

STRIKING A BALANCE BETWEEN RIGHTS TO FREEDOM OF RELIGION AND NUISANCE IN NIGERIA

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Abstract

In view of the importance and sensitivity of religion in Nigeria, the Constitution of the Federal Republic of Nigeria, 1999, the UN Universal Declaration of Human and Peoples' Rights and other international instruments unequivocally prescribe and sanction the right to freedom of religion as sacrosanct. However, in the course of exercising the right to freedom of religion, citizens often carry out certain religious practices that constitute a nuisance and violate the rights of other members of society. Hence, states put in place various legislation regulating such actions. Therefore, the controversy is whether such laws are inconsistent with the constitutionally guaranteed rights to freedom. The research aims to find out whether the various laws, by-laws, and executive orders restricting or prohibiting certain religious practices are valid and not inconsistent with the Constitution. The research adopts a doctrinal approach in an analytical by analyzing the Constitution, other legislation, and other literature. The research found that the prohibition of actions such as blockage of public ways, excessive use of loudspeakers, provocative sermons, and other similar actions is not inconsistent with the Constitutional provisions on freedom of religion and expression. The work recommended a general overhaul of the Constitution to expressly create exceptions to the rights to freedom of religion and expression, among others.

Keywords: Religion, Public Nuisance, Freedom of Religion

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1.0. INTRODUCTION

As law and religion scholar W. Cole Durham Jr. has observed, freedom of religion is a “core doctrine” amongst other fundamental human rights in the world today.¹ The Constitution of the Federal Republic of Nigeria,² the United Nations Declaration on Human and Peoples Rights,³ the Universal Declaration of Human Rights (UDHR),⁴ the International Covenant on Civil and Political Rights (ICCPR),⁵ the African Charter on Human and Peoples’ Rights,⁶ the European Convention on Human Rights (ECHR),⁷ the Arab Charter on Human rights (ACHR) 2004,⁸ and the American Convention on Human Rights⁹ stipulate the rights to freedom of religion and expression as fundamental human rights to be enjoyed by citizens without undue interference from the government or any other individual or group of individuals. These rights entitle the citizens to freely choose and practice any religion in the manner prescribed by the chosen religion. To safeguard the sanctity of these rights, the Constitution prescribes protective measures against any threat to or breach of such rights by the government, its agencies and/or private individuals by way of enforcement, damages and compensation. In fact, religious freedom is

¹ Durham WC (Jr)., “Perspectives on Religious Liberty: A Comparative Framework,” in van der Vyver, J.D. and Witte J. (eds), *Religious Human Rights Global Perspective*, Martinus Nijhoff, Boston, 2011 1-44.

² 1999 Constitution (As Amended)

³ UDHR 1948

⁴ Universal Declaration of Human Rights 1948, Article 18. 31 International Covenant on Civil and Political Rights 1966, Article 18. .

⁵ International Covenant on Civil and Political Rights 1966, Article 18

⁶ African (Banjul) Charter on Human and Peoples’ Rights 1981 (Entry into force in 1986), Article 8 34

⁷ . Adopted in 1950

⁸ Arab Charter on Human rights 2004 (Entry into force in 2008), Article 30(1).

⁹ American Convention on Human Rights 1969 (Entry into force in 1978),

so protected that it is even a crime in Nigeria to disrupt religious activities without lawful excuse.¹⁰

Nigeria is one of the countries with the largest number of mosques, churches, and other places of worship in the world. These places of worship often block public roads, produce excessive noise at odd hours, and spew harsh and provocative sermons all under the guise of exercising rights to freedom of religion. Outside speakers and musical instruments used by these places of worship and religious bodies constitute a heavy source of noise,¹¹ encroach on the rights of other private citizens, such as the right to freedom of movement, quiet possession and enjoyment of private property, and often at times cause public disorder, public nuisance, and even breach of peace¹² and often cause emotional and psychological damage to individuals and society at large.

To address the conflict between the exercise of rights to freedom of religion and the need to curtail nuisance and maintain public order, certain laws are put in place to regulate the religious institutions, their practices and activities between one religion and another and even within the same religion to avoid chaos and ensure public peace and tranquility.¹³ These laws come in the form of national and state laws,

¹⁰ Section 206 of the Criminal Code, provides that, “any person who willfully and without lawful justification or excuse, disquiets, or disturbs a religious worship is guilty of a simple offence and liable to imprisonment for two months, or a fine of ten Naira

¹¹ Abimbola Abatta /Can a Church be guilty of noise pollution/ <https://fij.ng/article/explained-can-a-church-be-guilty-of-noise-pollution/> (Accessed on 21st July, 2025)

¹² The December, 2015 bloody clash between Shiites and the Nigerian Army in Zaria, Kaduna State and the igniting cause of the Jos Crises in 2001 are a classical example

¹³ For instance the Lagos State Government in June 18, 2009 and October 30, 2009, shut down one parish of Redeemed Christian Church of God (RCCG) and Mountain of Fire and Miracle Ministry (MFM) over alleged noise pollution, and

bye laws and regulations, executive orders and administrative directives from various governmental agencies saddled with the responsibilities of maintaining public peace, safety of the society.

