

Discussion continues

Muslims Interest and the Existing Constitution

Legal Authority

The Preamble to the 1999 Constitution as amended in 2011 is categorical in its assumption that Nigeria is an indivisible and indissoluble sovereign state and further asserts to promote welfare of all persons and good government on the principle of freedom, equality and justice for the purpose of consolidating the unity of the Nigerian people

The Nigerian 1999 Constitution is not autochthonous

Perhaps if it is actually autochthonous, it would have taken care of the peculiar interest of every segment of the society against the background that Nigeria being a multi-cultural, multi-religious and multi-ethnic society would automatically deserve a constitution that is not only people's driven but home grown reflexive.

What do Muslims Want in the New Constitution?

Ask any average Nigerian conscious Muslim the above question, his answer without hesitation is one word '**Sharia**'.

Should Shariah be allowed in Nigeria as a complementary or a parallel legal system to the existing legal system.?

Is it justified at all to ask for Sharia.

Justification for demanding for Sharia

- ▶ The current dominant English system we operate originated from the United Kingdom whose official religion is Christianity
- ▶ Lord Sumner aptly described the English law in the case of *Bowman vs Secular Society* thus:
- ▶ Ours is and always has been a Christian state. The English family is built on Christian ideas, and if the national religion is not Christian there is none. English law may well be called a Christian law, but we apply many of its rules and most of its principles, with equal justice and equally good government, in heathen communities and its sections even in courts of conscience...

Another justification

- ▶ Secondly, it is arguable that if the constitution according to its preamble is actually sincere (and not merely pretends) to ensure justice and equality among all Nigerians, a demand for institution of Shariah legal system by the Nigerian Muslims who are in the majority must not be taken with levity.

Section 38 of the Constn

- ▶ Every person shall be entitled to freedom of thought conscience and religion, including freedom to change his religion in belief and freedom (either alone or in common with others and in public or private) to manifest and propagate his religion or belief or worship or teaching and observation.
- ▶ Unfortunately, how freely Muslims can manifest and propagate their religion in accordance with the dictate of Shariah either in public, private, alone or in community with others is a question which in my mind may not be answered in the affirmative.

Lord Finlay Confession

- ▶ There is an abundant authority for saying that Christianity is part and parcel of the laws of the land but the fact that Christianity is recognized by the law is the basis to a great extent for holding that the law will not help endeavors to undermine it.

Other Indicators

- ▶ The Nigeria society is conceived as a Christian state where Muslims are just tolerated or accommodated.
- ▶ Be that as it may, I do not see the status quo as a contention between Islam and Christianity but rather as consequences of colonial imposition of specific ideology and system of governance which ultimately serves to the advantage of the present Nigerian Christians but to the detriment of the Muslims.

NEED FOR ACTION ON THE PART OF MULAN

- ▶ Programmes of Actions arising from the status quo include but not limited to the following:

1. Analysis of the s275 and s277 of the Constitution on Sharia

The provision of section 275 is to the effect that Shariah peal can only be established based on discretion of the state that desires it.

- ▶ *“There shall be for any State that requires it a Shariah Court of Appeal for that State...”*
- ▶ Section 276 is devoted to the appointment of the Grandi Kadi of the Sharia C.O. A and Kadis
- ▶ While section 277 of the Constitution is on the jurisdictions on the Sharia Court of Appeal.

What have we done about this?

- ▶ The section confers the discretionary power on the state to establish Sharia court, *i.e.* even if it is desired by the people, it is not automatic.
- ▶ The second anomaly concerns the obvious lacunae in the judicial system with respect to Shariah court of first instance from which an appeal could arise. Therefore there is no basis to clamour for Shariah court of appeal. Where there is no shariah court of first instance.

Jurisdictions of the Existing Shariah Courts – section 277

Section 277. (1) confers on the Shariah Court of Appeal of a State to exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law.

Personal laws which are expressly restricted to marriage, custody of infants, wills, gifts and allied matters

2. In appointing the justices of COA and Supreme Court ---

- ▶ *“President shall have regard to the need to ensure that there are persons learned in Islamic Personal Law.”*
- ▶ This confirms the fact that only Muslims personal laws can be brought before the two most superior courts of record in Nigeria. It does not include all matters of dispute in Islamic law.

- ▶ The Nigerian Constitution does not confer jurisdiction on any Shariah courts or any conventional court to exercise criminal matters.
- ▶ This is a position which stemmed from 1960 Constitution which made provision that ousted the application of Shariah Legal System on criminal matters, it provides that;
- ▶ *“No person shall be convicted of criminal offence unless that offence is defined and the penalty therein is prescribed in a written law”*

Is Sharia Law a Written law?

- ▶ Justice Muhammed Bello (Rtd) said:
- ▶ It should be stated here for the avoidance of doubt that the Shariah law as stated in the Quran, Hadith and other sources is not a “written law” within the meaning of section 36 (12) of the 1999 Constitution.

How far have Nigerian Muslims gone to correct all these?

