

PERSPECTIVES ON LAW AND JUSTICE

A FESTSCHRIFT IN HONOUR OF

MUSIBAU ADETUNBI, SAN



EDITED BY

Prof. Hakeem Olasunkanmi Ijaiya
Prof. Kazeem Olajide Olaniyan
Dr. Taofeeq Abolaji Abdulraheem



A Publication of College of Law, Fountain University Osogbo, Nigeria



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2026



PERSPECTIVES ON LAW AND JUSTICE A FESTSCHRIFT IN HONOUR OF MUSIBAU ADETUNBI, SAN

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A Publication of College of Law, Fountain University, Osogbo, Nigeria

IN

**Collaboration with Law Students Society and Nigeria Association of Muslim
Law Students, Fountain University Osogbo**



Foreword

It is with profound honour and intellectual satisfaction that I write this foreword to *Perspectives on Law and Justice: A Festschrift in Honour of Musibau Adetunbi, SAN*; a work that stands not merely as a collection of scholarly essays, but as a testament to a life devoted to the advancement of law, justice, and the enduring ideals of equity.

A festschrift, by its very nature, is not an ordinary academic exercise. It is a scholarly tribute reserved for individuals whose contributions have shaped thought, influenced practice, and inspired generations. In Musibau Adetunbi, SAN, we find such a figure an accomplished legal practitioner, a distinguished scholar, and a man whose professional journey reflects discipline, integrity, and an unwavering commitment to justice.

This volume, comprising twenty-four rigorously researched chapters, traverses an impressive landscape of contemporary legal discourse. The contributors drawn from academia, legal practice, and allied disciplines have engaged with pressing issues that define not only the Nigerian legal system but also the broader global legal order.

The opening chapters set a compelling tone by interrogating the intersection of law, environment, and morality, particularly through the lens of maritime activities and climate change. The infusion of Islamic jurisprudential principles into these discussions reflects a growing recognition of the need for ethical frameworks that transcend conventional regulatory mechanisms.

Subsequent contributions address deeply rooted socio-legal challenges, including child labour, mental health and the decriminalisation of attempted suicide, electoral integrity, and the persistent crisis of insecurity in Nigeria. These chapters do not merely diagnose problems; they offer thoughtful, context-sensitive solutions grounded in both legal theory and practical realities.

Particularly noteworthy is the book's engagement with the tension and potential harmony between Islamic law and contemporary legal systems. From wealth regulation and anti-corruption strategies to questions of apostasy, corporate personality, and assisted reproductive technologies, the essays demonstrate that legal pluralism, when properly understood, is not a source of conflict but a reservoir of solutions.



The work also ventures boldly into emerging and evolving areas of law. Discussions on artificial intelligence and copyright, climate change and sustainable development, global trade disputes, and the reform of Nigeria's electricity sector underscore the dynamism of modern legal scholarship. These are not abstract concerns; they are real-world issues demanding urgent and innovative legal responses.

Equally significant are the chapters that interrogate institutional weaknesses, police overreach in civil matters, inefficiencies in debt recovery, and the structural limitations of the Land Use Act. Such analyses are critical, for the strength of any legal system lies not only in its principles but in its institutions.

What ultimately distinguishes this volume is its coherence of purpose. Despite the diversity of topics, there is a unifying thread: a commitment to justice as both a legal and moral imperative. The contributors remind us that law, in its truest sense, must serve humanity by protecting dignity, promoting fairness, and ensuring societal order.

The editors of this work deserve special commendation for their vision, industry, and scholarly rigour. Bringing together such a rich and diverse body of work is no small feat. Their efforts have produced a volume that will undoubtedly serve as a valuable resource for scholars, practitioners, policymakers, and students alike.

As we celebrate the remarkable career of Musibau Adetunbi, SAN, this festschrift does more than honour the man it reinforces the ideals he represents. It challenges us to think deeper, act justly, and continue the pursuit of a legal system that is both responsive and principled.

I have no hesitation in recommending this book to all who are committed to the study and advancement of law and justice.

Prof. Abiodun Amuda-Kannike SAN, FC Arb
Acting Dir, Dept. of Legislative Support Services,
National Institute for Legislative and Democratic Studies (NILDS) Abuja,
Pioneer Dean & Professor of Law,
Kwara State University, Malete.



BIOGRAPHICAL SECTION

BIOGRAPHY OF MUSIBAU ADETUNBI, SAN, MCI Arb (UK), FIMC

On the 2nd day of July, 1967, the family of Pa. Raji Adetunbi and Madam Yinyinola Raji Adetunbi (both of blessed memory) was blessed with the birth of Mr. Musibau Adetunbi, SAN. Mr. Adetunbi originates from Jagun-Olukosi Compound, of the historical town of Ede, the home of the legendary warrior, Timi Agbale Olofa Ina, in Osun State.

