

BLASPHEMY AND THE DEATH PENALTY UNDER SHARIAH LAW IN NIGERIA: A LEGISLATIVE MONSTROSITY¹

Abstract

The word 'blasphemy' connotes any act of disrespect or denigration of a religion which the adherents considered to be so. Religion usually invoke deep emotions and feelings that shapes and defines the world-view of its members. And because of its powerful effect on the members, proselytization of religion had always provoked violent reactions, at times, killings and destruction of properties and that explained why insult to religion was criminalized in many jurisdictions. The Nigerian criminal justice system at the federal level criminalized insult to religion as a misdemeanour. However, the entrance of Shariah penal code in some Northern States in Nigeria from 1999 altered the existing federal penal system and introduced a parallel law that made blasphemy a capital offence punishable with death. Using theoretical and doctrinal data, this paper investigated the justification of death penalty for blasphemy under Shariah penal code in Nigeria by interrogation of Qur'anic injunctions and the teachings and practice of Prophet Muhammed [PBUH] and other literature on the issue and found out that death penalty for blasphemy was a legislative monstrosity and ought to be abolished.

1. Introduction

The word 'blasphemy', a religious syntax across all religious divides connotes any act of irreverence whether by spoken words, in print or gestures considered by a class of people of a particular religious sect as demeaning, denigrating, desecrating and contemptuous of their religion or contextually considered sacrilegious by religious sacred texts. Such acts considered blasphemous have provoked hatred and violence of unimaginable proportions on limbs and properties [both private and public] especially among adherents of Islamic religion which had resulted to series of breaches of public peace and loss of several lives in Nigerian jurisdiction and several other jurisdictions in the international community.

The focus of this paper is Nigeria with comparative study of other jurisdictions. Recently and to be precise, on 10 August 2020 a Kano Upper Shariah Court sitting at Hausawa Filin Hockey Kano² convicted and sentenced to death a 22-year old musician, Yahaya Sharif-Amina to death by stoning for blasphemy on account that he published a song he composed in his WhatsApp account wherein the convict had praised a Senegalese Islamic cleric, Ibrahim Nyass from Tijaniya Sufi sect as greater than Prophet Muhammed [PBUH] considered disparaging and insulting to Prophet Muhammed [PBUH].³ Before the arrest and conviction of citizen Yahaya Sharif-Amina, there was wild spread violence visited on the family properties of the young man by angry Islamic youths who burnt down his family home and subsequently led a protest to the Kano Hisbah Shariah Police⁴ and demanded for his death upon

¹ **DR. INNOCENT EKEZIE NWAOGAZIE, LL.B (Hons), B.L, LL.M, Ph.D (UNN)**, a private Legal Practitioner and Managing Solicitor at Inno E. Nwaogazie & Co, No 2A Pound Road, Aba, Abia State, Nigeria with rich scholarship in law and practice. Phone no. +23430963132. Email: innocentnwaogazie@yahoo.com.

² Coram: Justice Allyu Kani.

³ <<https://www.news-at.feednews.com>> Retrieved on 29 August 2020. See also 'Nigeria: Singer Sentenced to Death for 'Blasphemy'' in <<https://www.voanews.com>>. Accessed 7 January 2021. See also 'Nigerian Singer Sentenced to Death in Kano State' in <<https://www.bbc.com>>. Accessed 7 January 2021. See also Sam Olukoya, 'Nigeria singer sentenced to death in north for blasphemy' in <<https://www.washingtonpost.com>>. Accessed on 7 January 2021.

⁴ A Shariah Law enforcement agency independent and separate from the conventional Nigerian Police Force.

which the Kano Hisbah Shariah Police promptly arrested him and he was hurriedly charged, tried and sentenced to death. More disturbing was the fact that some non-State actors such as the respected Supreme Council for Shariah and the Muslim Lawyers Association respectively in their separate pronouncements supported the death penalty.

Curiously, the same Kano Shariah Court on the same date convicted and sentenced a minor of 13 years, Umar Farouk to 10 years in prison with menial labour for blasphemy as he was found guilty of using disparaging language against Allah during an argument with a friend. The Kano Shariah Court in its verdict, considered the age of the offender in given a lesser punishment and held that the sentence would bring penitence on the child. That trial and conviction of a minor who had not attained sufficient legal age and who uttered the offensive words in the heat of an argument with a friend elicited wild-spread condemnation from human rights watchers notably the United Nations International Children and Emergency Fund [UNICEF] through her country Representative in Nigeria, Peter Hawkins who submitted that the trial and conviction negated all core underlying principles of child rights and child justice that Nigeria and by implication, Kano State was a signatory to.⁵

And before these latest incidents, Nigeria has an unenviable record of passing death penalty on religious impudence or irreverence based on extant Shariah laws in the Northern States. Two other instances would suffice. On 22 March 2002, one Amina Lawal, a single mother in Katsina State who had divorced from her husband later got pregnant and delivered a baby girl was accused of adultery and sentenced to death by stoning for having a child outside wedlock by a Shariah Court in Funtua. Curiously, the man she identified as the father of the child was not prosecuted for lack of evidence even when a DNA [deoxyribonucleic acids] test was not carried. On appeal to the Supreme Court, her conviction and sentence to death was voided on technical grounds for breach of fair hearing. In the same year 2002, one Safiya Husseini Tonyer Tudu was also sentenced to death for adultery but regained her freedom after a retrial.

The issue of religion is very sensitive and invoke a great deal of emotions and feelings among the adherents, some of who had laid down their lives or had killed others to protect and defend their faith; and some have had their properties destroyed or saw to the destruction of other person's properties on account of religious devotion. And as a faith-based system, religion with its sacred texts and writings, teachings and practice have conditioned the mind-set of its followers to the level of fanaticism and dogma. To some followers, their religion is their lives and any overt or covert act of desecration in any form is considered sacrilegious which ultimately invoked feelings of rage and violence in defence of their religion and its sacredness.