- ▶ **The Time Is NOW. Better late than never.**
- ▶ **Make A Formal Demand**

3. Beyond Constitution Amendment – the Fate of Muslims

- ▶ Muslims marriage certificates are not recognised in many foreign embassies including NYSC for the purpose of proving that a woman is in wedlock whereas Church certificates/Registry are automatically given priority.
- ▶ This has made many Muslims to go for registry marriage even at the risk of compromising their Islamic tenet or faith.
- ▶ This is sarcastically called **Double Decker Marriage**.

Consequence of Double Decker Marriage

- ▶ The true position is that the customary/Islamic marriage is converted by the Act marriage which in effect, supersedes it. Therefore, if the Act marriage is subsequently dissolved, the Islamic marriage cannot revive.

Theorists on this type of Marriage

- ▶ **“Conversion theorists”** is that, once couples after their customary or Islamic marriage undergo a statutory marriage, the former Customary/Islamic marriage automatically converts its legality to the latter statutory marriage, thus: the two marriages do not co-exist; the initial marriage merges into the ordinance marriage and loses all its distinction and characteristics, its legal incidents and consequences

Coexistence” theorists

- ▶ “– Both the first customary marriage and the latter statutory marriage co-exist; both marriages incidents are legal and valid. And to terminate such marriage, it has to be dissolved differently in different courts.
- ▶ *Afonne v. Afonne* where it was held that:
- ▶ Where two legally recognized Marriages are involved, the party seeking dissolution and a decree of divorce should clearly specify which marriage or marriages he or she wants dissolved....

Item 61 of Exclusive Legislative List in 1999 Constitution

- ▶ The provision above mentioned grants the exclusive power to the National Assembly to enact Laws on the formation, annulment and dissolution of marriages other than marriages under the Islamic law and Customary law including matrimonial causes relating thereto.

- ▶ **What has MULAN/NAMLAS done about all these? In view of the fact that correcting these noticeable anomalies falls squarely within our competence.**

5. Muslim Marriage Certificate

It must be pointed out that most foreign embassies do not recognise Islamic marriage certificates for the purpose of proving that couple are legally married especially now that most Asalatu groups also solemnise marriage and issue certificates.

Proposal for Muslim Marriage Validation and Registration Act.

Muslims Persecution across the World

- ▶ More than 13,000 Afghan citizens were killed between 2007 when the U.N. began reporting such statistics and June 2012.
- ▶ Nearly 2,000 civilians were wounded in war-related incidents during the first six months of 2012. About 1,145 civilians were killed in that same period.
- ▶ The reports specified about 109,032 deaths in Iraq, comprised of 66,081 'civilians'; 23,984 'enemy' (those labelled as insurgents); 15,196 'host nation' (Iraqi government forces) and 3,771 'friendly' (coalition forces),
- ▶ 66,000 (over 60 percent) of these are civilian deaths. This means that 31 civilians died every day during the six-year period.
- ▶ According to the U.S. Defense Department the war in Afghanistan has cost the United States between \$1.2 trillion and \$1.172 trillion since its inception in 2001 through July 31, 2012.
- ▶ **Note that these civilians are Muslims.**

- ▶ France in 1995 banned Headscarfs and Hijab in all public school.
- ▶ Finally in 2004, France passed a law forbidding the wearing of what they tagged “ostentatious” religious symbols in public schools

6. Lagos State Persecution on Muslims

Another issue is the victimization and harassment of Muslim female barristers in Nigerian courts because of the hijab which poses a serious challenge to the Muslim female members of the profession to practise their profession in accordance with their faith

- ▶ Another issue is the mode of addressing the court. It is 'My Lord' Your Lordship' in all courts of superior records. It is even worse that Magistrates are being addressed as Your Worship.

What have we done?

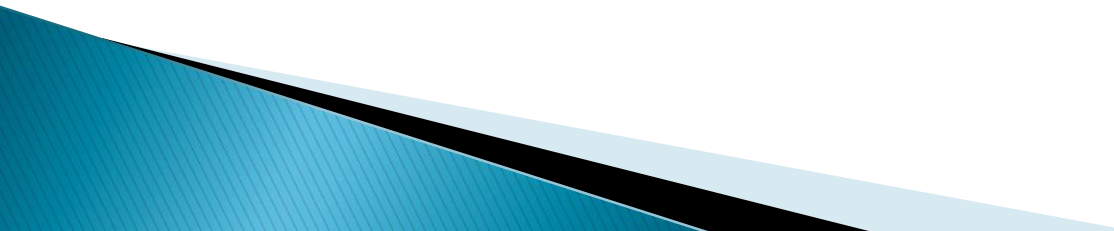
- ▶ In Lagos State, our Madrassah/private Arabic classes have shrunk seriously and depopulated due to the rule that secondary school students must stay in school till 4 pm.
- ▶ The same government of Lagos State banned Muslim from conducting prayer in the secretariat Mosques

Hijab is a Right Y Not Sponsor a BILL?

