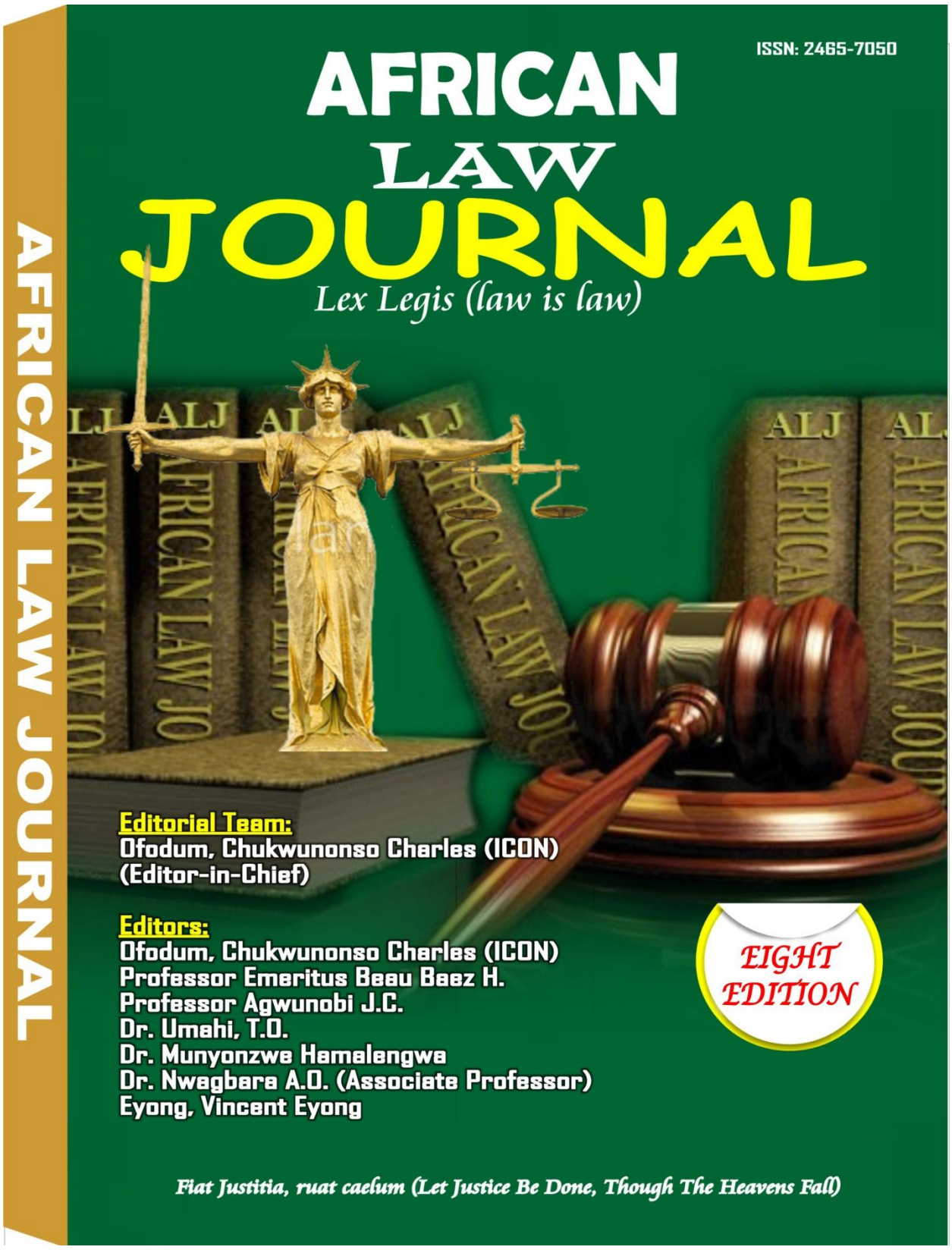

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1. Articles

2. Literary works

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African Law Journal provides the opportunity for Lawyers and students to discuss current issues as well as put forward their opinions about the issues. It also aims at creating an avenue for lawyers and students to write on topics that engage their minds. Through this journal, many will obtain a deeper knowledge of the law.

The African Law Journal is published annually. Commentaries and Contributions to the journal are peer-assessed. The journal is devoted to law and contemporary issues of significant research value.

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3. The title of submission should be brief, attractive, and accurate in describing what the paper is about. Headings and sub-headings within the text should be short and very clear, and numbered appropriately in Arabic numerals. Headings and subheadings are to be in initial cap(Proper Nouns should be capitalized at all times)

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"Journal of Energy & Natural Resources Law" (2006) 24(2) Journal of Energy & Natural Resources Law, 278-280 at 276.

14. Cases and Statutes: Cases should follow the conventional way of citing cases in each jurisdiction, but names of cases must be in italics. Full name of the statute and years of enactment as well as the chapter (where relevant) should be stated.

15. Web Materials: full web address must be stated with the date of most recent access in brackets.

16. Quotations: Double quotation should be used, but quotation within quotation should be single.

17. Abbreviations & Foreign Words: Helpful abbreviations such as id, ibid, op. cit., loc. Cit., supra, etc. should be used correctly, and in italics; Latin and other foreign language words should also be in italics.

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18. Others: Papers should be typed on A4 paper size in word Microsoft; typed double spaced; foot notes and not end notes should be used and numbered automatically; font size for the body of the work is 14 while footnotes should be 10-font; Times New Roman should be used.

19. The footnote marker should come last after both the closing quotation mark and/or the punctuation. For example: the President said that this power "is not limited to defence against aggression from a foreign nation."[1] And not the President said that this power "is not limited to defence against aggression from a foreign nation[2]."

20. If quoting internet sources: state the title of the article, the relevant web page, date and time visited. For instance: "Artisanal and Small-Scale Mining" http/www.africanbank.org visited 7/23/2004 at 1 pm.

21. All contributions must contain adequate references to sources or authorities relied upon, and must be accurate and relevant. Authors may be asked to revise their articles before publication.

22. Do not number your major headings in the paper. Number only your sub headings with (a), (b) etc. and sub-sub headings with (i), (ii) etc. The page numbering should be at the bottom.

23. You must italicize all cited cases.

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24. The citation for statutes must be in the following style: for example, section 35(1)(e) of the Administration of Criminal Justice Act 2015 etc.

25. Contributions that do not comply with the House Style will not be considered for publication.

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LITERARY WORK: The background to your work is required if you are sending a poem. Your biography is required. Submission must not be more than one and a half pages.

GENERAL REQUIREMENTS

1. All submissions must be related to law.

2. All submissions must be of a high professional standard.

3. All submissions must be proofread and publication ready.

4. All submissions must meet the submission format guidelines.

5. All submission must be original.

Submission that do not meet these requirements will be returned to the author for necessary corrections or rejected.

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AFRICAN LAW JOURNAL 8TH EDITION

FOREWORD

This eighth edition of African Law Journal took the line of the first edition, second edition, third edition, fourth edition, fifth edition, and seventh edition, which sought to focus and highlight the burning issues in our society to the attention of diverse stakeholders and participants.

This edition will appeal to a wide range of readers since the issues raised in the edition touches on the day-to-day activities of social, legal and economic challenges facing our society.

I will not hesitate to recommend this edition (African Law Journal, Eighth Edition) to a wide range of readership. This stems from the fact on the usefulness of the contents, the quality of academic and professional contributors, and the well-organized arrangement of the content. As a result, this journal will be valuable to military, Paramilitary, legal, paralegal, organizations, businessmen, social and human right activists, academia, professionals, and the general public.

The Journal identified areas, issues, and cases from which the public will learn in our society, especially the politics, legal community, developed countries, developing countries and their people, who are exposed to human rights abuses, poor quality service delivery, and general abuse.

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The Journal contents were well couched on typical issues like, assessment of abduction in Nigeria, Jungle justice, right of a finder, dentology in defense, social justice in era of social distancingand justice among others.

This edition features the teaching of laws and learning the laws worldwide and it follows up the seventh edition.

This Eighth edition of African law journal has been designed to be used at home, churches, schools, libraries, offices etc. The articles contain therein in this eighth edition of African law journal will help lecturers and students with their learning.

This Journal –African Law Journal (eighthedition) is strongly recommended to all, and secondarily, and it is worth keeping in public and private libraries.

I commend my fellow editors and contributors for their painstaking and thought-provoking journal.

PROF. AGWUNOBI, J. C.
Editor, African Law Journal

AFRICAN LAW JOURNAL 8TH EDITION

WHO IS THIS JOURNAL FOR?

FROM THE DESK OF THE EDITOR IN CHIEF

African Law Journal

You are all welcome to African law journal. The journal aims to provide information, legal issues, and to acquaint the readers with law and other societal problems.

The journal is for the ministers in the temple of justice, academia, practicing lawyers, legislators, researchers, scholars, lawyers in equity, and everyone in society. The journal examines not only the challenges we face on the African continent, but also around the world. The journal is made up of two sections: main body and compendium, which evaluate societal problems and provide possible solutions. With the help of the African Law Journal, every lawyer and every law student will be a researcher and at same time a reader.

We believe that our readers will learn several things while reading this journal. We want to use this medium to advise the contributors to adhere to the guidelines when recommending a contributed solution. We thank all the contributors for these articles and congratulate African law student administrators, African Law Journal Editors, and members as we look forward to a better future.