Among the adherents of Islamic religion, there exist a sort of emotive attachment to the teachings and practice of Prophet Muhammed [PBUH]. An Islamic writer gave a graphic description of that emotional attachment in words and stated thus: 'Muslims love him more deeply than their own selves. In him they find their greatest source of inspiration and guidance. He is the ultimate norm and the perfect example for them. Faith in Allah and His Messenger is their mainstay and Allah is their chief source of support and comfort in all personal vicissitudes and tribulations'.⁶ Similar bond of emotional feelings and deep

⁵ 'Nigeria: UNICEF criticizes boy's 10-year jailing for blasphemy' in <https://www.dw.com>>. Accessed 7 January 2021.

⁶ Murtadha Gusau, 'Prophet Muhammed (PBUH): The Man They Ignorantly Misunderstood' in <<https://jimidisu.com>>. Accessed 5 January 2021.

attachment existed among the adherents of other faiths and their founders such as the Christians, Hindus, the Mormons, et cetera.

In the modern history, rampant cases of rage and violence located in blasphemy had been attributed to some followers of Islamic religion. The strict enforcement and application of the Sharia legal system with some of its tough penal sanctions such as the one presented in this paper have provoked discussions and elicited calls for legislative reform because of the sacredness of human lives been wasted on account of religious irreverence. While conceding on the need to respect religious sensibilities of people, it is doubtful if death penalty was the appropriate sanction for such religious impudence.

Apart from Nigeria where there existed religious rage and violence leading to destruction of properties and death by some Islamic followers on account of issues factored as blasphemy to Islam and the Prophet Muhammed [PBUH], other jurisdictions have also witnessed similar incidents. In Saudi Arabia, a Turkish national, Sabi Bogday was on 13 June 2007 sentenced to death by a General Court at Jeddah on a charge of blasphemy for 'swearing at Allah'. His appeals to the Appeal Court and the Supreme Judicial Council were dismissed. On his final appeal to the Custodian of the Two Holy Mosques, King Abdullah was allowed upon his repentance and his plea to Allah for forgiveness before he returned to Turkey in the year 2000.⁷

At the level of European jurisdiction, France witnessed a gory and chilling mass killing of prominent journalists and others which resulted to 12 deaths and injuries to 11 other persons on 7 January 2015 in Paris who worked with the popular private satirical weekly magazine, *Charlie Hedbo* for publishing a caricature cartoon which depicted the image of Prophet Muhammed [PBUH] in 2012 forbidden by strong prominent Islam viewpoints. The attack was carried out by two French Muslim brothers, Said and Cherif Kouachi who claimed to belong to the Islamic terrorist group al-Qaeda in the Arabian Peninsula on account that the said publication offended the religious sensibilities of Islamic followers. The two armed Islamic youths invaded the publishing company's office and massacred several journalists before they were shot dead by the French Police after a gun duel few days later after they were traced in their hide-out. On 27 October 2020, a French history teacher in a class on free speech showed the said cartoon to his pupils, and was subsequently killed beheaded by an Islamic youth same day.

Since Shariah law was reputed to be distilled from and anchored on the Holy Qur'an, the aim of this paper was to interrogate the contextual provisions of the Holy Qur'an to evaluate the justification or otherwise of retaining the death penalty for blasphemous conduct and the imperatives of religious freedom under the universalism of human rights principles.

2. Islamic Religion and Blasphemy

The Islamic religion, been one of the two major religions practiced in Nigeria and predominant in the Northern States with influence in the Southern States remained a religion of peace and credited to the founder, Prophet Muhammed [PBUH] who was reported to be born in Mecca around 570 AD within the city of Arabic Peninsula.⁸ The followers of Islamic religion called the Moslems [Muslims] believed and accepted the immutable and eternal sacred Holy Qur'an as the article of faith, the Shariah⁹ and other

⁷ See <<https://www.af.feednews.com>>. Accessed on 29 August 2020.

⁸ E Obodo, *Culture, Religion and Ecumenism* (Enugu: God, s Will Prints Enterprises Limited) 20.

⁹ Shariah is the Allah's immutable divine law and it is different from *fiqh* which referred to its human scholarly interpretations.

sacred writings like the Hadeeth [Hadith]¹⁰ which all together constitute the binding code of conduct for all Muslim faithful.

Muslims hold the revered Prophet Muhammed [PBUH] as the Last Messenger of Allah and any disparaging remark covertly or overtly, whether in words, prints or gestures against Allah, His Messenger and the sacred Qur'an as blasphemous with dire consequences. It was the volatile reaction, at times murderous in nature that usually followed as a chain reaction to unnecessary but happenstance insidious remarks or comments howsoever made considered denigrating or blasphemous to Allah, His Prophet [PBUH] and the sacred Qur'an under the Shariah penal system that provoked this conversation.

The starting point to address this sensitive but controversial issue of blasphemy and the resultant death penalty as prescribed by the Shariah code was to interrogate the contextual divine verses of Qur'an and the teachings and practice of Prophet Muhammed [PBUH] on blasphemy. It was generally accepted among Muslims that the Holy Qur'an occupied a pre-eminent pristine position and remained the ultimate source of Islamic religion to the end that all teachings and practices in Islam derived authority and existence from it. That view was re-echoed by an Islamic scholar who stated that all other extra-Qur'anic sources or writings such as hadith [custom], traditional works of *tafsir* [interpretation] or *fiqr* [law] written by various Islamic scholars were subjugated under the ultimate source of Islamic teachings and injunctions which remained the Holy Qur'an.¹¹ Thus, the Shariah legal code that prescribed death penalty for blasphemy must be subjected to the Source [Holy Qur'an] to test whether it was in harmony with the Qur'anic injunctions and the teachings and practice of Prophet Muhammed [PBUH] respectively.

Majority of respected Islamic scholars have contextually interrogated the divine verses in the Qur'an and have come to the inevitable conclusion that blasphemy, though injurious to religious feelings of Moslems, was not punishable as there was no prescription for sanction, let alone death penalty for it in the Holy Qur'an. On the contrary, the Holy Qur'an principles and precepts on issues of blasphemy or apostasy as demonstrated in the clear and unambiguous injunctions were one of tolerance, forbearance and diplomacy by practice of withdrawal syndrome to avoid contamination.