- ▶ Specifically, paragraph 5(1) of the purported resolution directs:
- ▶ ‘That the use of hijab during Zuhuri and Jumat Prayers in the school compound should not be allowed. That Hijab no matter how small would not be allowed on school uniforms even after school hour, but student could wear full Islamic dress when going home after school hour. The Principal should allow students to change in the school to the Islamic outfit if need be.’

WHERE ARE WE ?

- ▶ Fatimo Abidemi Rasak & 3 Others v. Commissioner for Health Lagos State & 3 Ors. Suit No. ID/424/04.
- ▶ The court ruled that by virtue of the provision of *section 38 (1) of the Constitution of the Federal Republic of Nigeria a citizen of Nigeria are constitutionally entitled to manifest and propagate his religion or belief in worship, teaching, practice and observance.*



- ▶ The second case was **The Provost Kwara State College of Education, Ilorin & 2 Ors VS Bashirat Saliu & 2 ors (CA/IL/49/2006)**. The Court of Appeal said in the case:
- ▶
- ▶ *The right of the respondents to wear their Hijab Veil within the school campus and indeed anywhere else is adequately protected under our laws.....It is their fundamental right to practice and observe their religious injunctions in any part of Nigeria.”*

- ▶ **Sheikh Salaudeen Ade Olayiwola & Ors vs Governor of Osun State & ors** where the court declared that female Muslim Students have constitutional right to put on *Hijab* in all Public Primary and Secondary Schools in Osun State is recognised on the premises that it is enjoined by Chapter 24 verses 30 –31 of the Glorious Qur'an and is in exercise of their Constitutional right under S.38 (1) and 42 of the Constitution.

- ▶
- ▶ Miss Asiyat Abdulkareem & ors versus Lagos State Government & ors Appeal No. CA/L/135/2015. The court of appeal among other things held that
- ▶
- ▶ *“the continuous denial of the female Muslim students to use hijab or head covering within or outside the premises of any educational institution in Lagos State at any time is wrongful and unconstitutional as same constitutes a violation of their rights to freedom of thought, conscience and religion, freedom from discrimination, and right to dignity of human person.....the*

7. Need for Conscientious Objection Clause in Coroner Law

- ▶ There is an issue of Unsettled and controversial Coroner Law in Lagos State which makes it mandatory for relevant medical personnel to conduct post mortem examination for all dead bodies before they could be released to their relatives for burial

Christians strategy –more Effective

- ▶ An example is the case of *Olubunmi Okogie v Governor of Lagos State* where the catholic successfully challenged the government of Lagos State over the ban of private schools
- ▶ It is in this same Nigeria that the Supreme Court upheld the right of a Jehovah's Witness to object to a blood transfusion and denied the right of a medical doctor to override, on sound medical grounds, the religious wishes of the patient.

Muslim should adopt a Strategic non-violent approach

- ▶ In other words, while average Jehovah witness decides what he does with his life, and decides to go to heaven the way it pleases him, the Muslims have no control over the body of their own body when alive and more unfortunate have no control over the body of their dead relations.
- ▶ What a travesty of justice?

Its not late, make formal Demand

- ▶ To save the Muslims from all the above, the need and necessity to be involved in any public debate prior to promulgation of any law or the institution of any public policy is highly imperative and desirable.
- ▶ If there had been a common united front for pressing for the rights of the Muslims through effective dialogue and efficient representation, the position of the Muslims in Lagos State and in Nigeria would have fared better.

- ▶ **In conclusion therefore, engaging in the on-going Constitution Amendment process by the Muslims should be seen as more than a call to duty if we must prevent further and recurring onslaught on the Islam and the Muslims.**

NAMLAS'S BASIC DEMANDS/FOCUS

- ▶ **IN D INTEREST OF NIGERIAN MUSLIMS**
 1. **Recognising Females Muslims Rights to wear Hijab in Tertiary Institutions Law School, Dinner or Call to Bar, NYSC, Including all Clinical classes.**
 2. **Muslim Marriages Registration and Validation Laws in All States.**
 3. **Establishment of States Sharia Courts**

- 4. Inserting a Clause in Lagos State Coroner Law to take care of Conscientious Objection**
- 5. Encouraging the inclusion of LLB Combined Degree in Common and Islamic Law in our Universities**
- 6. Effect amendments in those areas in the extant constitution that are inimical to the Muslims interest.**

STRATEGIES CREATING GENERAL AWARENESS

- ▶ FURTHER STIMULATING DISCUSSION

- MUST CONTINUE AT

- ▶ ALL NECESSARY AND RELEVANT

- FORA

MA SALAAM

- ▶ Note that the Freedom we are enjoying today is a product cum end result of several years Struggle of the past Generation.
- ▶ **WHAT THERE 4 IS THE CONTRIBUTION OF THE PRESENT GENERATION?**

- ▶ **The clock of time is ticking and now is the time for Action.**
- ▶ **Non violent, Peaceful and Result oriented strategies must be embraced**
- ▶ **I thank you all for Listening.**
- ▶ **Prof. F.A.R. Adeleke**