The work seeks to address the challenge of the congruency of the laws on nuisance to fundamental rights to freedoms of religion, expression and association of the citizens under both the Nigerian Constitution and the International Freedom of Religion norms in all democracies.

2.0. CONCEPTUAL FRAMEWORK

This work is premised on certain concepts. This section would examine the concepts of religion, freedom of religion and nuisance from various perspectives and offer working definitions of each concept for easier discussion of the topic at hand.

2.1. The Concept of Religion

Due to the problems of over and under-inclusivity of what constitutes religion, and differentiating religious acts from non-religious act, defining religion for legal reasons is a difficult task¹⁴ and at the same time a useful device for inclusion and exclusion of individuals and groups in a democratic set up to provide equal legal advantages to all manner of people.

Literally, the term religion refers to the attribute of the human being to go beyond himself into relationship with the divine or the Supreme

for flouting the state environmental law.⁴ And in 2019 closed eight religious outlets comprising of Mosques and Churches, through the state Environmental Protection Agency, LASEPA, for noise pollution.

¹⁴ Jeffrey L. O., 'Constitutional "Religion": A Survey of First Amendment Definitions of Religion' 6 Tex. F. on C.L. & C.R. 117 2001-2002, at page 122, available at (<http://heinonline.org>)

Being.¹⁵ Black's Law Dictionary defines religion as "a system of faith and worship unusually involving belief in a Supreme Being and usually containing a moral and ethical code, especially, such a system recognized and practiced by a particular church, sect or denomination."¹⁶

To Gunn, religion may be seen not simply as a neutral description of such things as theological beliefs or ritual practices, but as judgment on whether the particular beliefs or actions are acceptable to the society or the legal system. Thus, a definition of "religion" may not simply be neutral, but may contain an inappropriate societal value judgment regarding particular beliefs or actions with "good" beliefs being characterized as "religions" and "bad" beliefs being characterized as "cults" or "heresies."¹⁷

The most well-known report on international protection of freedom of religion, which was released in 1960, the Krishna swami study, stated that 'in view of the difficulty of defining "religion", the term "religion or belief" is used in this study to include, in addition to various theistic creeds, such other beliefs as agnosticism, free thought, atheism and rationalism'.¹⁸ As Evans observed, the Krishna swami study drew attention to the fact that some non-theistic philosophies could be equated with religious beliefs and treated in a similar fashion. Article

¹⁵ O. Ezeanokwasa and O. O.Mbanugo 'Religious Freedom and Its Limitations Under The 1999 Constitution of Nigeria' (2016) NAUJILJ 55

¹⁶ B. A. Garner, Black's Law Dictionary (10th edn, Thompson West MN 2014) 1482.

¹⁷ Eg B Clements, 'Defining "Religion" in the First Amendment: A Functional Approach' in W Sadurski (ed), Law and Religion (Ashgate, Dartmouth 1992); W Sadurski, 'On Legal Definition of "Religion"' (1989) 63 The Australian L J 834; E Peñalver, 'The Concept of Religion' (1997) 107 The Yale L J 791; JH Choper, 'Defining "Religion" in the First Amendment' in W Sadurski (ed) Law and Religion (Ashgate, Dartmouth 1992).

¹⁸ A Krishnaswami, Study of Discrimination in the Matter of Religious Rights and Practices, UN Doc E/CN.4/Sub.2/200/Rev 1 (United Nations, New York 1960) 1.

18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.

Legal scholars have defined religion using four different approaches: the essentialist approach, otherwise called the content-based definition, identifies the essence or distinctive character of religious belief in a supreme being and focuses on features of religion which people should consider 'essential'. Agreeing with this approach, the U.S. Supreme Court in *Davis v Beason*¹⁹ held that "the term 'religion' has reference to one's views of his relations to his Creator, and the obligations they impose of reverence for his being and character, and of obedience to his will". The functional approach focuses on the role that a set of beliefs plays in the life of believers and defines religion as anything that plays the role of a religion. The third is the analogical approach, which looks for sets of characteristics that are indicative of religious belief, although none of those characteristics is necessarily a component of religion. The fourth is the deferential approach, which focuses on the self-understanding of the adherent as the baseline for defining what is and what is not religion. This approach curtails the state's chances to define religion narrowly. Nevertheless, the approach outlines criteria under which the state can legitimately reject a person's self-definition of religion. Nevertheless, the current position on the legal meaning of religion in common law courts however, is the one by Dillon J. His definition requires faith in a God and worship of that God.²⁰

¹⁹ 133 U.S 333, 342 (1890). Also see *United States v MacIntosh*, 283 U.S 605, 633-634 (Hughes, C.J dissenting ("the essence of religion is belief in a relation to God involving duties superior to those arising from any human relation").

