

**NIGERIA'S MULTI-RELIGIOUS PLATFORM:
A MYTH OR REALITY - PUBLIC HOLIDAYS A QUESTION
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Abstract.

Religion is as old as the origin of man's discovery of the existence of certain events or phenomena beyond his comprehension. The result is an institutionalized belief in the existence of supernatural beings that control these inexplicable scenarios. This position has the potential to engender societal cohesion particularly built on present and perennial fear of instant punishment, the suspended dread of eternal damnation or the positive alternative of instant reward and eternal bliss. The exploration of the potential that religion possesses, leads to explosions of faith by the practitioners and adherents of different religions. These unlock the contradicting indices of disunity, rancor and even wars arising from variation in dogmas which is inevitable, considering the inherent subjectivity-nature of beliefs. The negative proclivities are exacerbated by solid and sometimes, immutable feelings of superiority complex by one religion over the others, which meander through and corrode the crevices of the divisions. Ensnared in their various 'divinely' created cocoons, they struggle to de-recognize or un-recognize any other religion thereby leading to 'closed' recognized holiday periods by governments; oblivious of the beliefs of others in other religions including those whose religion is not to believe in any supernatural being. This paper makes a case for accommodating all persons in determining holiday periods which includes the interests and 'holy days' designated by all persons and groups within the Nigerian state.

Introduction

The heterogeneous nature of the component units of Nigerian Society necessitated the need to fashion out common social strata to accommodate all shades of interests and opinions that abound in the Nigerian nation. This particular phenomenon made the then Colonial Government in the country in the pre-independence era to introduce the principles of "Unity in diversity" in 1946 Constitution of Sir Arthur Richards. The thrust of this very Constitution was to carry along the various units of the polity, taking into consideration their diversities in custom, beliefs and level of development.

It is in furtherance of this objective, that Nigerian post-independence constitutions have been made to ensure a pluralistic society, whereby the various divergent component units of the country are expected to have their due in terms of self-determination and

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enjoyment of fundamental human rights within Nigerian set-up. Nigeria as constituted today has the 1999 Constitution as her grund-norm.¹ This Constitution is assumed to offer safeguards and protection of rights of Nigerian citizens irrespective of their tribe, belief, creed or religion.² However, it is a notorious fact that religion which ought to provide spiritual succor has throughout the globe and particularly, in Nigeria, brewed a catalogue of intrigue and political battles.³

Multi-religious stance of Nigerian nation stems from the singular fact that the nature of our Constitution recognizes the existence of religious bodies⁴ provided it does not infringe on the right of existence of other religions and this paper essentially, is to answer the question whether all religious bodies or denominations are accorded the same rights and privileges by the Government institutions on observance of public holidays for religious festivities or events.

The issue of multi-religious posture of our Constitution highlights the question of fundamental human rights as per public holidays as it relates to every religion in the country. If it is generally accepted that every religion is respected and accorded protection under a multi-religious setting, then it is imperative that public holidays as a right should be given in such a manner that it does not appear to discriminate between religious groups within the polity. Equality before God should be evident in the way we treat other believers. It was for this reason that **D. De Haan** wrote:

*All those who know and love the Lord Must show by word and deed,
That they will not discriminate*⁵

In many a theocratic state, discrimination against religious minorities has created much bitterness and blood-shed with blatant violation of human rights. All states are required to rescind discriminatory legislation, and to take all appropriate measures to combat

¹ I took for granted the general assumption that the Constitution is the Nigeria's grundnorm. But see the excellent survey of this issue in Hon. Justice Kayode Eso, Nigerian Grundnorm; Nigerian Law Publication, Lagos, 1986, being Public Lecture Delivered at University of Benin, Idigbe JSC Memorial Lecture, 1985 where the jurist looked at the question "Is there a Nigerian Grundnorm?".

² See Section 15(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

³ The religious controversies, crises and conflicts based on blind passion lead a group to treat Nigeria as an ethnic/religious patrimony or as if they had a prior claim to legitimacy and others were merely on sufferance. This costs Nigeria lives of its citizens and international engagement(s). The physical attacks on Christians in Muslim dominated states are common in spite of the fact that religion is a powerful instrument of social control, and a vibrant aspect of culture.

⁴ Section 10 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁵ Our Daily Bread, Sunday May 18, 2003, RBC Ministries Vol. 47 Nos. 12; Vol. 48 Nos. 1, 2.

intolerance on the grounds of religion or belief. This will enable the leadership build a clear followership control.

Preliminary Issues

a) *What is Religion?*

Religion is man's relation to Divinity, to reverence, worship, obedience and submission to mandates and precepts of supernatural or superior beings. It essentially connotes all forms of belief in the existence of superior beings exercising power over human beings by violation, imposing rules of conduct, with future rewards and punishments. It is, unlike science, a matter of the mind not of the head. And because it rules the mind is often described as the opium of the masses.⁶ For this reason all religions should co-exist and seen to be co-existing and government providing all the enabling environment for perfect harmony.

By this, all religions can at the same time largely enrich each other without the adherents compromising their respective faiths and standards of morals by showing dynamic leadership in these areas of our cultural orientation. After all, we are all equal before the law,⁷ with equal protection of the law. This is because justice to individual should be one of the highest interests of the state.

America which runs the same democracy as Nigeria recognizes the concept of freedom of religion as a right. This gave rise to Virginia Declaration of Rights of 1776 in the following words:

16. That religion, or the duty which we owe to our creator; and the manner of discharging it can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience, and it is the duty of all to practice forbearance, love and charity towards each other.⁸

The early immigrants to North America were generally the victims of religious persecution and they laid down a powerful tradition of complete separation between the

⁶ Ray Ekpu, Newswatch Magazine, February 24, 1986, Vol.3, No.8, 10.

⁷ Article 3(1) and (2) African Charter on Human and Peoples' Rights.