The eminent Jurist started the sojourn of his academic life at St Peters Anglican Primary School, Akintola, Odigbo, Ondo State between 1971 and 1978. The learned Silk proceeded to Ore Community High School, Ore, Ondo State between 1978 and 1983 for his Secondary School Education. Between 1986 and 1988, he proceeded to the defunct Federal School of Arts and Science, Ondo, Ondo State for his Advance Level Certificate. In a bid to satisfy his mission to read law, the law expert, attended Obafemi Awolowo University, Ile-Ife, Osun State, where he obtained his LLB, in May, 1997.

He proceeded to the Nigerian Law School, Bwari, Abuja in 1998, as part of the pioneer set of students to be admitted to the Abuja Campus of the Law School. He was called to the Nigerian Bar, as a Solicitor and Advocate of the Supreme Court of Nigeria in September, 1999. Again, belonging to the last set of Legal Practitioners to be called to Bar in the 20th Century. He had earlier served at the Ministry of Justice, Birnin-Kebbi, Kebbi State between 1997 and 1998.

After his call to Bar, Mr. Adetunbi, SAN did his Pupilage in the Chambers of Chief Ladosu Ladapo SAN & Co. in Ibadan between 1999 and 2001. He later proceeded to the law firm of Akin Delano SAN & Co. between 2001 and 2003 before he established his own law firm Musibau Adetunbi & Co. (Raji Chambers), which he has been managing since the year 2003 till date.

Mr. Adetunbi, SAN, has appeared in all echelon of courts in Nigeria, as he has argued successfully cases which judgments have been delivered ranging from Supreme Court to Magistrate Court. The judgments of the cases handled by the learned Silk have been reported in various Law reports. The Learned Silk's mastery of law and procedure was announced by Per Danjuma, J.C.A in the case of **SURAJO VS STATE (2019) ALL FWLR (PT 980) 663 AT 685 F – G**, Kaduna Division, Court Of Appeal, where his Lordship said thus:

“The Learned Counsel, Musibau Adetunbi, Esq. exhibited dexterity, learning and



commendable sense of justice in his brief of argument as a Minister of justice should be. He advocates and the court announce the dictates of justice by the oracles, as ordained in our jurisprudence of evidence and Criminal Law.”

In the year 2016, Mr. Adetunbi, SAN became a member of the Chartered Institute of Arbitration, UK, and in the same year, he became a Notary Public, having been appointed by the Chief Justice of Nigeria. It would be clearly seen that Mr. Adetunbi, SAN has through focus, determination and enthusiasm conquered the negativities of growth and evolved like a phoenix which is eternally incapable of earthly extermination. He wandered through the morass of pupillage in various Law Chambers, he disciplined himself stoically and eventually became a master mariner on the high seas of Legal Profession. Mr. Adetunbi, SAN is also a gentleman par excellence. His humility is electrifying. This endears him to all and sundry. He is sublime without haughtiness; courteous; strict without being sadistic; industrious without hubris; humble without being pretentious and magnanimous without announcement.

Mr. Adetunbi, SAN, has attended many conferences within and outside Nigeria, amongst which are; Commonwealth Lawyers Association Conference, Scotland, 2015. Chartered Institute of Arbitrators, Nigerian Branch, Annual Conference, Port Harcourt, 2016. CIARB International Arbitration Conference, Johannesburg, South Africa, 2017. Chartered Institute of Arbitrators, Nigerian Branch, Annual Conference, Lagos, 2017. Conference on Arbitration in Africa, Abidjan, Cote D'Ivoire, 2018. Chartered Institute of Arbitrators, Nigerian Branch, Annual Conference, Abuja, 2018. International Bar Association Annual Conference, Rome, Italy, 2018. CIARB International Arbitration Conference, Kenya, 2018. International Bar Association, Litigation and Dispute Resolution in Africa Conference, Accra Ghana, 2018. Chartered Institute of Arbitrators, Nigerian Branch, Annual Conference, Lagos, 2019. The learned Silk is a household name in the yearly Nigerian Bar Association General Conference, as he has never missed any General Conference, since 2007.

Mr. Adetunbi, SAN has delivered numerous papers in many fora which includes but not limited to:

- (1) The Role of Prosecuting and Investigating Agencies in the Successful Implementation of the Law; (i.e. Administration of Criminal Justice Law, Oyo State), 2017
- (2) Career Talk for Students of Nigeria-Ghana International College, Abuja, 2018.
- (3) Kidnapping and Terrorism: Threat to Freedom, Security and National



Development; What can Lawyers do? (Nigeria Bar Association General Conference, 2019).