OFODUM, CHUKWUNONSO CHARLES (ICON)
EDITOR IN CHIEF, AFRICAN LAW JOURNAL

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ABOUT THE JOURNAL

African Law Journal is an international Journal which has a Facebook Page, e-mail - africanlawjournal@gmail.com, WhatsAppgroup, and a website **www.africanlawjournal.net.** The journal is available on www.academia.edu and Google(www.google.com) and can be obtained by typing "African Law Journal by Ofodum, Chukwunonso." African Law Journal is in National Library Nigeria, and many Libraries around the world, like College of Law Libraries, University of South Africa, Pretoria, South Africa, Law library (Coscharis) UNEC, Enugu, Nigeria, Faculty of Law, University of Ibadan, Nigeria, all the campuses of University of South Africa, all the major libries in Zambia, all the major libraries in Tanzania etc. African Law Journal is a recognized Journal that is registered with Corporate Affairs Commission (C.A.C), Nigeria.

Apart from Nigeria, it is also distributed in other countries, such as Israel, Pakistan, South Africa, Malawi, Kenya, Zambia, Cameroon, Namibia, Ghana, Bangladesh, Uganda, China, Swaziland, Mexico, Benin Republic, United States of America, Thailand, Singapore, Senegal, Nigel, Equatorial Guinea, United Kingdom, Zimbabwe, Tunisia, Burkina Faso, Chad London, New York, Bazil, Rwanda, Egypt, Saudi Arabia,Turkey, Germany, Ethiopia, Malaysia, China, Sierra Leone,Turkish, Tanzania, Botswana , and Liberia.

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The first edition of this journal was published in 2015 and was edited by Dr. O. T. Umahi and OfodumChukwunonso Charles. The second edition saw an improvement as people from different countries contributed to the journal.

Eight countries contributed to the first edition of the journal, and they are Nigeria, Malawi, South Africa, Zambia, Kenya, Namibia, Uganda, and Singapore. The writers of the first publications are OfodumChukwunonso Charles (Nigeria), Thomas Solomon (Namibia), D.r K.C.E and Obioha J.O (Nigeria), Bongi France Mojapo (South Africa), Ombo D. Mulunibe (Kenya), Prof J.C. Agwunobi (Nigeria), SambasivamKunju (Singapore), Ezeakunne Okwuchukwu(Nigeria), Stuart Emmanuel Kondowe (Malawi), Mbagwu, Prime Ikechukwu Mark (Nigeria).

IDOKO CELINA NKECHINYERE

A Member, African Law Journal

AFRICAN LAW JOURNAL 8TH EDITION

DEDICATION

First of all, we dedicate this journal to God Almighty, the giver of life; all power belongs to Him.

Secondly, this Journal is dedicated to all the lawyers and law students of the world.

Lastly, God bless our Leaders, and this journal is dedicated to all leaders:

God bless Africa!

God bless Africa!

God bless the whole world!

Guide our leaders.

Guard her children.

And bring us peace.

EZENWA, UZOMA ANGELOU E.
Administrator, African Law Journal
College of Law, University of South Africa

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We would love to thank God and congratulate all the contributors of this journal for another successful publication. We acknowledge all the contributors like my fellow colleagues at African Law Journal and African Law Students, Ugochukwu Onu (admin., Nigeria), Ofodum, Chukwunonso Charles(Founder, Nigeria) Stuart Emmanuel Kondowe (writer, Zambia), Samuel OgundimuOlajide (admin., Nigeria), Manzi Nkoyosi S. (admin.,South Africa), Jozi (admin., South Africa) and Austin Remigius O. (admin.,Nigeria) Miracle Mont (admin.,Nigeria) and Magez Andrew (admin.,Uganda). We thank our editors Dr. T. O. Umahi, Professor Emeritus H. Beau Baez, Dr. MunyonzweHamalengwa, Eyong Vincent Eyong, Dr. Nwagbara A. O., Omirin Emmanuel Kayode. Finally,we are grateful to Prof. J. C. Agwunobi(writer, Nigeria), Prince Patrick Igwe, Dr. Arch. Engr. A. O. Nwagbara,Chima Kingsley Okwaraji,Nwachukwu C. Timothy, Idoko Celina Nkechinyere and IroegbuEzinna Edge etc., you are all well appreciated.

ArijeniwaAdedoyin Alexander
Practicing Lawyer, Abuja
Member, African Law Journal
Nigeria

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HISTORY OF AFRICAN LAW JOURNAL

Nothing comes out from nothing; everything that exists must surely have an origin. If everything that exists must have an origin, then African Law Journal must have an origin. This history espouses the origin of African Law Journal and its relevance till date.

This Law Journal is the sole property of African Law Students which started on Facebook in 2013 with the vision of providing African legal luminaries – lawyers and law students – latest and comprehensive legal education, and the happenings in the legal world.

Nothing comes without vision and mission. Our vision and mission are to be ubiquitous and excellent.

The noble course of this body is to transform into an international body in and outside the confines of Facebook by pursuing modern innovations which will equip law students with both online and offline materials on the substantive and procedural law. With this, future African lawyers would stand the chance of competing favourably with their peers from other parts of the world. Innovations employed by the body to help the students perform better and utilize this opportunity include:

1. Discussion of legal ideas which will help in widening their horizons.

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2. Bridging the inequality in thelegalimpartation of students of different law faculties (colleges).
3. Interaction by students from different schools.
4. Promotion of legal aids in various countries.
5. Promotion of African stability and unity.
6. Bringing justice to Africa and the world.
7. Bringing quality education to African lawyers, law students and the world.

It is imperative to note that the body is moving closer to achieving her goal as her first edition of the African Law Journal has spread far. The first edition can be found in libraries in Nigeria, Israel, Pakistan, Cameroon, South Africa, Uganda, Ghana, Kenya, Zambia, Malawi, and Namibia. Recently, the journal entered India and Benin Republic. It can also be found on www.africanlawjournal.net, www.academia.com,and on Google (www.google.com) by using African Law Journal by Ofodum, Chukwunonso Charles. With this transformation, the tools of justice will be learned and understood around the globe.

Directives

The body has three official languages and these include English, French and Legal maxims in Latin. The body operates a parliamentary system of administration. It is made up of two chambers – the main group and the administrators' group. The operational guidelines shall flow from Justice. Decision making of the body shall

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be democratic in which the majority's voice shall be given the utmost priority. The majority, as used in the previous sentence, means the highest number of participants in the decision-making. Any member can sponsor a bill or move a motion for the progress of the body.

Slogan

The slogan of African Law student shall be: "**Great African Law Students**" and which would be followed by a response of "**Justice Shall Prevail."** Our **motto** shall be: "***Aequitas sequitur legem*(Equity follows thelaw)".**

African Law Student now prides herself in having a Whatsapp group and a Facebook group with more than 13,000 members. Our administrators on these platforms include: Defokwu Stanley Ebube (Nigeria); OfodumChukwunonso Charles (ICON), Founder (Nigeria); EzenwaUzor Angelou E., a diaspora in South Africa; UgochukwuOnu (Nigeria); ManziNkanyiso (South Africa); O'men Abdul Ghaffar (Israel); IzuchukwuAsogwa (Nigeria); Ahmed Musa (Nigeria); Magezi Andrew Kasaijja (Uganda); Ogundimu Samuel (Nigeria); Orisewezie Desmond (Nigeria); Okoli Chinedu Hillary (Nigeria); Jackson Roman Meridew (Nigeria) Eze Collins (Nigeria); Muhammad Elmuheeb (Nigeria), Omirin Emmanuel Kayode (Nigeria);Walyawula Nelson (Zambia); Ogundimu Samuel Olajide, Niyomugabo Eugene (Rwanda), Afamefuna Daniel Edeachi Esq, Rilwan S. Salihu (Nigeria); Mbua Peter Junior (Cameroon) and Remi Austin (Nigeria).

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This edition is not limited to Africa alone as it has so many articles written about happenings around the world today. This edition also accommodates compendium that are legally related.

It is one thing to know the law, know where to find it, and to know how, when, and, where to apply the law. Knowing how to apply the law is useless when you do not know the law and knowing the law is meaningless when you do not know how to apply it. With African Law Students Journal, you will learn both.

Thank you.

Omirin, Emmanuel Kayode

Administrator, African Law Journal
Faculty of Law, ObafemiAwolowo University
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SOCIAL JUSTICE IN THE ERA OF SOCIAL DISTANCING

AKASH CHATTERJEE

BY

BALLB (H)

SEMESTER 5

AMITY LAW SCHOOL

AMITY UNIVERSITY KOLKATA

ABSTRACT –

As the world suffered and continues to struggle with the viral pandemic that almost took the entire mankind by shock, the cardinal focus of any Government shifted towards battling the crisis and saving innocent lives who fall as cruel victims to this virus. But what about the lives that are saved? What are the living conditions in a society that is already shattered by a pandemic? Questions like these naturally show an uncertainty as to whether social justice is secured even in the era that has ushered in social distancing. This paper attempts to scrutinise prevailing conditions with respect to India and gives a suggestive account of a better managed future.

STATEMENT OF PROBLEM - *Social Justice in the era of social distancing is a lag on part of implementation and planning by concerned authorities.*

AIMS AND OBJECTIVES

1. TO FIND HOW SOCIAL JUSTICE MECHANISM IS OPERATING IN THE TIMES OF A NATIONAL CRISIS

2. TO DISCERN THE IMPACTS OF A CRISIS ON DIFFERENT SECTIONS OF POPULATION

3. TO ANALYSE WORKING OF POLICIIES WITHIN IMPEDIMENTS

4. TO CRITICALLY UNDERSTAND THE PRESENT LEGAL EFFICACY WITH RESPECT TO PANDEMIC PREPAREDNESS

REVIEW OF LITERATURE

A wide range of data was collected and analysed – books and eBooks mainly were referred to in details. However given the novelty of this topic and the situation of pandemic that has arisen currently, relevant literature is scanty. Although direct literature was not available due to lack of proper research on the topic, but there were allied and correlated works on the same.

