

Jimoh

The Supremacy of the Constitution of the Federal Republic of Nigeria 1999  
(As Amended): A Myth or Reality? <https://doi.org/10.53982/alj.2021.0901.06-j>

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### **The Supremacy of the Constitution of the Federal Republic of Nigeria 1999 (As Amended): A Myth or Reality?**

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**Saliu Jimoh\***

#### **Abstract**

*Realistically speaking, the rate at which Nigerians, both high and low, trampled upon the provisions of the constitution in their daily doings, and with impunity for that matter leaves much to be desired. Can we, with all sense of responsibility, say that the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended are sacrosanct and most respected by all its subjects as codified? Are these provisions cosmetic or reality? The research employed doctrinal research methodology by analysing primary and secondary sources of data and texts. The research found that this issue is very pivotal and of jurisprudential importance to constitutional development in Nigeria and there is therefore an imperative need to make radical contribution to the subject matter through critical thinking and practical analysis of realities on ground vis- a-vis what is obtainable in an ideal constitutional democracy. It concludes that If the Supremacy of the constitution will move from being a mere farce to a real deal, the organs of government, especially the Executive and the Legislature have to respect the spirit and letter of the constitution*

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### **Introduction**

In a constitutional democracy, the wordings and spirits of the constitution are sacrosanct and very imperious in driving the system. Being the body of the most important and cardinal laws and the principles of government of a given state, it must be respected and the obedience to its letters and spirits cannot be negotiated. Hence, the codification of the supremacy of the constitution as one of the most cardinal and the bedrock upon which the constitution itself stands. This symbolises that no subject of the Constitution is allowed to take any step or carry out any act or omit to discharge a given responsibility in deviance to the tune of the Constitution.

The Constitution of the Federal Republic of Nigeria 1999 (as amended), has expressly entrenched and codified the doctrine of Constitutional sovereignty or supremacy just like many other constitutional democracies of the world. The provisions of the Constitution of Federal Republic of Nigeria 1999 declaring or containing supremacy clause are not hidden or ambiguous. The draftsmen employed the use of simple, direct, plain and unambiguous words to express the doctrine which has almost a universal approval particularly by countries that practice and have adopted constitutional democracy. The doctrine is light and very easy to assert or proclaim by all and sundry but the attitude of the government and the governed as well as our courts to its deployment, usage and enforcement is what is of major concern to scholars today in Nigeria. Sometimes, various sacred provisions of the constitution are trampled upon by many people, government and citizens alike with reckless abandon using the clouds of religion and tribal sentiments to launch violent attacks on our *groundnorm* with impunity and nothing happens thereafter .

Therefore, there is the need to critically analyse what is supreme in the Constitution of the Federal Republic of Nigeria 1999 as amended against the backdrop of the supremacy clause as embodied in the Constitution and looking at the actions of the government and the individuals which are antithetical to, and in rude violation of the supremacy clause. This article seeks to attempt a more practical and realistic appraisal as against theoretical analysis of the doctrine *vis a vis* what is inscribed in our Constitution relating to the supremacy of the constitution direction.

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### **Supremacy of the 1999 Constitution of the Federal Republic of Nigeria as Amended**

Just like many other democratic democracies of the world that have adopted the supremacy of the constitution and have gone ahead to codify it, the constitution of Nigeria is not different in this respect. By Section 1(1) of the CFRN 1999 as amended it provides as follows:-

*This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.*<sup>1</sup>

For clarity purposes, the word supremacy according to Black's Law Dictionary<sup>2</sup> means "the position of having the superior or greatest power or authority." Giving effect to this very definition, it means all governmental and individual doings; sayings and actions must be subjected to the spirits and letters of the constitution. Or simply put, acts and omissions of the subjects must be conducted and carried out in accordance with the encapsulated provisions of the Constitution<sup>3</sup>.

The Constitution contains provisions in unambiguous terms stipulating that it is the supreme law binding on all persons and authorities throughout the Federal Republic of Nigeria<sup>4</sup> without exception. The Constitution reasserts its supremacy and provides punishment for any form of deviance to its supremacy when it provides further in Section 1(3) as follows:

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<sup>1</sup> Constitution of federal republic of Nigeria 1999 as amended.

<sup>2</sup> 9<sup>th</sup> Edition: Bryan A. Garner Pg. 1669

<sup>3</sup> See Online Legal Dictionary- [www.legal.dictionay](http://www.legal.dictionay) –[www.legal.com/c/constitution-supremacy%20/](http://www.legal.com/c/constitution-supremacy%20/). Accessed on the 24<sup>th</sup> June, 2019 at 10:00 am.

