

NOISE POLLUTION AND RELIGIOUS FREEDOM IN NIGERIA: FOCUS ON THE 2016 BILL FOR A LAW TO SUBSTITUTE THE KADUNA STATE RELIGIOUS PREACHING LAW 1984¹

Abstract

This paper discusses the issue of noise pollution with regard to the current Kaduna State Bill called a Bill for a Law to Substitute the Kaduna State Religious Preaching Law 1984 which has become very controversial. Because many believe that the contents of this Bill constitute an affront to religious freedom as guaranteed in the Nigerian Constitution, this paper also analyses the contents of the Bill in relation to the right to freedom of religion, thought and conscience.

Key word: Noise pollution, religious freedom in Nigeria, Kaduna State Bill 2016, Preaching Law 1984

1. Introduction

Noise is not healthy for human beings. It is also an enemy to the environment as it pollutes the surroundings. Constant exposure to loud noise, experts say, affects human auditory system, especially when it is above the normal 85 decibels (dBs). Noise above the normal decibels is capable of perforating human ear membranes which can result in temporary hearing loss. There are many individuals who suffer from aural disorders caused by noise pollution. This disorder apparently manifests in the damage of the auricle as an initial sign. Experts contend that noise is one of the most dangerous and silent environmental pollutions as its effects on human body system could lead to death. Horn speakers used by churches, mosques and music sellers constitute a heavy source of noise.

Mindful of the health hazards associated with noise, the Lagos State Government recently came down hard on some sources of noise pollution. This it did by closing or sealing off some churches and mosques, among other institutions, from which deafening noises emanate. Such are worship centres that use *ahuja* speakers to conduct their services, even at nights. Consequently, following the Environmental Protection Agency Law 2012 (as amended), the Lagos State Environmental Protection Agency (LASEPA) shut down some places of worship after series of complaints from residents, whose lives have been affected by ceaseless noise.

This paper discusses the issue of noise pollution not in relation to Lagos State Law but with regard to the current Kaduna State Bill called a *Bill for a Law to Substitute the Kaduna State Religious Preaching Law 1984* which has become very controversial. Because many believe that the contents of this Bill constitute an affront to religious freedom as guaranteed in the Nigerian Constitution, this paper also analyses the contents of the Bill in relation to the right to freedom of religion, thought and conscience.

2. Kaduna Bill and its Highlights

Since it was announced that the Kaduna State government, led by Governor Nasir El-Rufai, had proposed an executive bill seeking to make illegal and regulate certain religious activities in the state, citizens across the country have condemned the bill, with many describing it as anti-religious. The bill, currently before the Kaduna State House of Assembly, has also drawn the ire of religious bodies and religious leaders within the state. The Kaduna state religious bill was first passed into law in 1984 and was then known as the 'Kaduna State Regulation of Religious Preaching Edict No 7 of 1984.' It was however, amended in 1987. To some extent, the law has remained irrelevant as it was not enforced. The bill proposed by El-Rufai is seeking to repeal the 1984 law and replace it with an updated version. It is important to note that Kaduna has been rocked by several religious crises, which have led to the death of several individuals. Such crises include: Kafanchan crisis in 1987, the 1988 religious conflict at Ahmadu Bello University Zaria, Sharia riots in 2000, among others. The introduction of the bill in the 1980s was intended to stop the scourge of violence stemming from religion in the state. Both the Islamic and Christian bodies in Kaduna state have, however, raised alarm over the bill, which has been described as unfair. **Yet, it has been claimed by government that the bill is not targeted at any group or religious body.**

According to the bill: 'The two major religions in the state shall be regulated by the following bodies: (a) a committee of the Jama'atu Nasril Islam with equal representation of Izala and Darika religious groups in the case of Muslims, and (b) A committee set up by Christian Association of Nigeria, in the case of Christians (c) An inter-faith Ministerial Committee to be appointed by the Governor.'

¹ By **Ikenga K. E. ORAEGBUNAM, PhD (Law), PhD (Phil.), PhD (Rel. & Soc.), MEd, BTh, BL**, Senior Lecturer and Ag Head, Department of International Law & Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria. E-mail: ik.oraegbunam@unizik.edu.ng. Phone Number: +2348034711211

The inter-faith ministerial committee, which is to be chaired by an appointee of the state governor, will have representatives of the JNI and the Christian Association of Nigeria, the police, Department of State Services, Nigeria Security and Civil Defence Corps, the governor's special adviser on religious matters, ministry of justice as well as the most senior official of the government advising the governor on interfaith matters. The bill further seeks to establish committees at the local government levels which are to screen applicants for licences and make recommendations to the ministerial committee for approval. If there were no laws guiding the activities of religious leaders and followers, 'they may take a cover under the guise of fundamental rights law to infringe on others' freedom.' Not only does the bill make provision for equal representation, it states same punishment for individuals who violates the law -regardless of religious affiliation.