Mr. Adetunbi, SAN is a recipient of many awards; to wit:

- (1) an Award of Excellence, in Appreciation of a Rare Person and Contributions and All Round Support, as the Chairman Parents Teachers Forum, West Prime Model School, Awolowo, Ibadan, Oyo State, 2007 to 2011.
- (2) an Award of Excellence in Acknowledgment and Recognition for Immense and Selfless Contribution Towards Law Students Association: by Law Students' Society, University of Ibadan, Oyo State, year 2012.
- (3) a Merit Award, for Immense Contribution to the Advancement of Law, by Legal Aid Clinic of Nigeria, Nigeria Youth Service Corps, Ibadan, Oyo State, year 2012.
- (4) an Award of Excellence, for Invaluable Comments and Immeasurable Contributions to the Growth and Development of the Legal Practice in Nigeria, by Justice Chambers, Faculty of Law, University of Ilorin, Kwara State, year 2014.
- (5) an Award, in Recognition of Excellence Performance in the Area of your Specialization and Contribution to the Growth of Islam, by Young Muslim Brothers and Sisters of Nigeria, year 2017.
- (6) an Award of Excellence, in Recognition of the Distinguished and Meritorious Contributions to Islam, by Zawiyat Aenur Rahamat Rabaniyyat, Arowodana Mosque, Ibadan, Oyo State, year 2018.
- (7) an Award of Excellence, in Recognition of an Unparalleled Contributions Towards the Motivation of the Entire Membership of Liberty Chambers, Lead City University, Ibadan, Oyo State, year 2018.
- (8) an Award of Expression of Gratitude for the Contributions to the Foundation's Charitable Activities; by Nigerian Turkish International Colleges Foundation, year 2019.
- (9) a Special Recognition Award for sound Advocacy, Friendliness and Cordiality with the Lower Courts of Oyo State; Magistrates' Association of Nigeria, Oyo State Branch, year 2019.
- (10) a Special Recognition Award, in Recognition of Astuteness, Industry and clear Attestation to Hard-work and Dedication to the Legal Profession, by



Ife Law Class of 1996, year 2020.

- (11) a Merit Award in Appreciation of Dedicated Service, Devotion and Commitment to the Organisation: by National Association of Muslim Law Students, Faculty of Law, University of Ibadan, Oyo State, year 2020.
- (12) an Award of Excellence, as Golden Son of Jagun Olukosi, Jagun Olukosi Descendants' Union, Ede, Osun State, year 2021.

Mr. Adetunbi, SAN, as an active player in the Nigerian Bar Association, has served in the Ibadan Branch, in diverse capacities, as he was a member of Human Rights Committee, 2011, member, Anti-Touting Committee, 2011, member of the Publicity Committee, between 2014 – 2015, member of 2017 Law Week Committee, member, Anti-Touting Committee, 2017. Presently, he is the Alternate Chairman of the Legal Practitioners Disciplinary Committee. Additionally, he holds the position of Chairman of the Conference Committee of the Muslim Lawyers Association of Nigeria (MULAN). He is also an esteemed member of the Law Reform Committee and holds membership in the International Bar Association.

He is a Litigation and Corporate lawyer per excellence. He is on the retainership of many financial institutions home and abroad. He has traversed all states of the Federation in pursuit of justice for his clients. He has also successfully prosecuted many Election Petitions. Pursuant to the excellent performance put up by Mr. Musibau Adetunbi, SAN, the Legal Practitioners' Privileges Committee deemed him fit and proper to be conferred with the prestigious rank of Senior Advocate of Nigeria on the 14th day of December, 2020.

Mr. Musibau Adetunbi, SAN is a devout Muslim who has performed both Umrah and Hajj to the Glory of the Almighty Allah. He loves reading, exploring, travelling and meeting people. He is married to the delectable, Hajia Rasheedat Yinyinola Adetunbi (who incidentally shares the same name with the learned Silk's late mother) and the marriage is blessed with healthy, good looking and intelligent boys and ladies.



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Chapter Seven

A DISCOURSE OF THE FREEDOM OF RELIGION IN A DEMOCRATIC NIGERIA AND THE ISLAMIC LAW OF APOSTASY

By

Mohd Jamiu Ayinla-Edun*

Abstract

This paper examines the apparent tension between the Islamic law of apostasy (ridda) and the constitutional guarantee of freedom of religion in Nigeria. It explores the classical juristic position across the Sunni legal schools, which generally upheld apostasy as a punishable offence, often justified within the framework of preserving religious and communal order. In contrast, contemporary scholarship increasingly challenges this position, arguing that classical rulings were shaped by historical and political contexts and should be reinterpreted in light of Qur'anic principles such as "no compulsion in religion" and modern notions of religious freedom. Using a doctrinal research methodology, the paper analyses primary sources of Islamic law alongside constitutional provisions, particularly Section 38 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). It further considers judicial pronouncements affirming the right to freedom of religion and examines how Islamic law conceptualises peace, religious pluralism, and the regulation of apostasy. The study finds that the perceived conflict between Islamic apostasy law and constitutional religious freedom is largely interpretive rather than absolute. It argues that while Islamic law prescribes sanctions for apostasy, these are understood within its legal order as safeguarding communal integrity rather than suppressing belief. The paper concludes that both systems can be reconciled by recognising the contextual limits of religious freedom and the internal legal logic of Islamic jurisprudence, particularly in relation to offences considered analogous to treason in secular legal systems.

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Keywords: Apostasy; Islamic law; Freedom of religion; Nigeria; Constitutional law.

