

LAW AND RELIGION: THE CHALLENGES OF CITIZENS AS A RESULT OF COVID-19 PANDEMIC IN NIGERIA*

Abstract

Religion and law play a vital role in maintenance of peace and order in our society. Law is intrinsically related to the society likewise religion. Religion is connected with belief and we have people who are ready to die for what they believe in. Many scholars had written and philosophised on the relationship between law and religion jurisprudentially. The need to pragmatically relate these two concepts to the current greatest challenge of the world, Covid -19 pandemic necessitated this work. This paper therefore, will be a reflection on the relationship between law and religion, the impact of law if any, on the exercise of right of freedom of religion particularly during this era of Covid-19 Pandemic as a result of restriction laws on religion. It finally concludes that law as a concept in a society is much stronger than religion irrespective of their semblance and nexus; that the two are separate; although, the working together of the two will make and build a better society.

Keywords: Covid-19, Religion, Law, Society

1. Introduction

Our knowledge or understanding of relevance of law in every society is as important as that of religion. In all society at all time, law and religion are two great interlocking systems of values and belief. It has become increasingly clear as it was in prior centuries that religion and law are two universal solvents of human living, two interlocking sources and systems of values and beliefs that have existed in every society¹. They both complement and contradict each other. Law intersects with religion in many areas of life like in the case of statutory marriage involving church and registry, oath taking and evidence adduction before the court, registration of religious bodies and under national laws; oath of allegiance and office by public office holders, judicial oaths by judges among others². In fact, it has been contested that laws are not being obeyed because of the sanctions attached to it or being a command but as a result of religion which is founded on morality. Also, religion without law cannot have its seat in society except the existing law favours it. However, where certain doctrines or aspect of religion are in conflict with what the society believe and accept as appropriate and guiding principles, law will not hesitate to foreclose such doctrines and practices. Again, some acts that are prejudicial to person's exercise of his religious right have been prohibited by the law³. Law has been a viable instrument for maintaining a peaceful exercise of one's religious rights⁴. In Nigeria recently, for the sake of public safety as a result of the pandemic Covid-19, the Federal Government of Nigeria forbade all social gatherings including gathering in places of worship. The Christians could not celebrate the Easter associated with the death and resurrection of Jesus Christ. The Muslims too could not go for pilgrimage in Mecca. In view of the foregoing, it is apparently clear that law and religion are conceptually and methodologically related. Both disciplines draw upon the same underlying concepts about the nature of being and order, of the person and community, of knowledge and truth. Both law and religion embrace closely analogous concepts of sin and crime, covenant and contract, redemption and rehabilitation, righteousness and justice that invariably combine in the mind of the legislator, judge, or juror or any right-thinking person⁵. This paper is therefore a reflection on the relation between law and religion. It further reflects the two sides of law on religion, pros and cons particularly in this era of Covid -19 pandemic.

*By **Olubusola Tunde SHEMUDARA, PhD**, Lecturer, Adekunle Ajasin University, Akungba Akoko, Ondo State. Email: shemudara@gmail.com, Phone No: 07039458128; and

***Victor O. AYENI, PhD**

¹ J. Witte, 'Law and Religion: The Challenges of Christian Jurisprudence' (Spring 2005) vol.2 *University of St. Thomas Journal* pp 445-446.

² A. Taiwo & I. J. Koni, *Jurisprudence and Legal Theory in Nigeria*, 1st ed., (Princeton & Associate Publishing Co.Ltd. 2019) pp 41-42

³ *Ibid*

⁴ Section 10 of the CFRN 1999 AS Amended

⁵ J. Witte, *op cit.*, p 447

2. A Thought on Meaning and Functions of Law

To quote Arnold, law is the ‘Armageddon of jurisprudential controversy’ which was why Lovelanus concluded rather despondently, ‘omnis definitio injure *civillii periculosa est*’⁶. It is very difficult to define the term law. Many Jurists attempted to define the term law. Obviously ‘law’ can never be defined, with equal obviousness, however, it should be said that adherents of legal profession must never give up the effort to define law, because it is an essential part of the idea that it is rational and capable of definition⁷. Adaramola posited further to state that the central issue is whether the phenomenon called law is properly and rightly conceived and perceived as a social element or merely as a form of metaphysical reality.⁸ It has also been observed that an important reason for differences which can be found among the definitions of various writers is the fact that these writers often have diverse conceptions of what constitutes a good definition. Many writers think that a good definition has to identify those characteristics to be defined which are shared by all the members of that class and only by them⁹. This reflects the fact that law is a very complex phenomenon which can be studied from many different standpoints. This explains the various schools of thought we have in, and for the purpose of clarity, some of the definitions given by Jurists in different Periods are categorized as follows: Positivist school, Economic school, Historical school, Realist school, Natural theory with all their proponents or exponents.