<sup>4</sup> Section 1(3) 1999 Constitution of the Federal Republic of Nigeria 1999 as amended.

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*If any law is inconsistent with the provision of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void*

Sub section (3) of Section 1 of the CFRN 1999 as currently drafted, appears to have been open ended, it is thus unclear whether acts and omissions on the part of government or individuals who are subjects of the constitution can come under this section. This is because the said subsection only provides that “any law” that is inconsistent with the constitution shall be void to the extent of its inconsistency. The draftsmen appear to be silent about act and omission of individuals, groups, even an arm of government that is inconsistent with the provisions of the constitution. In interpretation of statute, the law is clear that *expressio unis, est exclusio alterius*. That is, the express mentioning of one thing is the direct exclusion of the other.

The Supreme Court has had opportunities to pronounce on this maxim of interpretation and its usages as a veritable tool of interpretation as it relates to the above issue. In *AG Ondo State v. AG Ekiti State*<sup>5</sup>, the Apex court was called to the task of examining the propriety of the deployment of this settled maxim of interpretation of statute and the court through the vocal cord of Hon Justice Karibi –Whyte JSC stated as follows:-

*... This is in accord with the accepted principle of interpretation expressed in the Latin maxim *expressio unius est exclusio alterius* or *expressum facit cessare taciturn*. The two related principles mean firstly that "to state a thing expressly ends the possibility that something inconsistent with it is implied." Secondly "to express one thing is impliedly to exclude another" which is an aspect of the latter. This principle of construction is applied where a statutory proposition might have covered a number of matters but in fact mentions only some of them. Unless those mentioned are mentioned only as examples, or *ex abundantia cautela*, or for*

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<sup>5</sup>(2001)LPELR-622(SC).

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*some other sufficient reason, the rest are taken to be excluded from the proposition.*<sup>6</sup>

Hon. Justice Niki Tobi (JSC) as he then was, while lending credence to the supremacy of the Constitution stated in the case of *A.G Abia vs. A.G Federation*<sup>7</sup>  
*...in line with the kindly position of the constitution, all the three arms of the government are slaves of the constitution...in the sense of total obeisance and loyalty to it.*

The above recognition of the supremacy of the Constitution over every act, of government, its statutes, be it an Act of the National Assembly or Law of a House of Assembly of a State<sup>8</sup> is binding on all subjects. All arms of government must dance to the music and chorus of the constitution and must be ready to eat from the delicacies offered by it, whether palatable or unpalatable. Compliance with a law and particularly the provisions of the constitution is non negotiable, otherwise, room is being created for anarchy.

It should be pointed out that the Courts find Section 1(1) and Section 1(3) of the Constitution literally translated as supreme clause as a potent weapon to fight any seeming contravention of the provisions of the Constitution. A few cases will suffice to illustrate this stance.

In *Uzodima v. Commissioner of Police*<sup>9</sup> the court declared the provision of Section 390 of the CPC null and void on the ground that it is inconsistency with the provisions of the constitution. The said Section 390 had provided that a legal practitioner shall not represent any litigant in a native court. The court rightfully held that the provision contravened the constitutional right of the litigant to either represent themselves in person or through a legal practitioner of their own choice as it was contained in the 1979 constitution<sup>10</sup>.

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<sup>6</sup> Ibid at Page 66 para b-e.

<sup>7</sup> (2006) 16 NWLR (Pt. 1005) SC Pg. 265 at 389.

<sup>8</sup> Pursuant to their powers under Section 4 of the Constitution.

<sup>9</sup> (1982) 325 at 327

<sup>10</sup> In pari material with section 36(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria 1999 as amended.

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In *A.G Bendel v. A.G Federation*<sup>11</sup> the Court held that Section 2(1) and (2) of the Allocation of Revenue (Federation etc. Account) Act of 1981 which empowered the Federal Government to administer the share of state government from the Federation Account without the latter's authorization was null and void by reason of its inconsistency with the provisions of the 1979 Constitution.

Also, in *Inakoju v. Adeleke*<sup>12</sup>, it was held that the purported removal of a former Governor of Oyo State by the House of Assembly of the State was null and void for failure to follow the laid down constitutional procedure under Section 188 of the 1999 Constitution.

From the above decisions of the courts, it is crystal clear that the Constitution enshrines the supremacy clause. This is an irresistible mathematical conclusion about the fact that all act of government and the governed must mirror the provisions of the constitution otherwise, such acts will suffer the fate offered by section 1(3) of CFRN1999.