²⁰ L Wittgenstein, *Philosophical Investigations*, GEM Anscombe (tr) (MacMillan Co 1953) § 66, 3132. For detailed discussion on this see Ahmed Salisu Garba: A Thesis Submitted to the School of Post Graduate Studies, Bayero University, Kano in Partial Fulfilment of the Requirements for The Award Of The Degree Of Doctor Of Philosophy (Phd) In Law (Unpublished) April 2019

For this work, religion refers to such beliefs and practices by persons as a means of reaching to God. In Nigeria, the major religions that require the attention of this work are Islam, Christianity and traditional religious practices.

2.2. The Concept of Nuisance

In ordinary terms, nuisance means a source of inconvenience or annoyance. However, in a strict legal sense, the definition is more restrictive in nature, encompassing the protection and prevention of interference with another's use and enjoyment of land and those affecting the reasonable comfort of the public or a class of it. There are two categories of nuisance, namely public and private nuisance. Although they differ in some respects, they share similar principles and are almost used interchangeably. In the tort of private and public nuisance, the law seeks to protect an owner or occupier of land or even a user of a utility from substantial interference with his enjoyment thereof.

This work is more concerned with public nuisance. According to the Black's Law dictionary,²¹ public nuisance is one which affects an indefinite number of persons, or all the residents of a particular locality or all people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Public nuisance is also defined by Osborn's Concise Dictionary²² as an act which interferes with the enjoyment of a right which all members of the community are entitled

²¹ Nolan J.R and Nolan-Halley J.M, Black's Law Dictionary with Pronunciation (6th edn, West Publishing Co 1990) p. 1066

²² Bone S, Osborn's Concise Law Dictionary (9th edn, Sweet and Maxwell Limited London, 2001) p.269

to, such as the right to fresh air, to travel on the highways etc. Mozley and Whiteley's Dictionary ²³ defines public nuisance as that which affect the public and are an annoyance to all, or at least to an indefinite number of the Queen's subjects and typically amount to the interference with the exercise of the queen's subjects of a common right, for example, the obstruction of a highway preventing people from exercising their right to pass along it.

However, in *Attorney General v P.Y.A Quarries Ltd*,²⁴ public nuisance was described as an act or omission which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects. A Public nuisance created in a public place or on public land, or affecting the morals, safety, or health of the community, is considered an offense against the state. Such activities as obstructing a public road, polluting air and water, operating a house of prostitution, and keeping explosives are public nuisances. While a public nuisance, as such, is actionable only by the state through criminal proceedings, the same activity or conduct may also create a private nuisance to neighboring landowners and thus result in a civil suit.

Nuisance (Noise Pollution) within Human Rights and Sustainable Development Regimes, according to Merriam-Webster, noise is any sound that 'lacks an agreeable quality or is noticeably unpleasant or loud'; or 'any sound that is undesired or interferes with one's hearing of something' or 'loud, confused, or senseless shouting or outcry'; 'the characteristic natural or routine sound or sounds of something (such as an animal or an environment).' Noise pollution, also known as environmental noise, has been defined as an 'unwanted or excessive

²³ Penner J. E, Mozley and Whiteley's Law Dictionary (12th edn, Butterworths London)

²⁴ (1957) All E.R 894 at p 908

sound that can have deleterious effects on human health, wildlife, and environmental quality’

However, in law, the meaning of the word nuisance is more restricted and subjective in the sense that it is not every act of inconvenience or annoying situation that is actionable in tort. Thus, as a legal term, nuisance is an unreasonable interference, act or conduct which is harmful, offensive and inconveniencing to the public or a member of the public and for which there is a legal remedy.²⁵

As part of a new sustainable development roadmap, the United Nations approved the 2030 Agenda, which contains the Sustainable Development Goals, which is the contemporary call to action to protect the planet and guarantee the global well-being of people.²⁶ Furthermore, human rights as enshrined in both domestic and international frameworks reflect the correlation between the environment and human rights. It is trite that fundamental rights such as the right to life, basic needs, property, and other forms of civil, social, economic, and cultural rights are threatened in unsafe, unclean, and unhealthy environments. The above is equally tied to the procedural rights of citizens to enforce their rights. Procedural rights prescribe formal steps to be taken in enforcing legal rights. Procedural rights, as enshrined in laws and ideals, include fundamental access to justice, especially compensation. Hence, the welfare of citizens and sustainable environmental governance cannot exist without clear enforcement of human rights.

²⁵ Afolabi M. Tunde and Salamat Abdulquadri, ‘Environmental Noise Pollution and its Impacts on the Hearing Ability of Men and Women in Ilorin, Kwara State’, *Tanz. J. Sci.* Vol. 47(5) 2021

²⁶ United Nations General Assembly. "Transforming Our World: The 2030 Agenda for Sustainable Development." 2015. www.un.org.

