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Islamic Universities

Prospects and Challenges

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Edited by

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1.0 Rationale: Addressing the Educational Crisis

1.1 Quantity and Quality

The knowledge of a preponderant majority of Muslims is inadequate, fragmented and outdated. There is pervasive ignorance of the sciences of religion, *ulum al-din*, of the sciences of the world, *ulum al-dunya*. Religious illiteracy, *ummiyyat al-din*, and worldly scientific illiteracy, *ummiyyat al-qira'at*, are common. Islam is practiced by the majority with little appreciation or understanding of the underlying world-view. Institutions that teach the classical Islamic sciences usually have the poorest standards. Teachers are poorly paid. Their graduates have few opportunities in the job market. The brightest students are advised by their parents and heads not to enter these institutions because they will have no future.

The Western European education sector had been rejected by many Muslims during the colonial era not because they rejected modern knowledge but because they feared the indoctrination of their children. It however became more accepted following political independence in the 1950s and 1960s. The situation today is not very encouraging. Teachers are no longer respected as important members of society. Their leadership domain has been taken by politicians, businessmen and technicians. Teachers are

The Legal Challenges of Enforcing Shari'ah Compliant Dress Codes in Nigerian Islamic Universities

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Abstract

Islamic Universities are known to be established to attain certain objectives. prominent among these is the moral edification of the young generations, with particular interest on the enforcement of dress codes within and outside the campus system. In a bid to achieving this all important endeavour, policies are clearly formulated to ensure compliance not only on the part of students, but also the staff. As lofty as this mission is however, it has been observed and rightly too that certain 'legal rights' of some of the subjects of the rules are in the process violated. For the goal to be achieved therefore, and in order to ensure sustainability of these citadels of learning without compromising Islamic principles on which they are built, this paper examines the legal implication associated with the enforcement regime of dress code and how these challenges can be circumvented.

Introduction

The quest for a formal system of advanced learning necessitated the birth of University education. And that is why a University is often described as a citadel of learning, where three cardinal goals namely, teaching, research and community service, are the main responsibilities of members of staff, particularly the academic. It is on this basis that the relationship between the host community and the University is strengthened and sustained, irrespective of the ownership status of a University, be it public or privately owned. Buttressing this position, Bukhari (2006) opined:

To the authorities, the University supplied generations of administrators, judges and other functionaries of the State. To the wider community, it supplied teachers, men of religion, jurists and a class of merchants, notaries and clerks. But the relationship was (sic.) more than a crudely functional one. The University was the symbol of the spirit of the community, the guardian of its morals and the formulator of its hope and aspirations.

However, the society we live in has become a host to moral decadence. And as the level of immoralities increases so are over-indulgence in dastardly acts, particularly by the youths increasing at an alarming rate. As clearly captured in the words of Badamasiuy, the society today is experiencing increasing moral laxity, as well as a steady and grinding decline, as manifesting in all the facets of life of the people. According to the learned writer, the wave of evil, transgression and even social rebellion is now more pervasive than ever before. This trend should be, and according to her has been a source of grief to serious minded persons, particularly the Muslim *Ummah*. Thus, some means needed to be devised to reverse the negative trend. But this trend appears to be common place and a long time practice in the Western world which unfortunately has permeated the way of the life of the youths in the developing countries through blind imitation of western social culture. Buttressing this point Aliyu-Ibrahim (2007) said:

Today we live in a world where the more flesh you bare as a woman and even as a man, the more beautiful, fashionable and sophisticated you are. The popular slogan is 'if you've got it-Flaunt it' Therefore, we have so many different beauty pageants springing up.

This strange development raises the concern of parents and guardians some of whom are University administrators and/or authorities. As substantiated by Abdulkareem (2010), the University had lately received several complaints from parents and its friends that female male students could be singled out in town on account of their predilection for socially unacceptable fashions, which includes unnecessary exposure of female sensitive body parts and male underwear 'sag(ing) their trousers'. In the same vein, religious leaders, preachers and pundits, realizing the need to address the menace headlong and by all legitimate means, alike have also decried against these degrading and animalistic tendencies.

An indented and, perhaps sure medium of correcting these anomalies is the establishment of Islamic Universities, in which all curricula will be enriched and saturated with Islamic faith compatible thoughts, instructions virtues, and imparted in a way and with a view to reshaping the outlook of the youths to social life and conquering their minds and re-setting them on a new footing of a descent lifestyle.