The Holy Qur'an viewed the disgraceful attitude of irreverence to Allah and His Messenger as one borne out of ignorance and consequently enjoined all Muslim faithful to show empathy and quietly withdraw from such people. It stated thus: 'Take forgiveness and ever forbear and enjoin [the doing of good] and turn away from ignorant.'¹² Of particular and significant counsel to the faithful in the midst of mockers and jesters, the Noble Qur'an stated thus: 'You have been commanded in the Book that whenever you hear God's messages denied or derided, do not sit in that company until they begin talking of other things, or you will be no different from them. Indeed God will put the hypocrites and infidels together in Hell'.¹³

What was deducible from these fine divine counsels in the Qur'anic verses was that vengeance for any blasphemous conduct against Allah and His Messenger is located in Allah Who in His own utmost

¹⁰ Writings of the followers of Prophet Muhammed [PBUH] who wrote their injunctions after the death of the Prophet.

¹¹ _____ 'is blasphemy punishable by death in Islam'? in <<https://www.operanewsapp.com>>. Accessed 7 January 2021.

¹² The Holy Qur'an 7: 199.

¹³ The Holy Qur'an [Sura 4: 140]. See also Qur'an 3: 186-187; 6: 68; 20: 130; 23: 96-97; 25: 63; 28: 55; 33: 48; 50: 39, et cetera.

judgment would gather the mockers and hypocrites in Hell, and that to the faithful, to withdraw themselves from their midst so as not to be guilty by association unless the topic of discussion was changed to something godly.

And as a perfect example of Allah's injunction on issue of blasphemous conduct, His Messenger, the revered Prophet Muhammed [PBUH] demonstrated the highest deal of meekness, mercy and forgiveness upon His foes as the revered Prophet was recorded to have pardoned his adversaries without exerting any punishment against them even when the Prophet would have justifiably done so. A typical example was when Prophet Muhammed [PBUH] pardoned the people of Makkah around 630 AD when the Prophet finally conquered the city whose inhabitants waged fierce battle against the Prophet and His followers who had to run for some years before the victory.

Another significant demonstration of meekness, mercy and forgiveness by Prophet Muhammed [PBUH] against His adversaries recorded in many verses¹⁴ in the Qur'an where despite derogatory names were wrongly ascribed to the Prophet, yet the noble Prophet never took vengeance even when it was in His power to exert punishment. Thus, both the Qur'anic injunctions and the teachings and practice of Prophet Muhammed [PBUH] on blasphemy do not by any stretch of imagination support any physical sanction, let alone death penalty as been canvassed in the Shariah law. The only express mention of blasphemy in the Qur'an was where Muslims were admonished not to insult objects of worship of other people lest they use the insult as a window to show disrespect to God.¹⁵

Conversely, unlike Islamic religion that had no express or implied verse supporting death penalty for blasphemy, the Christian religion based on the Old Testament Judaism of Mosaic code had death penalty as a prescriptive sanction for blasphemy against God.¹⁶ The death punishment for blasphemy was a convenient point used by the ancient Jews to crucify Jesus Christ on the Cross by reason that He held Himself as the Messiah and Son of God¹⁷ which assertion was considered by them as blasphemous. However, the modern Christian religion of the New Testament founded by Jesus Christ was abhorrent to any sanction, let alone death penalty for any form of blasphemous conduct. The gospel of Jesus Christ negated any form of killing in the Name of God and that such killing cannot be equated with service to God.¹⁸ Thus, in modern Christian religion, killing of human beings under any disguise for the protection and defence of the faith was condemnable as God declared Himself to be the Sole avenger of His cause,¹⁹ and did not grant any person or group of persons authority or license to avenge any blasphemous acts against God, His servants or the prophets.

Again, unlike Islamic religion that has a prescribed legal code called Shariah with a separate judicial system especially in the Northern States that established Shariah Courts to hear and determine issues on Islamic law with appellate jurisdiction conferred on the Shariah Court of Appeal²⁰ to hear and determine appeals arising from the decision of the Shariah Court. Further appeals therefrom go to the

¹⁴ Qur'an 38:4 where the Prophet was called a magician [*sahir*]; Qur'an 37: 16 where He was called an artist [*shahir*]; Qur'an 52: 29 and 69: 42 where He was called a sorcerer [*kahir*]; Qur'an 68: 2 and 81: 22 where He was called insane [*majnun*], et cetera.

¹⁵ Ibid 6: 108.

¹⁶ Holy Bible Leviticus 24: 10-16.

¹⁷ Ibid, Matthew 26: 65-66; Mark 14: 64.

¹⁸ Ibid John 16: 2-3.

¹⁹ Ibid Roman 12: 19.

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as altered), ss 260 and 275.

Court of Appeal²¹ and finally the Supreme Court²² with limited jurisdiction to hear and determine appeals on issues of Islamic personal law, the modern Christian religion did not have any specific codified ecclesiastic laws or any ecclesiastic courts to try and determine issues located on Christian ethics.

3. Blasphemy Laws in Nigeria

The Nigerian jurisdiction has a duality of blasphemy laws – one under the secular system enacted by the Federal authorities for the protection of insult to all religions and made applicable in all the States of the Federation and the other one enacted by some Northern States' domestic jurisdictions under the Shariah legal framework that limited its scope to Islamic religion. Both systems of laws criminalized blasphemy with different penal sanctions.