2.3. The Concept of Freedom of Religion

The concept of freedom of religion under the present human rights scheme has a long history.²⁷ However, the legal history of modern freedom of religion is traceable to the adoption of the United Nation's Universal Declaration of Human Rights in 1948 which was a reaction to the totalitarianism of the 1930s and 40s and it was the first time that an international body designed fundamental rights and freedoms for all human beings in the world to enjoy. Thus, freedom of religion is a right guaranteed by local and international human rights instruments. Section 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended),²⁸ Articles... elaborately provide for numerous numbers of rights as within freedom of religion.

Therefore, freedom of religion guaranteed by the 1999 Constitution is not a solitary right to hold a religion but a compound right embracing other freedoms that define religion as involving rational process and a social reality, which thrives in interpersonal dynamics and concrete civil presence.²⁹ It is guaranteed alongside freedom of thought and conscience, freedom of religion, freedom to change one's religion, freedom of irreligion, freedom to manifest and propagate one's

²⁷ Michelline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (University of California Press, Berkeley, 2004)

²⁸ (1) Every person shall be entitled to freedom of thought, conscience, and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.
(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.
(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

²⁹ Adegbite, *Torts of Nuisance in Nigeria and the Relative Standard of Proof Per Locality*. *African Journal of Law and Human Rights* (AJLHR) 6(2) 2022

religion, freedom from coercion to receive religious instruction or to take part in or attend any religions ceremony or observance, freedom of a religious community or denomination from being prevented from providing religious instruction for its pupils, and no freedom to belong to any secret society, form one or take part in it.

In spite of the wide latitude given to freedom of religion by law, the right to freedom of religion is not without restrictions and or limitations.³⁰ Section 45(1) of the 1999 Constitution,³¹ Article 29(2) of the UDHR³² and Article 18(3) of the ICCPR³³ provide for the limitations. However, these restriction limit only the method and manner of the manifestation of religion and not the thought.

3.0. THE SCOPE OF FREEDOM OF RELIGION IN NIGERIA

Section 39(1) further provides that “every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference” and section 40 provides that “every person shall be entitled to assemble

³⁰ *Tega Esabunor & Anor. v Faweya & Ors* (2019) LPELR-46961 (SC).

³¹ Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society - (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons. By the provision of section 45(1) of the Constitution, it means that every right guaranteed under section 38 is not absolute and is liable for restriction including freedom of thought and conscience.

³² In the exercise of these rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

³³ “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”.

freely and associate with other persons...” These are the granting clauses that give a citizen of Nigeria the constitutional right to engage in religious propagation within the shores of Nigeria, among other rights; to associate and to hold on to an opinion or to impart ideas without any hindrance.

Though Nigeria has not developed its own local judicial review mechanism in the interpretation of the scope of freedom of religion in the country, there is a significant improvement in the jurisprudence of Nigeria on freedom of religion and its scope. The improvement shows a clear departure from the American-style jurisprudence which Nigerian courts have earlier adopted in their interpretation of the concept. For example, the case of *Medical and Dental Practitioners’ Disciplinary Tribunal v. Okonkwo*³⁴ where the Supreme Court held that the right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing one’s life, fashioned on what one believes in, and a right not to be prevented, without justification. To the effect that the import of the rights to privacy and of freedom of thought, conscience or religion is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary.

It must be stated, however, that these rights are not absolute. The Constitution gives the state power to derogate from them through laws that “are reasonably justifiable in a democratic society.” This is called the limitation clause, and it is the basis of the state’s regulatory power from which the state derives its power to enact the Preaching Board Laws under study. Section 45(1) of the Constitution provides that “nothing shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public

³⁴ (2001) LPELR-SC.213/1999

order, public morality or public health; or for the purpose of protecting the rights and freedoms of other persons.” This leaves room for the more or less standard array of penal and other legislation which the state uses to restrict citizens’ enjoyment of these rights legitimately.

In pursuance of Section 45(1) of the Constitution, the state enacts laws to curtail the excesses of religious institutions that may be injurious to public safety, peace and wellbeing of the society. Hence, the enactment of various regulatory laws, rules and guidelines to prevent, stop, punish nuisance and compensate victims thereof.

4.0. LEGAL REGIME OF NUISANCE IN NIGERIA

The legal regime on nuisance in places of Worship in Nigeria can be considered under two main headings: common law and statutes.

4.1. Nuisance under Common Law

Under common law, the tort of nuisance is actionable. Through a court action for nuisance, an aggrieved person can obtain damages for injury suffered from the offensive noise and also an injunction to stop any further emission of such noise. The common law rule which has been cited with approval in several cases in the Nigerian jurisprudence is as laid down in the case of *Vanderpant v Mayfair Hotel Co. Ltd.*³⁵ where Luxmoore J. said: Every person is entitled as against his neighbor to the comfortable and healthy enjoyment of the premises occupied by him, and in deciding whether, in any particular case, his right has been interfered with and a nuisance thereby caused.

It is however necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence, not merely according to elegant or dainty

³⁵ [1930] 1 ch 138

modes and habits of living, but according to plain, sober and simple notions obtaining among reasonable people.