One paramount issue of concern to an Islamic University, therefore, is the problem of the indecent way of dressing in vogue, which has been adopted by the youths in Nigeria. The genesis of this mode of dressing can be traced to the hegemonization and homogenization syndrome promoted by the West, which is ubiquitous in our society. Agreeing to this submission, Fayokun, Adedeji, Oyebade (2009) call our attention to the fact that in many higher institutions across the world, indecent dressing among the youths has become the

emblem of modernity in general and the university campuses in particular. The outlook of it is contended makes the affected youths appear more irresponsible and less of good ambassadors of their homes and societies. As Maiwada (2006) rightly opined:

...it is good homes that make good societies, hence the saying, 'Charity Begins at Home.' Because of the high number of good homes, our societies in the past were characterized by peace, tranquility, harmony and progress. Equally, because of adverse influences, our present societies are lacking in sustainable tranquility, harmony, peace and progress. It is common knowledge that influences, such as screen violence and the western mode of living, have had a negative impact on our society.

Given this background therefore, Islamic Universities in Nigeria have taken it upon themselves to re-address the ugly trend, culminating in the introduction and strict enforcement of dress codes in most of them. The main thrust of this paper therefore is to carefully examine from the legal point of view the introduction and enforcement of the dressing policy in the Universities in general, but with particular reference to the Islamic Universities, especially drawing out the likely legal constraints as well as the inherent risks in its implementations. The paper attempts to look into areas that appear not yet considered or presently not bothered about, but which in the opinion of the writers may affect the smooth operation of the policy. While far reaching recommendations are made so that while the vision of the proprietors and principles behind the policy are not compromised, the requirements of the law may also not be violated.

Ordinarily, dressing is part of the fundamental right to the dignity of persons under the Nigerian Constitution. Besides, in the African tradition and the rules of humanity, it is considered insane to walk (almost or half) naked. That virtue has, however, gradually eroded, as youths the in contemporary world have considered dressing almost nudely as part of civilization. To suppress this rather dangerous trend, Section 45 (1) 1999 of the Constitution lucidly and categorically provides:

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a 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. (Underlines added)

Taking advantage of these constitutional provisions, Islamic Universities have taken it upon themselves to introduce a *Shari'ah*-compliance dress code, which, it is hoped, would by far not only ensure public safety public, order and public morality, but also

protect the rights of others and make same binding on every students and staff of those institutions.

Conceptual Framework and Literature Review

The Concept of a Dress Code

The idea of a dress code implies an order of clothing or dressing or a minimum standard of dressing accepted of any group of people in line with their norms and values, or that is typical of a class of people. In another sense, it has been defined as the obligatory way to dress: a set of requirements as to how people should dress, e.g. when at school or attending a function (see Microsoft® Encarta® 2009). It may also be taken to imply an unwritten (but understood by most members of the society) rules of clothing (which may vary in different societies) as an aspect of human physical appearance.

The dress code has inbuilt rules or signs indicating the message being given by a person's clothing and how it is worn. The message may include indications of the person's gender, income, occupation or calling and social class, political, ethnic and religious affiliation, attitude towards comfort, fashion, traditions, gender expression, marital status, sexual availability and sexual orientation, etc. Clothes may convey other social messages, including an expression of personal or cultural identity, establishing, maintaining, or defying social group norms, and appreciating comfort and functionality.

Thus, wearing expensive clothes may be an exhibition of wealth, or access to quality clothing. All factors apply inversely to the wearing of inexpensive clothing. The observers see the resultant, expensive clothes, but may incorrectly perceive the extent to which these factors apply to the person observed. Clothing may also convey a social message, even if none is intended. Where however, the receiver's interpretation of the adopted dressing differs from the sender's motive it results in misinterpretations and dissonance.

In every culture, current fashion determines the manner of sewing, stitching and wearing clothing to convey a social message. And as the rate of changes in fashion vary, so also do modifications in the style of wearing clothes and its accessories within a short period, especially in small social groups or in modern communications media-influenced societies. More extensive changes, requiring more time, money and efforts to effect, may however span generations. But when fashion changes, the messages communicated by clothing change follow suit.

The Shari'ah Dress Code

Dress code is taken very seriously in Islam because it displays who a person is and to some extent his degree of religious commitment. This is attested to by Oba (2009):

Islam places much emphasis on modesty and chastity.

These demand respect for nudity. Islam makes it compulsory for all Muslims to dress with great modesty.

Being a faith with complete regulations for its adherents' affairs, Islam has introduced a standard dress code for its faithful males and females alike. Yusuf Ali, in his commentary on *Surat An-Nur*, Qur'an 24 verse 31, commented:

The need for modesty is the same for both men and women.