Another highlight of the Bill is that Religious preachers in the state must be licence before they can preach in the state. All religious preachers, including visiting preachers, in the state must obtain a licence before they can preach in the state. Furthermore, the licence must be renewed each year. The proposed law reads: 'The religious bodies established under Section 4 (a) & (b) of this Law shall issue licences approved by the Ministerial Committee (i) The licence shall be issued for a period not exceeding one year. (ii) A sponsored external preacher shall be issued a permit for the period of the event.' More still, playing of cassette in public place was barred by the bill, while playing of inciting media messages was also prohibited in the state: 'All cassettes, CDs, flash drives or any other communication gadgets containing religious recordings from accredited preachers may be played in the following places only: (a) inside one's house (b) Inside entrance porch (Zaure) (c) Inside the church (d) Inside the mosque, and (e) Any other designated place of worship. 'Any cassette containing religious recording in which abusive language is used against any person or religious organization or religious leaders (past or present) is hereby prohibited in the state.'

Other offences mentioned by the proposed bill include: '(a) preaching without a valid licence '(b) Playing religious cassette or using it for religious purposes after 8pm in a public place '(c) Using a loudspeaker for religious purposes other than inside a mosque or a church and the surrounding areas outside the stipulated prayer times '(d) Using a loudspeaker in vehicles plying the streets with religious recording '(e) Abusing religious books '(f) Inciting disturbance of the public peace '(g) Abusing or using any derogatory term in describing any religion or, (h) Carrying weapons of any description whether concealed or not in places of worship or to any other place with a view to causing religious disturbance shall be guilty of an offence.'

Any individual who commits any of the offences in the proposed bill shall be 'liable on conviction to a term of imprisonment not exceeding two years or a fine of N200,000 or both and have his licence revoked.'

3. Law against Noise Pollution in Nigeria

The legal regime on Noise Pollution in Nigeria can be considered under two main headings, namely, the common law and the policy and statutes. The common law intervention is through the actionable tort of nuisance. Through a court action for nuisance, an aggrieved person can obtain damages for injury suffered from the offensive noise and also injunction to stop any further course of the proceedings that the noise generated and emitted by the defendants was excessive and much more than any noise that can be produced in any noisy area in Nigeria. The court held that the noise was excessive and awarded damages to the plaintiff and also restrained the defendants from further act of noise nuisance.

However, the common law remedy through court action does not offer a comprehensive and infallible solution to noise pollution in Nigeria as a result of some inherent socio-economic factors. One of such factor is the high cost of legal fees and the frustration of forensic battles in Nigeria where the adversary system of justice system is operated. Another factor is the traditional inclination of Nigerians to avoid legal confrontation with neighbours or other people. Taken together, the likely result of these inherent factors is that many citizens may shy away from instituting court action to confront noise pollution even where they are directly affected.

Due to the above problems in relation to common law, policy and statutes seem desirable. Looking to the serious and disastrous effects of noise pollution on human life, it is essential to take preventive and protective measures. There is no doubt; the Nigerian government has taken bold steps to curtail noise especially in the cities. As regards the statutory control of noise, it is surprising that, until recently, there existed no law under the Nigerian legal system exclusively, dealing with the problem of noise or its control. Nigeria and its parts thereof lacked specific legislation on noise pollution as is the case in countries like the United States of America and United Kingdom. The relevant policies on noise pollution are:

1. *The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act of 2007* is the major law on noise pollution in Nigeria. The law provides that: (a)The Agency shall on the commencement of this Act, and in consultation with appropriate authorities: (i)identify major noise sources, noise criteria and noise control technology; and (ii)make regulations on noise, emission control, abatement, as may be necessary to preserve and maintain public health and welfare. (b)The Agency shall enforce compliance with existing regulations and recommend programs to control noise originating from industrial, commercial, domestic, sports, recreational, transportation or other similar activities.