At the outset it needs to be mentioned that the entire research has branched out of the primary guidelines that were laid down by WHO- World Health Organisation that were made mandatory for all the countries to follow and implement.[1]

Next were the guidelines issued by the Centres for disease control and prevention that aims at conclusive explanation about social distancing and going in details about how to implement it[2]

Secondly, the website of the ministry of home affairs was referred thoroughly for updates on the way lockdown and social distancing was being formulated in the country.[3]

A thorough referencing of different leading online newspapers were done to collect information about different communities and to explore the depths of journalism to figure out how Government plans and policies had impacted people during the lockdown.

With respect to the concept of social justice and the way it is implemented, a thorough research was made on available implementation models and material on this is scanty but some general provisions could be ascertained as in different portals of United Nations or other organisations devoted to the cause of human rights and advocating equality.

---

[1] https://www.who.int/emergencies/diseases/novel-coronavirus-2019?gclid=CjwKCAjwiMj2BRBFEiwAYfTbCsQeGy4scgcvkf-WXOwB_aPjvwVVZ9EY7_QxbNpVuP_ZPvaz7KrAmhoCqtgQAvD_BwE

[2] https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html

[3] https://www.mha.gov.in/media/whats-new

“

Injustice anywhere is a threat to justice everywhere

“

- MARTIN LUTHER KING Jr.

INTRODUCTION

Society is primarily a collection of individuals collectively held together and synthesised into one common identity by the tagline of a nation. The individual differences which various segments of a society has, sustains with one another in a collective pursuit of survival that in the present world is entirely dependent on the values of cooperation and peaceful harmony. However unity is not a political declaration or a rule, it is a feeling towards which a community has to gear up to. It is however interesting to note that the foundation of such harmony and peace rests with the moral code of justice – defined in various ways, but retaining the same essence; either corrective or distributive, justice forms the core surrounding which a civilisation can coalesce. The unification serving as the backbone assimilating differences, and ascertaining a cooperative integrity is the fact that justice remains, correcting any impropriety arising in any way whatsoever.

Justice needs to be analysed not simply in terms of resolution of lis between parties, or an elaborative court procedure of establishing status quo in the event of a dispute , but as a social coherence – the scheme of organised cohabitation that seeks to provide reasonable security of a peaceful sustenance in a variegated matrix of sociocultural diversity. As a cardinal characteristic of a civilisation that develops on a melting pot culture, rights need to be defined in the light of the over arching protection of justice. In this sense, social justice assumes importance as it relates to a collection of rights and the interaction of exercise of rights at the interpersonal level and the citizen-government level. In times of a crisis this functional interaction suffers certain significant changes –

Firstly, citizens deal with a pandemonium as panic rushes down them sabotaging their sense of responsibility,

Secondly, it is a question of circumstances that whether and to what extent shall authority's dictates be well followed by the people,

Thirdly, the measure of preparedness and the risk analysing factors of the concerned authority influence the handling of the situation.

Fourthly, people's reaction to an exigency situation often has negative overtones as political preferences and social stigmas break out as deadly as the cause of emergency itself.

Fifthly, it is interesting to note that while people are depended on the authorities, however conformity to emergency rules and provisions do not come easily.

The State has to keep in mind such myriad factors while handling the quandary and at the same time securing what is basic to existence –justice. While priorities and preferences get obviously rescheduled in terms of a disaster management, but at the same time the wheels of governance must turn expansive and inclusive thereby extending its protection to all the sectors and segments of society, assuring that no single individual or community bears the brunt of hatred or suffers being bereft of protection that is otherwise normally entitled. Protection is the essential duty of state to help secure people in their uncertain worry of a disaster.

LOCKDOWN AND LOCKING WORK DOWN

The recent medical emergency, under which the entire world is reeling, as termed as - Covid 19 disaster, has turned out to be a novel virus that spreads through contagion. With the medical facilities taken by surprise, nations braced up the challenge fearlessly, employing their maximum potential towards battling this out. While no particular solution seemed to work with the contagious lethal virus gripping its hold on mankind, the idea of breaking the chain of transmission by virtue of social distancing seemed to come out as the only plausible and feasible strategy towards preventing the disaster and the numerous toll on the lives of the people succumbing to it. The idea of social distancing being as novel as the virus itself , had to be introduced properly, rationally and at the same time enforced upon those sections or communities who were not ready to comply with the authority's disaster management strategies. Lockdown or the closing down of all or nearly all large and small scale commercial enterprises and a strict ban on public gathering of any sort , for any reason and minimising interaction between people urging them to stay indoors proved to be the only way of enforcing social distancing. This was fuelled by the idea that as the novel corona virus being highly contagious, the interpersonal contact of people had to be stopped anyhow. The strategy as devised was in full approval of World Health Organisation and had been applauded by countries alike. Despite their economic stability, growth patterns, business scales and nature of export and import affecting commercial backbone of the respective economies, all the nations resorted to applying lockdowns strictly and unanimously . Little did the citizens know then, that the entire scenario of saving lives was to turn into an ugly race to save livelihoods.

While medical emergency seemed to be the primary focus for allowing lockdowns, countries and their executive machineries were already alarmed at a significant impact that it would bring upon the socio economic fabric. Our paper keeps its focus limited to India and deals with the situational analysis under the following sub heads –

1. MIGRANT WORKERS

Employment in India and service conditions changed its traditional face and transformed into a work from home culture as soon as offices shutdown distancing people away. This swift transformation brought a momentary relief with commuting and chasing office hours now all in one household set up, but this is simply the tip of the iceberg for employment scenario in India. The submerged iceberg of a plethora of workers – wage labourers, contractual, seasonal , menial and migrant , started to bear the brunt of the strategy so ironically devised to protect them in the first case.

"The problem of migrant workers may not be entirely unique to India, but the sheer scale - there are more than 40 million migrant labourers across the country - makes it difficult to provide relief to everyone." – reported Times of India.[4]

While migrant workers maybe just another classification of employment , but in the exigency situation of a lockdown , their issue assumes cardinal importance as the option of travelling back to their respective hometowns ceases to be an option in the light of complete ban on interstate and intra state transportation as devised by the government for the lockdown period. Deprived of their means of livelihood and the options to travel, they had been forced

to put up at unknown locations devoid of safety , security and not to mention dignity of life in an environment of fear and disgust for them .

The problem of migrant workers was not anticipated to be a disastrous turn out with social distancing norms being implemented and lockdown being enforced countrywide as the first basic measures to combat the virulent spread. However , it loomed menacingly almost making it the most complicated case to be handled, showed up as an issue of human rights and obliterated the mechanism of social justice to the point of exposing the failure of state machinery to provide protection to its citizens and safeguard their right to justice. Social justice in this era of pandemic has been a recurrent theme for discussions and deliberations and analysis of government plans and policies but little did the top level bureaucracy discern that the grassroots level of labour would be churned and pestered under the wheels of administration. The nationwide lockdown had banned transportation and the implementation had come at a very short notice, so naturally the migrant labourers were stranded in unknown lands where they had habited temporarily for work. While Government proposed them to stay and reside in places where they were and not travel, these labourers soon ran out of basic resources to support their livelihood. Work as in menial physical labour ceased with all major operations being closed , and these labourers could not afford the luxury of sitting at a comfortable desk while working on the internet . The virtual world may seem

[4] https://www.bbc.com/news/world-asia-india-52360757 , last seen on 28/04/2020.

lucrative and progressive , that had efficiently provided an alternative to social distancing and kept workflow unhindered but the sector of menial labour remained undecided, starved and in oblivion of their future – while saving themselves from the virus all around, they had no option but to starve to death sitting idly at their temporary shelters. Scarred with pangs of hunger and frustration of running out of monetary resources and food, most of these migrant workers, millions in their count had decided to march towards their respective homelands. What followed next was a horrifying tale of massacre of lives as these marching millions suffered death on roads and railway tracks, died of hunger and starvation and eventually it became a headline story for the journalism sector to celebrate as heroism, while grotesque images of migrant workers' bodies, belongings and food packets marred with blood come out in the newspapers for the country to mourn.

ANALYSING THIS SITUATION IN TERMS OF SOCIAL JUSTICE MECHANISM –

Labour force of a nation is that pillar on which majority of working operation and production processes rests –

1. Migrant labourers have been denied basic fundamental rights as when they were stranded at unknown work locations and a nationwide lockdown enforced upon them at a short notice, they would not possibly plan how to sustain themselves. It was imperative for the Government to not simply institutionalise them in proper shelters but also cater to their free food and medical assistance if needed. It would have given them the requisite security that they needed to put up in alien corners of the country and away from their homes.

2. It was required by the Government of the respective states to devise financial aid packages to not only clear the dues of payments for the migrant workers, often pressurising private employers to do the same as well , but also announcing financial assistance for the period of lockdown whereby they were unemployed.

3. Absence of means of transportation coupled with an anxiety to reach the safe corners of their homes and villages, the march began that soon turned into a grotesque massacre claiming more lives than the scare of the virus that resulted in such a situation. At the point of declaring the lockdown and ban of transportation, some special arrangement should have been made for these migrant workers to reach their homes safely and with adequate social distancing and quarantine measures.

4. Lastly even after the horrifying journey which some migrants took on road on feet to reach their homes, the road was still not peaceful for them as majority became liability on their homeland

villages and instead of being greeted back , they were mistreated , stigmatised as being carriers of the virus , contaminating their villages and endangering it. There has been no end to the misery of migrant labourers, and this stays as the biggest drawback in the social justice mechanism during the era of social distancing.

