

The Nigerian Criminal Justice and the Belligerence of Blasphemy: Societal, Judicial and Islamic Law Perspectives

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Abstract

Introduction to the Problem: Blasphemy in religion undoubtedly jeopardises the universal human right of freedom of religion in any society. Considering that it is ethno-religiously linked and sensitive in multi-religious environments, the offence is proscribed under the Nigerian laws. With the re-emergence of democracy in Nigeria, the Criminal Justice System became expanded with the birth of a fully-fledged *Shariah* practice in some areas in Nigeria. The recent death sentence passed on a musician, Aminu, for the alleged offence of blasphemy by a Shariah Court in Kano State attracted the attention of the masses, particularly prompting the question of the propriety or otherwise of the punishment.

Purpose/Objective Study: This work examined the societal, judicial and Islamic law perspectives on blasphemy with a view to proffering viable options as punishment for the offence.

Design/Methodology/Approach: Doctrinal legal research methodology was adopted, and it involves primary sourcing materials from Quran, *Sunnah*, Acts and Cases. Secondary sources include journal articles, textbooks, official documents online and in newspaper.

Findings: The findings revealed that the death penalty for the offence is incompatible with the most convincing opinion of scholars, the reality of Nigeria and the international best practices. It is consequently suggested that offence and punishments for blasphemy should be treated as a *ta'zir*, and the punishment should be less than death.

Paper Type: Research Article

Keywords: Blasphemy; Shariah; *Ta'zir*; Shariah Penal Code; Islamic Law



Introduction

Blasphemy has in recent time been a topical issue garnering momentum of controversy and divergent positions among religious scholars, Jurists, political commentators and conscious members of the society. The recent death sentence caused the recent uproar passed on Yahaya Sharif-Aminu, a Musician, for blasphemy against Prophet Muhammad (PBUH) by an Upper Area Court in Kano State, Nigeria ([Amnesty International, 2021](#)).

There cannot be much disagreement that blasphemy is as old as man, as it has existed from ancient times and still springs its ugly head to the present moment. In Nigeria, there have been plethora of cases and cries in relation to blasphemy. One of the notable cases that heat up the polity is the case of one “Miss World Beauty Pageant” where a columnist with a National Newspaper *This Day*, wrote that “were Prophet Mohammad to be alive, he would have probably loved to marry one of the contestants of the competition” ([Daniel, 2003](#)). This was in response to opposite the event by some Muslims in the North. This statement triggered a riot that reportedly claimed about Two Hundred and Fifty lives in the North.

However, blasphemy in whatever form is totally condemned on moral, religious and ethical grounds. Although, there are supports founded on freedom of speech by both local and international enactment, just as in the case of the United State Commission on International Religious Freedom (USCIRF), which stated that the death sentence passed on Aminu was a violation of human right ([Davie & Perkins, 2021](#)). While conversely, many people in the state, including religious leaders and even legal practitioners, have lauded this decision and deemed it the most appropriate ([Yusuf, 2020](#)).

Suffices to say that while the constitution guarantees religious freedom, the law on blasphemy does not give a death blow as the provision of Section 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) that stipulates the extent to which such speech may travel. It should be noted that blasphemy is both religious and ethnic sensitive, and interestingly, Nigeria is both multi-religious and multi-ethnic, which thus makes the issue of blasphemy more serious and sensitive. That is why religious adherents, particularly Muslims, find the desecration of their noble Prophet Muhammad (PBUH) and the Quran is intolerable. It is also applicable to other Muslim-dominated countries all over the world, as can be seen in Article 1 of the Antiterrorism law of Saudi Arabia, Article 125 of the Sudan Penal Code 1991 and Article 6 of the Tunisian Constitution of 2011 and in Pakistan ([Ashraf, 2021](#)). The issue of blasphemy is however very fragile because all the common use of blasphemy accusations in the public domain is often vulnerably employed as a weapon against political opponents.

Today, by reason of the controversial nature of blasphemy as shown above, there are proponents of the death sentence as punishment for the crime of blasphemy, and

there are also opponents. This work will try to analyse the propriety or otherwise of these arguments using the societal, judicial and religious perspectives of blasphemy as a yardstick.