In the case of *Oluwaniyi v Adewumi*, the Court of Appeal held that day and night noise nuisance emanating from clapping of hands, singing, shouting and drumming in a church is an actionable nuisance and the matron of the church along with the church as a registered trustee can be joined in the suit against the church for the nuisance. In *Odugbesan v. Ogunsanya*, nuisance was established against the defendants who were trustees of an Aladura Church, which held services, sometimes between midnight and 5 am with ringing of bells, and wild shouts as devotees became possessed by the Holy Spirit.

At common law, public nuisance is a crime for which the remedy is criminal proceedings. As a crime, public nuisance is provided for under Nigerian laws. For instance, sections 192 and 194 of the Penal Code (Federal Provisions) Act³⁶ operating in northern Nigeria and section 234 of the Criminal Code³⁷ which operates in southern and eastern parts of the country.

4.2. Nuisance under Policy and Statutes in Nigeria

This section examines statutes and policies that have been put in place for the purpose of improving and protecting the environment from harmful activities of man, especially noise pollution.

a. Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria 1999 is regarded as the fundamental and supreme law of the land, which provides a basic framework for other laws and also establishes the powers and

³⁶ Cap P3, Laws of the Federation of Nigeria (LFN), 2004

³⁷ Cap C38, Laws of the Federation of Nigeria (LFN), 2004

duties of various authorities and government. Section 20 of the Constitution makes it an objective of the Nigerian government to improve and protect the air, land, water, forest and wildlife of Nigeria. The essence of embedding this environmental provision in the Constitution is that it has enhanced the priority that the government should give on sound environmental management and sustainable development, thereby prohibiting all forms of nuisance. Though the section of the law is not justiciable, it sets a framework for the government to make a series of legislations against nuisance, which laws are fully enforceable.

Also, section 33 (1) of the Constitution read in conjunction with the provision of section 20 as well as section 24 of the African Charter of Human and People's Rights can be relied upon by Nigerians to enforce violation of their right to peaceful environment rather than relying solely in Section 20 of the Constitution. Sections 33 and 34 which guarantee fundamental human rights to life and human dignity respectively have also been argued to be linked to the need for a healthy environment to give these rights effects.

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA) 2007 is the major law on noise pollution in Nigeria. The Act established the National Environmental Standards and Regulations Enforcement Agency saddled with the primary responsibility of enforcing environmental protection laws for the protection and enhancement of the quality of our environment. Section 22 mandates the agency to identify major noise sources, noise criteria and noise control technology; and make regulations on noise, emission control, abatement, as may be necessary to preserve and maintain public health and welfare and to enforce compliance with existing regulations and recommend programs to

control noise originating from industrial, commercial, domestic, sports, recreational, transportation or other similar activities.

The National Environmental (Noise Standards and Control) Regulations 2009 National Environmental (Noise Standards and Control) Regulations 2009, was made in furtherance of the exercise of the powers conferred on minister of environment who is also the director general of NESREA by Section 34 of the national Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007. According to Regulation 1 of the regulation, the primary purpose of the noise regulations is to ensure maintenance of a healthy environment for all people in Nigeria, the tranquility of their surroundings and their psychological well-being by regulating noise levels and generally, to elevate the standard of living of the people by prescribing the maximum permissible noise levels a facility or activity to which a person may be exposed, providing for the control of noise and for mitigating measures for the reduction noise and for giving effect to the provisions of section 22 of the NESREA Act 2007. Regulation 2 (7) of the Act provide for the maximum permissible noise levels from a place or areas of worship to which a person in the noise control zone specified in column I of Part VII of the first schedule may be exposed and shall not exceed the level specified in column 2 during the time specified in the table. The noise control zone specified in column I of part VII of the first schedule are residential, commercial and industrial zones.

Under these Regulations, the agency may seize, impound, confiscate or prohibit the use of any property, tool, machinery or other instrument which is likely to, or has caused the emission of excessive noise, if, in the agency's opinion, the sanction would restore the permissible noise level in the area and the owner of any item seized, impounded or

confiscated under these Regulations shall be responsible for the cost incurred.

In the Northern part of Nigeria where excessive use of loud speakers for public preaching, use of abusive and provocative sermons against one another are prevalent, the states enacted preaching laws to curtail nuisance and abate undesired sermons that may lead to breach of public peace. For instance, the Kano State House of Assembly enacted the Kano Local Government Authority (Control of Quranic Interpretation and Admonishing) Rules 1970 (Now Kano Local Government Law No. 3, 1970), which was repealed by the Kano State Religious Preaching Edict of 1985. Also in 1982, Kano State House of Assembly enacted another law called the Kano State Council for Islamic Affairs Law 1982 which was also repealed by the same of 1985.