3.1 Blasphemy Laws in Nigeria Secular State

Notwithstanding the professed secularity²³ of the Nigerian jurisdiction, there existed pieces of legislations which sought to protect places of worship, ministers of religion while performing religious activities and also criminalized blasphemy which in Nigeria was described as 'insult to religion'. At the Federal level, there existed a duality of criminal jurisprudence with their separate spheres of territorial application based essentially in the history and religion of the Nigerian peoples which basically influenced the reception of foreign criminal laws in Nigeria. The Criminal Code²⁴ territorial jurisdiction operated in the Southern States and the Federal Capital Territory, while the Penal Code²⁵ territorial jurisdiction was located in the Northern States. Historically, the Nigerian Criminal Code was modelled after the State of Queensland Australia Criminal Code 1899 largely influenced by Judeo-Christian religion, while the Nigerian Penal Code was modelled after the Sudanese Criminal Code largely influenced by Moslem Maliki school.²⁶

The Nigerian criminal justice system criminalized blasphemy with penal sanctions. Under the Criminal Code Act [CCA 2004] blasphemy was criminalized thus: 'Any person who does an act which any class of persons consider as a public insult on their religion, with the intention that they should consider the act such an insult, and any person who does an unlawful act with the knowledge that any class of persons will consider it such an insult, is guilty of a misdemeanour, and is liable to imprisonment for two years'.²⁷ Similar sanction was prescribed for offences that bordered on threats or violence to ministers of religion in their official religious activities²⁸ or wilfully disturbing religious worship.²⁹

The Penal Code had similar provision to the effect that: 'Whoever by any means publicly insults or seeks to incite contempt of any religion in such a manner as to be likely to lead a breach of the peace, shall be punished with imprisonment for a term which may extend to two years or with a fine or with

²¹ Ibid s 237.

²² Ibid s 230.

²³ Ibid, s 10 which provided thus: 'The Government of the Federation or of a State shall not adopt any religion as a State Religion'.

²⁴ Cap 42, 1958 now replaced by the Criminal Code Act cap C38 Laws of the Federation 2004.

²⁵ No 18, 1959 as amended by the Penal Code cap 89 Laws of the Federation and now replaced by the Penal Code (Northern States) Act cap P3 Laws of the Federation 2004.

²⁶ Okonkwo and Naish, *Criminal Law in Nigeria* (2nd edn, Ibadan: Spectrum Books Ltd 2012) 5-6.

²⁷ CCA (n 23) s 204.

²⁸ Ibid s 205 (1) – (3).

²⁹ Ibid s 206.

both'.³⁰ Also punishable are related offences of wilful defilement or injury to place of worship or any sacred object of worship with intention to insult the religion³¹ or voluntary disturbance of any religious assembly in worship or religious ceremonies³² or committing trespass on a place of worship or burial with intention to injure the feelings of any person.³³ The only striking difference between the CCA and the PCA was in the prescriptive sanctions and both have the same intention to criminalize blasphemy in Nigeria.

Recently in Nigeria, a new federal enactment on cybercrime³⁴ extended the definition of racist and xenophobic offences to religion and criminalized it which it defined as: '[a]ny written or printed material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence against any individual or group of individuals based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors'.³⁵ Nigeria is a common law jurisdiction and blasphemy laws were relics of colonial heritage from Great Britain which derived its origin from canon law in the medieval times. It seemed that the philosophy behind criminalization of proselytization or insult to religion was to maintain public peace and security which obligation and responsibility resided in the State in a democratic society.³⁶ Across the international community, several secular democratic jurisdictions³⁷ criminalized proselytization of religion as a misdemeanour and not a capital offence.

However, in many jurisdictions, blasphemy laws have been abolished in response to the challenges of freedom of speech and expression as well as demands of religious liberty within the docket of universalism of human rights. Of particular interest was the abolition of blasphemy laws in England and Wales³⁸ in May 2008 followed by Northern Ireland³⁹ in 2020 respectively. In the American jurisdiction, the constitution proscribed any legislation on religion to safeguard religious liberty and free speech. The Constitution provided thus: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press...'.⁴⁰ The anti-blasphemy law position of the United States jurisdiction was re-affirmed by Justice Clark thus: 'From the standpoint of freedom of speech and the press, it is enough to point that the State has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views. It is not the business of Government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publication, speeches, or motion pictures'.⁴¹

³⁰ The PCA (n 24) s 210.

³¹ Ibid s 211.

³² Ibid s 212.

³³ Ibid s 213.

³⁴ The Cybercrime Act 2015.

³⁵ Ibid s 18(1) and (2).

³⁶ See (n 18) s 11(1) and (2).

³⁷ Such as the Revised Penal Code Act No 3815 Philippines, art 133; Crimes Act 1961 New Zealand, s 123; Penal Code (cap 224) chap XV ss 295-298; Criminal Code Act 19343 Laws of Gambia cap 10.01 (rev ed 2009) arts 34 and 117; Penal Code 1860 India, chap XV, s 295A; Criminal Code 1997 Poland, art 196; Criminal Code 1937 Switzerland, art 261; Criminal Law (Codification and Reform) Act 2005 Zimbabwe, ss 37 and 42; Penal Decree Act 6 2004 Zanzibar, ss 27 and 121; Penal Code 1 Laws of Tanzania cap 16 2010, ss 125 and 129; Criminal Code 1998 Germany, s 166, et cetera.

³⁸ The Criminal Justice and Immigration Act 2008.

³⁹ Blasphemy (Abolition of Offences and Related Matters) Act 2019 which entered into force on 16 January 2020.

⁴⁰ Constitution of the United States 1787, First Amendment (adopted 1791).

⁴¹ *Joseph Burstyn, Inc v Wilson*, 343 US 495 [1952].

Thus, there was a growing trend in several jurisdictions to expunge blasphemy laws from their jurisprudence so as not to suppress free speech and liberty of conscience especially in the light of persecutions inherent in the abuse of blasphemy laws by political and religious actors in several jurisdictions to suppress voices of dissent and cage free exercise of religious liberty. The Nigerian jurisprudence still retained blasphemy laws criminalized as a misdemeanour. Notwithstanding the state of the law in Nigeria with respect to blasphemy, certain domestic jurisdictions in Nigeria especially in the Northern States introduced a Sharia legal code that created a new regime of sanctions that provoked this paper.

3.2 Blasphemy under Shariah Law in Nigeria

The entrance of strict Shariah penal system in the criminal jurisprudence of some Northern States' domestic jurisdictions in Nigeria was pioneered in 1999 by the Zamfara State of Nigeria Sharia'ah Penal Code Law.⁴² That precedent was followed by other Northern States⁴³ with distinct but similar contextual provisions and varying degrees of sanctions in certain offences. However, one common trend in the criminal jurisprudential landscape of all the Shariah laws in the Northern States with regard to the offence of blasphemy was the unanimity in the provision of the death penalty without an option of fine as a consequential sanction. However, the requirements of Shariah criminal code and its application were not extended to non-Muslims in Nigeria.