2. WHERE SOCIAL DISTANCE IS NOT AN OPTION

The affluent technologically equipped urban social classes were quite quick and adept in adapting to the New Normal as it is coined, during the period of lockdown where all forms of social gatherings were banned and the switchover to virtual space for the purposes of working was swift as well. Amidst this whirlpool of changes coupled with fear of contracting the disease, preventing the contagion and curbing the number of infections, Government was quick in enforcing the lockdown within a very short notice. What often remains neglected in this period of crisis often grows up to be examples of grave social injustice, and if such special needs are not catered to , then these scars leave long lasting impressions on the socio economic fabric of the country.

Neglecting the providers –

Rural India remains an integral reflection of the country's true identity as a sharp contrast to the urban cities and their cosmopolitan way of life. The rural society may not be as advanced and globalised as the urban ones are but nevertheless it is the key or core area of importance that comprises farmers and persons related with agriculture which shoulders the responsibility of feeding the millions that depend on the produce which is the product of their annual toil and hard work. When the nationwide lockdown as enforced, naturally transportation and supply chains were the worst affected, with almost blocking interstate transportation and in this flurry of restrictions, farmers endured a silent suffering that truly tantamount to miscarriage of social justice in a social distancing trend.

"*Movement of perishable products (vegetables, fruits, eggs, chickens, milk, etc. was stopped abruptly, inflicting massive and non-recoverable losses to the farmers. Poultry farming was already in a crisis due to* fake news *linking chickens to corona virus. Lockdown was the last straw on its back. Even when the restrictions on the movement of agricultural goods were lifted on paper, the draconian ban continued on ground. Vegetable and food grain mandis continued closure. This resulted in some widely circulated images of the farmers throwing away* grapes*, mowing down*

the cabbage crop *or pouring* milk *into canals"*[5]- As per this report by The Print , some problems can be analysed –

1. The perishable nature of certain crops that always requires quick and efficient transportation which was not given and hence the disaster was borne by those farmers who hoped to trade them.

2. Absence of special protection by the Government by means of making certain emergency provisions for the agriculture sector and prioritising the food producers or the farmers by emphasising on what they need during a crisis or how to protect them in the situation of social distancing.

3. Obviously, the entire crisis management started when the urban areas were getting affected and coming under the grip of the disease, but however rural regions were spared during the early days of infectious spreading, so the rural markets could always continue and keep generating sufficient demand for the small scale producers in the rural areas.

The stigmas and neglects that rural India faces is a true fact and a sad reality because it simply shows a failure of cohesiveness and to keep the unique knitty gritty of the nation finely balanced. Each time rural sector is ignored and the urban flamboyance is prioritised, quite like a westernised influence of showing the way of life in India, it is ultimately a stigma that is being fanned. In this present case, social distancing and the new norm of virtual work can never be the way of life for the farmers who are left so desperate with their produce. The normal way of life where people mix and gather, crowd and buy in bulging markets stopped suddenly. the entire hustle bustle of Indian markets that had ever soaring demand wonderfully helping farmers and middlemen sell their produce to optimum quantities were not the usual sight anymore. The fear of disease had emptied the markets and once again, online grocery delivery chains started operating on large scales replacing the *mandis*or the simple small scale markets for the producers. When this shift was taking place, our food producers – the farmers had to sustain huge losses. This calls for the State to implement its egalitarian policy of extending protection to those who need in the times of crisis. It is pertinent to cover the losses of these small scale producers and give adequate financial aid so that the primary and most important economic activity of agriculture goes on properly. Villages are the grassroot level models of self sufficiency and democracy in the country. If these units are empowered, with more delegation of powers to the Village and Block levels of administration, and greater self reliance being encouraged then this primary sector of economy and the personnel it employs can stay protected in the changing times and social distancing.

[5]Yadav ,Yogendra, India's farmers can keep economy running in Covid crisis,https://theprint.in/opinion/india-farmers-can-keep-economy-running-in-covid-crisis/406642/ last seen on 20/052020

3. WHEN PHOBIA AND STIGMA SOAR

A National Disaster is a hard time and a moment of chaos and crisis – definitely for the main stream population who are otherwise referred to as the normal and they lead their lives quite smoothly, and more so for that section of population which even in simpler times have to endure quite an amount of neglect, contempt and suffering at the hands of a conventionally normative society that refuses to venture out into the daring fields of liberal ideology. While battling with a pandemic, there are sections of people in the social matrix of the country who struggle hard firstly to make their ends meet and secondly to deserve some humane considerations of being treated with minimum dignity that a human being should deserve. This includes the transgender community whose sexual orientation is still refused to be recognised in a heteronormative society and who, being bereft of all formal educational and occupational safeguards of the state are left to themselves , poverty stricken , somehow begging their bare minimum needs to survive. This also includes the infamous yet an occupationally commercial community of sex workers who are widely remembered when in need for their service and indiscriminately visited by people needing it , but at the same time pushed away from the mainstream society and stigmatised, labelled as "prostitutes" almost to the brink of not deserving minimum respect and dignity due to all human beings in general.

According to a report by The Hindu[6] , transphobia has hiked in the Covid times with

a poster in a metro station showing –

"If you talk to a transgender you will get corona"

The phobia is not new, neither is the community surprised that once again; they are being pushed away from the society. They have dealt with social isolation and have trudged their ways though surviving and getting simply perished, which the transphobic mentality wants. However it is an instance of grave injustice in these socially distant times if they are not protected. Bereft of social security schemes, locked down in their dingy households, often discriminated against by the police officers, they endure brutality but this needs to stop. If the Government is planning schemes to save

[6]Kenith, Rosario, https://www.thehindu.com/news/cities/mumbai/covid-19-lockdown-transgender-community-pushed-further-to-the-margin/article31265535.ece , last seen on 15/05/2020

the population, then in no ways should one integral part of the society be simply left out and suffer unfair discrimination only because the general phobic tendency could not respect its sexual orientation.

The sex workers have also endured a similar suffering with the sex rackets , even today in a grey zone of legal – illegal complex , lay empty with no customers for them to fend for themselves. As already residing in ill sanitised and crowded small compartments, many of these sex workers are prone to corona virus infections and on top of that without a livelihood. Government schemes and social security policies do not reach them although they had to commercial scale of business in usual times. Such is the stigma around them that they are not simply marginalised but also considered outcastes or not belonging to the society at all. While social justice is a complete failure for them during the era of social distancing , a bigger question taunts us that whether at all social justice can be achieved in a society that even today refuses to change the orthodox and myopic minded morality and even refuses to give a dignified recognition to communities with whom they are supposed to cohabit as one and the same?

IMPLEMENTATION WITHIN OBSTRUCTIONS

Government machinery is a set of schemes and policies that regulate the interaction of the state with its citizens – it is that procedural layout which governs every aspect of life within the territorial jurisdiction of the concerned Government. An example would be laws, taxes, and social security schemes as well, all of which cumulatively impact the smooth functioning of governance. However, policy execution and its modus operandi should not be based on the assumption of utopia in the situational backdrop but should be inclusive of exigencies and assumptive of reasonable changes that are likely to come to the fore and the effect that it would have on the policies. Law in its evolutionary perspective has seen a remarkable progression from the *laissez faire* outlook of non intervention with the people governed to an increasingly egalitarian state where the citizens form the core of concern surrounding which laws develop and function. The orientation of any legislative action followed by an executive propagation is intrinsically balanced on the fulcrum of egalitarianism in the nature of modern rational welfare statehoods.

Obstruction refers to an impediment, a situation that is not considered normal in the usual course; it may imply an exigency, an urgency that obviously shifts the equilibrium of socio legal functioning to a misbalanced state. However that is no excuse for justifying an injustice meted out. This calls for special provisional planning and measures to arm the machinery implementation against possible lapses of management. Justice is an essential precondition to an existence and not a luxurious provision that can be exempted. The function of circumstance will mould the application of justice but the onus is upon the state to ensure that it is not compromised in any situation whatsoever.

Covid-19, the fatal disease that grew into a pandemic in this first quarter of 2020 has brought the fast paced progressive world to its heels. The medical emergency that has engulfed the mankind in its utter doom has proved to be a time for testing emergency preparedness of the governments of different countries and the real test of saving lives of citizens in the wake of a havoc wrecked by a microscopic enemy. The facade of great powerful nations being the world leaders marking the path for global politics to be pursued by other nations falls down as their incapacities get exposed and the social justice mechanisms collapse down into conflicts, tensions and poor preparedness amalgamating into a social disaster from a medical one. When the conventional establishment fails to keep up with challenges, the entire structure is threatened to collapse, but it is at this point of time that an adaptable approach needs to be used to deal with the situation.

The debate raging across the globe, percolating through various politically permeable ideological frameworks is that the recent pandemic and a microscopic strain – a virus has brought mankind to its heels, holding the seemingly innovative, modern world and its economic viability at ransom. The way Covid -19 situations has disfigured the conventional state mechanisms, ceased interpersonal interactions to bare minimum and implemented social distancing with the hope to save lives. While the inability to deal with a novel virus resulted in ruination of socio – economic functioning of the nations, on the other hand it simply exposed the already faulty system in many nations. While normal situation is simply a fallacy not to be held for long, coping mechanisms for situations of extremity are the most important parameters for scaling the efficacy of executive mechanisms of states.

NEED OF THE HOUR

Nations across the globe confronted with the neoteric virus that, escalating into spreading its fangs by way of contagion, scavenging as it preyed on human beings, quickly turned its face into a pandemic situation. With social distancing as the only feasible combating strategy available, strict lockdowns came to be implemented in a rush to save lives. Even amidst this crisis, what cannot be possibly neglected is the social justice factor – the backbone of a civilisation that sustains organised living in a society. In no situation, howsoever challenging it be, can justice get compromised or neglected in any way. Lockdown has emerged as a serious obstruction and in a world that is connected as much physically as it is virtually, social distancing looms big as a hinder to effective public policy execution and can very well corrode into injustice if proper precautionary measures are not put to force.