But on account of the differentiation of the sexes in nature, temperaments and social life, a greater amount of privacy is required for women than men, especially in the manner of dress code and the uncovering of the bosom. (n. 1012)

The bottom line is that every Muslim is to cover his/her nudity as well as lower his/her gaze. Part of what assists in the stress-free lowering of the gaze is modesty inducement. Thus, an unmarried young girl, who has not attained the age of majority and those at the age of majority are expected to comply with high standard dress codes. This is confirmed in a Hadith of Prophet Muhammad (SAW), as narrated by Aisha:

Asma bint Abubakr entered upon the Apostle of Allah (SAW) while she was wearing thin clothes. The Apostle of Allah turned his attention from her. He said: "O Asma! When a woman reaches the age of menstruation, it does not suit her that she displays her parts of the body except this, and this and he pointed to her face and hands (Sunan Abu Dawud 32: 4092).

There are several explanations of this Hadith, principal amongst which are that a woman in the fold of Islam must protect her nudity; she must see all parts of her body as sensitive except her face and hands. She is therefore required to dress modestly in such a way that parts of her body are properly covered and that non-*mahrim* must not be allowed to see her nakedness. And Allah says:

It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger he has indeed strayed into plain error. (Al-Ahzab 3: 36)

O you who believe! Obey Allah, and obey the Messenger (Muhammad) and render not in vain your deeds. (Muhammad 47: 33)

Relying on the above cited provisions of the Qur'an, Aliyu-Ibrahim (2007) observes that the compliance of Muslims with Islamic dress code is a not optional, but a matter of obligation.

However, while Islam has not legislated a particular type or style of dressing for Muslims, it has provided a framework and guidance on modest dressing hence, the term *Islamic Dress Code*. For instance, as for men, the policy remains that certain parts of their body, particularly between the navel and the thighs, should be properly covered, while the entire parts of a woman, including her voice, have been declared to be nakedness and must be covered. Expatiating further, Aliyu-Ibrahim (2007) opined:

If a Muslim (woman) wears a shirt, rather than a pair of trousers, she should rather wear a long skirt under it. If on the other hand, it is a pair of trousers she wears, then the top should be one that should cover her thighs in a loose gown, to reach from below her knees to her ankles. In this wise, her dressing will serve to contradict the way the men dress.

It is mandatory (that a) Muslim female veils herself in the press. It is the vogue among Muslim girls and women these days to use just scarf over their hair, or wear one of the variously designed caps. They thus leave their ears, earrings, necks, chest and bosom uncovered. This is not (an) Islamic fashion, a Muslim (who) dressed like this cannot be differentiated from certain Christian sects who dress similarly. As stated earlier, the Muslim should always strive to differentiate him/herself from people of other faiths so as not to be counted as one among them on the Last Day.

Veiling, i.e. the use of *Hijab*, as regards women folks, is a primary trait of a Muslim female. It is indispensable because it goes a long way to distinguish Muslim women from all other non-Muslims. In the opinion of Oba (2009):

....the covering of the head in a manner that the hair, the neck and the shape of the bosom are not exposed is considered mandatory. The areas of controversy are rather narrow. Majority of the scholars would permit the exposure of the face and feet while other scholars are of the view that

these should be covered also. The differences between the scholars are not based on their private whims and caprices but on the different interpretations they give to the same texts of the (sic. Qur'an) and *hadith*. The practical result is that some Muslim women apart from adopting the long loose outer garment (*Jilbab*) and headscarves (*Khimar*) that cover the head, neck and the upper body, also adopt the face veil (*niqab*). Others go further by covering their hands with gloves and their feet with stockings. In this way, no part of the body is exposed to the gaze of strangers. Some others do this but leave the hands, feet, and face exposed.

There is no gainsaying that this is the typical outlook of a Muslim woman and strictly in consonance with the requirements of the Shari'ah, as stressed in the following verses of the Holy Qur'an where Allah decrees:

And tell the believing women to lower their gaze and protect their private parts (from illegal sexual acts) and not to show off their adornment except only that, which is apparent, and to draw their veils all over their bosoms and not to reveal their adornment except to their husbands...(Surah An-Nur 24: 31)

O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies. That will be better, that they should be recognized (as Muslims) and not be molested. (Surah Al-Ahzab 33:59)

From the above verses, the minimum standard expected of every Muslim female is the use of *Hijab*. And as Zakariyya-Olukade (2010) puts it, 'the Hijab was prescribed for the believing women, not just woman, in a manner not less important than other obligatory injunctions in the Qur'an. A woman by this definition is any female who attains the age of puberty.' Thus, the use of *Hijab* has widely gained wide recognition and acceptance that even among female Muslim students, it is conspicuously worn everywhere on the campus. And when attempts were made by some school authorities to outlaw it, as would be seen shortly, its importance was emphasized and established.