It was based on the strict provisions of death penalty on blasphemy that the Kano State Upper Shariah Court tried, convicted and sentenced the 22 year-old Yahaya Sharif-Amina to death on 10 August 2020 which provoked this paper. The relevant provisions of the Kano State Penal Code in relation to blasphemy provided thus:

Whoever by any means whatsoever intentionally abuses, insults, derogates, humiliates or speaks to incite contempt of the holy Prophet Muhammed (SAW) or his prophet hood or any other prophet of Allah recognized by the religion of Islam shall be punished with death.⁴⁴

Although, that death sentence had recently been overturned on appeal by the Kano State High Court [Appeal Section] on Thursday, 21 January 2021 for procedural irregularities which ordered a retrial of the same matter by the same Sharia Court, and the discharged person had also lodged an appeal to challenge the order of retrial. However, notwithstanding the outcome of the legal fireworks, the substratum of the matter remained the focus of this work, namely the monstrosity of death penalty associated with blasphemy under the Sharia Law in Nigeria.

The Nigerian Supreme Court in a landmark decision in the case of *Shalla v The State*⁴⁵ affirmed that blasphemy was a serious crime punishable with death penalty in Islam. The judgment of the Supreme Court in *Shalla's* case was an affirmation of the extant sharia jurisprudence on blasphemy as the Courts only interpret and apply the law. It would require a legislative action to reform the penal system on

⁴² Cap 133 Law No 10 of 2000.

⁴³ Such as The Shariah Penal Code Law 2000 Kano State; Niger State Penal Code (Amendment) Law 2000; Kebbi Penal Code (Amendment) Law 2000; Jigawa State Penal Code Law No 12 of 2000; Shariah Penal Code Law 2000 Sokoto State; Shariah Penal Code Law No 8 2000 Yobe State; Shariah Penal Code Law 2001 Gombe State; Shariah Penal Code Law 2001 Bauchi State; Shariah Penal Code Law 2001 Borno State; Shariah Penal Code Law No 4 of 2002 Kaduna State etcetera.

⁴⁴ Sharia Penal Code Law Kano (n 42), s 382(b). See also The Harmonized Shariah Penal Code proposed by the Centre for Islamic Studies, Ahmadu Bello University Zaria, March 2002, s 406.

⁴⁵ [2007] 18 NWLR (pt 1066) 240.

blasphemy as presently constituted under the Sharia legal code in Nigeria which view was canvased in this paper.

It would be seen that the provisions of the Northern States sharia laws on blasphemy and their penal sanctions conflicted with the federal enactment on the same subject. The domestic conflict of laws on blasphemy within the Nigerian jurisdiction was a reflection of the federal system of government, but a clear violation of the Constitution which prohibited adoption of any religion as a State religion.⁴⁶ The adoption of strict Sharia jurisprudence distilled from Islamic religion, though rightly appealing to Muslims amounted to State adoption of a particular religion since it was the State resources that would be utilized to remunerate the enforcement officials [*hisbah*] of the sharia law and funding of their activities.

In most Muslim-dominated jurisdictions in the world, the criminalization of blasphemy rarely attracted death penalty except in few jurisdictions. In Saudi Arabian jurisdiction, a State founded on Islamic legal system, there was no specific codified penal code but the legal system were comprised of the Holy Qur'an, the hadith, Sunni jurisprudence, *fatwa* [rulings] of the Council of Religious Scholars and Royal Decrees with varying penal sanctions for blasphemy ranging from fines, public whipping and death depending on the circumstances of the matter. A new anti-terrorism law⁴⁷ had extended the meaning of 'terrorist act' to mean the 'act of questioning the fundamentals of the Islamic religion on which the country was based'.⁴⁸

Another jurisdiction with complex blasphemy laws was Pakistan with Muslim majority with variance of penal sanctions on blasphemy depending on the object of proselytization. Historically, Pakistan anti-blasphemy law⁴⁹ was religion-neutral devoid of death penalty. However, a legislative amendment⁵⁰ introduced varying degrees of blasphemous offences and penal sanctions⁵¹ with a death penalty or imprisonment for life and a fine where the insult to religion was expressly or impliedly directed to Prophet Muhammed [PBUH].⁵² Thus, in Pakistan jurisdiction, while proselytization of Prophet Muhammed [PBUH] carried the severest punishment of death with options of life imprisonment and a fine which afforded the judicial authorities an exercise of discretion in matters of life and death; that was not the position in the Sharia-compliant domestic jurisdictions in Nigeria which left no room for discretion other than death penalty.

At the level of European jurisdiction, the European Court of Human Rights [ECtHR] had affirmed that domestic laws criminalizing insult to religion were sustainable and valid to the end that the protection afforded by free speech and freedom of religion cannot be exercised in such a manner to deliberately disparage a religion or an object of religious worship. Thus, in the case of *ES v Australia*⁵³ the ECtHR

⁴⁶ See (n 22).

⁴⁷ The Crimes of Terrorism and Funding Decree M/16 2014.

⁴⁸ *Ibid*, art 1.

⁴⁹ Penal Code Act No XLV 1860.

⁵⁰ Criminal Law (Amendment) Act 1986.

⁵¹ *Ibid* s 295-A which prohibited deliberate and malicious acts intended to outrage the religious feelings of any class of persons by insulting its religion or religious beliefs and punishable by up to 10 years imprisonment, a fine or both. See also s 295-B which prescribed punishment for wilfully defiling, desecration, or damaging of damaging of the Holy Qur'an and punishable with life imprisonment.

⁵² *Ibid* s 295-C which provided thus: 'Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defile the sacred name of the Holy Prophet [peace be upon him] shall be punished with death, or imprisonment for life and shall also be liable and shall also be liable to a fine'.