21st Century globalised world facing a pandemic that spreads through contagion and the important step to be taken lies in combating the viral spread through social distancing and

severing physical connections as much as possible. One would always find the lucrative and developed parallel medium of interaction – the virtual world that has actually emerged as real as the physical world itself. When this exists as a fruitfully applicable alternative, then distancing physically should not be an issue to ponder over at all but the situation has more overtones than reasonably discerned. While virtual world can be expansive enough to shelter a socially distanced trend, it cannot possibly be the ultimate solution. It needs to be understood that conventional transactions depend on physical interactions and the entire structure of employment can never go online. Agriculture still needs to churn out food to feed the masses, products to sustain life needs to flow through commercial channels of distribution , services , delivery, essential commodities need to reach people and this assumes even more difficulties with lockdown disabling people to fend for themselves. When people are barred from going out into the open and when markets are closed down to avoid congregation, delivery services turn out to be the need of the hour. As social distancing severs interpersonal connection and household becomes not just the place of rest but the centre of all activities throughout the day, home delivery and direct availability of items of essential importance starts relying on more elaborative channels of availability. In short, while isolation and migration to virtual world tries to sustain a part of social distancing, on the other hand there cannot be a situation where physical interaction can be ceased. This calls for government interference in easing out such a distress by effective balancing in public policy.

WHO – World Health Organisation called for particular emphasis on containing the spread of the virus and that nations should primarily prioritise this medical emergency over any other matter, but within this aggressive crisis handling situation, it needs to be kept in the rationale of public policy making that while saving lives, they have to provide for adequate provisions to secure them. While imposing restrictions and making stringent decisions to curb the contagious spread, human dignity at the micro level has to be respected – be it for people involved in the fight on the frontline or the people who have been locked down due to the same. Any policy can assume arbitrary tendency to secure its application in times of an emergency but this does not justify robbing anyone of their fundamental human rights, and it is here that social justice becomes most important. It is significant that while state employs all its methods to save lives, the ones for whom such steps are taken should stay in complete solidarity with the changing conditions adapting to an abnormal situation. In order to secure this solidarity and conformity to unconventional and crisis based regulations, the micro and macro level social justice needs of people and communities as a whole needs to be figured out and thoughtfully catered to as well.

Focusing on India in particular , the following have been some ways of coping up with this situation -

Digitising Courts –

While corona virus is being battled by medical experts in trying to save the loss of lives, socially distanced world cannot possibly allow occurrences of injustice and at the same time, it cannot be an excuse for disabling the judicial system of the country. When the courts were locked down and court premises emptied, it did not mean that the need for justice, remedying wrongs and questioning state actions by way of petitions would cease all at the same time. Hence Indian judiciary digitised itself keeping in mind the need for social justice in the era of social distancing. While lawyers suited up in front of their web cameras, honourable justices seated at their own houses gave the cases their requisite hearings and decided as well .This step is not simply one of the landmark adaptations in the crisis, but at the same time reiterates on that philosophy of social justice that cannot be compromised at any instance .

On April 6, the Supreme Court passed a seven-page order explaining the reason for moving online: "The Supreme Court of India and all High Courts are authorised to adopt measures required to ensure the robust functioning of the judicial system through the use of video conferencing technologies; and Consistent with the peculiarities of the judicial system in every state and the dynamically developing public health situation, every High Court is authorised to determine the modalities which are suitable to the temporary transition to the use of video conferencing technologies."[7] The step came at a time when a troubled medical emergency urged Indian state to implement specific legislations to save the situation. It is very crucial to note that when an unprecedented situation is encountered and the state assumes some rationally justified arbitrary actions only to smoothen its implementation of disaster management , different disputes centring around government – governed complex arises and takes the shape of conflicts when individuals refuse to conform. This digression can be treated either by punitive measures or by remedying any wrongful state action and reinstating the balance .E –petitions and online portals of case hearings have proved to be a boon in times of social distancing and securing social justice.

The pandemic could have very well paralysed the court system and injustice in terms of backlog of cases, inadequate representation, minimum or no scope of challenging any unjust or unfair state action, all of which are highly critical during an existing exigency. It is remarkable how this situation has prompted the digitisation as the need of the hour . Taking social distancing as an opportunity, higher judiciary mandatorily emphasised on the adoption of digital courts. This served as a progression into the era of modernisation , breaking through conventional systems , revolutionising the practice of litigation , coping up with the need of the hour and emerging out successful in sustaining social justice in these troubled times. While remote areas get connected by virtue of internet, paperless work boosts ecofriendly processes and work from home or rather plead from home substantially changes the notions involved in hearing pleas.

[7] https://indianexpress.com/article/explained/virtual-courts-robes-laywers-covid-lockdown-6412041/,last seen on 01/05/2020

Unhindered Education–

The philosophy of social justice is holistic in its application as it includes every sector to be considered at the broader level, while giving due diligence to individual matters of concern. With social distancing, the major impact was borne by the educational sector which in India still primarily relies upon the classroom facility, physical presence of teachers and students together in the interactive forum for dissemination of knowledge. With a quick metamorphosis into the virtual alternatives, even teaching went the electronic way, with online classes and socially distant learning coming to the fore. The authorities were really quick to judge the progress of this disease and the Governments acted well in advance, protecting the nation's real wealth that it has in its students as the future generation. However, the real issue came up when the transformation to virtual learning petered out the less privileged , discriminated against those students who are yet to equip themselves with the affluence of smart phones and laptops and unlimited internet connections. While education is the biggest priority for a nation, securing its unhindered percolation down to the most remote corners needs to be secured notwithstanding the current pandemic and it is in this effort that execution within obstruction works. The onus is upon the government to establish such mechanisms that would make operative executive immune to hindrances – in the case of socially distant education, the entire focus falls on internet connectivity and related issues like –

Safe and secured connection,

Stable connectivity,

Remote region connectivity,

Access to students and teachers to be supervised,

While these four points may be just basic to the establishment of a justified virtual teaching platform, there are more to it, which needs to be considered in every case specific situation .Indian classrooms do not portray the picture of a bunch of affluent kids armed with the technical expertise and availability of internet at their fingertips, that once the doors to classrooms are shut, parallel virtual doors would soon open up to take its place. Remote connectivity and stable connection come as issues to worry about, but firstly this needs to be checked whether at all some areas are connected with the requisite infrastructure. The rural population dynamic always suggests that students and job seekers out migrate and enter cities in search of a better life. Their life in the cities are supported with the abundance of technology which their homeland villages so despair of. When colleges were shut down and the students had to return back to their villages , internet came as a secondary concern while many still were yet to own a laptop or a computer or a basic smart phone to cope up with virtual timers. Educations should be the most important priority as sans it, any rational or moral progress would be stalled. In the era of social distancing, social justice has become a cause of worry from the cause of concern as, unhindered education demands shifting to the digital

platforms and at the same time revolutionising the entire gamut of higher education in the country . These challenging and tough times definitely calls for harsh and drastic steps to taken and quick decisions to be made but the entire process hangs loose in the inability of the system to adapt to the change quickly. Years of conventional continuity of long established systems and a wilful neglect on the part of authorities concerned to push for reforms in peaceful times looms big during the exigencies. When crisis calls for a coordinated and quick response, it is that neglect to change and inertia to stick with the conventionalities that becomes a hindrance bigger than the crisis itself. The same situation has occurred with the

education sector in terms of the Covid 19 crisis and the need to cope up with social distancing norms, that has finally given the long overdue impetus to distance learning and virtual online courses.

As the schools and colleges were forced to shut down, the continuance of education and course curriculum had to go online where students despaired of connectivity issues and in some cases felt the system too novel to be adapted to quickly. Online Classes were the first challenge and a test of time through which the students struggled through as the colleges rushed through curriculum to completion. Work from home became the new normal in the socially distant age and likewise online education too, suddenly transformed into the new normal. The transformation was quick and what was stranger was that while college infrastructure closed down, very less regard was shown and little consideration given to the new infrastructure that a student would need – a basic appliance and stable internet connectivity to continue with the new course of education that had suddenly began. Social Justice yet again failed miserably when students en masse reported inability to join and attend classes, disruptions in stable network and connectivity and often missing out on important e-notes and e-assignments that are regularly uploaded to various online portals for the students to work upon.

"The survey further said that nearly 50% students maintained that they were not able to access to reading material sent online by their teachers. Interestingly, 55% students responded that they did not have their reading material for classes held before announcement of pandemic."

-Survey conducted by Delhi University Teacher's Association (DUTA).

It is a problem if an alternative that is feasible does not get best suited to the people for whom it is so devised – here while online mode of education is for the benefit of the students, but ironically it is becoming a burden for them to cope up with . Meanwhile, these problems develop into dissatisfaction and outbursts if the authorities continue nevertheless. The second problem came up as the question of exams came to the fore, the evaluation at the end of any academic session.

"...They need to understand that it is absolutely unfair to ask students to sit for exams in the middle of a pandemic. Not only does the question of access arise but also about their psychological

circumstances. How is one supposed to concentrate on studying for exams when all they hear are the number of lives this corona virus has claimed? Moreover, some of these students or their family members could be infected by the virus, which just makes the situation more stressful for such people."[8]

- was reported by the Print, as a usable remedy and an implementation scheme during the crisis.