⁸ See F. E. Dowrick (ed): Human Rights, Problems, Perspectives and Text, (1979), appendices. H.P. I 57. In America, because of historical factors of great waves of immigration of peoples of sharply different cultural backgrounds and massive migration resulting in settlement of successive Western Frontiers, an area of tension initially was religion. The first Amendment merely asserted the claim of an individual to privacy in respect of his religious belief in practice. Although on the whole, the law formally respected this value, the practice in fact laid social and economic handicaps upon -Catholic and Jews which law ignored. See Sydney E. Ahlstrom, A Religious History of American People (1972), 70 - 853 - 854, 973 - 974. See also Prof. R. P. Dhokalia, The Human Right To Religious Freedom Problems of Definition and Effective Enjoyment (1986). I Cal L. J. 90 at 96.

church and the state and the latter's neutrality towards religion and, therefore, the Federal Bill of Rights in 1791⁹ laid down that "Congress shall make no law restricting an establishment of religion, or prohibiting the free exercise thereof."¹⁰

Freedom of religion includes freedom to practice one's religion, observe its rituals, dietary and other practices, and to produce or import the objects, food and other articles and facilities customarily required in such practices and as well proselytize. Like other human rights, it is an amalgam of economic, ethnical, political, psychological and social doctrines with rationalistic, historical and theological roots.¹¹

The truth is that, although religion, law and morals can be separated, they are nevertheless very dependent on one another. Without religion, there can be no morality; and without morality, there can be no law.¹² In all, law is concerned with justice and religion is concerned with justice. The Naturalists School of Jurisprudence generally posits that justice is not temporal but eternal.

Also that the knowledge of what justice is, is not the product of one's intellect but of one's spirit. Religion concerns the spirit in man whereby he is able to recognize what is justice; whereas law is only the application, however imperfectly, of justice in our everyday affairs. If religion perishes in the land, truth and justice will, at last.

Under the interpretation Section¹³ of the Constitution, religion is not defined. But Oxford Advanced Learners' Dictionary¹⁴ defined religion to mean "belief in the existence of a supernatural ruling power, the creator and controller of the Universe, who has given to man a spiritual nature which continues to exist after the death of the body. Religion is also one of the various systems of faith and worship based on such belief, e.g. Christianity, Islam, Buddhism, Godianism". The categories of religious adherents are:

- (a) Those to whose religion provides a platform of social/political relevance and economic base.

⁹ Article 1 of the U.S. Constitution.

¹⁰ See Law and Social Order in the United States, (1977) Ch.1 Dorwick, op cit., 157; James Willurd Hurst, See also Prof. R. P. Dhokalia op cit; 96.

¹¹ Ibid, 106.

¹² The Rt. Hon. Lord Denning MR, The Family Story, Butterworths, London 1981, 182.

¹³ Section 318 of the Constitution of the Federal Republic of Nigeria, 1999. Also our Interpretation Act, Cap LFN, 2010 did not define religion; but See David v. Benson (1890) 133 US333.

¹⁴ Oxford Advanced Learners' Dictionary of Current English 6th Edition, A. S. Hornby with the assistance of A. P. Cavie Esq., and W. J. Windsey Lewis Esq.

- (b) Those that owe their careers to religion including those who have made a thriving industry out of supporting and promoting religions.
- (c) The legion of followers whose distorted belief is that their religious piety is the basis of their achieving their worldly ambitions and or keeping them.

To most of the above, religion is a matter of life and death and no room for logic, and no matter how ludicrous and or harmful their position might be in relation to others, what remains unchallengeable is their faith, bound and supported by sheer emotions. This is why there is no hesitation if it comes to spilling the blood of anyone opposed to their beliefs. To them, it is in keeping with the tenets of their beliefs to rise in defence of their God, because the more they are seen to be advancing the cause of God, the higher and more abundant the blessings they will receive. This is because man is born believing. A man bears beliefs as a tree bears apples. In fact, there is no Human being without a religious belief. Religion is a matter of faith, a matter of the mind (which is not known or visible to another person) not of the head.

(b) (i) **Holidays**

It is a day set apart for commemorating some important events in history which exempts persons from labour; a day upon which the usual operations of business and government are suspended and the Courts closed, and generally, no legal process is permitted to be served in national holidays.

There is no definition of "Public Holidays" in most dictionaries. However, there is a definition of "Legal Holiday", the legal or practical effects of such day vary from state to state. According to Black's Law Dictionary, "a holiday may in some states be a day on which service of process is invalid, on which all or only some business are closed, on which state offices may or may not be closed. The statute should be consulted in individual cases, **as well as local custom**,¹⁵ to determine if a "holiday" affects some particular contemplated action.¹⁶

¹⁵ The implication of this is that local norms, history, myths, folklores may be put into consideration in granting holiday.

¹⁶ See Black's Law Dictionary, with Pronunciations, 6th Edition Centennial Edition (1891 - 1991), Joseph R. Nolan and others et al. 894.

However, the Interpretation Act¹⁷ provides that:

- (ii) **Public Holiday**¹⁸ means a day which is a public holiday-
 - (a) as respects Lagos, by virtue of the Public Holidays Act;
 - (b) as respects any other part of Nigeria, by virtue of any corresponding enactment in force in that part.

This shows us that states can declare public holidays. However, by **Section 4 of the 1999 Constitution of the Federal Republic of Nigeria**¹⁹ it is only the Federal Government that can legislate on Public Holidays being located in the Exclusive Legislative list. It has to be quickly pointed out that State Governments only declare public holidays when the need arises not on the basis of legislation²⁰. It is because public holidays are in the said list that Ministry of Internal Affairs grant and declare public holidays²¹.

It appears as if there will be no harm if public holidays is located in the Concurrent Legislative List. This is because the Federal Legislature may simply set out the general framework with respect to the subject matter, leaving the state legislature to supply the substance.

So long as the state legislature, in supplying the substance; as to the type and nature of religious persuasions in the state; keeps within the general framework provided by the Central Legislature, no problem arises.²² Alternatively, the Federal Government can comprehensively and satisfactorily ‘cover the field’ by listing and recognizing all religions in Nigeria. This is to ensure that no state legislates on religion or takes any religion as a state religion.²³

The democratic process in vogue as some people say, includes consideration of the rights of both the majority and minority; this means the rights of all the people. During the elections all the people of the Constitutional age of 18 years²⁴ are required to vote not

¹⁷ Section 18(1) of Interpretation Act, Cap. LFN, 2010. By Section 3(2) of the Interpretation Act, it was provided that nothing in the Act shall be construed as purporting to prejudice the provisions of the Constitution of the Federal Republic of Nigeria.