2. *National Policy on the Environment and Noise Pollution*. The National policy on the Environment of 1988 provided that programmes will be established to: (a)set up standards including acoustic guarantees; (b) prescribe guidelines for the control of neighbourhood noise especially with respect to construction sites, market and meeting places. (c) prescribe permissible noise level in noise-prone industries and construction sites and to ensure the installation of noise dampers on noise equipment; (d) set up quiet zones especially within game parks, reserves and recreational centres; (e) ensure compliance with stipulated standards by conducting periodic audit checks.

3. National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations and Noise Pollution. The National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulation of 1991 enjoined designated industrial layouts separate from residential area and to create buffer zones separating industrial areas from residential areas.

4. National Guideline and Standards for Environmental Pollution Control in Nigeria. The National Guidelines and Standards for Environmental Pollution Control in Nigeria of 1991 were meant to monitor and control industrial and urban pollution.

4. Right to Freedom of Religion in the 1999 Constitution

Right to freedom of religion is part and parcel of the bundle of fundamental rights guaranteed in section 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Thus, the right provided for in the said section extends from that of religion to those of conscience and thought. The reason for this conceptual association in relation to these rights may not be far-fetched. There is a conceptual *koinonia* among the three concepts of thought, conscience and religion. Surely, one would not fail to notice a thread of *Aryana* passing through the concepts when one immediately considers the fact that they are not only intangible and ultra-personal, but also emanate from inner consciousness and disposition. As if this is not enough, they are, so to speak, divine sparks in man commanding the correlative duty of respect from other men. It is within this context that one speaks of moral freedom, intellectual freedom, and religious freedom. The subjects of these rights are not likely to forfeit any of them at the slightest attempt to infringe upon them. For a better appreciation of the provision of the right to freedom of thought, conscience and religion, it may be necessary to state the provision of section 38:

- (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance of such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.
- (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
- (4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

A careful observation of the phraseology of the above provision would reveal the use of the term ‘shall’ in positively guaranteeing the freedom of thought, conscience and religion upon every person. The word ‘shall’ when

used in statutes more often imports obligation². Hence, as a general rule, the word ‘shall’ imports obligation even as, in some circumstances, obligation is not intended³.

With regard to the above provision, borrowing from the Christian theology of the Trinity, the Greek word *perichoresis* which is rendered in Latin as ‘*circumincessio*’ and in English as ‘interpenetration’ may go an extent in explaining the reason for lumping the concepts together. Thought, conscience and religion may, if each is broadly defined, not exist in isolation from one another. While thought may appear quite solitary, yet on a deeper consideration, thought may easily graduate into the level of religion and become a matter of conscience. After all one can decide to die for one’s opinions emanating, as it were, from one’s thinking. In the same way, conscience is like an inner divine instructor, guide, or master directing one on what to do or not to do (antecedent conscience) or a divine corrector or reproacher berating one for having done or not done an act (consequent conscience) Hence, conscience almost always involves a form of thinking that may obey or disobey one’s conscience. Understood as external voice within, conscience is clearly of religious character. Yet in very similar manner, religion is not unencumbered by thought and conscience. Certainly, religion without conscience is nothing but a misnomer, and religion without thinking is outright fanaticism or fundamentalism. That does not mean that everything about religion is thought for there is always the non-rational aspect of religion. Yet any religion that is irrational would not worth the salt as that would be a contradiction to the very nature of the religious object (the author and epitome of rationality) and whom the religious person seeks to worship in conscience as the Wholly Other All in all, thought, conscience and religion have to do with one’s form of belief and worldview which may be religious, economic, political, social, cultural, or otherwise.

Be that as it may, in no section of the constitution is any of the key words, namely, thought, conscience, and religion, defined. Not even in its interpretative section 318 is an attempt made in defining the important words in spite of their socio-political and other implications in national life. One is therefore left with the lexical definitions of the terms for any relevant discourse. Oxford Advanced Learners Dictionary defines ‘thought’ as ‘something you think or remember; a person’s mind and all the ideas that they have in it when they are thinking or the powers or process of thinking’. In the same manner, Chambers Twentieth Century Dictionary describes thought as ‘thinking, mind, consciousness, reasoning, deliberation; that which one thinks a notion, an idea or opinion’. Similarly, the same dictionary identifies conscience as ‘inmost thought, consciousness, moral sense, scrupulousness on the part of your mind that tells you whether your actions are right or wrong’. Religion is equally defined by these dictionaries. While the Oxford Dictionary sees religion as ‘the belief in the existence of god or gods and the activities that are connected with the worship of them’, Chambers Dictionary describes religion as ‘a belief in, recognition of, or an awakened sense of, a higher unseen controlling power or powers with the emotion and morality connected therewith’. It regards religion as rites or system of worship, or any system of such belief or worship’.