In the celebrated case of *S. J. Bamigbade & Nine others vs. Vice Chancellor, Obafemi Awolowo University* (Unreported Suit No. HIF/MISC/20/2002), in response to a dress code enacted by the University authority prohibiting the use of certain Muslim women dress-*Jalbab* into the Laboratory, some Muslim students filed a suit challenging same.

And while granting in their favour an interim injunction against the defendants University, the Court, per Awotoye J. of the High Court of Osun State sitting in Ile-Ife on 9/5/2002, held that the dress code, as enacted by the institution, was most unwarranted, unfair, discriminatory, oppressive, baseless, a gross violation of the rules of natural justice and of the Applicants' respective Constitutional rights, unlawful, null and void. The dress code was thus discharged and the *status quo ante* was restored by the Court.

On the contrary however, there are certain objectives derivable from the prescription and adoption of *Hijab* by the Muslim females in Islam. They include but are not limited to the desire to show compliance with the dictates of the *Shari'ah*; covering nudity; commanding respect; warding off temptation and evils; engendering socio-religious maturity; promoting religious affiliation and identity; giving good impression of one's home and family background; instilling confidence and restfulness in one's parent/husband; and projecting the facial beauty of the female, excepting the pressing need for the suitor to see the entire body.

The Practice of a Dress Code in Higher Institutions

The practice of dress code enforcement is universal. It is widely embraced at all the strata or levels of the educational institutions, though it may be given various nomenclatures, like 'modest and appropriate dresses by some higher institutions like the Harding University' (UK). Tracing the genesis of this, Okwu submits that:

Tertiary institutions of learning in Nigeria have been bedeviled with obscene dressing particularly by female students. Most girls go bare, display their navels and boobs and wearing what are just ample cleavages on display, depicting size and shape of the private parts with minis that barely skim the bottom. It appears now that to be fashionable, one has to become half nude, dressed in sleeveless/see-through tops without bra. According to Irtwange(2004), this constitutes Weapons of Mass Distraction (WMD) and sexual harassment. This seductive dressing thus has profound negative effect on both the students and the lecturers alike as they can hardly concentrate in their academic work under such an environment. There must be a moderate position that allows the students to dress in a certain way that would meet societal value. The higher institutions of learning have been fighting against other social vices such as cultism, examination malpractice, and drug abuse but the issue of obscene dressing has not received comparable attention.

The practice of establishing dress code is almost everywhere, as hardly would one find any institution in Nigeria, for instance, that does not make it an issue of priority in view of the worrisome observations made by Okwu above. In the same vein, outside the shores of Nigeria, the position is the same. For instance, Fayokun, et al (2009) noted thus:

...Moreover, in Nigeria and Uganda, the authorities of some universities (University of Ibadan, UI; University of Lagos, UNILAG; Obafemi Awolowo University, OAU; Lagos State University, LASU; Makerere University, Kampala, MUK and Islamic University in Uganda, IUIU) have prescribed dress codes for their students. For instance, in a special release to all students titled *Dress code in the university*, the Governing Council of Obafemi Awolowo University in Nigeria approved the following guidelines for strict compliance by students:

- (1) Dress which is sexually provocative and exposes vital parts of the body that are supposed to be hidden (such as the chest, navel and thighs) is prohibited;
- (2) The identity of all students must, at all times, be visible, i.e. their faces must be fully visible. The form of dressing that obscures identification poses serious security problems;
- (3) Individual faculties are required to draw up additional guidelines that are relevant to their academic activities.

Similarly, in Harding University, Section 6 of its Students Handbook is dedicated to cautions, which give students clear-cut instructions on what is expected of them within the campus system. This was made in line with Biblical instructions (Student HandBook, 2010-11, See further: Appendix I). The understanding therefore is that both Christian and Islamic Universities are in the vanguard of the campaign against immodest dressing.

In Southwestern Nigeria, Bowen University is remarkable for taking the bull of the dress code by the horn. According to the institution's Vice Chancellor:

...the University is aware of the low academic and moral status of students seeking admission into Nigerian tertiary institutions. To checkmate the care free attitude of students on the campus, the management constituted special units saddled with the responsibility of ensuring the adherence of students to the rules and regulations of the university. In this regard, the university established a task force, called

Compliance Unit. The duty of the members of the task force is to go round the campus to ensure that every student complies with the university dress code and attitudinal behaviour on the campus (www.tribune.com.ng).