However, one question that is highly mind bugging is whether Nigeria operates a genuine constitutional sovereignty in the practical sense of it, given how the Constitution is being continuously flouted by both the executive and the legislature and by necessary extension, other agencies of the government, individuals and group with such disdain impunity.

It is correct that the courts have upheld the doctrine of constitutional sovereignty in certain instances or occasions particularly when and where it is brought to their attention. What happens in many instances and places where the constitutional provisions are undermined and trampled upon or ignored with impunity or carelessly by government or individuals in a group?

Can it be said that it is every citizen of Nigeria who willingly and knowingly subscribed to those provisions of the constitution proclaiming the supremacy of the Nigerian Constitution over them and their other books? The answer is surely in the negative because it would mean that Muslims are as good as kufar, Zaalim

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<sup>11</sup> (1983) All NLR 208

<sup>12</sup> (2007) 4 NWLR (Pt. 1025) 423.

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and Faasiq<sup>13</sup> who are not worthy of being so addressed or referred<sup>14</sup> and more importantly Quran 4:59 proclaimed obedience to Allah and his prophet as cardinal before those in authority and declares those who are not governed by the law of God as kufar<sup>15</sup>

In the same vein in Christendom, the bible proclaims the supremacy of God and that all created serve the creator.<sup>16</sup> Hence no one shares His sovereignty with Him.<sup>17</sup> Little wonder that both the governed and the government create time to put Him first at every occasion whether private or national, secret or open. The legal practitioners and the courts make use of Quran and Bible and not the constitution to administer oath even when the same constitution declares the country as a state without religion<sup>18</sup>

Certainly, because of the too much love for religion, miracle and superstitious beliefs in Nigeria, any item in colours of religion is priced high in all its spheres, irrespective of what the law says. This will be demonstrated in the cause of this work. This is perhaps the reason all our factories and industries are now good places of worship and there is an average of two churches and a mosque per street in the major cities in the south and that of the North is not totally different with higher number of mosques than churches depending on the length of the street.<sup>19</sup> To this end, if a Nigerian is called up to identify and pick from CFRN 1999, Quran<sup>20</sup> and bible<sup>21</sup> as the supreme book or law over him or her, based on the provisions of the two books which regulates the creed to which he or she has subscribed. There is no doubt that the majority, if they are Christians, will pick the bible and Muslims will definitely prefer the Quran as the supreme book over

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<sup>13</sup>< [www. Al –Malwid . Org](http://www.Al-Malwid.Org) > The Administrator, Al Mawrid Organisation, a Foundation for Islamic Research and Education, “Supremacy of the Quran and Sunnah” , Islamic Manifesto , 01/8/1995. Accessed on 14<sup>th</sup> August 2019.

<sup>14</sup> Quran 4”:59 and

<sup>15</sup>Quran 5: 4.

<sup>16</sup>Job 1:6-22 KJV

<sup>17</sup>Rom 8:29-30, Eph 1:21 KJV.

<sup>18</sup>See section 10 of the Constitution of Federal Republic of Nigeria 1999.

<sup>19</sup> <https://punchng.com/churches-new-tenants-old-industrial-estates/>

<sup>20</sup> Quran is the holy and supreme books of Muslim world over and it provisions and spirit are binding and a must observe.

<sup>21</sup> The Holy bible is the holy and supreme books of Christians world over and it provisions and spirit are binding and a must observe.

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our constitution. The reasons are no far from the fact that they are more familiar with and appreciate the contents of those Holy books. Not only this, substantial part, if not all are committed to their memory right from the cradle since the content, unlike the constitution are stable. All they do is to give interpretation to the provisions in line with the societal development of mankind. All these are lacking in our constitution lacks.

There is need to further examine the supremacy of our constitution in context of our daily life in Nigeria to see whether the above assumption and conclusion is trite and requires no empirical search or research before it is justified and confirmed. The author will therefore attempt to analyse some of Nigeria's acts and omission vis a vis some of the sacred constitutional provisions

#### **Prayers in Private and National Events**

Section 10 of CFRN 1999 as amended states that  
“the government of the Federation and of a state shall not adopt any religion as state religion”

This is one of the salient provisions of the CFRN1999 and because of its importance, it forms part of the early sections of the constitution. By this section, the constitution prohibits government at all level from adopting a state religion. The reason for this is not farfetched. It is because of the heterogeneous composition of the country with over 375 tribes<sup>22</sup> and hundreds of religion groups with Islam and Christianity having the overwhelming majority. Because of this composition, the adoption of secular state becomes inevitable; hence section 10 of the CFRN 1999.