1.0 INTRODUCTION

Apostasy (ridda) and its prescribed punishment under Islamic law has long been discussed by classical Muslim jurists. Across the major Sunni schools of law, there was broad consensus among early scholars that apostasy constituted a punishable offence, often understood within the framework of preserving the religious and political order of the Muslim community.¹ However, in contemporary discourse, this long-established position has been increasingly questioned. Critics argue that some classical interpretations were influenced by historical and political contexts rather than purely textual mandates. These differing views often stem from varying interpretations of key evidences in Islamic law, including Qur'anic verses and Prophetic traditions. As a result, modern scholarship reflects a spectrum of opinions, ranging from strict adherence to classical rulings to calls for reinterpretation in light of principles such as freedom of religion and changing societal contexts. The argument for reinterpretation is further premised on the concept of peace and harmonious coexistence by people of diverse religious belief.

Peace may be taken as the greatest good that have happened to man, it is as well the most sought after phenomenon in the world today,² peace is a state of tranquility or quiet, freedom from civil disturbance; a state of security or order within a community provided for by law or custom; specifically, absence of cessation of war; a state of reconciliation after strife or enmity; etc.³

Peace is a phenomenon which every human society strives to ensure, this has been the case since man was aware of his existence and has been and will continue to be one of the paramount desires of man and the society at large.

Despite the relentless effort of man and his community at large to ensure peace in the society, absolute peace may not be visible, as such there is a need to put in place measures to restore peace in case of the occurrence of a state of anomaly of

¹ Ibn Qudamah, *Al-Mughni*, vol 9 (Dar al-Fikr, Beirut, nd); Al-Kasani, *Bada'i al-Sana'i fi Tartib al-Shara'i*, vol 7 (Dar al-Kutub al-'Ilmiyyah, Beirut, 1986); Sahnun, *Al-Mudawwana al-Kubra*, vol 4 (Dar al-Kutub al-'Ilmiyyah, Beirut, nd).

² Naghma Siddiqi, 'The Role of Islam in Establishing Peace in the Contemporary World' (Jamia Hamdard, Hamdard Nagar, New Delhi) 1.

³ *The New International Webster's Comprehensive Dictionary of the English Language* (Deluxe Encyclopedic Edition, Trident Press International, Naples, 2001) 927.



any form. Islam as a religion seeks to maintain peace and as well restore same in the occasion of rift. It ensures peace even in diversity such as difference in religion tribe, colour and so on.⁴

The right to freedom of religion as espoused in the Nigeria Constitution is an important phenomenon that seeks to ensure peace and tolerance among all citizens regardless of their diversity and religious inclination. However, Islam in its unique nature has a punitive measure for a Muslim who abandons Islam for another religion, this position of Islamic Law seemingly contradicts the right to freedom of Religion as guaranteed in a democratic setting like Nigeria.

It is in light of the foregoing that this paper adopts the doctrinal methodology to make a discourse of the concept of freedom of Religion and the apostasy rules under Islamic Law with the view to addressing the seemingly contradictions in the two systems

2.0 FREEDOM OF RELIGION IN NIGERIA

Nigeria is a multi-religious state composed of diverse religious communities.⁵ Nigerians are guaranteed the right to practice and publicly manifest any religion of their choice without interference. In pursuit of equality among adherents of different religions, the Constitution prohibits the adoption of any particular religion as a state or federal religion.⁶

The constitution by virtue of section 38 (1) expressly avails the right to citizens to openly propagate, practice and their religion or believe in worship at will, the section reads;

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

The Supreme Court has given judicial recognition to this constitutional provision, affirming that a Muslim woman who wishes to publicly manifest her

⁴ See Al-Qur'an, Suratul Al-Ahzab verse 13

⁵ Ayinla-Edun M J, *A Critical Analysis of Secular State and the Religious Faith of Muslims under the 1999 Nigerian Constitution* (Undergraduate Thesis, Department of Islamic Law, Faculty of Law, University of Ilorin, 2014).

⁶ Section 10, Constitution of the Federal Republic of Nigeria 1999 (as amended, 2023).



Islamic faith - including the wearing of the hijab - has a fundamental right to do so in public spaces, including schools, without hindrance or interference. Any attempt to restrict or deny this right amount to a violation of her fundamental human rights.⁷

The court had earlier recognized the right to freedom of religion in the cases of *Agbai vs. Okogbue*⁸ and *Nkpa vs. Nkume*,⁹ both cases, the facts were similar in that the plaintiffs were maltreated for their failure to participate in a community effort that contradicts their religious beliefs, the court held that such treated was a violation of their right to religion.

2.1 Freedom of religion: a Showcase of Peace in Islam

One of the most criticised aspects of Islamic law is its position on the adoption of other religions. Many including Muslims, holds the belief that Islam does not tolerate the existence of any other religion and seeks to, by every means, bring their existence to abeyance. This position is a misconceived one for the reasons to be discussed in this part of the work.¹⁰

In the course of ensuring and restoring peace in the Human Community, Islam, respect - though does not approve¹¹ - the believes and practices of other religion, thus, it forbids Muslims to exhibit any form of transgression or abuse on the faith of the adherence of other religion, this is in place, so that they may as well not resort to insult, desecration and above all, abuse of the faith of Islam, Allah says;

And do not abuse those whom they call upon besides Allah lest exceeding the limits and abuse Allah out of ignorance....¹²

The foregoing refutes the view that Islamic law does not tolerate other religious beliefs. It is, however, important to note that Islam accommodates other religions insofar as they do not threaten its existence or the safety of its adherents. Accordingly, it promotes peaceful coexistence, while reserving the use of force where necessary to preserve order and ensure mutual security.