In the same southwestern Nigeria, the Fountain University which is an Islamic University, the situation is the same, as its Vice Chancellor, Professor Hussein Oloyede, described the dress code as:

... a unique rule and regulation to instill moral and the fear of God into the students (Education Tribune). What is important to us at Fountain is to produce graduates with high moral standard and fear of God. That is why we have set a realistic standard that can sustain the policy.

Oloyede further affirmed that the University would not tolerate indecent dressing, adding that any student who failed to comply with the University's regulations with respect to dress codes would be asked to leave.

That notwithstanding, some other universities, especially the publicly owned, are indifferent to this campaign in that most of them, according to Professor Oloyede, have lost their moral values because they cannot control the kind of dresses their students put on. And that is why many of their products today are found wanting when it comes to the issue of morality.

Methodology

This research is basically library oriented and in view of the development in information technology, the advantage of data collection via website or internet sources is explored. However, there is a combination of structural interviews of stakeholders conducted to ascertain the precise position of the research problem. Literature reviews in the sense that books, related articles and journals that have relevance whatsoever to the topic were harnessed. And for a thorough exposition of the research, materials were sourced from both primary and secondary sources, especially on points of law.

The primary sources of law include but are not limited to the Constitution of the Federal Republic of Nigeria (1999), Statutes, Court decisions of various superiors courts in Nigeria and elsewhere, the twin rules of Natural Justice, face to face structural interviews with stakeholders and personal observation. On the other hand, the secondary sources of information include textbooks, law reports, research reports, learned journal articles, papers delivered at learned conferences and daily newspaper report as well as information obtained from the internet and seminar papers, etc relevant to the study.

A critical appraisal of all the materials was done with a view to analyzing their effects with respect to the research problems.

Discussion of Results

The Enforcement of the Shari'ah Dress Code in Islamic Universities in Nigeria

The Islamic Universities in Nigeria are still very few. This is in view of the many hurdles on the way to their establishment. All together however, today those with a full operational license and strength are still put at four namely, Al-Hikma University, Ilorin (estab. in 1999 but could not commence operation until 2005); Crescent University, Abeokuta (estab. 2005); Fountain University, Osogbo (estab. 2007) and Katsina Islamic University, Katsina (2005). Others that are yet to commence operation include the proposed Hijra University, Osogbo (the name of this proposed university is still under review due to the new NUC regulation, which henceforth prohibits religious names to feature as a name of a university in Nigeria); Muhammad Kamaldeen University, Ilorin (proposed by the Ansarul Islam Society of Nigeria) and Summit University, Offa (proposed by the Ansaru Deen Society of Nigeria).

From the fully licensed and operational Islamic Universities, findings show that none of them condone indecency and immorality. And particularly in the area of dress code, very unlike the conventional universities, regulations are made and enforced very strictly. The same is applicable to the staff as well. Each of these shall now be examined in some material detail, viz.:

Al-Hikmat University, Ilorin

The regulation guiding Dress Code in this University is incorporated in the Student's Handbook of Rules and Regulations, 2006, particularly, *Regulation 3*. And so far, the response has been wonderful. The provisions under the Handbook, amongst others, provide orders of clothes to be worn by the students and hair-do/make up. For example, such dresses as tattered jeans, trousers and shorts cum flamboyant garments are not allowed. The regulation also disallows or moderates the use of certain types of shoes, glasses/goggles, jewelry and mandatory the use of *Hijab*.

According to the Deputy Vice Chancellor, Dr. Muhammad Salih, the use of *Hijab* has not generated any issue so far. In his words,

... The authority provided a model and similarly made available a designer, who was instructed to sew *Hijab* for the female students at regulated price. As part of the measure undertaken to make the non-Muslim use the *Hijab*, he personally donated to some non-Muslim female students

because it is mandated for them to wear it and were asked to call it veil, if they so wish but making themselves odd is not allowed. And at the same time, the university authority would not condone non-compliance, so he sewed for them.

At the University, irrespective of differences in religion, so long a student has consented and subscribed to the Matriculation Oath to be part of the University system, she must comply with use of *Hijab*, while dissidence is followed by sanctions, which sequentially takes the step of the issuance of a query and a strong letter of warning. If there no change that is followed by rustication for a session. While serving the punishment, the counseling unit is detailed to conduct a proper re-orientation for a recalcitrant student. Compliance with the University Dress Code in the opinion of the Deputy-Vice Chancellor makes the students themselves appear more mature, corporate and decent.