The different perspectives on blasphemy are interwoven and cannot be discussed in isolation for proper understanding. This work analysed the issues surrounding blasphemy in Nigeria with reference to the societal, judicial and Islamic attitudes to it and the extant position of the law on its punishment. Blasphemy-related crisis and cases were examined and used to discern the gaps in the extant laws of Nigeria and the Islamic law to reconcile the same. In this background, this work will answer the following questions:

1. What is the societal and judicial perception of blasphemy in Nigeria?
2. What is the provision for blasphemy in the Nigerian Shariah Penal Codes?
3. How sustainable is the provision of the law for the offence?
4. If the provision is not sustainable, what can be an alternative to it?

Methodology

To adequately answer the above questions, this research uses the doctrinal research technique, the orthodox genre for legal research (Coetsee & Buys, 2018). With this method, the existing laws on blasphemy were examined under the conventional and Islamic laws and international law where it significant. This method is the most accurate for achieving the aim of the work, which seeks to analyse the existing laws and conceptualise them *vis-a-vis* the reality of the society (Gawas, 2017) to bring out a sustainable legal approach to the lingering legal issue.

Results and Discussion

Societal Perspective of Blasphemy

Blasphemy is the action or offence of speaking sacrilegiously about God or sacred things, which is irreverence or insult towards holy personages, religious groups, sacred artefacts, customs or beliefs. Society perceives blasphemy as a heinous crime that is unacceptable, particularly in the North. The societal perspective of blasphemy is influenced by religious standing point in Nigeria. In recent times, the conflict that has to do with blasphemy in Nigeria results from Christians and Muslims, the two dominant adherents of religions in the country.

Due to the religious proscription of blasphemy, the notable attitude of the people is violently responding to the acts seen as blasphemous. This has accounted for most of the religious crisis in Nigeria in recent years. This violent response is more pronounced in the North. A timeline of some of these reactions will give a clearer picture of the societal perception of the act.

In Jos, Plateau State of Nigeria, on 7th day of September, 2001, a lady allegedly dressed in a manner perceived to have exposed her nakedness attempted to pass through a barricade mounted by Muslims during a Friday (Jumuat) prayer. She insisted when



she was asked not to pass the barricade and was attacked. The Christian faith retaliated, and the whole state was engulfed in crisis which took the intervention of the Federal Government to whittle down the crisis by declaring a State of Emergency ([Tertsakian, 2001](#)).

In February 2006, a student in Bauchi was reading the Qur'an during a lesson and was inattentive in the class. The teacher confiscated the Qur'an, and the student alleged desecration of the Qur'an, in the ensuing riot, more than fifty people were killed ([Damidez, 2020](#)).

On 28th of September, 2007, a Muslim Mob rioted at Tudun Wada in Kano State. The mob killed nine Christians, burned several churches and destroyed the homes and businesses of some non-Muslims. The Muslims were reported to have complained that the Christians drew a picture of Prophet Muhammad (PBUH), while the Christians negated the story by stating that the crisis erupted when the Christians prevented one of their members from converting to Islam ([U.S Department of State, 2008](#)).

In March 2007, Mrs. Oluwatoyin Olusesin, a Christian Teacher, who was invigilating an examination in Islamic Religion in Gandu, Gombe State, caught a student cheating in the examination hall. She confiscated the item she was using to cheat. After the exam, the student informed other students that the teacher had desecrated the Qur'an and Mrs Oluwatoyin was killed ([Damidez, 2020](#)).

In February 2008, there was a crisis in the Town of Sumaila in Kano State where a Mob acting on the allegation of the distribution of leaflet that reportedly maligned Prophet Muhammad (PBUH). The mob murdered a Christian police officer and two civilians and wounded twenty others. The mob also set ablaze vehicles and destroyed a police station ([Bos, 2008](#)).

On the 4th February 2008, a Muslim Mob invaded a police station and set it on fire in the city of Yano in Bauchi State. The police station was said to be the refuge of a Christian woman whom the Mob accused of desecrating the Qur'an ([Integrated Regional Information Networks \(IRIN\), 2008](#)).

On the 20th of April 2008, a riot erupted in the City of Kano, in which a shop and vehicle of a Christian businessman were burnt after he was alleged to have disparaged Prophet Muhammad (PBUH) ([U.S Department of State, 2008](#)).