Ever since the dawn of Human civilization, mankind has had some sort of rule or that they used to govern itself in society. Law sets the standard in which we should live in if we want to be part of society. Law sets up rules and regulations for society so that we can live in freedom. It gives justice to those who were wronged; it sets up and protects us from our own government. Most importantly, the law also provides a mechanism to resolve disputes arising from those duties and rights and allows parties to enforce promises in a court of law¹⁰ According to Corley and Reed, law is a body of rules of action or conduct Prescribed by controlling authority, and having legal binding forces. Laws are created because it helps prevent chaos from happening within the business environment and as well as society. In business law sets guide lines regarding employment regulatory, compliance, even inter office regulations. Law regulates conduct acts as deterrent, that is, sanctions. Through law, disputes are settled among disputants and avoided or prevented. For instance; law of contracts sets out the rules governing execution of contracts, and enforcement of terms of contracts. It sets out rights and obligations of citizens. For instance, Charter of Rights, the CFRN spells out the rights of citizens and obligations of the government. It spells out the limit of exercise of rights creating a duty to enable enjoyment of those rights by citizens. Law provides remedies for breach of rights i.e. *ibi jus ibi remedium* for every right there is a remedy. It spells out the extent or limit of exercise of power of the organs of government in the State which includes how the parliament will make laws, how the executive is to execute and judiciary on how to adjudicate among others.

Summarily, through the use of normative, directive and prescriptive rules, supported by varying degrees of sanctions, law has been used to create a climate of social order, the usual justification of which has been that it benefits member of the society. Therefore, without law our society would be chaotic, uncivilized mess and anarchy would reign supreme. It creates a norm of conducts in the society we live in laws are made to protect its citizen from harm. It set in way that all citizens are given equal opportunity, protection from harm no matter your race, gender, religion and social standing. Under the law, all citizens are guaranteed equal protections. In society, laws are made to promote the common good for everyone. Law sets up guideline for everyone in society to act in ways that bring the greater good. If everyone acts without thinking about the greater good, society would revert to the state of nature according to Thomas Hobbes. We live in world where we have finite amount of resources should be shared or used. Laws are made on how to manage these and how we resolve if issues arise over these resources. If no laws were in place, these sources would be controlled by the string and the wealthy.

⁶ T. Arnold, *The symbols of Government* (New Heaven: Yale University Press.1935), pp36-37

⁷ Adaramola, *Op. cit.*, p7

⁸ Ibid

⁹ J.M. Elegido, *op cit.*, p331

¹⁰ R. N. Corley and O. L. Reed., *Fundamental of the Legal Environment of Business* (Mac GrawHil, New York, 1986) pg 6

3. A Reflection on the Relationship Between Law, Religion and Society

The coming together and formation of civil state in the Western world has been attributed to willing and planned agreement of men while formation of state in African societies is said to be natural¹¹. To put it in the language of Max Weber cited by Otubajo¹² (1980), the African conception of society was always at the level of a *Gemeinschaft*, an association which evolves naturally as distinct from a *Gesellschaft*, one which emerges from rational calculation or deliberate planning. African settings were created naturally and the reason for this has been attributed to several beliefs of people, various groups, each living in a world of its own which mesh together to form their coherent thought system. There are beliefs about the origins and nature of state, the authority of the matter, the right of citizen, to mention few. The antecedent of African settings is located in a traumatic supernatural phenomenon. Origin of tribal groups and African societies are traced to either benevolence of an all-powerful god or super-human ancestor which are always shrouded in myths and mystery. For instance, the Yorùbá believe in *Òrìṣàńlá* archangel, sent by God to create the earth and that *Odùduwà* became the first king of Ile - Ife and so on.