Going by this report there are certain observations that can be made –

1. Firstly the traditional system of an end term evaluation system that keeps the entire academic record held up by one single organised examination – obviously while lockdowns have been modified, but an examination with a huge congregation of students under one roof is not a reasonable thing to be conducted even if classes resume with social distancing norms.

2. Online examinations come to the students as a shock as it is almost as novel as the corona virus itself for the majority of students who are not even in the least, oriented with the process. This puts the blame once again on the conventional comfort of the education system that did not venture out into active adapting of new and virtual trends in India.

3. It is therefore imperative to scrutinise all the circumstantial conditions to which a student is subject to, before setting up any educational or examination scheme at an All Indian stature. While it is the duty of the state to ensure education to its citizens, it comes under the ambit of social justice protection that in time of a crisis, any arbitrary action that may have discriminatory overtones be curbed down *ab initio*. The Government needs to play a proactive role, as even though it is preoccupied with managing a bigger crisis of a pandemic, its reiterated that this cannot serve as an excuse to allow any injustice howsoever trivial it be.

Relief Work – As Disasters don't wait

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[8] John Rachel ,Indian educational institutes should break norms in Covid times, not conduct online exams,https://theprint.in/opinion/pov/indian-educational-institutes-should-break-norms-in-covid-times-not-conduct-online-exams/408660/

The country went into a complete lockdown and major work operations ceased, but does that mean a complete impediment to all sorts of activities? Can it justify that relief work or reaching out to people in times of crisis should also stop in the wake of a pandemic? The current socially distant world shouts out this question loud and clear – Is pandemic an excuse to do away with essential services or not extending help when and where needed the most. The timing of a pandemic has nothing to do with the otherwise exigencies that may arise and those which need special attention in usually normal times. We have considered some of these issues –

DISASTERS

With very few people turning up for work and scanty labour force, the authorities had been struggling to keep relief forces ready and active, while the cyclone Amphan lashed against the shores of Bengal and Odisha wrecking havoc on these states on the scale of national disasters. Densely populated coastal areas were saved by a plan of safe and early evacuation of the coastal dwellers and they were safely relocated elsewhere in shelter camps. While the cyclone destroyed the cities and left millions homeless, electricity, network and connectivity issues cropped up, almost disfiguring and marring the city with the relics of destruction leaving their trail behind. It is justified that the city and state authorities braced up for the catastrophe from before but again, when the storm calms down and the destroyed people start gathering their broken pieces together to once again start the struggle for life it is then that the issues of social justice comes up coupled with responsiveness of the Government to cater to incidents of crisis amidst a greater prevailing emergency, which cannot possibly be an excuse to undermine other areas of special interest. People however suffered due to the cyclonic storm and its devastation as the homeless were jam packed in close quarters where

social distancing was a myth , while power supply and networks were disrupted, people suffered tremendous pain with no water and electricity. The urban fabric in the city life despaired of bare essentials and people with special needs, sensitive health did not find a clue to help save themselves. Inspire of all the preparedness, a super cyclonic circulation warning from well ahead, the relief mechanism terribly filed and this was once again due to the prevailing pandemic, subsequent lockdown and social distancing. Effective planning should take into consideration that while the country reels under a bigger calamity, many other exigencies shall arise and that too need special focus and attention or else that would clearly amount to an injustice in the socially distant times.

Transportation – the need may arise

Buses and trains have always been bulging with people going out of their way to secure a little space for themselves, if not a seat to travel , in cheap and affordable means, but that however could not be

allowed as it meant to become a potential corona virus carrier hotspot so when the lockdown rules were devised, transportation – both public and private was ceased momentarily from functioning and hence the most important service in a person's life which cater to the basic need to commute and which also lays its importance in any emergency – mainly medical , stopped suddenly with no reasonable alternative being devised. E- Passes were obviously allowed to be made by people to go out during any essential need, but there was no transport to help them commute. The transportation being banned, people who do not own private vehicles were is disarray and often despaired to reach a place or cater to an essential need of the hour. While aged parents were separated from their young children ailing relatives were cloistered in their own residencies, and with a sudden lockdown, fear and anxiety spurt up among them as many others truly suffered from the lack of delivery services of essential groceries, fresh foods and worse still, medical assistance and help. This made the atmosphere ever more tensed for these suffering and ailing people. Special help, assistance and proper attention awaits in these trivial yet majorly significant sectors as these loopholes emerge as instances of social justice not being carried out in the era of social distancing.

A range of hundreds of indicators shows a worrying disruption in India's basic health services in March as local administrations focused on containing the spread of covid-19. These include curtailed immunization schedules, restricted inpatient, outpatient and emergency treatment for infectious and non-communicable diseases, reduced laboratory investigations, and lowered access to mental health treatment.[9]– was reported by LiveMint and this simply gives an insight into the prevailing condition of the country following social distancing.

This brings us to the conclusion of the thoughtful and critical introspection that while impediments may come, but it is imperative for the machinery of social justice to widen its application and have the citizens covered in any situation nonetheless.

CRITICAL ANALYSIS OF CURRENT SITUATION

Legislative Efficacy-

Corona pandemic or Covid 19 scare has not just been the most pathetic kick start to a new decade but has at the same time challenged nations in bringing out their optimum capacities in combating the deadly doom. While social distancing has emerged out as the only possible solution in dealing with it, on the other hand inadequacy of preparedness and the contagion containing measures have indeed come as a bolt out of the blue for the citizens of the countries. While the world has dissolved borders

[9]Rukmini, S, https://www.livemint.com/news/india/how-covid-19-response-disrupted-health-services-in-rural-india-11587713155817.html

in a war against a virus with solidarity of survival tendency, the same forces inclusion of borders of social distancing, isolation, home quarantine. At this point of a crisis management, efficacy of legislative provisions and procedural mechanisms need to be transparent, strict and armed with public support. It is worth mentioning here that in battling such an unprecedented extremity, it is significant to supervise whether the existing legislations are at all capable and up to date in handling the situation or is it just another impediment to efficacy. While challenging times need prompt action , adaptable legislations do quite a commendable lubrication in the executive processes. In case of India, however, the colonial era legislation of Epidemics Diseases Act, 1897 has not proved to be effectively viable in this newly encountered situation. On the other hand , Disaster management Act, 2005 may provide a perfectly structured organisation of battling a national disaster both at the macro and micro levels of administration , but at the same time leaves a void for situations of a pandemic specifically .

Medical facilities of a country can be progressive, technology can be blooming in health sector with powered investments and world help, other assistance may be provided to countries from different international forums, like World Health Organisation, but it ultimately rests with the respective countries to figure out how would they sustain their own unique societies, how could they secure social justice in the troubled disastrous times. The overarching medical protection given to the people or citizens would mean nothing if they can't live with dignity. A brilliant example in the current pandemic is social distancing as a measure to curb down the number of people getting affected with the virus – a measure of concern to save precious lives of the citizens. This however does not culminate here – what about their lives after saving them? It is indeed ironical that in developing nations, people who are entirely dependent on manual and physical jobs, small scale enterprises are getting wiped out of their employment and eventually starvation shall emerge out as a bigger concern than the corona virus. This is the point of dissension – whereby legal efficacy has significantly failed in not being able to provide adequate measures in the books of law.

With regards to a special emphasis on India , we have –

Epidemic Diseases Act, 1897

This colonial era legislation has surprisingly survived nearly one whole century and made its entry into the next 21stCentury, and is still used till this date to combat the novel pandemic. one of the most important weapons of the state is an enacted legislation- this is because it quite naturally instigates a wider and better conformity and has an obligatory application on the usually law abiding citizens. When a legislation is in force, it becomes easier for the state to implement its exigency schemes and easier for the citizens to adapt to the changes that keep happening as the crisis is dealt with. The problem arises when the codified law is not adept in dealing the situation for want of dynamism as a function of changing circumstances.

"The Act was formulated about 118 years ago and thus has major limitations in this era of changing priorities in public health emergency management. The factors leading to the emergence and spread of communicable diseases have also changed over the years. Some of the factors that need to be addressed now are the increasing rates of international travel, more extensive use of air travel compared to sea travel, greater migration within states for the sake of earning a livelihood, the transition from agrarian to industrial societies, increased urbanisation, grossly increased density of populations in certain areas, increasing intensity of contact with animals and birds, man-made ecological changes, changing climatic conditions, technologies of mass food production, breakdown of public health measures and bio safety lapses. The Epidemic Diseases Act needs modifications in the changing scenario. For example, it is too oriented towards travel by ship and silent on "air travel", which was uncommon at that time. The epidemiological concepts used in relation to the prevention and control of epidemic diseases have also changed over time. The Epidemic Diseases Act is not in line with the contemporary scientific understanding of outbreak prevention and response, but only reflects the scientific and legal standards that prevailed at the time when it was framed. To cite an example, the Act places too much emphasis on isolation or quarantine measures, but is silent on the other scientific methods of outbreak prevention and control, such as vaccination, surveillance and organised public health response. The political scenarios in the country and Centre-state relationships have changed. The Act of 1897, as such, is not sufficient to deal with the prevention and control of communicable disease in the current situation."[10]

The above observation delves into a critical evaluation of a pandemic management by a developing country that already despairs of advanced and well equipped health system. With the outbreak stealthily approaching the country , government was wary of handling the situation and it resorted to preventive social distancing measures from well ahead of time , but it becomes imperative that this redundant colonial hangover in the legal framework is done away with before crises emerge. Had there been provisions of effective pandemic management, better personal contact tracking, suitable 21st century ways of handling affected patients and managing the spread of this virulent disease, the cooperation of people would have been better aligned with the steps taken in public interest.