¹⁸ See the list of National Public Holidays in Section 1 of Public. Holidays Act Cap.P40 LFN; 2010.

¹⁹ See the 2nd Schedule Part I of the Exclusive Legislative List item 51.

²⁰ See section 2(2) and (3) of Public Holidays Act Cap.P40 LFN, 2010. The State should take cognizance of Section 9(1) of Interpretation Act Cap. LFN, 2010 and Section 1(3) of the 1999 Constitution.

²¹ See section 3 of Public Holidays Act Cap.P40 LFN, 2010.

²² See also Ex Parte Maclean (1930) 43 where it was stated that if the Federal Law is shown to be intended as supplementary to or cumulative upon the state law, no inconsistency exists and no problem arises. See also Alhaji Aberuagbe v A.G. of Ogun State & Ors. (1985)1 NWLR (pt. 3) 395.

²³ This is in compliance with Section 10 of the Constitution of the Federal Republic of Nigeria, 1999.

²⁴ See Sections 29 (4) (a); 77 (2) and 117 (2) of the Constitution of the FRN, 1999.

minding their religious inclination. Also, all adults are required to pay their taxes to the government without consideration of religion. Justice must be seen to be done in compliance with the dry letters of our Constitution particularly the protection of human dignity as well as ensure the freedom of all and sundry.

Our democratic neighbour or sister-nation America, while accommodating various religious beliefs at the same time does not favour any particular belief. This is crucial in their maintenance of peaceful co-existence of various religious factors. Religious factions and mixing of state with religion often enflames civil disturbances and rebellion. When the state favours one religion over another or gives tax support to the privileged religion, the state creates political insiders and outsiders, as in Nigeria with respect to public holidays. This increases bitter resentments of one religion against another.

We have to bear in mind that man's uneasiness is such that the vagueness and mystery which religion presents are absolutely necessary to him. This is because life is one long journey through a dark tunnel full of problems, fears and uncertainties. Religion uses man and man uses religion for various ends for personal advantages in politics and business.

The religious groups provide a splendid platform for the emergence of a charismatic leader, because social groups need leadership. Interposed between the congregation and the Almighty, the charismatic religious leader can in the long run metamorphose into a deity himself.

For the alienated or spiritually dislocated, he inspires hope in the end, the congregation, hypnotized by the leader's wit and, sometimes, powers can begin to see hope radiated from him. His words become law and dogma. The congregation sworn, and hear kens to his call; they worship at his feet, hedonistically and occasionally tragically. In 1978, Rev. Jim Jones led over 900 members of the Peoples Temple in Guyana to mass suicide when he exhorted them to drink of a communion, which, unknown to the followers, had been laced with cyanide. Later a religious leader asked his followers to withdraw all their money here on earth to enable them transfers same to heaven.

His congregation did so en-mass. Very recently in an African country, a religious leader called in his followers and agreed with them that they should all go to heaven together by dying all at a time. For this reason, he set the church ablaze and they were all burnt to death. Muhammed Marwa of the maitatsine did such terrible things. At Enugu, Nigeria, a

Pentecostal church leader ordered all their followers to withdraw their children and relations from businesses and schools to wait for the coming of Christ, This they did, for months, but God being awaited did not come and most of them lost their employment and their children lost school sessions.

The reason for the instances is to remind us of what religion could mean to some. The danger is that one day a religion that feels discriminated against may cause a havoc never contemplated by any person. We all know that religion was never intended to foster such calamities, often believed to be an indirect expression of God's wrath.

Although it may appear as if liberal spread of public holidays to all religions will adversely affect the man-hour of the nation, there is an alternative as may be suggested later in this work. The synergic effect of equal spread of public holidays will surely cover the loss that may be sustained as a result of a negative reaction of any religion. Accommodating all religions will appear a long uphill task. But the ride down the other side more than justifies the climb.

(c) **Secularism**

"Secularism" means among other things the "theory that religion and state should be separate" and "secularism" is defined as "A view of life or of any particular matter based on the premise that religious consideration should be ignored or purposely excluded in government; a system of social ethics based upon a doctrine that ethical standards and conducts should be determined exclusively with reference to the present life and social well-being without reference to religion.

Nigeria being multi-ethnic in composition with diverse religious beliefs, it is better with the provisions of **Section 10 of the 1999 Constitution.**

This is because if a state chooses to legislate a religion into law by adopting it as the state religion, it evidently does not add a new factor of unity to the old, but sows the seeds of future disunity and conflict by declaring that non-conformers and aliens have no place in such a state/society.²⁵

²⁵ Examples of regressive religious states are: Iran (Islam), Libya (Islam), Pakistan (Islam), Malaysia (Islam), Morocco (Islam), Bangladesh (Islam), Saudi Arabia (Islam), Yemen Republic (Islam), Cambodia (Buddhism), Nepal (Hindusim).

It is the belief that religious influence should be restricted, and in particular that education, morality, the state and others should be independent of religion,²⁶ secularism is not opposed to religion as such but in a state which shows tolerance towards all religions, allows full freedom of worship, prayers and all other religious observances, excepting those practices which conflict with the laws of the state such as secret society.²⁷ This is because Nigeria is beset by ethnic and religious pluralism, and this will make the nation face the challenge of danger to its very political existence if it does not consolidate the unity of the society around the nation²⁸.

The country does not have any option than to seek a compromise between diversity and unity, autonomy and suppression, recognition of inherited religion-based institutions and customary personal laws on the one hand and the institution of a monopolistic national secular law on the other. In the Constitution of the Federal Republic of Nigeria, 1999 it is stated that "the Government of the Federation shall not adopt any religion as state religion",²⁹ This makes some Nigerians feel that Nigeria is a "secular state." Albeit, Nigeria is a multi-religious country, as some also feel.