Fountain University, Osogbo

The implementation of the Dress Code in the *Nasr- Ilahi- l- Fathi* (NASFAT) Society established University seems to be very firm. The University authority has in place a Dress Code Enforcement Committee, which oversees the compliance within the university campus. According to the Vice Chancellor, the dress code is a unique rule and regulation to instill morality and the fear of God into the students. He added that the university would not tolerate indecent dressing, so any student who failed to comply with the regulation would be rusticated. According to him there is:

Zero tolerance for indecent dressing. Our students must dress decently. Our female students are enjoined to cover their hair, wear blouse and skirts that are not tight-fitted and the skirts must be far below the knees. Our male students must knot their ties and always appear corporately dressed.

During the last matriculation, the population of non-Muslims-female totals 13; they are not speared from the mandatory use of *Hijab*. So far, according to the Vice Chancellor, they have not at any time contravened the rule of dress code. It should be mentioned however, that these students were not hindered from practicing their religion, pointing that:

...University is a non-discriminating institution but the management will expect any student regardless of his or her religion to obey the laws and orders. By doing so, it reaffirms the matriculation oath that the students must fulfill the academic ad moral requirements upon which the awards of degrees of this university are based.

Crescent University, Abeokuta

At the Crescent University, Abeokuta, there is no evidence indicating a Dress Code is put in to use on campus. This has probably been passively left open to the wish of staff members on whom reliance is placed to lead the campaign of Dress Code by example. The registrar of the institution declares that while not regulating how the students should dress; the lecturers had nevertheless been implored to serve as role models to the students in their mode of dressing. Commenting on this issue, the proprietor of the institution, Prince Bola Ajibola said:

What we intend to do with things like that is to give them warnings and if we see that such a thing (improper dressing) has become habitual, then a decision may be taken that such a person is not fit for a university environment. We are trying to produce clear publications - pictorial and literature - for the students to make themselves aware of what we actually require. We lay emphasis on our members of staff that they should ensure they live by examples as far as dress code is concerned. We are also working on the rule that no department of the university attends to any student that is not properly dressed at any given point in time.

It should be mentioned however that the use of *Hijab* is not made compulsory for the female students, including non-Muslim females. A scarf is sufficient, but immodest dressing is strictly disallowed, as efforts must be made to re-orientate the nation's youth on quality moral and academic values.

An Examination of the Legal Challenges/ Constraints

The policy of the enforcement of a dress code is as good as a legal requirement. For Section 18 of the Interpretation Act, Cap I.123 Laws of the Federation of Nigeria 2004 provides that Law 'means any law enacted or having effect as if enacted by the legislature of a State and includes any instrument having force of law which is made under a law.' (cf. s.318 CFRN1999). More so, as the dress codes are a normative policy or rule of conduct to be obeyed and failure of which is sanctioned, they are a "law" made by the school authorities for the compliance of the students. But in spite of the fact that the submissions above agrees with the provisions of the Interpretation Act, as well as the positions of the Positivists, Sociological and Pure theories of Law as to what a rule of law is, it should be noted that the enforcement of a Dress Code will most likely contravene some other laws and hence may end up being declared by Court as *ultra vires*, *null* and *void* to the extent of its inconsistency with the other law.

The Conventional Legal Position

The Constitution of the country is supreme and its provisions are binding on all authorities throughout Nigeria (see section 1 (1) 1999 Constitution). Accordingly, where a

dress code is inconsistent with the constitution such codes would be void to the extent of the inconsistency (see section 1(3) 1999 constitution).

Thus, Fayokun, *et al* (2009) postulated a principle of a validity test to determine how and when codes of dress contradict the constitution or any other law. They proffer thus:

Some of the legal principles employed to test the validity of disciplinary measures are:

- (1) Constitutional appropriateness (e.g. whether it infringes on fundamental (human) rights or any other enshrined provisions of the Constitution).
- (2) The doctrine of *Ultra Vires* (e.g. whether it conflicts with an overriding legislative enactment or can be struck down on the ground of “ambiguity”, ‘vagueness’ or ‘unreasonableness’).
- (3) Compliance with the twin principles of Natural Justice i.e. *nemo iudex in causa sua* and *audi alterem partem* (the requirements that no man should be a judge in his own cause and that the other side must be heard).

Looking at this carefully, it is obvious that with the style of the enforcement of this rule, the constitutional rights of some citizens may be violated in the following ways namely: The first is the right to freedom of thought, conscience and religion, as contained in section 38 (1) of the 1999 Constitution, which provides:

Every person shall be entitled to freedom of thought, conscience and religion, including the freedom to change 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. (Underlines added)

The second is the right to freedom from discrimination on grounds of religion articulated in section 42 (1) of the Constitution thus:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person

- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other

communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

Thus, where the use of *Hijab* is imposed on non-Muslim female students, whose religious doctrines do not permit this, then the test 1 above is contravened by virtue of Sections 38 (1) and 42 (1) (a) & (b), respectively.