⁷ Lagos State Government Vs. Asiyat AbdulKareem (2022) LPELR 58517 SC

⁸ (1991) 7 NWLR (pt 204) 391

⁹ (2003) AHRLR 208 (NgCA 2000)

¹⁰ Kamali MH, *Freedom of Expression in Islam* (Islamic Texts Society, Cambridge, 1997) 120–135; Kamali MH, *The Right to Freedom of Belief and Religion in Islamic Law* (Islamic Texts Society, Cambridge, 2013) 85–110; Esposito JL, *Islam: The Straight Path* (Oxford University Press, New York, 2005) 152–160; An-Na'im AA, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press, Cambridge, 2008) 96–120.

¹¹ See Qur'an, suratu Az-Zumar verse 7

¹² Quran, suratu Al-An'am verse 108



In the absence of any actual or potential threat to the existence of Islam or its adherents, Islamic law forbids that anyone be forced to embrace it.¹³ The fact that Islam accords to every man the freedom to choose a religion of his choice – despite the fact that he/she shall be punished thereto if he/she chooses other than Islam¹⁴ – are also evident from the traditions of the prophet such as the treaty of Hudaibiyyah, and the charter of Madeenah.¹⁵ The prophet in fact accepted the most unjust terms in the treaty of Hudaibiyyah all in the quest for peace and tranquility between the Muslim and Non-Muslim communities.¹⁶

The foregoing are enough evidences to establish the fact that Islam does not seek to be the only religion in existence, such even contradict the universal wish of Allah. However, it will not tolerate any religion that strives to subdue it, or causes oppression in the world, and as such it will strive to conquer such a wanting religion or civilization to ensure peace and harmony in the universe. In other words, Islam tolerates a friendly religion and civilization while it frowns at the aggressive ones.¹⁷

2.2 Apostasy law in Islam

Apostasy may come to place in various form, it may be by the outright conversion of a person who is previously a Muslim to a religion other than Islam, it may as well occur by the performance of some action and the utterance of some words which are capable of excommunicating a person from Islam, these actions and statements are seen in Islam as blasphemous, actions such as cursing and abusing Prophet Muhammad, denial of obligatory nature of the five daily prayers or denial of any matter compulsorily to be known in the religion.

The offence of Apostasy may as well occur by the belief in some anti-Islam matters such as believe in trinity, the existence of another Prophet after Prophet Muhammad and so on. Thus an apostate is someone –while being a Muslim– intentionally commits an act of disbelieve while being aware of the legal consequences.¹⁸

¹³ See Quran, suratu Al-Baqarah verse 256 and Quran, suratu Al-Kaafirun verse 6

¹⁴ See Quran suratu Aal-imran verse 85.

¹⁵ Muhammad S Q, *Foreign Policy of Hadrat Muhammad (SAW)* (Nusrat Ali Nasri for Kitab Bhavan, 1991) 135–137.

¹⁶ See Al-Bukhari M, *Sahih al-Bukhari* (1st edn, Dar al-Haythami 2004/1425) 319–321.

¹⁷ Muhammad S. Q. *ibid* p. 190

¹⁸ Ibn Jibrin, *Sharh Akhsar al-Mukhtasarat*, vol 81 (Al-Shabakah al-Islamiyyah, Saudi Arabia, nd) 1; Ameer Katib ibn Umar al-Atqani, *Ghayat al-Bayan*, vol 1 (Ilm li-Ihya' al-Turath, nd) 27.



From the foregoing, it is clear that apostasy is not limited to a situation where a Muslim dumps Islam for other religion, it may as well occur when such a person performs or pronounces some heretical actions, statements and belief, some of which are listed below;¹⁹

1. Claiming prophethood.
2. Abusing Allah and or the Prophet.²⁰
3. Denial of Allah's existence.
4. Believe in the falsehood of Al-Qur'an and that same was not from Allah.²¹
5. Denial of the existence of an Angel mentioned in the Qur'an.
6. Denial of any of the pillars of Islam.
7. Intentional desecrate or make jest of any part of religion.

The lists are virtually endless and one may have to make recourse to the books of Islamic law on the subject matter to have more glimpse of the list.

3.0 PUNISHMENT FOR APOSTASY UNDER ISLAMIC LAW

A discussion of the punishment for the offence of apostasy is not a new one, scholars from among the companions of the Prophet, and their predecessors and thereafter had discussed the topic, the scholars of the major schools of law in Islam –including- the zahiri- are unanimous on the fact that the most ingenious offence against the Al-mighty creator attracts a capital punishment.