Our principal proposition rests with the phenomenon of social justice – it may mend its ways and change its application, but it shall always be a constant, there is possibly no alternative to it in any way whatsoever. The need of the hour is legislative efficacy, an overarching legislation that would govern all matters arising out of this crisis management approach of the nations. While issues of greater concerns catch the limelight of importance, people and their micro level hurdles should not

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[10]The Epidemic Diseases Act of 1897: public health relevance in the current scenario, Rakesh PS, ***http://ijme.in/articles/the-epidemic-diseases-act-of-1897-public-health-relevance-in-the-current-scenario/?galley=html***, last seen on 02/05/2020.

corrode in the oblivion. Proper addressing of all possible circumstantial obstacles need to be done to ensure that a citizen and his dignity is of prime importance to a nation always. At the same time it needs to be reiterated that medical preparedness for a pandemic is as significant as legal preparedness – to avoid ambiguity, mismanagement of affairs and incidents of injustice while battling out greater causes.

Artificial Intelligence and Cyber Safety

The dawn of civilisation has been marked by the distinct Darwinian philosophy – *Survival of the fittest*as reiterated in Indian scriptures as – *MatsyaNyay*. This means that in the race of survival, the weak and infirm fade out in the light of the progress which the mighty show. However this narcissistic struggle evolved its way into a cooperative struggle for the same cause and it is precisely at this point that societies or abstractly the idea of societal living emerged. Ever since then, progress of mankind has been shared and the benefits of advancement distributed for the greater good of humanity. 21st Century has witnessed such a remarkable progress as the physical world slowly got transferred into the wider virtual world, fathoming distance and remoteness. At the same time, Artificial Intelligence or AI is yet another landmark on mankind's route to excellence. While human brains have found a suitable partner in artificially stimulated intelligence capacitated mechanical beings, productivity has enlarged manifold. Work balance has shifted from sole reliance on manual physical labour to AI simulated technologically driven operations. At one hand while the civilisation celebrates this scale of development, on the other hand looms the threat of destruction, impediment and regression as occurred in the present pandemic. While the virus brought mankind to its heels, strategies of lockdown have stagnated production to minimise personal contact among people. The current situation finds its relevant alternative and a solution in machines – simulated mechanised handling of operations in whichever sector of economy possible has to be encouraged with whatever possible way feasible.

"*Digital transformation in companies will focus on new end-to-end customer journeys and we will see an increase in adoption of automation in manufacturing industries. They will also invest in enhancing employee engagement given the remote working model*" is a view expressed by Aarthi Subramanian, group chief digital officer of Tata Sons.[11]

While automation and simulated mechanisation may be the trendsetting indicators for a technologically brighter future, it has to be noted that periodic maintenance of such mechanisms have to be handled sans human aid or else any breakdown thereof would result in a failure in entirety. While manual and technical labour coordinates in usual times, at a time when covid scared people inside their houses, the dearth of physical aid to technical continuity made an alarming concern.

[11]https://www.deccanchronicle.com/technology/in-other-news/160520/investments-in-cloud-ai-and-cybersecurity-get-a-push-amid-the-coronav.html , last seen on 05/05/2020

When the machine stops –

Our dependence on AI and mechanisationhas to be sustainable as we progress and expand into our future plans of implementation. The balance of manual and mechanical has to be such that a complimentary cycle can be established in which continuity of operations can be ensured and at the same time there is a sufficient demand for labour force so that employment and job opportunities do not get dried up under the warmth of automation. It has to be pointed out that while this balance is essential it is also integral to social justice mechanism – the fact of ensuring employment cannot be neglected in the light of adapting to new and better technologies. In the present crisis situation when dependence on machines has increased manifold and social distancing enforces a curb on gatherings, issues of concern are growing. While at one hand, machines need to be fully equipped to replace labour in exigency or calamity situations, when work must go on unhindered and cater to situations of need, on the other hand it is pertinent to secure livelihood of people whose manual jobs the machines replace so deptly.Government schemes and guidelines for the private enterprises assume importance at this point because citizens seek a protection that the state is liable to guarantee them.

Cyber security in Troubled times

With Work From Home, online education and video conferencing becoming the need of the hour and the means to sustain in the struggle for existence, from a modern affluence , traffic has been bulging on our online portals . With increasing use , crops up the most obvious question – How safe is it?

The intriguing question found its quick answers in the data leak scandal that happened with a video conferencing app – ZOOM. While the country was becoming excessively dependent on these online applications to find a portal, socially distant yet virtually constant, the evil woes of a cyber attack loomed big . Social justice loses its application when this newfound alternative proves to be not viable enough.

Cyber security and its associated risks increase with more encouraged work from home. Proactive measures and an affirmative action may enhance user experiences and security for remote access, safety enabling opportunities for telework. Unprotected devices that are a sign of complete irresponsibility on the part of authorities concerned could lead to the loss of data, privacy breaches, and systems being held at ransom.

Organisations should:

• *enforce a consistent layer of multi-factor authentication (MFA) or deploy a step-up authentication depending on the severity of access requests.*

• *ensure identity and access management processes fully secure third-party identities access networks.*

• *have a comprehensive view of privileged identities within their IT environments, including a procedure to detect, prevent, or remove orphaned accounts.*[12]

The intervention of Government once again assumes importance here –

1. Companies and enterprises to have requisite security and insurances aided by the Government so that the risk of transforming the entire model of work is eased with a sense of confidence.

2. While safety measures are protocoled into every organisation, stricter cyber laws need to be ensured on the part of government so that retributive and corrective justice can be properly ensured to those who would be affected by cyber crime.

3. Crime rates in the cyber space often expands with lack of knowledge and means to protect ones self in the vast digital world. It needs to be ensured that if a fresh wave of digitisation is being operated in the country to encourage social distancing , it must be safe and people should not get frizzled out of its benefits for lack of know how.

Protecting the Protectors –

The Corona virus pandemic that has ravaged humankind with its novel composition , that seemed to be appearing immune to any method used by medical experts to eliminate it, rummaged through countries , almost waging a war against humanity. With their instincts of survival, people have devised ways and methods to prevent them from coming under the grip of this virus, but while this battle is going on, the frontline warriors this time are not the soldiers who tirelessly guard our frontiers, but our dedicated doctors, nurses, and medical personnel who have fearlessly embraced the looming fear of death that haunts them each moment as they devote themselves in the service of

[12] https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Risk/IE_Covid_19_flyer_0320.pdf, last seen 20/05/2020

those patients who are down with the disease. While at one hand the entire country is grateful towards these selfless warriors, at the same time this call for a proactive introspection that

How well are our protectors protected?

What duty do the countrymen owe to them?

Is the social justice mechanism fair to them?

Medical profession calls for these people to devote themselves in the utmost service during these times of critical medical emergency but that does not justify that they shall be left without any social or economic or life safeguards and be simply pushed to death while in active service. It has to be remembered that while an enthusiastic mind may compare them with the valour of the soldiers on the battle front, it has to be remembered that they never consented to death and neither does their service obviously entail such an uncertainty. In this present crisis while they have forgone such technical considerations, it is the duty of the State and its social protection schemes to have them fully covered and be prepared to extend protection to their families on the accident of their deaths. Country should align its governance more egalitarian during a crisis so that the pillars of a government stay strong and the people feel secured. Social justice loses its relevance when this sense of security is marred with impending lack of protection and often disgust, neglect on the part of authorities. While the medical personnel risk their lives for the sake of the country, they expect the minimum basic entitlement to a protection privilege that is upon the Government to analyse and accordingly apply. The scheme should be such that

1. It gives financial aid to the families of the health workers, who might embrace death in the pandemic,

2. It secures easy and free availability of Personal Protective Equipment – PPE suits to these personnel so that they can ensure their safety.

3. The protection should also include social protection- from the phobias they encounter as being perceived to be the carriers of the disease due to their close association with the patients of the disease.

4. Securing safe residence of the healthcare workers and arranging for their unimpeded transportation to their places of work.

5. With respect to sanitation and hygiene workers , ensuring that they are paid properly and if needed extending schemes of protection to their families as well so that the burden of livelihood eases on them amidst the bigger health crisis.

Surge capacity *refers to the ability to manage a sudden, unexpected increase in patient volume that would otherwise severely challenge or exceed the present capacity of a facility. While there are no commonly accepted measurements or triggers to distinguish surge capacity from daily patient care capacity, surge capacity is a useful framework to approach a decreased supply of PPE during the COVID-19 response. Three general strata have been used to describe surge capacity and can be used to prioritize measures to conserve PPE supplies along the continuum of care.*[13]

- Centres For Disease Control and Prevention mentioned about a kind of crisis based on their data. It soon grew into an alarming concern for all.

"Healthcare workers rely on personal protective equipment to protect themselves and their patients from being infected and infecting others.

But shortages are leaving doctors, nurses and other frontline workers dangerously ill-equipped to care for COVID-19 patients, due to limited access to supplies such as gloves, medical masks, respirators, goggles, face shields, gowns, and aprons."[14]

-World Health Organisation (WHO) reported this observation based on the current situation.

While at one hand, PPE and other protections need to be ensured if not clearly available; on the other hand, these fighters must not feel secluded and isolated in their duty bearing the struggle on their precious shoulders. While their selfless service is loudly applauded with voracious slogans and praises from all around the world and at the same time, from people in India, it now becomes an important component of Social Justice that these health workers do not suffer in any way. Gratitude or the attitude of giving thanks to the people who do something good is a moral virtue. It the current scenario, we are obliged towards these workers who are trying to save the humankind from this deadly disease, and when this obligation is neglected and in return they face insecurity, faulty

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[13] https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html , last seen on 20/05/2020.