There is no gain saying that the southern part of Nigeria is more pleased with the secular nature of Nigeria. This may be because of the long direct rules by British Government as against the North's indirect rule which allowed them practice their sharia law. Little wonder there is less agitation for adoption of, or request for recognition of a particular creed as state creed until recently in the south as witnessed in the north.

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<sup>22</sup>Mommoh Lawani Yesufu, impact of religion on a secular state: the Nigerian experience, *Studia Hist.* vol. 42 n.1 Pretoria 2016.



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By secular state, what is meant is, ‘worldly as distinguished from spiritual’<sup>23</sup> a world without particular religious affiliation. It is a societal practice where the metaphysical and spirituality is relegated to the background. It is simply the exclusion of religion from the way of life of the people of a given society. If this reflects the ideal of secularity as contained in section 10 CFRN1999, it therefore means adoption of any form of religious practice directly or by implication is at variance with section 1 of CFRN 1999 and to the extent of the inconsistency, is null and void.

The following acts of the government at all level become caught in the web of Section 1(3) of CFRN 1999. The building of a National mosque and church at the Federal capital Territory Abuja, all governmental functions and event including those of individual where call was made to Muslim and Christian clergies to offer prayers before and in most cases after the event, the adoption by Makinde<sup>24</sup> of the church where he worships as the official State’s church, adoption and or the use of Bible, Quran and iron to take oath in courts, codification permitting freedom of worship and religion<sup>25</sup> in the constitution, adoption of sharia law in some states in the north. By and large, what can be concluded from the above is that, in actual sense the constitution is not supreme. Supremacy lies with the government and its agencies who can decide whether or not to follow the Constitution<sup>26</sup>.

### **What is Supreme in the 1999 Constitution**

The 1999 Constitution in Section 1(1) provides that the Constitution is supreme. It states as follows:

This constitution is supreme and its provisions shall have binding force on all persons and authorities throughout the federal republic of Nigeria.

From the provision above, the two underlining clauses are *this Constitution is supreme* and *shall have binding force*. It is seriously doubtful whether the Constitution is in actual sense supreme and has binding force on all person and authorities. However, the bindingness of the Constitution is not of any relevance

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<sup>23</sup>Bry A. Garner, Black’s Law Dictionary, 8<sup>th</sup> Ed, pg1383.

<sup>24</sup>The incumbent Governor of Oyo State , Nigeria

<sup>25</sup>Section 38 of the CFRN 1999 as amended.

<sup>26</sup> The provision of Section 11(b) of the Constitution is to the effect that, the Constitution

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at the moment for the purport of our discourse. The main thrust of our discourse is what is supreme in the supremacy of the Constitution?

The incursion or insertion of Section 1(1) of the Constitution is a clear departure from the erstwhile position when each Region had its own Constitution<sup>27</sup>. In the United States, there is no specific provision re-establishing the supremacy of her Constitution and yet the Constitution is largely being complied with. However, most of Constitutions especially in the Commonwealth Nations embody such provision<sup>28</sup>. Although, the Constitution arrogates supremacy to its self, those who wield the powers of the state are not conscious of and responsive to their obligations and responsibilities assumed under the Constitution because of their personal aggrandisement<sup>29</sup>.

Since the inception of civilian regime, the alarming rate of Constitution violation in Nigeria leaves no one in doubt that the Constitution's supremacy only operates in theory and in its violation rather than adherence. In 2003, Olusegun Obasanjo, the then President of Nigeria withheld the Constitutional Monthly Allocation due to Lagos State for eleven months despite the Supreme Court judgment declaring the action of the President unconstitutional and directing him to release the allocation to Lagos State forthwith<sup>30</sup>. In 2009, President Umaru Musa Yar Adua left the Country to attend to urgent matters of his failing health without any compliance with the provision of Section 144, 145 and 146 of the Constitution<sup>31</sup>. Former President Goodluck Jonathan after being sworn in as the president of Nigeria in 2011 did not declare his assets as required by the Constitution. This paper argues that no one can claim that president Goodluck Jonathan did not

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<sup>27</sup> Akande, J. Introduction to the Constitution of the Federal Republic of Nigeria 1999, MIJ Professional Publishers Limited (2000) pg. 17

<sup>28</sup> Olamide, O. Supremacy of the Constitution. Source: [www.adjectlawyer.com](http://www.adjectlawyer.com). Assessed on the 24<sup>th</sup> of June, 2019 12:14 pm.