Therefore, government can legitimately regulate the right to freedom of religion and regulating freedom of religion has a number benefits; to protect the secular status of the state. If it is done in order to protect a dominant religious ideology or satisfy the yearnings and aspirations of members of a dominant religious group then the action may qualify as a reflection, protection and an advancement of that dominant religious ideology. In addition, political benefit may be engaged here. The idea of motive behind the regulation of religions may extend to noting differences in country's political, economic and religious context.

Therefore, a definition of regulation in this context must consider these issues to avoid ambiguity. The focus of this work as explained elsewhere in the work, is on the collaborative form of regulation of freedom of religion. In this context, therefore, regulation of religious preaching or freedom of religion at large means the enactment of laws,

introduction of policies or other administrative measures by government or its agents to control the right of the citizen to preach or practice his or her religion freely.

The Constitution of Nigeria mentions this phrase in Section 45. This provision allows the state to derogate from freedom of religion, among other rights in a prescribed manner through a law that is “reasonably justifiable in a democratic society” on the grounds of “defence”, “public safety”, “public order”, “public morality”, “public health” and for “protecting the rights of others.” Such derogation, however, must be premised on the principles of fairness, transparency and equitable representation the aim of which is to salvage the yearnings and aspirations of the people via public policy, legislation and political stability. In this sense, the government is expected to be neutral in its dealings with its people. The European court of Human Rights emphasized this role in the management of religious groups in the case of *Hasan and Chaush v. Bulgaria*.³⁸ In this case, the court held that where the state fails to be dispassionate in the exercise of its powers, the failure could be interpreted to mean tampering with the citizens’ right to manifest their religion.³⁹

The impartiality requirement means that the state should have no interest at all in the internal matters of religious organizations unless it is clear that such matters, if allowed, would endanger public order, health, morals, rights, and freedom of others. The court held that “state’s duty of neutrality... is incompatible with any power...to assess the legitimacy of religious beliefs, and requires the state to ensure that

³⁸ (2000) 34 EHRR 55

³⁹ See also *Metropolitan Church of Bessarabia v. Moldova* (2002) 35 EHRR 306 para 116. 91 and *Kokkinakis v. Greece, Larrisis, and Others v. Greece* (14307/88) 1993. 92 Judgment of 24/2/1998, RJD-1998-1, 23 EHRR 329.

conflicting groups tolerate each other, even when they originated in the same group.”

The need to balance the regulatory power of the state with the right of the citizen to engage in religious persuasion is aimed at achieving neutrality and ensuring that laws enacted for the regulation of free exercise rights are reasonable and justifiable in democratic societies. For example, the International Convention on Civil and Political Rights proposes a “three-step” standard of judicial review designed to strike a balance between state regulatory power and citizens’ freedom of religion in a democratic society.⁴⁰ The three-step balancing mechanism requires that for any limitation on freedom of religion to be legitimate in a democratic society, it must satisfy these three standards of being prescribed by law requirement, furtherance of a legitimate state interest qualification and the requirement of proportionality.

American constitutional law scholar Jeremy Gunn, however, recommends four standards of review instead of three. According to him, a tribunal faced with the task of interpreting derogatory clauses with respect to freedom of religion should, first, understand its role, second, properly identify the burden of proof of each of the parties, third, apply the less restrictive alternatives with correct evidentiary obligations placed on both parties, and fourthly, understand the relevant degree of scrutiny to apply.⁴¹

⁴⁰ Art.18 (3) the provisions of the International Convention on Civil and Political Rights (ICCPR). See also European Convention on Human Rights, Art. 9.2.

⁴¹ Gunn, TJ., “Permissible Limitations on Freedom of Religion or Belief”, in Witte J (Jr) and Green MC (eds). *Religion and Human Rights: An Introduction*. Oxford University Press, Oxford, 2011 263-264.

Scholars have demonstrated that many countries had to regulate religion or its preaching or both for security reasons and in some instances to protect the rights of other citizens. In northern Nigeria, the history explored indicates that some reasons may be security concern and the protection of the rights of other citizens. This is because, the manner of religious preaching has been problematic in northern Nigeria and it has caused intra Muslim conflicts in the region with devastating consequences on the polity. In this region sometime, Islamic religious preachers use belittling remarks in their preaching sessions against adherents of other religious groups or become intolerant of others. Some other time, they engage in harsh religious propagation without recourse to peoples' sensibilities or even preach hatred to their own congregation. In some other instances, they preach violence against other groups; legitimating or inciting the commission of crimes against others or ex-communicate their co-religionists of other sects, or calling them to repent from their sinning or "unbelief". In addition, when preaching to some uneducated and credulous followers, they led them astray; into religious beliefs and practices that are "clearly in error"; into the belief for instance, that it is Haram to attend any "western style" school in Nigeria or study any "Western" subject.

