic Church here and that of the CNAC. The canonical form in the Catholic Church is exclusively under ecclesiastical jurisdiction whereas the Anglican Church recognizes the jurisdiction of the civil government over the form for celebrating marriage. In effect the Anglican Church, besides marriages celebrated in accordance with her own form, recognizes, equally as valid, marriages celebrated solely according to the form prescribed by the civil law of the land.[95] Though the CCNAC is silent on this, the Church of England, the mother Church of Anglicanism, is explicit on this as it presents civil registry marriage as a valid form of marriage.[96] Once a marriage has been celebrated at the civil registry, what obtains later in a church is usually referred to in England as 'service of solemnization of matrimony'. Its equivalent in Nigeria, 'church blessing' has been held to constitute no marriage and adds nothing to an existing civil marriage.[97] The Catholic canon law sets out religious personalities ordinarily empowered to assist at marriages. They are the local Ordinary (which includes the diocesan bishop) or parish priest or the priest or deacon delegated by either the local Ordinary or the parish priest.[98] The marriage has to be celebrated in the presence of two witnesses.[99] The law on the form of the celebration of marriage prescribes the place for the celebration of marriage[100]and records to be kept after marriage is celebrated.[101] The CCNAC is not very elaborate on the form of celebrating marriage. Canon XVII in section 2 talks of marriage according to the rite of the Church and it deals also with people qualified for solemnizing Holy Matrimony according the rite of the Church, but does not specify the protocols to be followed in the rites of the church.

**Christian Matrimonial Causes**

Christians have matrimonial causes and relief rooted in their Christian religion. Catholic Church has a well-established judicial system with both substantive and procedural rules for determining matrimonial cases pursuant to the right over matrimonial causes concerning her faithful that are reserved to the ecclesiastical judge.[102] There are the tribunals of the Roman Pontiff,[103] diocesan tribunals,[104] inter-diocesan tribunals of First Instance,[105] Metropolitan tribunals,[106] Inter-diocesan tribunals of Second Instance,[107] and tribunal of the episcopal Conference.[108] This means that the Church does not recognize the competence of the state over the validity of a Catholic marriage except in matters relating to the merely civil effects of the marriage.[109] An instance of a civil effect of marriage would be succession.

The CCNAC recognizes the possibility of divorce and annulment,[110]but does not talk of the jurisdiction of the Church of Nigeria to annul or dissolve the marriage of her faithful. Can. XVII (2) (4) (f) (IV), CCNAC suggests that the Church vets the annulment or dissolution decreed by the civil court before a party to the annulment or dissolution could remarry in the Church. This section of the canon deals with the solemnization according to the rites of the Church of another marriage of a person whose earlier marriage was annulled or dissolved and the ex-spouse remains alive. The law demands that such a person should apply to the Bishop for judgment.[111] Before a favourable judgment is rendered, the Bishop, and a majority of the assessors shall be satisfied that either one or more of the impediments listed in section 6 of can. XVII, CCNAC are shown to have existed in the previous relationship of him or her whose marriage has been

[95]*See* E. Iwuji, *Marriage Forms in Nigeria*, 36; can. XVII (2)(3) & XVII (3)(6), CCNAC.

[96] Can. B. 36 of the Canons of the Church of England, which provides: '1. If any persons have contracted marriage before the civil registrar under the provisions of the statute law, and shall afterwards desire to add thereto a service of Solemnization of Matrimony, a minister may, if he see fit, use such form of service, as may be approved by the General Synod under Canon B 2, in the church or chapel in which he is authorized to exercise his ministry: Provided first, that the minister be duly satisfied that the civil marriage has been contracted, and secondly that in regard to this use of the said service the minister do observe the Canons and regulations of the General Synod for the time being in force. 2. In connection with such a service there shall be no publication of banns nor any licence or certificate authorizing a marriage: and no record of any such service shall be entered by the minister in the register books of marriages provided by the Registrar General.'