<sup>29</sup>Sahara Reporters: The Supremacy of the Constitution, Good Governance and Doctrine of Necessity: a Critical Appraisal. Article published online. Source: <http://www.sahara-reporters.com> supremacy-of-the-constitution-good-governance-and –the doctrine-of-necessity-a-critical-appraisal. Assessed on the 24<sup>th</sup> of June, 2019

<sup>30</sup> See A.G Lagos vs. A.G Federation

<sup>31</sup> The provisions are to the effect that the president transmits a letter to the National Assembly notifying them of his intention to travel and spend more than 10 days and seek authorization to hand over to the Vice President in acting capacity till his arrival.

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know that it is a constitutional duty imposed on him all of these makes the argument about constitutional supremacy story for the marines.

Section 34(1)(a) of the Constitution provides that every individual is entitled to the dignity of his person and shall not be subjected to torture or any form of inhuman and degrading treatment<sup>32</sup>. However, in practice, the Nigerian Police and other law enforcement agents torture suspects in their custody to extract statement from them in flagrant and utter disregards to the provisions of the Constitution which is purportedly regarded as being supreme<sup>33</sup>.

The homes of erudite and serving jurists of repute were invaded and thoroughly ransacked on mere suspicion corruption by men of the Department of State Service. About eight judges and two Supreme Court justices' homes were evaded and for hours subjected to all forms of torture

It should also be pointed out that, members of the National Assembly derive pleasure in defecting from one political party or the other without adherence to the Constitution when doing so. Nevertheless, no single seat has been declared vacant for the unconstitutional defection.

#### Detention of Citizens for a Period Longer than the Prescribed Limit

The right to personal liberty is one of those inalienable rights of every citizen which is guaranteed in the constitution. In order to underscore its importance, the constitution states that even if the right is to be curtailed for the reason of making a person to face the law, the limitation should only be for a short period as not to breach the right. Thus, a person whose right to personal liberty is to be curtailed in such a circumstance, must be arraigned before the court within a “**reasonable time**” which is defined in the same section, and the maximum of which is forty-eight 48 hours. See Section 35 (4) of the Constitution.

This provision however seems not to have any effect in actual practice. Law enforcement agents detains citizens who are suspected of having committed an offence, for as long as they are pleased with, and with impunity for that matter. Worst still, is the provision of Section 293(1) of the Administration of Criminal Justice Act, 2015 whose promulgation seems to have been made to legalize detention of citizens beyond the prescribed period, without trial.

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<sup>32</sup> Section 34(1)(a) CFRN 1999 as amended.

<sup>33</sup> See Sections (1)(1) & Section 1(3) CFRN 1999 as amended.

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As a matter of fact, the subheading of the part of the law (ACJA), the first section of which is section 293 is “Detention Time Limits”. It appears to have conceded the fact that the ground norm has a provision for the maximum period for which a person’s freedom can be lawfully curtailed, but that this provision is to take away, what the Constitution gives to a citizen. Then, where lies the supremacy of the constitution?

The situation is more worrisome when one considers the fact that the provision of the constitution had been in existence before the promulgation of the ACJA whose provision is to derogate from that of the constitution.

### **Conclusion**

Section 10 of the Constitution provides for prohibition of State Religion yet the government both States and the Federal Government have by conduct adopted Islam and Christianity as State Religions<sup>34</sup>. In every government functions, opening and closing prayers are done by either a Muslim or Christian in place of National Anthem, yet, we claim the Constitution is supreme. It is submitted that, there is no supremacy of the Constitution in Nigeria order than in theory. The supremacy provision is at best without dressing a cosmetic provision. It is being violated mostly by the people that enacted it and are also to be protecting it.

### **Recommendation**

If the Supremacy of the constitution will more from being a mere farce to a real deal, the organs of government, especially the Executive and the Legislature have to respect the spirit and letter of the constitution. Court judgments should be enforced even when it seem to be against the interest of government. State secularity should be taken as optimum and it is suggested that just as in the court proceedings that commence without prayers, state functions should also commence and end in the same light.

In the alternative, the letters of the constitution can be amended to leave room for the adoption of certain practices that are in tune with the realities of a nation deeply religious and ethnic like Nigeria. This will take the constitution from being a toothless bulldog to an instrument whose mere mention commands respect.

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<sup>34</sup> The Governor of Oyo State Engr. Seyi Makinde after being sworn in declared his Church as an official Church of the State in gross violation of the provision of Section 10 of the Constitution.

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