The only point of divergence among the majority and the Hanafi school is as regards a female apostate, the Hanafi school are of the view that the textual authority on the subject does not apply to a female, they reach this conclusion on the premise of their style of lexical interpretation of the Arabic word 'Man' used in most of the textual references, especially the authentic Hadith of "Whoever (man) changes his religion should be killed", they are of the opinion that the word is only used for males and does not apply to females, they opine that the appropriate word for female is 'mannah'. Thus they view that a female apostate is not to be killed.²²

However, the Hanafi view is a weak one, in that the word 'man' is lexically of general application, it applies to both male and female and this is the usage of the Qur'an as regards word,

¹⁹ ibid

²⁰ See Quran, suratu Al-Maidah verse 64; Al-Shinqiti, *Sharh Zad al-Mustaqni'*, vol 396 (transcribed by Al-Shabakah al-Islamiyyah, nd).

²¹ See Quran, suratu Al-Furqan verse 4, Quran. Suratu As-Sabai verse 43, Quran, suratu Al-Ahqaf verse 11

²² Al-Shinqiti, *Sharh Zad al-Mustaqni'*, vol 396 (transcribed by Al-Shabakah al-Islamiyyah, nd). for details.



It is however pertinent to note importantly, that despite the divergence as regards the punishment for a female apostate between the majority and the Hanafi school, they are all unanimous –including the Hanafi school- that the punishment for a matured male is capital in nature i.e. he is to be killed. They all rely on the following evidences; it was reported in Sunnan Abee Dawud that Aliy ibn Abee taalib burnt some people who apostatized, the news came to Ibn Abbaas and he commented that he would not have burnt them as the prophet forbade punishing with fire, he made it known that the prophet said “whoever changes his religion should be killed, this comment got to Aliyy and he acknowledged it.”²⁴ He as well reported that a man, sa'd bn sarhi, who used to write for the prophet was put astray by shaytan and he joined the unbelievers (apostatized), the prophet ordered that he be killed on the day of conquest of Makkah, However, the man was pardoned on the plea of Uthman bn Affaan, who presented the him for allegiance before the prophet, the prophet was initially reluctant to take the allegiance and rebooked the companions from failing to execute him before he took the allegiance, the prophet only did not signal to the companions that the man be killed because that was not befitting of a prophet.²⁵

The prophet was also reported to have permitted the killing of anyone who retires to polytheism (apostates).²⁶ The prophet as well approved of a man who killed his wife for consistently abusing the prophet after several warnings, the prophet was said to have pronounced her soul as a wasted one.²⁷

The above and more are the textual evidences relied on by the classical scholars from among the companions, their predecessors and the schools of thought, their exist no divergence amongst them as to the fact that an apostate is to be killed, in other words, there is a consensus on the capital punishment for apostasy.

However, in recent time, there emerges a claim from some quarters of the invalidity of the consensus of scholars on the subject, the proponents of this claim cite no classical work in support of their claim neither do they make reference to any companion with this position. The largely based their arguments on the fact

²³ See Quran suratu An-Nisai verse 124, suratu An-Nahl verse 97, suratu Al-Ghaafir verse 40; Al-Tabari M ibn Jarir, *Jami' al-Bayan fi Ta'wil Ayat al-Qur'an*, vol 36 (Dar al-Fikr, Beirut, nd) 18–31. for the explanations of the word 'man' as used in the verses

²⁴ Abu Dawud S, *Sunan Abi Dawud*, Hadith no 4351 (Dar al-Haythami, nd) 126; Al-Bukhari M ibn Isma'il, *Sahih al-Bukhari*, Hadith no 6525 (1st edn, Dar al-Haythami 2004/1425).

²⁵ Abu Dawud S, *Sunan Abi Dawud*, Hadith nos 4358–4359 (Dar al-Haythami, nd).

²⁶ Ibid, Hadith 4360

²⁷ Ibid



that the Qur'an did not expressly provide for capital punishment for the grave offence of apostasy. Mirza aptly presented this argument as follows;

Now, against the foregoing, I present the verses of the Holy Qur'an that clearly deal with the subject of apostasy, but there is no mention at all that death is its punishment. On the contrary, the subject is so very evident that there remains no place to entertain the opinion that the punishment of apostasy is death.²⁸

The argument against the above is that the Qur'an is not the only source of law in Islam and in fact, the traditions of the prophet are meant to interpreted and provide the most correct connotations of the Qur'anic verses²⁹ and same is not to be subjected to individual intellectual interpretation which may be defective, it has clearly been shown above that the traditions of the prophet unequivocally provides for capital punishment for apostasy, the fact that some verses of the Qur'an only condemns apostates to hell only has to do with ruling of even to happen hereafter and does not in any many way water down the punishment to be applied in this world.³⁰

It scholars as well made it know that the case of those referred to in suratu An-Nisai verse 137 of the Qur'an refers to hypocrites, who intermittently changes their religion, those who apostates, repented before the punishment was carried out and went back to disbelief, those who apostates and were never caught probably because their apostasy was not publicized or they fed for the punishment, or the verse on refers to the hypocrites who are not to be killed because they manifestly profess Islam unlike an apostate who manifestly profess disbelief.³¹