Owing to the nexus between the African settings and circumstances surrounding their existence tied to metaphysics and religion, myths indicate quite early that society or state in Africa is a natural outgrowth of a supernatural or super-ordinary juxtaposition of events. It was from this belief that the political structures and organisations developed. Thus, Yorùbá will address their king as *Kábi ó òsí* i.e *kábièsí*, *Igbákejì Òrìṣà* meaning Question him not, second in command to god. It was from these beliefs that the judicial frame work also developed. In the African settings, religion plays a vital role in the political and social set up of society. The gods are feared, custom, tradition and norms, are obeyed and complied with.

At the same time, in the western world, the role of religion has no measure. For instance, Adaramola while discussing Law, Religion and Morality quoted Sir Henry Maine:

At the beginning of the society, the law was entangled with religion and morality but became separated as society developed. For instance, the early man believed that the King's judgment was inspired by the gods, kings were usually simultaneously priest and kings or were closely involved with the shrines, temples or because a sort of myth was woven around them in this regard¹³.

The learned author went further to quote Diamond who disagreed with the conviction of Sir Henry Maine and contended that law and religion were always separate in early societies. He studied ancient Codes including the Babylonian, Hebrew, Roman and Anglo-Saxon Codes, and it is on these he based his views. According to him, these codes were originally concerned with law only, but were later interpolated by the priests in whose custody they were deposited¹⁴. From the argument canvassed by Diamond, it is safe to conclude that he goofed. Adaramola rightly criticized him by pointing out that if there is no relationship between law and religion, why were the codes entrusted with the priest and not any other person else.

To buttress further the role of religion in the western world, also the relationship between law and religion, enforcement and execution of law in early societies were works of ecclesiastics. Even in African societies, customs, norms and traditions guiding human conduct in the society and administration of justice were carried out as part of the duties of the priest. In more recent history, much of the codification of Jewish law was undertaken by Moses Maimonides (1135-1204). His Book of the Commandments catalogued the 613 biblical laws, his commentary on the *Mishnah* explained the rational purpose of the rabbinic code and the 14 volume *Mishnah* is divided into various sections dealing

¹¹ O. T. Shemudara, *Ayelala Traditional Criminal Trial and the English Criminal Justice System Among the Ilaje and Apoi of Ondo State, Nigeria* (Unpublished Ph. D Thesis submitted to the Post Graduate School, University of Ibadan, Ibadan 2018). pp 1-2

¹² F. Otubanjo, 'Themes in African Traditional Political Thoughts' (1989) in J.A.A. Ayoade and A.A.B. Agbaje (ed) *African Traditional Police Thought and Institutions* Lagos: Center for Black and African Arts and Civilizations.

¹³ Adaramola, *op. cit.*, p86

¹⁴ *Ibid*

with, for example, agricultural laws, the conduct of women, civil laws and festivals. Islam shares with Judaism this centrality of law.¹⁵ Now in the modern time that religion is separate and law separate, law aids religion and makes to come into reality as religion too helps in achieving the efficacy of laws in our society. Law aids religion by granting freedom of religion. Law ensures that no religion is super imposed on any society in other words, freedom of religion. Laws of every state now incorporate and accommodate various religious beliefs and even sometimes actively promote some religious values and do not favour any specific religion. For instance, the United States constitution was one of the first legal documents to codify into fundamental law, this basic conception¹⁶. The First Amendment provides that: ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...’ This provision was initially misconstrued to prohibit freedom of religion until the recent case of *School District of Abington Township .v. Schemp* in 1963; the American Supreme Court held that it is unconstitutional for public schools to have a moment of prayer and meditation, a moment of silence for prayer and meditation¹⁷. However, a more careful and clearer provision is the provision of Article 18 (1) of the International Covenant on Civil and Political Rights and it provides that:

Everyone shall have the right to freedom of thought, conscience and religion.
The right shall include freedom to have or adopt a religion or belief of his choice and freedom either individually or in the community with others and in public or private, to manifest his religion, or belief in worship, observance, practice and teaching.

This provision has found its way into the Constitution of Federal Republic of Nigeria of course, not in the same letters but of the same effect and content. Like Section 10 of the 1999 CFRN as amended provides that the Government of the Federation or of a State shall not adopt any religion as a State Religion. Section 38 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) also guarantee freedom of religion.