⁵³ Appeal No 38450/2 [2018] delivered on 25 October 2018.

held that: ‘...expressions that seek to spread, incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection afforded by Article 10 [European Convention on Human Rights]. If expressions go beyond criticism of other religions and incite religious intolerance, then a State may legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures’.⁵⁴

The case of *ES v Australia* addressed the contentious issue of locating a balance between the exercise of freedom of speech and respect for freedom of thought, conscience and religion and the likelihood of offending religious ethics or morals and sensibilities in a democratic society. The ECtHR eloquently stated that when exercising the right to freedom of religion under Article 9 [European Convention of Human Rights], individuals ‘[c]annot expect to be exempted from criticism...must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith; and that Article 10 [freedom of expression] required that the exercise of the right of freedom of expression included various duties and responsibilities to ensure that the enjoyment of the right under Article 9 was not threatened with statements that were gratuitously offensive’.⁵⁵ The Court held that each State had legitimate interest to invoke the wide degree of margin of appreciation to enact laws to protect proselytization of religion without suppressing free speech and religious freedom.⁵⁶

4. The Monstrosity of Death Penalty for Blasphemy

There has been a raging debate among the abolitionists and retentionists of death penalty for blasphemy as amplified under Islamic Sharia legal code. The retentionists of death penalty under the Sharia jurisprudence against blasphemy argued that it was acceptable under Islamic religion and that any form of profanity against the Holy Qur’an, Prophet Muhammed [PBUH], other prophets and any sacred objects of Islamic religious worship deserved the severity of punishment of death penalty. Majority of Islamic scholars pontificated that the Sharia jurisprudence was distilled from the Holy Qur’an and that in itself made the observance and practice of Sharia a binding obligation of Muslim faithful. They further argued that the Shariah code enjoyed validity as a legal enactment; consequent upon which it should be enforced.

On the other hand, the major plank of argument of abolitionists was located in the contextual verses of the sacred Qur’an that remained silent on penal prescription for blasphemy in its injunctions as demonstrated in this work. Thus, nowhere in the Holy Qur’anic injunctions was blasphemy, though condemned as an abhorrent behaviour, ever targeted for any form of prescriptive sanction by the Islamic faithful let alone death penalty. Although the validity and legitimacy of Sharia penal code was not been challenged as a religious code, it was doubtful if the death penalty for blasphemy was in harmony and conversation with the Holy Qur’an.

Another fundamental argument put forward by the abolitionists’ theory was anchored on the teachings and practice of Prophet Muhammed [PBUH] in the face of unprovoked, deliberate and unjustifiable vilifications and attacks by his opponents who, rather than received a recompense from the Prophet for their misdeeds, were treated with mercy and pardon by Prophet Muhammed [PBUH] as already demonstrated earlier in this work. It was argued sagaciously that since Prophet Muhammed [PBUH] anchored the religion of Islam as the Messenger of Allah, his eloquent teachings and exemplary

⁵⁴ Ibid, para 43.

⁵⁵ Ibid para 43.

⁵⁶ Ibid

practices, especially on his attitude towards insult to religion ought to define the ethical behaviour of the modern Islamic faithful when faced with similar misguided and reckless misconduct as seen in the present times. Granted that acts intended to hurt and injure religious feelings of others were indeed wrongful and despicable, the attitude of Prophet Muhammed [PBUH] in extending mercy, pardon and compassion to his adversaries without exertion of any revenge on the basis of justified indignation against them let alone the death sanction strengthened the argument of abolitionists.

Furthermore, the stringent call for abolition of the death penalty for the offence of insult to religion was situated on the platform of doctrine of proportionality which had underscored the determination of appropriate penal sanctions for criminal breaches in criminal jurisprudence. It was submitted strenuously that the prescription of the death penalty for the offence of blasphemy which in itself remained a moral or ethical offence without physical harm to any member of the religious sect ridiculed or the object of worship under abuse was quite disproportionate. In Nigerian criminal jurisprudence, death penalty was rarely prescribed except in serious heinous crimes such as armed robbery,⁵⁷ murder,⁵⁸ culpable homicide,⁵⁹ treason or treasonable felonies.⁶⁰ It became more worrisome to observe that an irreversible punishment when executed in the nature of death could be imposed on a person simply because of act of misguided disrespect to religion or object of religious worship.

In the Australian case of *ES v Australia* earlier discussed, the ECtHR noted that the Courts in exercise of its supervisory function were required to determine whether an interference in the exercise of freedom of expression was made for a pressing social need and if it was proportionate to the legitimate aim pursued, the Court must take into account the content of the impugned statements, the context in which they were made and the nature and severity of the penalty imposed.⁶¹

Thus, granted that the legitimate goal of criminalization of blasphemy was to preserve a social need of religious tolerance, peaceful and harmonious society, the degree or severity of the death penalty imposed for such an offence under the Sharia penal code in Nigeria was indeed disproportionate to the offence prescribed. Another point been canvassed for the abolition of death penalty for proselytization of religion was the concerns of human rights advocates. The dignity of human person,⁶² the assurance of enjoyment of human life,⁶³ freedom of expression⁶⁴ and the right to freedom of conscience, thought and religion⁶⁵ respectively been universal human rights principles would continue to be diminished and threatened. Religious non-State actors and extremists have continued to launch vicious attacks, mob lynching in the guise of ‘honour killings’, wanton destruction of properties, suppression and repression of different views which they considered hostile to their own sect or religious belief. In some cases, innocent citizens of different faith have been falsely accused of blasphemy to settle personal scores and summarily executed without any serious challenge from the State to bring them to justice. The fortunate

⁵⁷ Robbery and Firearms (Special Provisions) Act cap R11, Laws of the Federation 2004, s 1(2) and (3).

⁵⁸ See CCA (n 23), s 319(1).

⁵⁹ See PCA (n 24), s 221.

⁶⁰ See CCA (n 23), ss 37 and 38.

⁶¹ See (n 52), para 49.

⁶² Universal Declaration of Human Rights [UDHR] adopted by the General Assembly resolution 217A (111) of 10 December 1948, art 5; See also the International Covenant on Civil and Political Rights [ICCPR] adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, art 10; See also the African Charter on Human and People’s Rights [ACHPR] 1981, art v; See also Constitution of Nigeria (n 19), s 34.

⁶³ Ibid UDHR (n 61), art 3; ICCPR (n 61), art 6; ACHPR (n 61) iv; Constitution of Nigeria (n 61), s 33.