The judicial authority for the above legal proposition can be seen in the case of *Onyinyeka M. Enoch vs. Mary U. Akobi* (1994) A.N.S.L.R 338, the fact of which was that a fresh female student of Federal Government College who was wearing 'newly permed hair' contrary to the school regulations was denied registration. The school insisted that she must cut her hair short as a way of complying with the students' code of conduct. Dissatisfied, the student contended that her Christian faith requires her never to 'cut, shorn or shave her hair,' relying on the Book of 1st Corinthians Chapters 11 Verses 5 – 6 and 15. The verse 15 for example says:

But if a woman has long hair, it is a glory to her: for her hair is given her for covering.

The High Court of Anambra State considered the said hairstyle regulations in secondary schools *vis-à-vis* religious rights. And in interpreting religion solely as a system of belief, the biblical passages cited by the plaintiff were disregarded while the Court held that the religious rights of the applicant have not been violated and the suit was summarily dismissed. In the opinion of the Court, the school's regulation relating to keeping the hair short was 'not only reasonable, but accords with proper and basic discipline in a model educational institution.'

The court decision has however been heavily criticized, and rightly too, because the Courts have only succeeded in introducing without any basis the requirement of 'reasonableness' to the question freedom of religion.

On the contrary, in *Bashirat Saliu and 2 Ors vs. The Provost, Kwara State College of Education & 2 Ors* (Unreported: Suit No. KWS/28M/2006 delivered on 8 /5/ 2006), sitting in Ilorin Per Kawu, J. struck out a Dress Code policy, which purported to prohibit female Muslim students from wearing veils on the College campus.

The facts of the case are that the three plaintiffs/applicants who were female Muslim students of the College and who strongly believed that their lives were guided by Islamic doctrines, which required them to cover their body with *Hijab* or 'veil,' were on 28/09/2005, issued with a circular titled 'Dress Code for students of the College' by the defendant/respondent. Article J of the Code prohibits the wearing of 'dress/apparel which covers the entire face of an individual, thereby making the immediate identity of the person impossible'. Acting pursuant to this article, the defendants/respondents prevented the applicants from attending lectures and writing examinations. The applicants therefore challenged the Dress Codes before the High Court.

At the hearing, the applicants contended that since the veil is part of their religion, it falls within the ambit of their fundamental right to religion, as enshrined in section 38 (1) of the 1999 Constitution. The Court upheld their submissions.

(See also the following cases: *Ahmad vs. Inner London Education Authority (ILEA)* [1978] 1 Q. B. 38; *Emerson vs. Board of Education* 390 US 483/1947; *Arch. Bishop Olubumi Okogie vs. A.G Lagos State* 1981 NCLR218; *Adewole & Ors vs. Jakande* 1981 NCLR 262; *S. J. Bamigbade & 9 Ors vs. Vice Chancellor, Obafemi Awolowo University* (Unreported Suit No. HIF/MISC/20/2002, *Supra*).

A.A. Oba (2009) observes the seriousness attached to the enforcement of human rights in recent years, especially because of the various Treaties and other laws made towards enforcement of the rights. In his words, the human right treaties include:

... the right to freedom of religion among other rights such as the Universal Declaration of Human Rights, 1948, the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities and treaties dealing specifically with religious rights such as the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Constitution stipulates that treaties have the force of law in the country only if enacted into law by the National Assembly. The African Charter is the only human rights treaty that has been so domesticated and has become part of Nigerian law

See also, the Fundamental Rights Enforcement Procedure Rules, 2010 made pursuant to the s.46 (3) of the 1999 Constitution.

The Shari'ah Legal Position

Non-Muslim students in Islamic Universities are like *dhimmi*. Their rights are protected, although this is not without compromise. *Dhimmi* or non-Muslim have a legal claim to the protection of Muslim authorities if they were permitted to enter Muslims territory (Khudduri 1955). Part of these legal claims are access to *Aman*, i.e. a pledge of security by virtue of which the *harbi* (non-Muslims) would be entitled to protection, while he is in the *dar al- Islam*, by the Muslim authority (Ibid).