On the 9th of August, 2008 some aggrieved Muslims in Kano State beat to death, a fifty-years-old Muslim man, who allegedly committed blasphemy against Prophet Muhammad (PBUH) ([Yushu'a, 2008](#)).

In September, 2020, another conflict occurred in Kano State, which involved an Ibo woman whose family used a radio transistor Arabic Manual to clean her baby's faeces. A Hausa Muslim, who was to make some repairs in the house, saw this and wrongly presumed the manual written in Arabic to be Qur'an. He likened it to the desecration

of the Qur'an and drew the attention of other Muslims. As the innocent and unsuspecting husband of the woman returned home from work, he was attacked and killed. This resulted in a major crisis in Kano between Muslims and Christians (Hamzah, 2020). This timeline of ugly incidents and activities of the mobs may not represent the perception of the majority of the people, but it stands as the obvious evidence for this.

A study of these cited incidences showed that all of the occurrences were in the North, notably Kano, Kaduna and Jos. One may argue that the reason is that the area is densely populated by Muslims.

Judicial Attitude to Blasphemy in Nigerian

By virtue of section 6(5)(a)(i) of the Nigerian Constitution, Nigeria operates a dual court system where we have the regular conventional courts like High Courts on one hand and the Customary courts on the other hand. The high court of the state has unlimited jurisdiction to hear and determine civil and criminal proceedings except where otherwise stated (S. 236 (1), CFRN 1999 as amended).

They also entertain unlimited appellate jurisdiction in both criminal and civil matters. The Customary Courts comprise Customary Courts of different grades that administer customary rule (S. 265- 284 Constitution Federal Republic of Nigeria, 1999 as amended) and the Area/Shariah Courts that adjudicate with Shariah law (S. 260-264 the Constitution Federal Republic of Nigeria, 1999 as amended). The Criminal Code prohibits blasphemy and refers to it as an insult to religion. It provides thus:

“any person who does an act which any class of person considers 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 person will consider it such an insult, is guilty of a misdemeanour and is liable to imprisonment for two years (S. 204 Criminal Code Act, 1964)”

Legislations against transgression of one religion, group or person on another religious group or person perceived by some people or organisations as a violation of the right to freedom of religion must be keenly analysed. In that, blasphemy law aims at penalising speech or acts that disrespect God or the sacred. And so, blasphemy laws are used to protect religious beliefs and also to prevent religious crises. Just as the law will not, on the ground of freedom of speech, allow citizens to utter statements that can provoke or incite civil unrest that of, blasphemy is on a similar pedestal.

The creation of Shariah Courts is given impetus under Sections 275-279 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). By these provisions, the states and the Federal are empowered to establish their own Shariah Courts of Appeal for civil matters (Shittu, 2015). The Jurisdiction of Shariah courts under the 1999 Constitution (as amended) covers a wide range of areas that affects Islamic personal law, which covers issues such as inheritance, guardianship, marriage, and divorce, amongst others (S. 262 Constitution Federal Republic of Nigeria, 1999 as amended).



Blasphemy, by its nature, looks like a criminal offence apparently outside the jurisdiction of the Shariah court as contained in the constitution. With the rebirth of democracy in Nigeria in the year 1999, northern states clamoured for the expansion of the jurisdiction of the Shariah Court to cover criminal matters to aid the proper actualisation of freedom of religion as contained in the constitution (S. 33 Constitution Federal Republic of Nigeria, 1999 as amended)

Pursuant to the above, many states in the northern part of Nigeria, pioneered by Zamfara State, through their State Houses of Assembly, enacted the Shariah Penal Codes and resultantly expanded the jurisdiction of the Shariah courts to cover criminal matters. This Shariah Penal Codes explicitly criminalises blasphemy, among other crimes. The enactment of the Shariah Penal Codes have since then been generating unending controversy not to talk of provisions on blasphemy. For instance, under the Kano State Shariah Penal Code 2000, which is analogues to other Shariah Penal Codes in the country, Section 382(2) provides that:

“whoever by any means whatsoever intentionally abuses, insults, derogates, humiliates or seeks to incite contempt of the Holy Prophet Muhammad (SAW) or his prophethood or any other prophet of Allah recognised by the religion of Islam shall be punished with death....”