8.0 CHANGES IN THE REGULATION OF RELIGIOUS PREACHING

It is pertinent to point out that the regulation of religious preaching by means of legislative enactment, as in the case of Kano, brought a new dimension to the scope of the regulation. Before 1970, the scope of the regulation was in the context of what was then the Northern region as whole. After the civil war (1967-1970), however, the three regions that used to constitute the Federal Republic of Nigeria were sub-divided into smaller states. Kano became the first state to enact a law for the regulation of Islamic preaching as seen above. Borno state followed

suit in 1977, then Niger and Sokoto states in 1979 and Bauchi state in 1984. These states subsequently amended their preaching laws with the exception of Bauchi, which suspended its own and instead banned open-air preaching. Plateau and Katsina states enacted their preaching laws in 1986 and 1991 respectively. From 1990 to 1996, the new states of Jigawa, Kebbi, Yobe, Zamfara, Gombe and Nasarawa were created within the territory of the former region of Northern Nigeria, and all of them inherited the religious preaching laws of their mother states.

Borno State's two Islamic Religious Preaching Board laws (the 1981 law and its 2010 amendment); 139 b) Kano State's Council for Islamic Affairs Law (1981), subsequently repealed and replaced by the Religious Preaching Edict (1985); c) Kaduna State Religious Preaching Edict No. 7 of 1984 has been the preaching law in the state. It was amended by the regulation of religious preaching (Amendment) edicts No. 1 of 1987 and No. 6 of 1996 respectively. The state is presently making effort to amend its preaching edict through the introduction of the Kaduna State Religious Preaching Bill 2016 which is currently being debated; d) Zamfara State's Religious Preaching and Establishment of Juma'at Mosque and Idi Praying Ground Commission's Law (2003); e) Kebbi State's Preaching Law (2004); f) Katsina State's Islamic Education and Preaching Law (2011) although yet to be passed; g) Jigawa State's Religious Preaching Law, amended by Law No. 14 of 2012; h) The Niger State's Religious Preaching and Place of Worship (amendment) Bill 2013.

9.0 ATTITUDE OF COURTS OVER RELIGIOUS ACTIVITIES CONSTITUTING NUISANCE

The initial position is that common law courts generally declined invitations to give legal or judicial meaning to religion⁴². In Britain for instance, the courts have declared themselves incompetent to determine the truth of any religious belief.⁴³ In the case of Williamson dealing with corporal correction of children, Lord Nicholas of the South African constitutional court applying the wisdom of Justice Sachs in a British context observed: When the genuineness of a claimant's professed belief is in issue in the proceedings, the court will inquire into and decide this issue as a question of fact. This is a limited enquiry. The court is concerned to ensure an assertion of religious belief is made in good faith...But, emphatically, it is not for the court to embark on an inquiry into the asserted belief and judge its "validity" by some objective standard such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant's belief conforms to or differs from the views of others professing the same religion. Therefore, when religious activities become a nuisance, they have to be regulated by law, and when it comes before the court, it should be judged according to fairness and justice. In *Shodeinde v Registered Trustees of the Ahmadiyya Movement in Islam*⁴⁴ Kayode Eso JSC said; "now it appears to me that the matters of faith are hardly matters for a court of law, but once it is there, the court should deal with them without passion, but only with justice according to the law being a

⁴² Hill M. 2001. "Judicial Approaches to religious disputes", in O' Dair R and Lewis A (eds).

⁴³ Hill M., Religious Autonomy and Judicial Deference: Should State Courts Adjudicate upon Matters of Religious Doctrine? in Pieter Coertzen, M. Christian Green and Len Hansen (eds), *Law and Religion in Africa: The Quest for the Common Good in Pluralistic Societies* (Sun Media, Stellenbosch, 2015) page 369-377.

⁴⁴ *Shodeinde & Ors. v Regd. Trustees of the Ahmadiyya* [1983] LPELR – 3064 (SC), 53 – 54

guide”. In the English case of *Williamson v Secretary of State for Education and Skills*, the House of Lords stated that while “everyone is entitled to hold whatever beliefs he wishes, when questions of “manifestation” arise ... a belief must satisfy some modest, objective minimum requirements. The belief must be consistent with basic standards of human dignity or integrity. ...” In other words, a person can hold whatever belief he wants insofar as it is not manifested. But if it is to be manifested, then it has to be subject to social requirements. The law must show zero tolerance for religious bigots who don’t care about the rights of others in their ‘zeal’ to impose their beliefs on others.

In addition, in the case of *Bruker v Marcovitz*⁴⁵, the court held “...a court is ...not barred from considering a question of a religious nature, provided that the claim is based on the violation of a rule recognized in positive.