Religious Structure of Nigeria and Constitutional Provisions

Nigeria as a nation was amalgamated by Lord Lugard in 1914. This was achieved by integrating the Northern and Southern Protectorates. The presumption is that in the North, Muslims are more in number as a result of the jihadist incursion in 1804 - 1810. In the South, Christians are generally known to predominate. Without going much deeper into history, there was a lot of Islamic influence in the North and a lot of Christian influence in the South through the Western world.³⁰

It certainly will not be true that there were no forms of religions at both the Northern and Southern parts of Nigeria before the aforesaid influences. The father's religion is prima-

²⁶ The New Lexicon, Webster's Encyclopedic Dictionary of the English Language, Deluxe Edition, Lexicon Publications Inc., Danbury, CT. 903.

²⁷ See Section 38(4) of 1999 Constitution; Registered Trustees of AMORC v AWONIYI (1994)7 NWLR (pt. 355), 154 at 178, paras. G-H.

²⁸ In the TELL MAGAZINE, (2002) Vol. 7 Edition, 10, the Magazine catalogued at least 40 instances of Ethno-Religious crisis from May, 1999 to February, 18, 2002.

²⁹ See Section 10 of the Constitution of the Federal Republic of Nigeria, 1999.

³⁰ The Widespread Western World influence brought with it early education to these regions. Indeed, in the South, education came much earlier than Islam. See generally J.F. Ade Ajayi and Ian Espie (eds). A Thousand years of West African History, (Ibadan: Ibadan University Press, 1965) ch.15, 267.

facie the infant's religion.³¹ One can safely state that some Nigerians continued the religion of their ancestors while others were proselytized. Some parts of the Yorubas adopted Islam during the 20th Century at a time when Western education was spreading and along with it, Christianity. So it happens that families frequently have pagan members, Christian members, and Muslim members.³²

Based on the foregoing, it is not true to say that Nigeria as a nation does not believe that religion should have a place in her civil affairs³³ which is the purport of secularism. According to Lord Denning the difference in worship of God by different churches (religions) is merely the difference of ritual. Surely it is not ritual which appeals to God, but a heartfelt worship of His Being.

Apart from Christianity and Islam, there are yet other religions in Nigeria some of which are: traditional religion such as heathenism, animism, fetishism, totemism, Godianism³⁴ etc. All these religious practices conceive one God, one Supreme Being which we all call God the creator, Supreme God, Almighty perhaps in different languages, ways and places. In the same vein, there are appreciable incidence of similarities in faith and mode of worship in these religions which goes a long way to buttress the fact of pre-eminence of one Supreme Being and His intervention on the life of mankind like "THE GOLDEN RULE"³⁵. Whoever lives according to the tenets of the Supreme Being or Creator shall be rewarded and whoever derails on the injunctions shall be punished. In view of these,

³¹ This is usually captured by the Latin expression - *religio sequitur Patrem*.

³² See I. N. D. Anderson, *Islamic Law in Africa*, 222, Anderson, *The Legal Tradition - Islam in Africa*, Van Nostrand-Rein hold Co. (Canada) Ltd, 35 at 41.

³³ Quaere, the 1999 Constitution subtly acknowledges this position by its secular stance.

³⁴ This religion has its Headquarters at Ogbor Hill Area, Aba, Abia State, Nigeria, at 97, Ikot Ekpene Road, Aba. They hold their religious services regularly and have covenant of hearts (wed) their members in their own way and extend other religious rights and services to their members. Their Religious Redemption day is 12/12 or 12th December every year.

³⁵ BUDDHISM: Hurt not others with that which pains yourself. (Unanavarga, 5:18); CHRISTIANITY: So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets (Bible, St Matthew, 7:12); CONFUCIANISM: Is there anyone maxim which ought to be acted upon throughout one's whole life? Surely the maxim of loving-kindness is such. Do not unto others what you would not they should do unto you. (Analects 15:23); HERBRAISM: What is hurtful to yourself do not to your fellow man. That is the whole of the Torah and the remainder is but commentary. (Talmud); HINDUISM: This is the sum of duty; do naught to others which if done to thee, would cause thee pain. (Mahabharata, 5:15-17); ISLAM: No one of you is a believer until he loves for his brother what he loves for himself. (Traditions); JAINISM: In happiness and suffering, in joy and grief, we should regard all creatures as we regard our own self, and should therefore refrain from inflicting upon others such injury as would appear undesirable to us if inflicted upon ourselves. (Yogashastra, 2:20). See Frederick R. Gould, *Developing Your Latent Powers, Thirty Practical Steps to Spiritual Satisfaction*, David & Charles Newton Abbot London Vancouver (1976), 28.

why discriminate? Is right all about numbers? Does number of followers make them better or more pious? I think not. Religious acculturation in Africa has produced a mélange of rituals, practices and beliefs in Nigeria. There is no need mentioning polytheists as they also abound in Nigeria.

It is true that gender is one reason for inequality but religion is another, they do not mutually exclude each other. They both perpetrate discriminatory practices. Indeed, they intersect giving rise to compounded or double discrimination. On our political calendar since independence the Ministry of Internal Affairs indicates and grants public holidays only to Christians and Muslims.³⁶

We are so wrong to be smug about the secularity or multi-religions platform of Nigerian nation. It has to be borne in mind that anytime truth is violated, the seed of violence is sown and every time justice is violated, peace is compromised for truth and justice are the pathways to peace, security and social well being.

There is no need incubating religious hatred. We should remember that what goes around comes around. Our “unity in diversity”³⁷ should be cemented in one accord notwithstanding our creed or religion. Our laws, whether state or federal should endeavour deliberately to look up to our unity as our source of strength. Our Constitution whenever amended should be the place where gender-setting compromises will be seen to have been grafted so as to offset the negative impact of religious shock.' Instead of having religion as the dividing sword, we should rather have it as a more effective instrument of development and peace.

The future generation cannot be expected to learn that we sat idly or watch helplessly while a particular religion or right which will not cost us much to destroy our commonweal, and render desolate our national landscape/prospect. We should not allow the greed of the majority ride in tandem with their lust for perpetual control. The heat already generated by

³⁶ By Section 4 of 199 Constitution per the 2nd Scheduled Part I of the Exclusive Legislative List it is only the Federal Government can in view of item 51 legislate on Public Holidays. See f.n. No 17 above. See also section 3 of Public Holidays Act, Cap.A40 LFN, 2010.