In a similar provision, section 400 of the Zamfara State Shariah Penal Code 2000 states 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 to a breach of the peace shall be punished with imprisonment for a term which may extend to two years or with fine or with both”

Equally relevant is the provision of section 401 of the same Shariah Penal Code, which states:

“Whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to two years or with fine or with both”

Therefore, just like other provisions, the Shariah Courts in the North have consistently implemented this area without fairness or favour. Even though only Kano State and Kaduna State have the death penalty as part of the punishment for blasphemy. Below are some high-profile cases of blasphemy decided by the Upper Area Court in Northern Nigeria.

The lower courts in Nigeria are courts below the courts of record and are described using different names depending on the part of the country their jurisdiction lies. We have Area courts, the customary courts and the Shariah courts. In October 2007, a

Shariah Court in Kano State sentenced a Christian, Sani Kabili and a father of six to three years imprisonment for blasphemy against Prophet Muhammed (PBUH). On appeal, the sentence was overturned in 2009 ([Bourbeau, Umar, & Bauman, 2019](#)).

On the 25th of June, 2015, the Upper Area Court in Kano State sentenced a member of Tijjaniyya Muslim Cleric Abdulazeez Dauda and 8 other followers to death for blasphemy after he was accused of claiming that Ibrahim Niyass was greater than Prophet Muhammad ([Bourbeau, Umar, & Bauman, 2019](#)).

On the 2nd of June 2016, a Christian trader was murdered in Kano State. She was reportedly hacked to death by five Muslim men who accused her of blasphemy against the Prophet Muhammad (PBUH). The Shariah Court acquitted all the five accused persons for the murder of the victim on the ground that the victim's blood is no longer sacred for having committed blasphemy. He is, therefore, qualified to be killed ([World-Watch-Monitor, 2016](#)).

Similarly, Umar Farouq was found guilty of blasphemy against God in an argument that ensued between him and his friend and was sentenced to 10 years' imprisonment with menial labour on the 10th August, 2020 by a Kano State Upper Area Court ([Innocent Ekezie, 2021](#)). On the same day in Kano, Yahaya Sharif-Aminu, a 22-year-old musician, was sentenced to death by hanging in a judgement presided over by Aliyu Muhammed Kani after being found guilty of committing blasphemy in a song he shared on WhatsApp on the 4th of March, 2020. Mr Aminu's song went viral and angry mobs attempted to raze his family's house and demanded his arrest. The case has, however, been ordered for retrial by an appeal panel on the ground that the accused was not represented by any legal practitioner ([Amnesty International, 2021](#)).

From the above, it is crystal clear that the Upper Area Court in Kano State has been consistent in passing a death sentence verdict on cases bothering on blasphemy. These decisions are based on the provisions of the Shariah Penal Codes which are said to be enacted in line with the Maliki School of law. However, opinion seems divided on what sort of punishment is prescribed by Shariah on blasphemy, given that any Muslim faithful prefers their parents to be maligned to Prophet Muhammad (PBUH) being insulted. It is to show the love of the Prophet more than any other entity. Unfortunately, some Muslim Scholars have condemned the death sentence or other harsh punishment for those that commit blasphemy. We are, therefore, inclined to consider some Quranic verses and the understanding of jurists on these verses in relation to blasphemy. This would be better discussed in the Islamic perspective on blasphemy for proper understanding.

From the angle of the Nigerian Courts of record's decisions on blasphemy, there are very few reported cases. This is supported by the fact that the original jurisdiction to prosecute under the provisions of relevant laws generating interest of the public in relation to blasphemy lies with the lower court. Only appeals, so to say, can go to the Shariah Court of Appeal or High Court of the state. A search through the Law Pavilion



cases repository for the keyword “blasphemy” yielded no result. On the other hand, similar search in the Nigeria Weekly Law Report (NWLRL) generated just two cases, of which only one is relevant to the discussion. The relevant case is that of ([Usman Kaza V State, 2008](#)), while in the second case, the word blasphemy was just used as a qualifier ([Zango v. Gov. of Kano State, 1986](#)). In the case of Kaza, the appellants were charged with culpable homicide punishable with death for extra-judicially killing a man for alleged blasphemy in Kano State. The court, while upholding the death sentence passed against the appellant, held that even if death is the penance for a person guilty of blasphemy under the Islamic law, it is not the duty of the public or any individual to take the law onto his hands by killing the accused. The duty to make the pronouncement of guilt and punishment lies solely with the court.