At-Tabariy in his book alluded to the fact that the above verse establishes the punishment for apostasy, He adopted a conjunctive interpretation of the verse by linking it to the preceding text, arguing that the phrase "*inna alladhina amanu thumma kafaru...*" is not independent but should be read in continuity with what comes before it to produce a coherent meaning. He further explained that the

²⁸ Mirza TA, 'The Truth about the Punishment for Apostasy in Islam', address delivered at Jalsa Salana (Annual Conference, UK, Islamabad, Tilford, 27 July 1986), published in *Islam International Publications Ltd* (2005) 73

²⁹ See Quran, suratu Al-an'am verse 4 and 64

³⁰ Ibn al-Humam, *Sharh Fath al-Qadir*, vol 8 (Dar al-Kutub al-'Ilmiyyah, Beirut, nd) 72.

³¹ See Al-Tabari M ibn Jarir, *Jami' al-Bayan fi Ta'wil Ayat al-Qur'an* (Dar Hajr lil-Tiba'ah wa al-Nashr, nd).



statement "*lam yakuni Allahu liyaghfira lahum...*" signifies that Allah will not forgive their disbelief and sins by pardoning them from punishment; rather, they will be exposed before witnesses. Likewise, "*wa la liyahdiyahum sabeela*" means that Allah will not guide them to righteousness or enable them to follow the correct path, but will instead distance them from it as a consequence of their grave offence and transgression against their Lord.³²

To further substantiate the validity of capital punishment for apostasy, At-Tabariy went further to explain the opinions of scholars as to the condition precedent to be observed before same is executed.³³

In the quest to support his view, Mirza as well quoted Allamah Al-Marghinani and Imam Ibn Humam's-both of Hanafi School- arguments against the killing of a female apostate, he gave the arguments a general application to both male and female.³⁴ This general application cannot hold water as Imam Ibn Hummam himself presented a narration from Imam Abee Haneefah that a female apostate is to be caned till she either repents or die;

it was narrated from Abee Haneefah that she (a female apostate) be beaten every day till she repents or dies, and from Al-Hasan that she be given thirty Nine strokes of cane every day till she dies or embraces Islam.³⁵

In view lines before he mentioned the divergence of opinion regarding the punishment of a female apostate, Ibn Humām stated that an apostate should first be invited to return to Islam, and if he refuses to revert to the faith, he is to be put to death.³⁶

Mirza as well presented Al-Sarkhasi arguments in kitabu Al-Mabsut in favour of the view that a female apostate is not to be killed as a general argument against capital punishment for apostasy,³⁷ this in fact is an opposite of what the great scholar intends, the scholars is as well of the same view with the majority, he in fact mentioned this in Kitabu Al-Mabsut thus;

Hasan narrated from Aboo Haneefah that a female apostate is to be punished with what is different to the punishment of a male apostate, because a male apostate is

³² ibid

³³ ibid

³⁴ Ibid, pp. 138-139

³⁵ Muhammad ibn 'Abd al-Wahid al-Siwasi, *Fath al-Qadir Sharh al-Hidayah*, vol 6 (1st edn, Dar al-Kutub al-'Ilmiyyah, nd) 78; see also Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* (Dar al-Fikr, Damascus, nd).

³⁶ Ibid, Fathu Al-Qadeer Sharhi Al-Hidaayah'

³⁷ Mirza Tahir Ahmad, *The Truth about the Punishment for Apostasy in Islam* (Islam International Publications Ltd, Tilford, 2005) 140-142



upon destruction, he is to be killed unlike a female apostate.³⁸

He further mentioned;

“This is because a male apostate is to be killed, be he a free born or a slave.”³⁹ It is pertinent to note, that every scholars that were presented as being against capital punishment are of the Hanafi School, this accounts for their position as earlier mentioned regards a female apostate. We have however, presented evidences to show the correctness of the majority view.

Another proponent of the 'no capital punishment for apostasy' claim, Taha, argued that those who maintain the existence of consensus on capital punishment for an apostate by this diverted attention from the fact that scholars of weight like Umar Ibn Khattab, Ibrahim An-Nakha'I, Sufyan Ath-Thawri and others did not support the punishment.⁴⁰ He made this claim without giving a reference to where any of these scholars presented the alleged contrary opinion.