From this position of the Shari'ah, it suffices to say that by coming in good faith of these non-Muslim students into Islamic Universities it is implied that they are for all purposes and intents, *Dhimmi*. Therefore, the authorities of Islamic Universities are required to be protective of their rights without forcing any aspect of Islamic ethics and values on them. The Allah decrees:

And if any one of the *Mushrikun* (polytheists, idolaters and pagans, disbelievers in the Oneness of Allah) seeks your protection then grant him protection – so that they may hear the Word of Allah (the Qur'an) – and then escort him to where he can be secure, that is because they are men who know not {Surah At-Taubah 9:6}

When considering what justice implies, Oba (2007-2008) observes that even Prophet Muhammad (SAW) emphasis justice in favour of non-Muslim citizens (*dhimmi*) in an Islamic State when he said:

Beware! Whomever is cruel and hard on a contractee (*dhimmi*), or curtails his rights, or burdens him with more than he can endure, or takes anything of his property against his will, I shall myself be a plaintiff against him on the Day of Judgment.

Thus, part of the rights of *dhimmis* is their right to dressing in conformity with the dictates of their faith or religion. Thus, any attempt to impose or cause an imposition of what is in Islam on them is tantamount to a deliberate denial of their rights as *dhimmi*, and such was what the Prophet was referring to in the Hadith referred to above. Issues relating to a decent dress code with respect to Muslim and non-Muslims is part of what Islam classifies as part of the freedom of religion and belief. According to Oba (2007-2008) perhaps the most important expression of tolerance for non-Muslims within the Islamic State is the autonomy granted to them by the Prophet (SAW) in their social, cultural and judicial matters which is not offensive to Islam. This point may be buttressed further by referring to the Medina Treaty in Section 16 of which the Prophet (SAW) covenants thus:

Whoever of the Jews follows us has the same help and support as the believers, so long as they (sic. We) are not wronged by him and he does not help others against them (sic. Us).

It should also be added that, in deciding matters relating to non-Muslims, the Prophet (SAW) was always insisting that their laws as contained in their and scriptures, which are not offensive to Islam, be used to determine their affairs, not minding that they were non-citizens in the Islamic State.

Conclusion

It is obvious that the attitude and act of the authority of the Islamic Universities with particular reference to the imposition or enforcement of *Hijab* or other Muslim way/manner of dressing on non-Muslim female students is *ultra vires* (beyond their legal powers). It is submitted that in the event of a challenge against it sooner or later it may not stand in the faces of the law of Nigeria by virtue of the Constitutional provisions extensively analyzed above.

Recommendations

It was Lord Denning (Master of Rolls), the most quoted judge in Common Law, who said in his judgment in the case of *UAC vs. McFord*, that when something is placed on nothing, it is bound to fall. In other words, a rule having a force of law, such as a dress code on a University, must be based on a sound legal footing otherwise it will not stand the test of time. But the proprietors cannot compromise on their vision and mission of moral edification of the young generation; they may avert and indeed circumvent the potential problems likely to arise from the introduction of a Dress Code already pointed above if the following recommendations are considered:

1. The provisions of sections 45 of 1999 Constitution can make a formidable footing or premises upon which the Islamic Universities can base their dress code. Like any other phenomenon, there are exceptions to constitutional provisions relating to religious rights, and the limits according to the Constitution itself are provided under section 45 of the Constitution which provides:

(1) Nothing in sections 37, 38, 39, 40, and 41 of this Constitution shall invalidate any law (or code) that is reasonably justifiable in a 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. (Underlines and bracket added)

Thus, it can be argued that non-compliance by non-Muslim students with the Dress Code could offend the morality of other students and staff of the institution, and/or that the code is reasonably justified in order to guarantee public safety and ward-off evil, lawlessness and promiscuity.

2. In cases of litigation, the relevant authorities of the institutions should be prepared to adduce evidence to establish that failure to introduce the Islamic Dress Code and mandate same and the youthful exuberance of students could drive them to cause promiscuity on the campus, leading to widespread sexually transmitted diseases within the campus and in the society at large.
3. The university authorities should always observe the twin principles of natural justice-i.e. the rule of *audi alteram partem* and *nemo judex in causa sua* (discussed above) and fair hearing before sanctions or punishments are meted against erring students, otherwise on application to the Courts of law, the university decisions will be upturned. See: *University of Ilorin & Ors vs. Prof. Olufeagba & 42 Ors (2010) FWLR*; see also the three tests of Fayokun, et al (discussed above).
4. While drafting or making whatever rule or provisions with respect to a Dress Code, the relevant authorities should avert their mind to all the relevant provision(s) of the Constitution and other existing laws relating thereto. This is to avoid inconsistency or repugnancy with any of the municipal law.

It is strongly believed that if recommendations made herein are taken seriously and reflected in our attitude to student disciplinary measures, they will go a long way in helping us to fight successfully the prevalent immodesty and immorality in our society. Meanwhile, while a hundred percent success may not be attainable or claimed immediately, the activities of the existing Islamic universities represent a bold step in the direction of achieving the moral edification of the products of our Islamic universities.

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