On a similar pedestal, The case of [Abubakar Dan Shalla vs. State \(2007\)](#) shares similar facts and judgement with the above case, Per Muhammad JSC commented that :

“the trite position of the law under Shariah is that any sane and adult Muslim who insults, defames or utter words or acts which are capable of bringing into disrepute, odium, contempt, the person of Holy Prophet Muhammad (SAW), such a person has committed a serious crime which is punishable by death, however Islamic law has not left the killing open in the hands of private individuals.... ([Abubakar Dan Shalla Vs State, 2007](#))”

Apart from Nigeria, the majority of the countries in the whole universe have legislations criminalising blasphemy. While blasphemy law does not operate effectively in some countries, it is a potent weapon in some other countries to combat unguarded utterances against one religion or personage by another. Most of the countries that have been implementing the laws on blasphemy are Asian and African countries. Countries such as Saudi Arabia ([Antiterrorism Law of Saudi Arabia, 2014](#)), Tunisia ([Amnesty International, 2015](#)), Afghanistan ([Sediqi & Shuaib, 2021](#)), India (Indian Penal Code, 1860 s.45), Cosmos (Cosmos Penal Code, Article 229), Ethiopia (Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, Article 492), Russia (Russian Penal Code, Article 148), Israel ([Aran, 2016](#)), amongst many others have legislation criminalising blasphemy and have also successfully convicted people for this crime with varying degrees of punishments awarded including death in rare circumstances. The laws of blasphemy has also been implemented in Pakistan widely ([Totten, 2013](#))

From the International law perspective, the United Nations Human Right Committee (UNHRC), in the General Comment 34 relating to freedom of expression, proscribed any law on blasphemy on the ground that it is antagonistic to the principles of freedom of religion except it is in the protection of religious or racial incitement. The International Covenant on Civil and Political Rights (ICCPR) only allows such laws for the protection of public morality ([UN Human Rights Committee \(HRC\), 2011](#)). Based on this, some have argued that laws on blasphemy are anti-human rights in most circumstances and tools for marginalising some folks ([Johnson, 2014](#)). Others still see

blasphemy law as compatible with international law on the ground that the major purpose of laws on blasphemy is to protect public morality. It is thus seen as a regulation of the freedom of expression and thought rather than its restriction (Cox, 2020).

Islamic Perspective on Blasphemy

It is apposite to mention that Islamic law enjoins fair treatment of both foes and friends. Allah says in the Quran 6:106 *“And revile not those whom they call upon besides Allah, lest they, out of spite, revile Allah in their ignorance.”* This verse explicitly warns a Muslim against blaspheming other adherents’ religion in the protection of reciprocity of the act. Islamic Law does not only condemn the blasphemy of God, but it also protects the feelings of polytheists by forbidding Muslims from attacking their idols. In this narrative, Allah says, *“Let not a people’s enmity incite you to act otherwise than with justice. Be always just, that is nearer to righteousness”* (Quran 5:9). The above verses, coupled with several others in the Quran, are to the effect that there should be religious tolerance (Quran 109:6) and religious freedom (Quran 2:256). Despite this, there is a limitation to every freedom, most importantly, when it affects other people’s freedom. Law on blasphemy in the like manner can be said or seen as one of the limitations to the freedom of religion. There is no controversy amongst jurists that blasphemy is blameworthy. The question that prompts for an answer is; what is the punishment for blasphemy under Islamic Law?

There are divergent opinions on the punishment for blasphemy, and such opinions can be summarised into three. Words like *ta’ana*, *la’ana*, *sab*, *dhamm* and *shatm* are often used in books on Islamic law to represent blasphemy. Some jurists such as Ibn Mundhir opine that the punishment is death, while some such as Umar bn Abdulaziz opined that offender should be punished using the discretion of the judge depending on the extent of the blasphemy. The last opinion held few scholars such as Tahir Ahmad is that the punishment for blasphemy is heavenly. The reason for this difference in opinion is due to the fact that there is no definitive and explicit punishment stated in the primary sources of Islamic Law for blasphemy. To give a balanced position of the law, it is expedient to succinctly discuss the evidence relied for the different opinions on the punishment of blasphemy.