Taha further stated that executing a capital punishment for apostasy, contradicts the fundamental principle of Islam of 'No compulsion in religion, he asserted that the punishment for apostasy may be understood as operating at both individual and collective levels, on the basis that it serves to safeguard the religion from those who might seek to undermine, exploit, or rebel against it. In reaching such conclusions, classical Muslim scholars generally did not view any inconsistency between this position and the widely accepted Qur'anic principle of freedom of belief, expressed in the verse that “there shall be no compulsion in religion.” Historically, the dominant view within Islamic legal tradition has upheld the death penalty for apostasy across different periods. Although a number of early authorities expressed dissenting opinions—including notable figures such as the Companion ‘Umar ibn al-Khaṭṭāb, Ibrāhīm al-Nakha‘ī, and Sufyān al-Thawrī—these minority perspectives were not widely circulated or given significant prominence in the broader juristic discourse.⁴¹

It has earlier been said that the assertion that there existed a contrary view as regards the punishment was not referenced to any source; as such same cannot be relied upon. In response to the fact that killing an apostate negates the principle of freedom of religion can be responded to in any of the following manners; as

³⁸ Al-Sarakhsi, Shams al-Din, *Kitab al-Mabsut*, vol 7 (Dar al-Ma'rifah, Beirut, nd) 33.

³⁹ Al-Sarakhsi, Shams al-Din, *Kitab al-Mabsut*, vol 25 (Dar al-Ma'rifah, Beirut, nd) 61.

⁴⁰ Taha Jabir al-Alwani, *Apostasy in Islam: A Historical and Scriptural Analysis* (IIIT Books-in-Brief Series, trans Nancy Robert, abridged Alison Lake, International Institute of Islamic Thought, Herndon, nd) 3.

⁴¹ Ibid p.4



alluded to Taha himself, the sunnah is to interpret and explain the Qur'an⁴² and same is not left to the intellect of any individual, the sunnah had in fact – as aforementioned- prescribed capital punishment for apostasy, the principle only applies to the extent that those who are primarily unbelievers are not to be coerced to embrace Islam, if however, any of them embraces Islam, he had willfully submitted him/herself to the laws of the religion among which is the punishment for apostasy.

Sadia Khan argued that only an apostate who rebels against an Islamic government would be killed, she supported this view by making the example of the Meccan period, She argued that there is no recorded instance of apostasy being punished during that period. According to her, the reported statement of the Prophet Muhammad was made only in Medina, particularly in a time of war, after Islam had become a structured state. She further questioned why, if cases of apostasy occurred in both Mecca and Medina, no similar pronouncements were made during the Meccan period.⁴³

The responses to the above are simply that, it is an established principle of Islamic law jurisprudence that what matters in the application of a text is the general intent of the text and not the peculiarity of the reason(s) for the text, therefore, what matter is that the prophet commands the killing of apostates without any specification and exceptions, the absence of a ruling at a particular time is not a justification for the absence at the other, moreso that most legal rulings in Islam were revealed after migration of the prophet (Sallaallaahu alayhi wa salam) to Medina and the case of apostasy may not be an exception.

The teachings of the prophet during the Meccan period was majorly concentrated on issues of monotheism and not law and rulings, even though, apostasy occurs by the contradiction of Monotheism but the punishment is an issue of law and rulings.

4.0 RESOLVING THE CONFLICT BETWEEN THE LAWS

The right to freedom of religion as guaranteed under the 1999 constitution seems to be apparently in contradiction to the rules of apostasy under Islamic Law. The contradiction is manifest in the fact that the constitution recognizes the right to at will change a religion or belief in worship without any hindrance while the rules of apostasy under Islamic Law regards the relinquishing of Islam for another religion as sacrilegious offence.

⁴² Ibid p.1

⁴³ Sadia khan, 'Apostasy in Islam: A Critical Analysis of traditional Islamic Sources', 4 < <https://www.islamandpeace.org/sites/default/files/building-bridges/Apostacy%20and%20Islam.pdf>> accessed on the 29 March, 2026.



However, the contradiction is superficial because Islamic law does not demand the submission by adherents of other religions to its principles and teachings, it only prohibits a Muslim -who had willingly submitted to the principles of Islam including the rules of apostasy- from apostatizing because like any other conventional states, apostasy is regarded as rebellious and treasonable offence against a constituted authority which attracts capital punishment in almost all jurisdictions.

As such Islam does not force any one to embrace it. However, it commands obedience from someone who is already a Muslim and subjects defaulters to appropriate punishment.⁴⁴ It is important to note that the fundamental rights including right to religion of choice are not absolute, they are subject to elements that may curtail them and the apostasy law under Islamic Law is a reasonable curtailing element of the right to freedom of religion in the democratic Nigeria with respect to a Muslim who had willfully submitted to the rules and principles of Islam including the law of Apostasy.

5.0 CONCLUSION

Islam is a religion of peace and tranquility, it encourages peace in diversity, however, the religion like any other state and civilization does not make itself prone to external threat and attack as such it may employ the use of force where the law permits.

Apostasy is a very ingenious crime against an Islamic state and the consensus of scholars as to its attraction of capital punishment remains established. However, the contradiction that seems to exist between the apostasy law and the right to freedom of religion in Nigeria is cleared with the fact that apostasy is regarded as treasonable and rebellious offence under Islamic law, and the Nigerian Legal system equally penalizes treasonable offences with capital punishment.

⁴⁴ Muhammad B I, *Al-Fiqh al-Wadiah min al-Kitab wa al-Sunnah 'ala Madhahib al-Arba'ah*, vol 2 (2nd edn, Dar al-Manar, nd) 270.