From all these provisions of law above stated, one will see that law exists to foster human good religion and to avoid religious domination and imposition. Secondly, law has its share in both moral norms and religious precepts. As Eligido observed that in principle it is not difficult to draw a conceptual distinction between religious precepts and moral norms and cited examples of the religious precepts like the Roman catholic members duty to attend morning mass on Sundays or Deeper Life Bible Church members not to put on ear rings or golden apparels and Muslims not to drink alcohol so also moral norms such as Christians, Muslims, irrespective of the religion should not steal nor kill the innocent¹⁸. Observance of the precepts may still be flouted or breached while the moral norms is constant and certain to be respected irrespective of the religion which also reflects an attempt of reflection of moral norms and values in law.

Thirdly, in spite of the relationship between law and religion, can law accommodate special religious beliefs which clash with legal provisions? There are of course two perspectives to this. Some hold the view that such should be allowed while some are of the opinion that legislators should not consider religion while enacting laws. However, we are of the opinion that some laws take into consideration the religious background of a geographical entity before making laws. For instance, Sharia law criminalises alcohol consumption and adultery under the Penal Code as an offence. However, whatever the position or view one holds, it is not every religious precept the law will consider and incorporate; outrageous ones may not be accommodated. For instance, a religion that says a candidate sitting for a Bar Final Exams or even the lectures should not unveil is outrageous when the identity of the candidate sitting for the examination is germane. Also, a religion that says a lady should not sit beside a male candidate to avoid body contact will definitely create a separate school for its members.

¹⁵ G.A. Anderson, ‘Law, Religion and Theology’ (2018) *Journal for the Study of the Old Testament Sage Journals* .

¹⁶ J.M. Eligido, *Jurisprudence* (Spectrum Books Limited, Ibadan, 2007) 349.

¹⁷ See also the case of *Wallace .v. Jaffree*, 472 U.S. 38 (1985)

¹⁸ J.M. Eligido, op cit., pp 369-370

As a result of the outbreak of the pandemic Covid -19, both the federal and State Government of Nigeria made instant law in bid to curtail the spread of the deadly disease. For instance, the Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020 which came into force on 27th of March 2020. Section 3 of the Regulation forbids gathering of persons including conferences, meetings, festivals, private events, *Religious Services* (Emphasis mine), public visits, and educational institutions. These laws and regulations of kind are also available virtually in all the States of the Federation. With the coming in of these Laws and Regulations, so many persons had faced criminal charges¹⁹, churches²⁰ and mosques had been sealed up when members and religious leaders acted in defiance to the provisions of the existing law. This is the coercive power of law on religion. All over the world today until recently, no religious gathering was allowed anywhere because of anti-social gathering laws as a result of this pandemic. This appears to be a deprivation of one's human right of freedom of association and religion. However, for the sake of public policy and safety, the actions of government are justified. Again, international human rights law guarantees everyone the right to the highest attainable standard of health and obliges governments to take steps to prevent threats to public health and to provide medical care to those who need. Human rights law also recognizes that in the context of serious public health threats and public emergencies threatening the life of the nation, restrictions on some rights can be justified when they have legal basis, are strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the objective²¹.

4. Conclusion

From the analysis so far, it is safe to conclude that Law and Religion can be related to the joint duty of two hands in washing each other to wash perfectly without any dirt. Of course, they may be independent of each other but, the combined effort of the two works better; so also these two concepts in every society. Law as a concept in a society is much stronger than religion irrespective of their semblance and nexus. The two are separate and distinct playing similar role but in different form. For instance, law punishes and sanctions, religion does not. Law is coercive and compulsory where religion is optional and voluntary. Bees sting and snakes do but, one cannot compare the venom of a snake with that of a bee. The two are separate and distinct entity; although, the working together of the two will make and build a better society.

¹⁹ See the case of *Attorney – General of Lagos State.v. Funke Akindele & Anor*, Charge No: MIK/A/43/2020

²⁰ See Vanguard News: [//www. Vanguardngr.com](http://www.Vanguardngr.com) (13 worship centers were locked up and several other centers in Lagos State. Retrieved on 5th of May 2020.

²¹ <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>. Retrieved from the internet on 24th of March 2020