Those who opine that the death penalty is the apposite atonement for blasphemy rely on the provision of Quran 9:12 where Allah says, *“And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease.”* In explaining this verse, exegetes such as Qurtubi, explained that some jurists understand this verse to mean that the non-Muslims (*dhimmi*) who have accepted to live peacefully in a place governed by Islamic Law who commits blasphemy against Islam should be killed (Al-Qurtubi, 2014). Ibn Mundhir emphasised that the majority of scholars agree that whoever defames the Prophet (PBUH) has committed blasphemy and should be killed. This opinion is also attributed to Imam Malik, Al Laythu, Ahmad, Ishaq and the



Shafi'i School of Law (Al-Qurtubi, 2014). When a Muslim commits acts of blasphemy, he is also to be killed, according to the opinion of the majority of scholars like Al Auza'iy (Al-Jisas, 2014). They are treated like *Riddah* (apostacy), one of the hudud offences, categorised as criminal acts that either affect the right of the public or Allah (Kamali, 2019).

Some modern writers, such as Khalid (Khalid & Sharma, 2015), used the *hadith* whereby the Prophet commanded the killing of Ka'b bn Ashraf (Al Bukhari, 2020) and Abi Rafi'i (Al Bukhari, 2020) as a justification for the death penalty for blasphemy. They also rely on the report attributed to Ali, who narrated that a man killed a woman who used to abuse the Prophet, and the Prophet did not permit the killing of the man.

The second notable opinion on the punishment for blasphemy is that it should be punished based on the discretion of the judge and the severity of the act committed. This opinion is held by the Hanafi and the Thawriyah schools of Law (Zuhayli, 2014). This opinion is also shared by many classical scholars and jurists such as Jisas (Al-Jisas, 2014), Abu Hanifah, Umar bn Abdulaziz, Ibrahim al-Nakha'i, and many contemporary scholars such as Shaltut, the former rector of Al-Azhar. Imam Abu Hanifah further asserted that a *Dhimmi* should not be killed, but rather he should be punished under discretionary punishment for the offence of blasphemy. He argued that there are two conditions to be satisfied before a person can be punished for blasphemy, as provided in Quran Chapter 9 verse 12 quoted above. The conditions are that the person must have waged a war of enmity on the Muslims and then blasphemed. Imam Thawriy was also of the same opinion on the ground that Shirk is greater sin, and yet it is only punishable with *ta'azir*; therefore, blasphemy should be punished with *ta'azir* (Zuhayli, 2014). The opinion that blasphemy should be treated as *ta'azir* offence was one of the main reformist ideas of Mahmud Shaltut, who preached religious tolerance and the compatibility of Islamic Law with the contemporary world.

Lastly, a few scholars share the opinion that there is no worldly punishment for blasphemy but a heavenly punishment which is solely at the discretion of Allah. Tahir Ahmad of the Ahmadiyah movement was reported to have said that there has been no prophet upon whom derogatory words were not used (Hamzah, 2020). He explained that as contained in the Quran 23:44 Allah sent a Warner to every people and that every prophet has been subjected to mockery. This opinion is premised on the argument that there is no evidence to buttress that offenders were ever ordered to be punished for blasphemy as the Quran records many instances of blasphemous utterances by non-believers and hypocrites against Prophet Muhammad (PBUH), but no sanctioning or any physical punishment for the perpetrators. Tahir and few other scholars rely on the verse :

“Verily, those who annoy Allah and his messenger, Allah has cursed them in this world and in the hereafter and has prepared for them an abasing punishment. And those who malign believing men and believing women for

what they have not earned shall bear the guilt of calumny and a manifest sin (Quran 33:58-59).”

Based on the ongoing analysis, the discourse that the above verse is to the effect that there is only abasing punishment for people who commit blasphemy against God and Prophet Muhammad (PBUH) and the said abasing punishment is within the knowledge and prerogative of Allah. It is within His sole discretion whether to punish them in this world or hereafter.