³⁷ In the opinion of the Ionians all things are ultimately one because they are all made of one stuff but in various forms giving rise to different names. We all belong to one God who is all knowing. He alone knows why He created the geographical entity known as and called Nigeria with different people, religion, languages, etc. If there is a basic unity in the Universe in spite of so much diversity of things, then it must be the case that somehow all things are basically one in many forms.

ethnic minorities could be said to be sufficient and enough for Nigeria, also religious heat should be eliminated by equal treatment to all.

Human rights and fundamental freedoms have moved through various stages. Presently, they are codified having in mind that law ought to reflect the moral milieu for the purpose of attaining social cohesion. This is consistent with **Jeremy Bentham's** utility principle, the principle of attaining the greatest happiness of the greatest number. Fortunately, our Constitution provides for such rights.³⁸ Equality and non-discrimination constitute the heart of human right. The legal implication of **Blackstorian theory** was that the fundamental rights of man were considered the essential feature of a Constitution with a view to redressing the balance between the power of the state imposing duties³⁹ on its citizens and the powerlessness of the citizens to ensure correlative respect for their rights. The essence of government is to maintain peace and as well extend social justice to and among the citizens. Without justice, social order is constantly threatened.

The right to religious freedom, like other human rights, cannot be unfettered and is subject to restraints in deference to correlative duties or obligations towards the state, its laws, public order, morals and fellow citizens. Our Constitutional history informs us that **Willink's Commission** recommended the inclusion of fundamental rights in the Constitution to protect the rights of the minorities.⁴⁰ By extension, the religious beliefs of the minorities were inclusive.

Fundamental Human Rights and Religion

'Freedom' and 'Equality' have turned out in our times to be major rivals and poisoned chalice⁴¹. Equality, in fact, is the starting point of all liberties and is philosophically related

³⁸ Nigeria is a signatory to some International Treaties and Conventions; e.g. African Charter on Human. and Peoples' Rights-See Articles 2 and 3; CEDAW - See Art 1; Convention on the Rights of the Child - See Art. 14, A. U. Charter on the Rights & Welfare of the Child - See Art. III, etc.

³⁹ See Section 24 of the Constitution of the FRN 1999. Human Right include human duties, whoever receives the benefit should bear the cost. See Irene Dass, Human Rights and the Duties of Citizens, (1992).

⁴⁰ D. L. Grove, "The Sentinel of Liberty: The Nigerian Judiciary and Fundamental Rights," {1963, J. A. L. Vol. 152, 12 quoted in M.I. Jegede" The Supreme Court's Attitude Towards Some Aspects of Individual Freedom and the Right to Property." In A. B. Kasumu (ed) 121.

⁴¹ "Freedom" is now for the majority, the rich, the powerful, the fraudster etc and "Equality" is for the bourgeoisie, the well connected, the privileged etc. This is what Lord Macnaghten noticed and he said "It is a public scandal when the law is forced to uphold a dishonest act" Nordenfelt V Maxim. Nordenfelt & Co (1894) L.R. App. Cas. Pt. 3, p 573. What we now have is army of occupation. Most states do not have law reforms over 20 years now and their governments will not want to empower the common man or the masses through law reforms.

to the concept of freedom and justice.⁴² It is hoped that our laws shall remain progressive and in line with the opinion of Oputa JSC (as he then was), “.. we conflate law with justice” as according to him, the law can crush us and we will have no redress. But if we regard justice as a concept higher than law (as in deed it is) then when law oppresses, we can appeal to justice for redress.⁴³ The principle of equality restricts freedom allotting to each individual or group or community a sphere of freedom.

In respect of religion, the equality principles imply that all religious groups should enjoy equal freedom, or are to be treated equally or in the same way. Freedom of religion in any society can exist only on the premise of the equality in the enjoyment of this freedom. Any reason to treat different religions differently (e.g. the principle of treating equally what are unequal and unequally what are equal) imports all kinds of invidious distinctions.⁴⁴ Any discrimination in a multi-religious society corresponding to the differences raises issues of reasonableness and justice and of permissible discrimination as a reverse side of the notion of equality before the law.⁴⁵ The essential problem of liberty and of equality is patently one of freedom of individuals or groups from arbitrary restriction and discrimination whenever and wherever imposed.⁴⁶

Intolerance and discrimination have been defined to mean any distinction, exclusion, restriction or preference based on religion or belief with a view to effecting nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis. Equality and non-discrimination constitute the heart of human rights, the major task ahead for the goal of effective realization of human rights lies in effective elimination of all forms of discrimination. In the words of Lord Atkin:

The Sacred rights of mankind are not to be rummaged for among
old parchments of musty records, they are written, as with sunbeam

⁴² See Harold Laski, 'A Plea for Equality' in his *Dangers of Obedience*, (1930)232; *ibid*, *A Grammar of Politics*, (1925); 42 - 172.

⁴³ Justice Oputa JSC (rtd), *The Working of a great mind*, *The Guardian Newspaper*, Wednesday, October 4, 1989, 16 by Kunle Sanyaolu.

⁴⁴ The equal protection clauses, in both India and U.S.A. rests upon two largely subjective judgments: the relative invidiousness of particular differentiation and the relative importance of the subject with respect to which equality is sought. See K. K. Mathew: *Democracy, Equality and Freedom*, (1978) 222 - 226, See also Prof. R. P. Dhokalia, *ibid* at 108.

⁴⁵ See also Article 19 of African Charter on Human and Peoples' Rights.

⁴⁶ *Op cit*.

in the whole volume of human nature, by the hand of Divinity itself
and can never be obscured by moral power⁴⁷

It may be the peculiar nature of religion that necessitated numerous mention of religion in the Nigerian Constitution.⁴⁸ It is stated that "a citizen 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 (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 ... religions or political opinions are not made subject, (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 religions or political opinions.⁴⁹ It is doubtful if this same provision in the Constitution was considered by our Courts when it gave judgment in *Ojiegbe & Ors v Ubani & Ors*⁵⁰ that the election would not have favoured the defeated candidate even if all the members of the 7th Day Adventist Church voted for him. Also that 'fixing any other day would have infringed on the right of some other people. Another election should have been organized and fixed for another day not the day of service of the church to clearly confirm whether the defeated candidate will lose or win.