⁶⁴ Ibid UDHR art 19; ICCPR art 19; ACHPR art ix (2); Constitution of Nigeria, s 39.

⁶⁵ Ibid UDHR art 18; ICCPR 18; ACHPR art viii; Constitution of Nigeria s 38.

victims of religious extremism who escaped summary killings suffered endless persecution with their family members while some were subjected to unfair trials and imprisonment.

Nigerian jurisdiction landscape was riddled with instances of ‘honour killings’ by some Islamist extremists. In recent times, some citizens considered to have committed one act of insult to Islamic religion or the other were summarily executed by angry mob without subjecting the victims to minimum requirements of due and fair trial in accordance with the law. For instance, on 2 June 2016, a Christian wife and mother, Bridget Agbahiwe who was the wife of a Deeper Life Bible Church, Kano was gruesomely stoned to death for alleged ‘blasphemy’ of Prophet Muhammed [PBUH] at the Kofar Wambui market, Kano. According to eye-witnesses reports, the deceased had persistent misunderstanding with one Dauda, a Muslim who was fond of using the deceased’s shopfront for his Muslim adulations which the deceased constantly warned him to change his location but he refused. And on that fateful day, the deceased again objected to Dauda’s usage of her shopfront for adulation, and that angered Dauda who left and returned with a mob and falsely accused the deceased of ‘blasphemy’ against Prophet Muhammed [PBUH]. Despite all attempts to save the woman, she was stoned to death on the spot as the deceased knelt down and prayed.⁶⁶

In 1995 an Igbo Christian trader in Kano State, Gideon Akaluka was also beheaded by some irate Muslim youths who accused him of desecrating the Qur’an. The mob invaded the security where he was detained, forcefully took him out, beheaded him and thereafter hoisted his severed head on a spike and paraded around the city.⁶⁷ These few instances out of litany of violent killings and destruction of properties in Nigeria by some Muslim youths on the basis of ‘justified indignation’ underscored the inherent and present danger of retention of death penalty for blasphemy under the Sharia penal code in Nigerian jurisdiction.

Across jurisdictions globally, incidences of ‘honour killings’ and violent attacks by Islamist extremists have become a recurrent decimal and religious minorities have been known to suffer undue persecutions as what was enough to eliminate a perceived enemy of different religious sect was to fly the kite of ‘blasphemy’ and a motley crowd of irate mob would, without affording the victim an opportunity to defend himself or herself before appropriate tribunals, resorted to self-help, attacked and killed the person ostensibly to appease or satiate their indignation.

Drawing from Pakistani experience on the flagrant abuse of blasphemy laws where insult to Islam or Prophet Muhammed [PBUH] attracted death penalty, the Amnesty International [AI] in its documented reports by David Griffiths, Director of the Office of the Secretary General observed that: ‘[b]lasphemy laws have been used to target some of the most marginalized people in society which included children, individuals with mental disabilities, members of religious minorities and poorer people, and further that they were used to make false accusations that could, and have indeed led to unlawful killings and attack on communities and burning of homes’.⁶⁸ In that report, the Amnesty International [AI] noted that the failure of Pakistani authorities to repeal the blasphemy laws had created a permissive climate for

⁶⁶ ‘Nigeria pastor’s wife killed by Muslim mob’ in <<https://www.baptistpress.com>>. Accessed 2 February 2021.
See also ‘Nigeria’s top Islamic body condemns mob killing of Christian woman’ in <<https://en.qantara.de>>.
Accessed 2 February 2021.

⁶⁷ Ibid.

⁶⁸ ‘Pakistani: Accusations of blasphemy continues to endanger lives’, Amnesty International Report 25 August 2020 in <<https://www.amnesty.org>>. Accessed 03 February 2021.

brutality.⁶⁹ Indeed, the climate of tolerant self-enforcement of blasphemy laws by overzealous extremists who had constituted themselves into unofficial sheriffs without any legal framework by the State authorities to sanction abuses had crystallized to widespread culture of violence and murderous environment with strong implications on human rights of the victims.

The clarion call at the level of international law for the abolition of the death penalty generally had reinforced the argument of abolitionists of the death penalty for blasphemy who maintained that disparaging a religion or object of religious worship could, by any stretch of imagination, be regarded as a heinous crime to justify the imposition of the death penalty. Although, at the level of international law, death penalty for jurisdictions that have not abolished it could only be imposed only for the most serious crimes,⁷⁰ the author of this work believed strongly that blasphemy, though an intolerable behaviour, could be situated as a ‘serious crime’ deserving of death sentence. There seemed to be a general consensus that what might constitute as ‘most serious crimes’ were such crimes like murder, treason, treasonable offences and armed robbery.

Notwithstanding the permissive position of international law on death penalty for the ‘most serious crimes’ to jurisdictions that deserved it, the international law and practice have adopted a paradigm shift towards the abolition of death penalty.⁷¹ Pursuant to that development, several international⁷² and regional⁷³ human rights instruments have been promulgated to encourage jurisdictions in the international community to abolish death penalty with reservations that State Parties could retain death penalty in time of war if they make reservation to that effect at the time of ratifying or acceding to the Protocol. Incidentally, Nigeria as a State Party to the [ICCPR] has not ratified the Second Optional Protocol for the abolition of death penalty and that situation need to be addressed.

5. Conclusion

5.1 Findings

In the light of the available scholarship that enriched this work, the following findings were made. It was demonstrated that blasphemy, a rare occurrence in the Qur’an was used to show that human nature accentuated by ungodliness might push certain people to denigrate Islam as a religion or Allah and the Prophets with a strong admonition that a good Muslim should withdraw from such a gathering or the subject of discussion changed to something reasonable otherwise, such faithful might be guilty of association and that damnation awaited such scornful people. Thus, the only duty imposed on a Muslim faithful by the Qur’an in the face of blasphemous conduct was one of tactical withdrawal, leaving vengeance for Allah.

It was also revealed that from a painstaking interrogation of the Qur’anic verses from which the Shariah penal code was distilled from, nowhere was death penalty prescribed as a punishment for blasphemy. Thus, the death penalty imposed by Sharia penal code in Nigeria for the offence of blasphemy was not in harmony with the Qur’an.