It is further submitted by the proponents of heavenly punishment for blasphemy that God and the Prophet were insulted, and the Qur’an also mentions numerous instances where the Qur’an itself was called the book of confused dreams (Quran 16:25) and Prophet Muhammad referred to as a madman (Quran 15:7) and that there is madness in him (Quran 23:71). This and many other verses show that Allah was aware that the Prophet (PBUH) was insulted, but none mentions punishment and the Prophet was never required by Allah to punish blasphemers (Nickel, 2017).

Discussion of the Opinions

Reconciling the opinions mentioned, it is thus not surprising that the position of Nigerian Shariah Penal Laws on blasphemy has been subjected to controversy. However, considering the first opinion, which is said to be the majority opinion, it seems to be based on inconclusive evidence, assumptions, and individual reasoning (*ijtihad*) and cannot be implemented accordingly to the reality of the modern-day situation of the world. The problem with the verse relied upon is that Allah mentions that when they break their oath to live peacefully with the Muslims and defame the religion, they should be fought/ killed (Quran 9:12). This apparently means that those who would be punished with death must have done something opposite from “peace” which is war/conflict, which defamed the religion in any way, as earlier explained, showcased by a blasphemer. Waging war against the Muslims, which does not necessarily require the use of ammunition, is the most grievous of the two and should not be trivialised. It is evidenced in another portion of the Quran, where Allah prescribes severe alternative punishments for those who waged war on Muslims or waylaid them. Punishment ranging from death, crucifixion, and amputation of leg and arm in alternative side to banishment are prescribed for waging war against the Muslims (Quran 5:33). This range of punishment is to buttress the point that blasphemy alone from the verse does not attract the death penalty.

Furthermore, the evidence of the death of Ka’ab bn Ashraf and Abu Rafi’i used as justification for the death penalty for blasphemy is misconceived as the clear wordings of the long *ahadith* as contained in the book of Bukhari points to the fact that the two were not killed for blasphemy alone but for strategically waging war against Allah and his Prophet (Al Bukhari, 2020). This accounts for why their deaths were strategically planned, and it is not surprising that these *ahadith* were categorised under “Chapter of fighting in Allah’s Cause (Jihad)” (Al Bukhari, 2020). This is also the understanding of Badurudin Al ‘Ayni in his exegeses of “Sahih Bukhari”



who said Ka'ab was killed not only because he insulted the Prophet, but he was also the notorious enemy of Islam who joined hands with the enemy to fight the Prophet (PBUH) and served as a spy for the unbelievers (Al'Ayni, 2018).

Most other reports relating to the Prophet (PBUH) punishing or sanctioning death as the penalty for blasphemy are indirect, isolated incidences, weak or fabrications, and such cannot be used to justify the legality of severe punishment as death. Furthermore, there are many reports where the Prophet (PBUH) demonstrated and recommended leniency towards unbelievers who targeted and harmed him. Instead, he reacted calmly despite having the power to do the contrary, as in the case of the woman who poisoned him and the Jews who cursed him (Al Bukhari, 2020). His companions even asked if the woman should be killed, and he responded negatively despite the apparent effect of the poison on him. Some proponents of the death penalty argued that such attacks were made against the personality of the Prophet and not his prophethood (Khalid & Sharma, 2015). This argument is weak as it is crystal clear that the Prophethood of Muhammad (PBUH) was built on his personality. Likewise, if it were to be a Muslim who was guilty of such acts, he would have undoubtedly been punished for apostasy, as also argued by Jisas (Al-Jisas, 2014).

The third opinion, which negates worldly punishment for blasphemy, is a weak argument in the face of the shreds of evidence earlier discussed. Damage, unrest and war that blasphemy can trigger, are so germane to be overlooked. Religion is undoubtedly connected to emotions, and blasphemy attacks both emotion and religion. There is no gainsaying that most of the crises in Nigeria have a religious undertone, and consequently, matters that can trigger a crisis easily cannot be left unregulated. On the ground of public interest, which is one of the secondary sources of Islamic Law, blasphemy must be regulated to avoid religious crisis bearing in mind the multi-religious nature of Nigeria. The outcome of the blasphemous comment made by Isioma in the northern part of Nigeria is enough evidence to buttress the fact that blasphemy must be regulated. Even if it is argued that the purpose of capital punishment is highly beneficial to the country, the opposite of it is being achieved as the outcome of such punishment in court and by mob often spiral greater harm.