Also the same Constitution stated that "every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief... and propagate his religion or belief in worship, teaching, practice and observance.⁵¹ This falls partly within the scope of freedom of expression⁵² and association⁵³ and includes one's freedom even to change one's religion or to propagate one's religion or belief and manifest it, in worship, teaching, practice or observance.

Religious resistance has all along the history of mankind been of enormous power and has to be properly understood in the context that the age of technology has inaugurated a

⁴⁷ See *The History of Freedom and other Essays* (1907)587; See also R.P. Dhokalia op cit.

⁴⁸ See Section 10, 15(2), 17(3)(b), 38(1)(2)(3) and 42 of 1999 Constitution among others.

⁴⁹ Section 42 of the Federal Republic of Nigeria, 1999.

⁵⁰ (1961) All NLR 277 SC; *Agbai v Okagbue* (1991)7NWLR (pt.204) 391 SC.

⁵¹ See Section 3 8(1) of 1999 Constitution; Article 10 of Universal Declaration of Human Rights; Article 18 of ICCPR, etc.

⁵² Section 39 of the Constitution of Federal Republic of Nigeria 1999.

⁵³ Section 40 of the Constitution of Federal Republic of Nigeria, 1999.

new era of accelerated movement of persons, ideas and things across national frontiers to call for adjustment of human groups composing pluralistic and multi-religious societies. This human right belongs to every individual member of human society and entails the notion of human equality and universal possession of this right without any discrimination or distinction as to race, sex, language, religion or belief. It is inconsistent with the principles of equality that men are treated differently on the grounds of thought, conscience and religion.

Religion or belief remains a fundamental element in man's conception of life; religion and belief and of practicing religion as well as manifesting a belief calls for full respect and guarantee against discrimination. The United Nations Charter in several articles stressed the principle of non-discrimination on account of religion, race, colour, sex, language, political creed, etc. This country is enjoined by International Conventions not to pursue a policy or enact and retain discriminatory laws impeding freedom of religion and to ensure equality before the law without discrimination and its protection and remedies against promotion of incitement to religious intolerance or discrimination.

It further enjoined the duty on every civilized legal system and government, as mere agent of the society, to guarantee and protect the right to religious freedom. A couple of specific International instruments target the religious aspect of minority rights, notably; the Declaration, the Elimination of All Forms of Intolerance.⁵⁴

Public Holidays for all: What Will The Courts Say?

The Court is the guardian of the Constitution,⁵⁵ it has the Constitutional; Legal and Sociological responsibility by Section 6 of 1999 Constitution to interpret it in the light of the

⁵⁴ See the Declaration on the Elimination of All Forms of Religious Intolerance, 1993; Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities of 1992.

⁵⁵ CC. Nweze J said "There is a striking convergence of juristic views on the role of the judiciary as the guardian of the Constitution, and *ipso facto* of Democracy. These views find solid anchorage on a plethora of provisions in the 1999 Constitution. From a conceptus of these provisions the Judiciary could rightly be viewed as the sentinel duly consecrated to guard the cherished principles of Democracy enunciated in the Constitution. See NAN Law Journal Vol. 1, no. 3, p.2. Also see P. Nnaemeka Agu, 'Enhancing the Efficacy and the Independence of the Judiciary in the 3rd Republic (Enugu 4th Dimension Publishing Co. Ltd. 1993) 37, 41; See also Eso 'The Court as the Guardian of the Constitution' in J. A. Oyeyipo, 'Enhancing the Efficacy and the Independence of the Judiciary in the 3rd Republic in I. A. Umezulike (00); *ibid*, p.17 at 22. Also C. Oputa, the Independence of the Judiciary: Myth or Reality, in E. Amucheazi and O. Olatawura (eds.), the Judiciary and Democracy in Nigeria (Abuja: NOA 1988) 168, 174; Oputa, *ibid* p. 174; E.Azinge, Jurisprudence of, 'Democracy' in Yemi Osinbajo and Awa Kalu (eds). Democracy and the Law (Lagos:)

socio-economic and cultural background of the people in whose background it is fashioned. My opinion has always been that repugnancy test should not be based on standard in “civilized society”. It is for this reason that we have in the preamble to the Constitution the following:

WE THE PEOPLE of the Federal Republic of Nigeria⁵⁶ HA VING firmly and solemnly resolved; TO LIVE in Unity and harmony as ONE indivisible and Indissoluble sovereign Nation under GOD dedicated to the promotion...

With this preamble of our Constitution, the Court is armed to do justice, and the means to enforce it should be available equally to every member of the community, regardless of means, religion and without discrimination. The Court as the watch-dog of the other arms of government and the guardian of the Constitution should hold void any exercise of power such as the declaration of public holidays in favour of few religions.

The Court should not lose sight of the historical justification for the inclusion of fundamental rights in the Constitution. By Section 6 of the 1999 Constitution, the Court is the final arbiter in the protection of the rights of the minority and expose the oppressive acts of the majority having in mind the view of Udo Udoma JSC in the case of *Nafiu Rabi v The State*⁵⁷ that the proper approach of the Court to the construction of the Constitution should be one of liberalism. This is because the Court is the avowed sentinel of liberty and fundamental freedoms.⁵⁸ And, the ferocious 'alsatian,' keeping watch over our citadel of democracy.

In the ex-curia opinion of Oputa JSC:

..... it is only when the machinery to deliver justice reaches the poor and the disadvantaged members of the society (such as religious minorities)⁵⁹ that the Courts will acquire new credibility with our people and the judiciary will then really deserve the appellation - 'the last hope, the last line of defence of the common man' in his unequal combat with power and its misuse and abuse.

When our people feel sure that they can turn to the Courts against executive excesses or abuse of legislative power, in short, against what for lack of better expression, one may call governmental lawlessness, then the

⁵⁶This presupposes adequate representation of all classes, religions, etc. of people of Nigeria.

⁵⁷ (1980) 8 - II SC 130.

⁵⁸ See *Onu Obekpa v C. O. P.* (1981) 2NCLR 420.

⁵⁹ Words added are mine.

judiciary is playing its Constitutional role as the watch-dog of the Constitution and of our peoples right.⁶⁰

Noble and courageous words indeed!