⁶⁹ Ibid.

⁷⁰ ICCPR (n 61), art 6(2).

⁷¹ Ibid art 6(6) which provided that: ‘Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant’.

⁷² The Second Optional Protocol to the ICCPR adopted by the UN General Assembly in 1989.

⁷³ Optional Protocol No 6 Strasbourg 22 X1 1984 and Optional No 13 Vilnius 3 V 2002 to the European Convention on Human Rights. See also the Protocol to the American Convention on Human Rights to Abolish Death Penalty adopted by the General Assembly of the Organization of American States in 1990

Furthermore, the exemplary and impressive teachings and practice of Prophet Muhammed [PBUH] in the face of spiteful, scornful denigration of his person and Islamic religion as well as violent attacks on him by his opponents, and who demonstrated an attitude of forbearance, mercy, compassion and forgiveness remained a perfect example to all followers of Islamic religion. It was shown that the amiable and humble Prophet of Allah [PBUH] did not exert any form of sanction, let alone, death penalty on his enemies who denigrated, insulted and violently attacked the Prophet without provocation. That explained why the Islamic religion remained ‘a religion of peace’.

It was also demonstrated in this work that any form of proselytization of religion usually invoked the emotive feelings and sensibilities of the adherents, and that such conduct was not only despicable but condemnable. Thus, criminalization of insult to religion in Nigeria jurisdiction as a misdemeanour remained a good law under the federal criminal jurisprudence to serve a social need and to protect and promote public peace. However, the imposition of death penalty under the Shariah penal code in Nigeria by some Northern States from 1999 was found to be disproportionate to the offence of insult to religion as the severity of punishment outweighed the gravity of the offence; and that those States’ extant Shariah penal laws amounted to adoption of Islamic religion as a State religion in direct conflict with the Constitution which prohibited adoption of any religion as a State religion.

Afortiori, this work found out that the protection afforded to free speech and liberty of conscience, thought and religion under the imperatives of universalism of human rights and constitutional democracy were not in conflict with blasphemy laws, and that blasphemy laws were justified for the protection and advancement of social need. Again, it was demonstrated that the imposition of death penalty for blasphemy under the Shariah penal code, though a legitimate piece of legislation, had led to increased permissible culture of violence and unlawful killings of victims and destruction of properties by non-State actors especially the Islamic youths and other extremists in Nigeria and in some other jurisdictions on the basis of ‘justified indignation’ or ‘honour killings’ without recourse to due process of law.

It was further demonstrated in this work that death penalty was permissible for only most serious crimes at the level of international law to those jurisdictions that desired them. In Nigerian criminal jurisdiction, capital punishment were ordinarily imposed for heinous crimes such as murder or homicide, armed robbery, treason or treasonable felonies and lately kidnapping by some State laws. Although blasphemy was criminalized as a misdemeanour, it was never within the docket of serious crimes until the entrance of Shariah penal code in 1999 championed by Zamfara State which criminalized it as a capital offence punishable with death without any option of imprisonment or fine. There seemed to be a growing shift towards abolition of death penalty even in most serious crimes at the level of international law and the European and American jurisdictions with the passage of various human rights instruments. It was observed that many jurisdictions in the international community have adopted and implemented these resolutions.

5.2 Recommendations

Based on the findings, the following recommendations were made, namely:

1. That the death penalty imposed by Shariah penal code in Nigeria was a monstrosity as it was not in harmony and conversation with the express injunctions of the Holy Qur’an and the teachings and practices of Prophet Muhammed [PBUH] respectively.

2. Furthermore, the death penalty for the offence of blasphemy as presently constituted under the Shariah penal code in some Northern States in Nigeria violated international law jurisprudence by reason that insult to religion could not be regarded as a 'most serious crime' in international law as no human life could be endangered or killed by such misguided conduct. Indeed, proselytization of religion remained an ethical issue subjected to value judgment by those affected. No matter the subjective value judgment placed on such unethical behaviour, killing the offender could never be the best sanction in the circumstance.
3. That the federal prosecutorial authorities in Nigeria should take steps to challenge the constitutional validity of Shariah penal code which adopted, promoted and advanced the interests of a particular religion with State resources in direct conflict with the Constitution which prohibited the adoption of any religion as a State religion as well as the issue of conflict of laws between the federal enactment on blasphemy and that of the Shariah penal codes respectively.
4. The paradigm shift for abolition of the death penalty at the level of international law through the adoption of the Second Optional Protocol to the ICCPR and other regional human rights instruments had reinforced the persuasive campaign for the abolition of death penalty. Thus, the continued retention of capital punishment for the offence of blasphemy be jettisoned.
5. The climate of mob lynching and destruction of properties by youths under the cover of 'justified indignation' or 'honour killings' on blasphemous accusations have no place in a constitutional democracy which Nigerian Constitution guaranteed right to life, dignity of human person and fair and reasonable trial by judicial tribunals for those accused of commission of criminal offences. The State actors should ensure that persons who engaged in such reprehensive conducts were prosecuted in accordance with the extant laws. Nigeria been a signatory to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment [CAT] 1987 should address the concerns of human rights abuses perpetuated by such wanton attacks and unlawful killings.
6. Again blasphemy laws should not be utilized to stifle or asphyxiate religious freedoms and free speech which had remained the concerns of human rights watchers. Since State Parties were at liberty to enact blasphemy laws under the doctrine of margin of appreciation for social need under international law and practice, the courts, when faced with the issue of evaluation of the offensive statements alleged to be blasphemous, should strike a balance between fair and objective criticisms of religious beliefs for the purpose of promotion and advancement of religious discourse and those that were intended to mock or denigrate a particular religion. No religion has immunity from fair, reasonable and objective assessment or evaluation of its doctrines, teachings and practices by others with different views.

5.3 Conclusion

In the light of the above findings and recommendations, this paper concluded by adopting the abolitionist viewpoint that death penalty for blasphemy under the Shariah penal code in Nigeria remained a monstrosity and recommended for its repeal through legislative intervention.