Assuming but not conceding that extrajudicial killing of blasphemers is allowed under Islamic law, the situation of Nigeria today, in terms of security, political system and the interwoven religions, would continue to trigger the crisis. It is a settled principle under Islamic law that "*Dar ul mafaasid aula min jalbilmasalih*" (Al Subki, 2013) i.e. elimination of harm supersedes seeking of benefit. Also, one of the fundamental jurisprudential principles of Islamic Law is the elimination of harm which is often presented in the maxim *al darar yuzal Shari' i* (Al Subki, 2013). These two maxims imply that Islamic law gives credence to eliminating what can cause one or the populace harm be it harm to their personhood, property, religion or even emotion, over what can benefit them (Zakariyah, 2015). It thus implies that the prevention of

civil unrest within the country must be prioritised over punishing an individual with the contentious death penalty for the offence of blasphemy.

A study of the trends in the outburst of most religious crises born out of issues related to blasphemy in Nigeria shows that it is like fuel awaiting a sparkle to conflagrate. The crisis does not only stay where it started but spreads to other localities where there are sympathisers who make reprisal attacks in Nigeria and other countries practising similar laws like Pakistan (Rumi, 2018). This is what prompted Shaltut to point out its incompatibility with the modern secular world. Particularly, a study of the Shariah Penal Laws in Nigeria revealed that in order to avoid the controversy and nullity of the law, the drafters of the law omitted the apostasy as it would directly contravene the provision of section 38(I) of the Constitution of the Federal Republic of Nigeria which guarantees freedom of religion. The decision was born as a result of the reality of the situation of the laws of the country, and they rightly opted for the lesser evil by omitting such provision to give birth to the law instead of totally losing the opportunity of enacting the law as a whole. This is supported by the juristic maxim *irtikaab akhafu dararayn* which means choosing the least of two evils (Al-Balas, 2021). It is indisputable fact that the evils that mostly take centre stage in purported cases of blasphemy ironically undermine the importance of the law. Therefore, assuming the right punishment for blasphemy is death, based on the ills accompanying it, it would be a lesser evil to replace the punishment with *ta'azir*, as earlier argued and will also amount to blocking a legal means that can lead to an unlawful end. Blocking a lawful means that can lead to an unlawful end, technically called *Saad Dhariah*, is one of the secondary sources of Islamic law (Alkhamees, 2017; Abozaid, 2016).

This work analysed the issues surrounding blasphemy in Nigeria with reference to the societal, judicial and Islamic attitudes to it and the extant position of the law on its punishment. Blasphemy-related crises and cases were examined and used to discern the gaps in the extant laws of Nigeria and Islamic law with a view to reconciling the same.

To this end, the work found out that the Shariah Penal Codes are not harmonious on the punishment for blasphemy as Kano state law stipulates death as one of the punishments for blasphemy which is incompatible with the reality of Nigeria. This not only gives room for controversy but also realised that most of the blasphemy-related crises in Muslim-dominated northern Nigeria are primarily borne out of people taking the laws into their hands by killing an alleged blasphemer under the guise of the law.

Conclusion

The Nigerian Shariah Penal Laws on blasphemy has been subjected to controversy probably because of the absence of a clear-cut evidence on the punishment for the offence in the Qur'an. This paper further observed that most of what relates to the Prophet (PBUH) punishing or sanctioning death as the penalty for blasphemy are



either indirect, isolated incidences, weak or fabrications and such cannot be used to justify the legality of severe punishment as death.

On the ground of public interest, blasphemy should be regulated to avoid religious crisis bearing in mind the multi-religious nature of Nigeria. A suggested way of addressing the issue of blasphemy is to treat it as a *ta'azir* offence; therefore, the judge is duty-bound to apportion punishment based on the surrounding circumstances of each case. Additionally, the judiciary should not be hesitant in prosecuting jungle justice resulting from mobs which are on the fore in blasphemy matters in Nigeria.

Additionally, there is a need to enlighten the populace on the change suggested above, and the judiciary should not be hesitant in prosecuting jungle justice resulting from mobs, which is on the fore in blasphemy matters in Nigeria.

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