The judges have a vital role to play in ensuring that law serves the end of justice and that there must be a meeting point for social and legal justice. It is expected that the Court should whenever possible, and in response to the demands of justice, lean to broader interpretation of the Constitution. The law should be even handed between the government and citizens.

To be able to do justice to those in need of it, there must be an arbiter who understands the meaning of justice and has the will to do it, do it without fear or favour, affection or ill will. This is because the wheel of society moves on the wings of justice.

From all indications, no person or group of persons have sought the assistance of the Courts for the declaration of Public Holidays for any other religion in Nigeria apart from that of the gazetted holidays by the Ministry of Internal Affairs. So until a part or more seeks the Declaration of the Courts, one cannot say that the Courts have adopted activist or positivist posture. We have in mind the legal aphorism that the function of the Judge is **judicare et non jus dare**, that is, that Judges do not make law but rather declare what law is. It is trite that Court does not grant or award what was not sought.⁶¹ Also what the Courts say in fact is the law and nothing more pretentious, as laws are inanimate before the courts pronounce on it.⁶² Our Courts are courts of law and justice. The essence of law is to protect the interest of the people in the society because we are all equal before the Law.⁶³

It was for this that Rosco Pound had argued that law should balance the conflicting interests of the people in the society. Also, Jeremy Bentham postulated that the greatest happiness of the greatest majority should be the essence of a good government and a good government to protect the citizens from infringement of their rights by declaring *ultra vires* action that are antithetical to the Constitution.

⁶⁰ Oputa JSC, Access To Court in Law and Practice, Journal of the Nigerian Bar Association L.P. Vol No.1, August 1988 edition 7.

⁶¹ Iweka v S. C. O. A. Nig. Ltd (2000) F.W.L.R.(pt.15); p7, Wegede- v Milt. Admin. Benue State (2000) FWLR (pt22) 981; Union Breverages v Owolabi (1988)INWLR(pt.68)128; Ajikano v. Ansaldo Nig. Ltd (1991)2NWLR(p.173) 359 at 364 - 5; 372 - 3; State v Aibangbee (1988)3NWLR (pt.84)577; Adebayor Ojo v Abagunyin & Ors (1989)5NWLR (pt120)162 at 165.

⁶² Oliver Wendell Holmes, The Common Law, Buston, USA; Little, Brown & Co. (1948).

⁶³ See The Universal Declaration of Human Rights.

Nigeria should not stick to the public holidays declared by the Western world because African values are different from European values. Standard in civilized society should not be used as a basis for repugnancy, they wed man and man as husband and 'wife'⁶⁴ but in Nigeria due to our custom we do not allow woman to woman marriage customarily.⁶⁵ We also practice 'N'rachi custom's'⁶⁶ although they are not wedded. Negative emulation could generate cultural confusion, where the society will not have a clearly defined character. Since law came to be regarded not as an unchanging command of a divine being, but as a purely human invention, born of expediency and alterable at will, all the citizens rights should be accommodated in the Declaration of Public holidays. Those who feel that their rights are being denied may be encouraged to seek relief from the Court having in mind cases like *Balewa v Doherty*⁶⁷ and that of *Akintola v Adegbenro*⁶⁸. The dictum of Fatai-Williams CJN should not be over looked in this regard; he said:

I take Significant cognizance of the fact that Nigeria is a developing country with a multi-ethnic society and a written Federal Constitution where rumour-mongering is the pastime of the market places and construction sites. To deny any member of such society who is aware or believes or is led to believe that there has been an infraction of any of the provisions of our Constitution, or that any law passed by any of our legislative houses whether Federal or State, is unconstitutional, access to a court of law to air his grievance on the flimsy excuse, lack of sufficient interest is to provide a remedy for organized disenchantment with the judicial process... when interpreting the provisions of our 1979 Constitution⁶⁹ Not only should the Courts look at the Constitution as a whole they should also construe its provisions in such a way as to justify the hopes and aspirations of those who have made the strenuous effort to provide us with a Constitution for the purpose of promoting the good government and *welfare of all persons* in our country on the principles of

⁶⁴ *Corbett v Corbett* (1970)2 All E.R. 33. Marriage is a Union of a man and woman which involves two persons of opposite sex. Sex therefore plays a very crucial role in marriage relationship. Therefore for a person to establish the existence of a valid marriage, it must be proved that the persons who are involved are man and woman. See Section 15 (2)(a) of the MCA, 1970 and Section S(IM)CA, 1970.

⁶⁵ See *Meribe v Egwu* (1976)1AIINLR 266, *Iweze v Okocha* (1967) MSNLR64.

⁶⁶ *Muojekwu v Ejikeme* (2000)5 NWLR (pt,567) 402.

⁶⁷ (1961)1 All NLR 604.

⁶⁸ (1963) A. C. 614; 3WLR 63 (PC).

⁶⁹ The 1979 situation is in line with 1999 Constitution with respect to the letters and the spirit of the Constitution, The difference may be in numbering. The court should not adopt political question doctrine as it will not mean encroaching into the duties or decisions of other arms as to make it not justiciable, It is part of the promotion of good governance and welfare of all same spirit that judgments such as *A.G. Bendel v A.G. Federation* (1981) 10S.C.1; *A.G. Abia State & Ors v A.G. Federation* (2001)16WRN 1; *Buhari & Ors. v Obasanjo & Ors* May 2003 were decided.

freedom, equality and justice and for the purpose of consolidating the Unity of our society.⁷⁰

African Charter on Human and Peoples' Rights which Nigeria has domesticated⁷¹ stated that "All peoples shall be equal before the law.⁷² They shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.⁷³ This is a valuable tool available to the Courts. Inimitable courage and probity should encapsulate the attributes required for the sustenance of public confidence in the judiciary. The judiciary activist sensibility should be excited in our judges when the minorities who may feel horrendously asphyxiated as they are denied their Constitutional rights of public holidays. The perspicacity and sagacity of our judges in this area of our constitutional and societal need is desirable for cementing of national unity. The judges will be better for it because according to Nietzsche the German Philosopher said "Light heartedness is the reward of a deep, courageous and painful inward seriousness."