The elements of this fundamental right can be outlined as follows: freedom of thought and conscience, freedom of religion, freedom to change one’s religion, freedom of irreligion, freedom to manifest and propagate one’s religion, freedom from coercion to receive religious instruction or to take part in or attend any religions ceremony or observance, freedom of a religious community or denomination from being prevented from providing religious instruction for its pupils, and no freedom to belong to any secret society, form one or take part in it.

There is no gainsaying that in a multi-religious country like Nigeria, the need and respect for this human right cannot be over-emphasized. However, in spite of the fact that the people of Nigeria are multi-religious, the government machinery, organization, or institution is secular⁴. Hence, the constitution prohibits in its section 10 any government from adopting any religion as a state religion. The reason is to foster peaceful co-existence among adherents of different religions. By this principle, Nigeria ideally opts to be officially neutral in matters of religion, neither supporting nor opposing any particular religious beliefs or practices. Nigeria chooses to treat all citizens equally regardless of religion, and does not give preferential treatment for a citizen from a particular religion over others. Secularity in Nigeria prevents religion from controlling government or exercising political power. The constitution protects each individual including religious minorities from discrimination on the basis of religion. Be that as it may, Nigeria is not an atheistic state in which officially all religious beliefs and practices are opposed. At times unlike in Korea where there are no state privileges or subsidies to religions⁵, Nigerian government can offer financial support to religious bodies, or give or even proclaim public holidays on religious feasts, give

² See the cases of *Katto v. Central Bank of Nigeria* (1991) 9 NWLR (pt. 214) 126 at 147; *Okpala v. Director General of National Museum and Monuments & Ors* (1996) 4 NWLR (pt 444) 587.

³ See *Burknor- Macleans v. Inlaks* (1980) 8 – 11 SC 1 at 23.

⁴ E. Malemi, *The Nigerian Constitutional Law*. Lagos: Princeton Publ. Co., 2006, p.231

⁵ S. Ryu, *Limits on secularism in Korean constitution* (Korea: Pusan University of Foreign Studies, 2009). (pdf).

appointments to some religious personnel, but not for one against the other. In Nigeria, there is no such practice as in United Kingdom where the Head of State is required to take the Coronation Oath swearing to uphold the protestant faith or where at least 26 senior clergymen of the established Church of England (spiritual peers) maintain positions in the House of Lords⁶. This mechanism of secularity is put in place in order not to allow the pluralistic and multi-religious nature of Nigeria to become a liability to national unity and development⁷. Let it suffice that the idea of state secularity in Nigeria does not aim at inaugurating a religionless or anti-religious society. Its principal aim is the entrancement of peaceful co-existence of citizens of a nation professing various religions. Secularity is simply a safeguard against anarchy and conflict in a pluralistic society. It does not matter how much percentage of a population that practise a particular religion. The freedom and conscience of the minorities are as important as those of the majority⁸.

5. Limitations to Right to Freedom of Religion

In spite of religion being an inherent feature of the human person, right to freedom of religion is not a licence for one's religion to be manifested however, wherever and whenever a person desires. It's manifestation in the society has to be balanced out with other social values and interests. In this way the legal right to freedom of religion is interfaced with the legal duty to respect other key social interests. This fact is incorporated in section 45(1) of the 1999 Constitution which provides: 'Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonable justifiable in democratic society –(a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons'.

Apart from the freedom of thought, conscience and religion contained in section 38(1), section 45(1) limits the exercise of the rights in sections 37, 39, 40 and 41 of the Constitution. By including section 38 amongst the sections of the Constitution to be limited under section 45(1) it means that every right guaranteed under section 38 is liable for restriction including freedom of thought and conscience. But most international legal instruments restrict only the manifestation of religion or belief in social actions without including thought and conscience. Such instruments include: the UDHR,⁹ ICCPR,¹⁰ UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief,¹¹ the African (Banjul) Charter on Human and Peoples' Rights,¹² and the European Convention on Human Rights, 2010.¹³ Others are the American Convention on Human Rights¹⁴ and the Arab Charter on Human Rights 2004.¹⁵ The couching of the provision differs but the same idea runs through them. The UDHR for instance provides in article 29(2):

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

The ICCPR in article 18(3) states:

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

Notwithstanding the foregoing article 15(1) of the European Convention on Human Rights appears to authorize during war a sweeping limitation of freedom of religion similar to the provision of section 45(1) of the Nigerian Constitution. It provides in article 15(1):

In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided

⁶ <http://www.statemaster.com/encyclopedia/secularstate>. (12/04/15).