9.0 DEFENCES TO ACTIONS FOR NUISANCE

Person who chooses to live in the heart of an industrial town or in a densely populated part of a large city is not entitled to expect such a high degree of peace and quiet as one who lives in a residential area. Where there is material damage to property, the nature of the locality becomes irrelevant and the defendant cannot escape liability by pleading that his activities were done in an industrial area. This is so because tangible damage can be easily seen and measured. Emphatically, the tort of private nuisance can only be established if a plaintiff can show substantial interference with his enjoyment of land. The principle here was laid down in the case of *Vanderpant v Mayfair Hotel Co. Ltd.* by Luxmoore J that, every person is entitled as against his neighbor to the comfortable and healthy enjoyment of the premises

⁴⁵ *Bruker v Marcovitz* [2007] 3 SCR 607, Supreme Court of Canada

occupied by him, and in deciding whether, in any particular case, his right has been interfered with and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical discomfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions obtaining among the English people. Again, the question of the existence of a nuisance is one of degree and depends on the circumstances of the case. This principle was applied in the Nigerian case of *Abiola v Ijoma*²² where the plaintiff complained about the excessive noise in the early morning hours disturbing his sleep and also of nauseating smells, both from the defendant's adjoining chicken pens; the court relied on *Vanderpant v Mayfair Hotel Co. Ltd* supra to find for the plaintiff and awarded damages and an injunction restraining the defendant from carry on further acts of nuisance. The court, per Dosunmu J. held that, in any organized society, everyone must put up with a certain amount of discomfort and annoyance from the activities of his neighbors; and in this case I have to strike a fair and reasonable balance between the defendant, who likes to keep poultry for his pleasure in his house, and a neighbor who is entitled to the undiluted enjoyment of his property. Hence, in *Moore v Nnado*, the court held that the degree of nuisance from the defendant's premises was more than the plaintiff is expected to tolerate in the circumstances. The learned judge found the defendants liable upon proof that the defendants intentionally wanted to annoy the plaintiff and held that in an action for nuisance, it is not necessary to prove any injury to health and also that a plaintiff who lives in a noisy neighborhood is not precluded from maintaining an action in nuisance from noise once he can establish substantial additional noise. The primary question to determine in an action for private nuisance is whether the defendant's conduct is reasonable according to the ordinary usages of mankind living in a particular society.

To determine this all-important element of proving nuisance, there are factors that serve as yardsticks for the court to come to a conclusion. These factors are the nature of the locality. In private nuisance, as seen in *Moore v Nnado*, the nature of the locality where the defendant's conduct being complained of occurred is usually taken into account in cases of interference with enjoyment of land, under which category noise pollution falls, but this is not so in cases of physical injury to property. In other words, where the conduct has caused physical harm, it will readily be held to be a nuisance and the issue of locality will not be relevant. The standard of comfort expected differs from one locality to another. The general rule is that the nature, character and standard of living in each locality are all relevant for consideration in a case of interference with enjoyment of land and in this instance, noise pollution. Therefore, in *Tebite v Nigeria Marine & Trading Co. Ltd.* the court, per Atake J, said that, ...what would be a nuisance in Victoria Island or Ikoyi in Lagos would not necessarily be so in Ebute Metta: and what would be a nuisance in the G.R.A. in Warri will not necessarily be so in Robert Road. The neighborhood of Robert Road has, therefore, to be considered in this case. The plaintiff cannot come into Robert Road and, because he is a legal practitioner, expect to introduce or import into it certain standards which accord with elegant and dainty modes and habits of living.

10.0 CONCLUSION

This research has examined the complex relationship between freedom of religion and public order in Nigeria, with a focus on the validity of laws restricting or prohibiting certain religious practices. The study reveals that laws prohibiting actions such as blocking public roads, excessive noise, and provocative sermons are not inconsistent with constitutional provisions on freedom of religion and expression. However, the effective enforcement of these laws is crucial to prevent

nuisance and maintain public order. The research also highlights the need for a balance between protecting freedom of religion and ensuring the rights of others are respected.

11.0 RECOMMENDATIONS

1. Clarify Constitutional Provisions

The Constitution of the Federal Republic of Nigeria should be clarified to expressly create exceptions to freedom of religion and expression. This would provide a clear framework for regulating religious practices and ensure that the rights of others are protected. By clarifying these provisions, the government can provide guidance on the limits of freedom of religion and expression, thereby reducing conflicts and promoting peaceful coexistence.

2. Effective Enforcement of Laws

Laws regulating religious practices should be effectively enforced by law enforcement agencies. This would require providing necessary training and resources to law enforcement officials to ensure impartiality and fairness in the enforcement of these laws. Effective enforcement would also involve holding accountable those who engage in practices that constitute nuisance or violate the rights of others.

3. Public Sensitization

Public sensitization campaigns should be conducted to educate citizens on the importance of respecting the rights of others and the limits of freedom of religion. This would involve promoting a culture of tolerance and respect for diversity, as well as educating citizens on the laws and regulations governing religious practices. By promoting public awareness and understanding, the government can reduce conflicts and promote peaceful coexistence.

4. Review and Harmonize Laws

Existing laws regulating religious practices should be reviewed and harmonized to ensure consistency with the Constitution and international human rights instruments. This would involve reviewing laws at the federal and state levels to identify areas of inconsistency and ambiguity, and harmonizing them to provide clarity and certainty for all stakeholders. By reviewing and harmonizing these laws, the government can ensure that the rights of all citizens are protected and that the laws are enforced in a fair and impartial manner.