Law exists in every human society for the control of human conduct - *ubi societates ibi jus*. For this reason, International Covenant on Civil and Political Rights (ICCPR) specifically affirmed the rights of minority groups to exist and enjoy their rights:

In those states in which ethnic, religious, linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with other members of their group to enjoy his own culture to profess and practice their own religion, or use their own language.

It is hoped that our courts when matters of this nature are brought will concur with the diction of Lord Denning's activism and innovative spirit in. **Major and St. Mellons RDC v New Port Corporation**⁷⁴ where he said:

We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.

Something should be done to harmonize the situation because equity will not suffer a wrong to be without a remedy and equality is equity. We should be impartial in thought as

⁷⁰ Senator Adesanya v The President of the Republic (1981)2NCLR 35 at 37.

⁷¹ See The African Charter on Human and Peoples' Rights (Ratification and Enforcement Act, Cap. 10LPN, 1990). Sani Abacha & Ors v Chief Gani Fawehinmi (2000) FWLR (pt.4)533; (1996)9 NWLR (pt.475)710.

⁷² See Article 3(1) of Cap 10 LFN, 1990.

⁷³ See Article 19, 20(1) and 39 of Cap A9 LFN, 2010.

⁷⁴ (1950)2 All E. R. 1226 at 1236; (1951)2 All E. R. 839.

well as in action. It is said that it is a political error to practice deceit, if deceit is carried too far.

No judgment is expected to be fair and seen to be fair except it be free from bias.⁷⁵ That is why it is often represented by a person blind folded, an indication that justice has to be blind to religious persuasion and blind to discriminating tendencies or policy and to all other considerations that may impede the exercise of the sacred duty of serving all manners of men.

Conclusion

A critical study on this discourse vis-a-viz the present application of public holidays on religious grounds clearly shows that the country is yet to come to terms with according fairness to other religious bodies in the country.

What is prevalent in our country today by the state preference to Christian and Muslim faiths only, to say the least is not by any standard in jurisprudence fair and just to other numerous religious bodies in a multi-religious setting like Nigeria.

Government should always be mindful of the fact that no matter how minor an interest group is, that equity is fairness, and equity begets justice and justice remains the corner-stone of any human set up. To do otherwise, detracts from the true spirit of our Constitution and immutable divine injunction. During national elections, people of all religions vote, all taxable adults and companies without religious consideration pay taxes. Also, since there has not been any empirical proof of superiority or otherwise of any religion to the other, the assumption is that no religion is superior to the other⁷⁶. For this, all religions should enjoy equal rights and privileges as they share equal duties.⁷⁷

It has to be understood that prejudice can never justify discrimination.⁷⁸ One can see discrimination as oppression or injustice or at best "sad-eyed justice". There appear to be

⁷⁵ Secretary, Iwo Central Local Government v Adio (2000) FWLR (pt. 7) 1142 SC; Yabugb v C. D. P. (I 992)4NWLR (pt.234)152, 173 -4; Eckersley, v Mersey Docks and Harbore Board (1894)2 QB 667 at 670.

⁷⁶ It is pertinent to state that the resurrection of Christ from death distinguished Christianity among other religions of the World.

⁷⁷ This has not been the case because majority rule is a euphemism for the law of the jungle, the power of the strongest. For this reason rights and duties are only a political device in the hands of the powerful, no matter how acquired in politics without principle era. History discloses that only the victors declare and promulgate rights, which are simply what the powerful consider rights at any given time.

⁷⁸ Jacques Charl Hoffmann v South African Airways.(2001)38WRN 147 at 167.

institutionalized prejudice against other religions. One clear indication is the denial of Public Holidays which the elected executives are mandated to handle exclusively. Our Constitutional Democracy has ushered in a new era - it is an era characterized by respect for human dignity for all human beings. In this era, prejudice and stereo-typing have no place. Indeed, if as a nation we are to achieve the goal of equality that we have fashioned in our Constitution, we must never tolerate prejudice, either directly or indirectly.

To ensure equality and fairness, all employees should be granted Public Holidays according to their religious persuasions. This may not exceed a certain specified number of days in a year. Each employee should declare his/her religion as a matter of official requirement of the employment. There should be agreed general public holidays which may be on the New Year Day ie national public holiday on this date, all should be on holiday. The court processes should be based on this record, so that people will be granted adjournment according to their respective religious affiliation for their observance of public holidays.

By this, the unity of the country will be cemented as every religion will feel recognized and accommodated/integrated or affiliated in the national scheme of things. It has to be understood that the denial of public holidays to certain religious groups appears to be a potential land mine which may explode when they decide to insist on their rights. This is analogous to chaining religious minorities and other minority groups to the pillar of second class Citizens in their own country contrary to the "letters" and the "spirit" of their own/autochthonous Constitution. Liability without fault scenario.

We should assuage minority endemic and, maybe, justified fears of majority domination and winner-takes-all attitude in all areas of the polity. National policies should be subjected to the acid test of justice. Also, there must not be one rule by which one privileged religion is treated and another for the unprivileged religion. No religion should have justice meted to it by a different measure on account of its privilege or fortune, from what would be done if it were destitute of both privilege and fortune. Justice is the constant and perpetual will to render to everyone that to which he is entitled.⁷⁹ Also, justice is the master idea of the modern world. Today the consciousness of justice is increasing. Every

⁷⁹ In fact, the Justinian Pandects equated justice with equity which it defined as: "*honeste vivere, alterum non laedere suum cuique tribuere*" (to live honestly not to hurt another, to give to each his due).

man today has a new awareness of himself.⁸⁰ He knows that he is a person, an individual being, equal to others, rational and self-active, free and responsible, certain things are due to him. These are his rights. One of such rights is public holidays enjoyed by other religions in our secular, nay multi-religious nation.

Fundamental rights and freedoms were not a matter of consensus. A majoritarian notion of "morality" was not a sufficient basis to deny an unpopular minority the equal protection of the law. Indeed, it was because they were a minority and likely to be politically powerless that they require the protection of the law and equal treatment under the law.⁸¹

⁸⁰ This means self actualization or realization of oneself.

⁸¹ *Quiter v. Attorney General, New Zealand* (1998)3 LRC 119 at 123, paras. f-g.