⁷ J. S. Omotola, *Secularism and the politics of religious balancing in Nigeria*. (Mowe: Redeemer's University Redemption City, 2009). (pdf).

⁸ I. Zarifis, 'Rights of religious minorities in Nigeria' in *Human rights brief*, vol. 10 Issue 1, 2010. <http://www.statemaster.com/encyclopedia/secular-state>. (13/08/15).

⁹ Art. 29(2).

¹⁰ Art. 18(3).

¹¹ Art. 1(2 & 3).

¹² Art. 8.

¹³ Art 9(2).

¹⁴ Art. 12(3).

¹⁵ Art. 30(2).

that such measures are not inconsistent with its other obligations under international law.

This is a general legal authority for government to do whatever is possible for defending the country during war or in an emergency situation, which does not particularly mean restricting people's right to think, have a conscience, religion or a belief *simpliciter*. Derogation from freedom of religion is limited to the external manifestation of it for the obvious reason that it is hardly possible to regulate what is locked up in a person's mind. There is hardly any police for thoughts, conscience, beliefs or ideas that are not put into actions. In the English case of *Williamson v Secretary of State for Education and Skills* the House of Lord stated that while [e]veryone is entitled to hold whatever beliefs he wishes, when questions of 'manifestation' arise ... a belief must satisfy some modest, objective minimum requirements. The belief must be consistent with basic standards of human dignity or integrity. ...¹⁶

In other words, a person can hold whatever belief he wants in so far as it is not manifested. But if it is to be manifested, then it has to be subject to social requirements. In effect, though section 45(1) provides for the restriction of freedom of thought, conscience and religion or belief in all ramifications, what is possible is the limitation of the manifestation of religion.

6. Conclusion

The passage of the National Environmental Policy Act (NEPA) and the Noise Pollution and Abatement Act is a remarkable step toward eradicating noise pollution in USA. There are also state laws: many cities throughout USA have noise ordinances, which specify the allowable sound level that can cross property lane. These ordinances can be enforced with local police powers. Several European countries such as Netherlands, France, Spain and Denmark emulated the USA noise control law. The EU enacted regulations geared towards curbing noise pollution for example the EU Environmental Noise Directives empowered EU to identify noise pollution levels and to trigger the necessary action both at member state and EU level. Noise Pollution is a major problem in India especially during festivals of Diwali, Navaratri and Ganpati. The Government of India has regulations against fire crackers and loudspeakers. Awaaz foundation is an Indian NGO working to control noise pollution from various sources in Mumbai through advocacy, public interest litigation awareness and educational campaigns since 2003. Under Environmental Protection Act, 1966 India equally established Noise Pollution Control Rules, 2000 in order to curb the growing problem of noise pollution. In Nigeria, Lagos State Environmental Protection Agency Law 2012 (as amended) disallows indiscriminate use of public address systems (PAS) by religious organisations, among others and provides for noise control in both residential and industrial areas.¹⁷ It seems that the Kaduna bill, by virtue of Section 45(1) of the 1999 Constitution, is in order and does not offend the provisions of the constitution. It is further held that the provisions of the bill are in tandem with the constitution, that there is nothing in the bill that suggests any effort to abolish, stop or derogate on the freedom of religion and religious beliefs, and that it merely seeks to ensure that religious preaching and activities in the state are conducted in ways that do not threaten public order, public safety, and to protect the rights and freedom of other persons. Yet, because of the bill's controversial nature owing to religious tension in the country in general and in Kaduna State in particular, there is need for the government to go the way of referendum and public hearing in the course of the legislative process. It is also necessary that the Church and Christian Association of Nigeria (CAN) be watchful enough and be ready to constitutionally challenge any wrong implementation of the law if eventually passed by the Kaduna State House of Assembly and assented to by the Governor.

¹⁶ [2005] 2 AC 246, at para. 23

¹⁷ Read more at <http://www.dailytrust.com.ng/news/eko-trust/will-lagos-win-the-war-against-noise-from-churches-mosques/140132.html#cJ0OO1GWq7kyjB10.99>