[97]*Akparanta v. Akparanta* (1972) 2 ECSLR 779, 783; *see* E. I. Nwogugu, *Family Law in Nigeria*, rev.ed. 1990 (repr, with minor corrections) HEBN Publishers Plc, Ibadan 2011, 36.

[98]Can. 1108 §1, 1983 Code of Canon Law.

[99] Ibid.

[100] 'Marriages are to be celebrated in the parish in which either of the contracting parties has a domicile or a quasi-domicile or aa month's residence or, if there is question of *vagi*, in the parish in which they are actually residing.' Cann.1115, 1983 Code of Canon Law.

[101]Cann. 1121 – 1122, ibid.

[102]Jude O. Ezeanokwasa, op. cit., 338-345.

[103] The ordinary tribunals of the Apostolic See are the Roman Rota (can. 1444, 1983 Code) and the Apostolic Signatura (can. 1445, 1983 Code).

[104]Can. 1419, 1983 Code.

[105]Can. 1423 §1, 1983 Code.

[106]*See* can. 1438,2, 1983 Code.

[107]Can. 1439 §1, 1983 Code.

[108]Can. 1439 §2, 1983 Code.

[109]Can. 1672, 1983 Code.

[110] Can. XVII(2)(4)(a), CCNAC

[111] Ibid.

annulled or dissolved by the civil court which manifestly establish that no marriage bond as is recognised by the Church exists; or that such defects of personality shall have been shown to exist, which made the continuance of the marriage impossible. What is not clear is whether after the vetting, and the Bishop and the assessors are satisfied, they adopt the annulment or dissolution decreed by the civil court, or they *de novo* annul or dissolve the marriage on their own authority. The alignment of the matrimonial processes of the Church of Nigeria (Anglican Communion) to the civil law process of the state appears to be a carry-over from England where the Church is the established church of the kingdom with the requirements for statutory marriage being those of the church and the operators of the civil machinery being, in the main, members of the church as the British monarchy is both the head of the civil government and the Church. In consequence, hardly can anything be done in the church to undermine the civil sphere and *vice versa*. Unfortunately, this integrated marriage does not exist in Nigeria. The danger in the present framework in Nigeria is that whatever the National Assembly, which makes laws on statutory marriage, enacts binds the Church of Nigeria. Separation of religion from state, which is one basis for the Nigerian constitutional democracy, suggests that religious doctrines and practices should be independent from the legislative dictates of the National Assembly. Consequently, it may pay the Church of Nigeria better to not submit its marriage doctrine and administration to the National Assembly, but rather exercise the jurisdiction of its marriage institution as a way of exercising its right to freedom of religion.

**7. Conclusion**

The foregoing facts show that the Christian marriage is just as religious as Islamic and customary law marriages. One major distinction between them is that while customary marriage law, as an institution, is aboriginal, the Christian and Islamic marriage systems came in time to Nigeria. But this does not justify the discrimination in the mandate of item 61 since Islamic law marriage, which is not native, is recognized while Christian marriage is not. The discrimination is more telling since before the introduction of statutory marriage, Christian marriage enjoyed civil recognition.[112] Christian marriage shares monogamy with statutory marriage. This nonetheless should not suggest that both Christian marriage and statutory marriage are therefore the same because monogamy is not a preserve of Christianity. Other religions, such as Sikhism,[113] practice monogamy. As already noted, statutory marriage is secular while Christian marriage is religious. Marriage statutes are enacted by Nigerians of all shades of faith whereas the formulation of Christian marriage norms is the preserve of Christians pursuant to the right to freedom of religion. Consequently, the discrimination against Christian marriage is a discrimination against Christians and it has no justification. It makes Christians second-class citizens and constitutes a big minus to the integrity of the 1999 Constitution as a beacon of religious equality in Nigeria. Given the position of the constitution as the primary and highest law of the land, this discrimination calls for urgent redress.

[112]E. I. Nwogugu, *Family Law in Nigeria*, 22.

[113]*See* W. O. Cole and P. S. Sambhi, *The Sikhs: Their Religious Beliefs and Practices*, Vikas Publishing House PVT Ltd, New Delhi 1978, 142