[14] https://www.who.int/news-room/detail/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide ,last seen on 20/05/2020.

equipments of self protection and inability to house themselves in their own localities, disrespect and phobia from people , it is a shame on the people as a whole.

This once again opens up the question that forms the crux of the matter dealt with under this chapter – The Efficacy of laws, the applicability and the void or the feeling of insufficiency of laws in the tough times. Crisis period exposes the faults in a system in a way no other situation can. Hence it is pertinent that laws are amended and the need of the hour catered to, with a reasonable insight well ahead of time.

Employment -

Amidst a thousand uncertainties, the havoc of a pandemic, economy being worst hit in several centuries, inability to find a cure to the virus that spreads through a deadly contagion, there arises another bigger threat which almost puts the question on the national headline – Life or Livelihood? While the virus may spare a person, but will the pangs of hunger do that? While economy and production suffer from the blow that lockdown meted out to it , the insecurity of losing jobs – the means of livelihood comes up to break the confidence of a generation of workforce that had been battling a pandemic . Just as living a worst dream feels like , laying off has began and it is crucial for the government to play an assertive role in not simply protecting the lives of the citizens but also in trying to save their means of living a saved life. With the daily cost of living surging high in prices and increased expenditure on health and sanitation, it is crucial that the workforce of the country remain employed. Any doomsday in employment or any downturn in the demand and growth of jobs, especially among the educated youth and also among the rural youth force, both skilled and unskilled shall be detrimental to the country at large. Although it might seem as a petty issue of economic recession leading up to loss of jobs but one cannot avoid foreseeing the critical connotations that a large scale unemployment would trigger in the country – starting from crime rates to protests and eruptions of political temper, disruption the serenity of public support backing up Governmental plans and actions, it would all add up to the organised chaos simply making the management of the pandemic even more difficult.

While the rural and small scale industries that already suffer neglect and are not counted in the commercial affluence would perish, people employed at the clerical and junior levels of even big shot companies would suffer with scanty salary packages and reduced benefits, often cut downs on their employments. Sales and door to door service has already been stifling and it is needless to mention that while the crowded markets have ceased to exist, at the same time all that demand and bulk sales generating revenue and salaries for the employees and traders have been hit as well. With social distancing norms, resumption of the past model of buying would never happen again and the recession in their revenues will make its direct impact on the already underpaid employees. Several other sectors and especially the unorganised sector is suffering beyond imagination as the social security schemes seldom reach them and save them . While social distancing and the closure of

business has been a prompt and quick action on the part of Government to be a drastic measure to contain the pandemic , some thought and planning should have been invested in securing the livelihood of the millions who are under the constant threat of losing their jobs.

It is definitely a crucial time for not simply a country or a state; it is a challenge for the mankind who struggles and battles with a microscopic virus and retains its skills of outliving any challenge posed to it. As the people battle, their Governments guide and act as their guardians in this crisis. This is high time when social justice needs to be highlighted not as an allied consideration while framing a public policy, but rather, as the cardinal principle for modelling legislation or a policy. Job sector needs to be rescued and it is already late, so the Government has to jump in and offer packages, schemes, it needs to look after the needs and problems of business of varying scales, extend financial support and ultimately try to get the maximum possible proportion of population covered so that as the people are saved from the deadly virus , they are also saved from the deadlier pangs of hunger.

CONCLUSION AND RECOMMENDATIONS

A pandemic rummaging through countries and being too novel of its kind to be identified or at least combated spread with contagion and contact at a point of time when the world is most connected, almost conquering remoteness and vastness, reducing the world to a global village of sorts. At the same time the citizens struggled to adapt to changing conditions, the new norm of social distancing, losing human physical contact as more and more social isolation was encouraged, and the virtual shift in almost all sectors of working emerged to gulp the generation into the internet. Within this chaos was an underlying unity that humankind had been brought down to its heels , all the progress and achievements in the medical field held at ransom by a viral strain that know no bounds. The struggle was sudden and no one had enough time to brace up for it , but the undeclared war with an unknown and invisible enemy was being waged bravely and this time not by the valiant soldiers but by selfless healthcare workers.

One thing that might sound unrelated and too distal a worry taking the uncertainty and lethality of the disease into consideration is that how well is the mechanism of social justice functioning?

Or if at all it has been spared a thought within this situation of extremity?

Our paper attempts to explore the different sectors in which the justice or rather implementation and formulation policies and plan of action of the Government affects and the way these sectors are benefited or if they are yet to be benefited, maybe ignored as well. The usual collective of people cohabiting together that has been named as society has its unique segmental division and while at one hand this division has to be kept in mind during application of plans and

policies, on the other hand the response of people in unison, during a crisis matters equally important. Social Distancing is the New Normal – or so it is being claimed to be as the world prepares to fight the virus with losing physical touch, not crowding and dismantling physical contagion wherever possible and to whichever extent it can be led to. The change is challenging and so is the ability to change difficult. Caught in this whirlpool of a rapidly paced dynamism, significance of social justice increases ever more as the onus falls upon the Government to ensure that while the adaptability to the new normal is developed, people are not left without adequate protection or at least they are not deprived of the dignity of existence.

Injustice is not an incident that may take place; it is a progressive development of a negativity that may scar the phenomenal power of justice forever.

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SHOULD DEONTOLOGY IN DEFENSE BE A QUESTION OF LAW OR; OF FACT?

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ABSTRACT

As law students, we are well informed that the importance of the Law is to care and address the intentions and purposes of the legislative body (Legislature). Therefore, from the above purpose, the law should be founded upon the principles and values that are permanent, uniform, universal, conformable to justice and its facets and also not forgetting the feelings of humanity, and the indelible rights of a human being.[15] The common law judicature courts (England) in the realm of criminal law are not effective in deciding cases as it has an absurdly harsh view with regards towards the defendants in defences. As the courts believing in the archaic notion of; "it's better to suffer than be the cause of suffering," in a way that certain crimes cannot be forgiven since [**deontology**] has influenced some of the defences to be held absurd. However, this in turn leads to many issues inter alia; predominant inequitable treatment of the defendants in litigation which brings forth an irony while considering the fact that the judicial system prides itself with the foresight of 'equity and fairness', when the courts themselves treat the defendants inequitably due to this notion. **For that matter**, this article discussed; the meaning of **deontology** and utilitarianism, with references to the defences raised in various cases in order to show the absurd results and the reason to why **utilitarianism** should be embraced.

INTRODUCTION

Blackstone identifies a peculiar tension resting at the juncture of law and morality. As Blackstone notes, rights are "**indelible.**" Where a right exists, morality prohibits its violation. This prohibition extends even –and perhaps especially –to situations in which greater good can be accomplished by violating a right.[16] Deontology generally means the theory of moral obligation, and, by connotation, encompasses moral theories that emphasize the rights and duties. Also, Deontology may refer to a philosophical view that certain action done are not justifiable and are considered morally wrong. Deontological theories include moral theories of a vaguely Kantian stripe. Kant held that one should "act" in such a way that [one] always treats humanity, whether in [one's] own person or in the person of any other, never simply as a means, but always at the same time as an end."[17]A good example and contemporary one is; a fictional scenario in Avengers Infinity War when "Thanos" tried to destroy half of the world's population for the great good of the plant which may encompass things as not

[15]William Blackstone, Commentaries*2.
[16]See SAMUEL SCHEFFLER, THE REJECTION OF CONSEQUENTIALISM 80-114 (1982)
[17]IMMANUEL KANT, GROUND WORK OF THE METAPHYSIC OF MORALS 96 (H.J. Patontrans., Harper &Row 1964.)

stealing, killing or anything that is viewed as unsavory to society. This would contrast **utilitarianism** by Jeremy Bentham and J.S .Mill where it would be ok to do the unsavory act for the greater good. A real life example would be in "Bush Presidency"where by the shooting of the plane during the attempted attack on the Pentagon during 9/11 was justified despite the brutality and loss of civilian life in the plane.

Now it can be seen that the UK and the US to some extent follows the deontology theory while raising/claiming defences in such cases, whereby there is brutality involved as opposed to utilitarianism. As seen in **R v Dudley and Stephens**[18], by **Lord Coleridge CJ**, it was held that the killing and eating of a sick cabin boy to save the defendants was not a defence. Similar in **R v Axtell,** "where treason was not a defence to protect the victim if it involves killing the Monarch. More still, in **US v Holmes**[19] by **Baldwin CJ: -**it was held that the throwing of some the passengers overboard to prevent the boat from being swamped. Even in minor cases like **Southwark LBC v Williams,**[20]in this case the defendants were in need of housing, both having been forced to leave their current lodging, the defendants were chased from the houses they latter occupied and they could not rely on the defence of necessity to their trespass of the properties. Even though authority existed supporting the view that in extreme circumstances the preservation of life allows encroachment onto private property **(Mouse's Case (1609) 12 Co Rep 63)**, the facts could not support the appeal and it was dismissed. However, courts would generally try to use policy as a reasoning or a hypothetical argument ie; Lord Denning's argument on policy of pandora box though it is observed in these cases where the courts generally decide in a pro-Deontology view that is influenced by the Anglican /Christian view of murder being unacceptable.

It can be submitted that the courts should and ought to adopt a more of utilitarianism. When Jeremy Bentham, one of Utilitarianism founders, first coined the word in 1814,[21] "**deontology**" referred to the marshalling of self-interested reasons for agents to act for the general good." Essentially, this was a utilitarian theory of obligation, and was quite distinct from modern use. As looking at the precedents above it can be deduced that the defendants did not enjoy,in fact they did not want to do the illegal acts. Rather if a better alternative was given, the defendant probably would have chosen that route rather than performing that act . This was supported by the Carrado "**The Theory of Excuse**' and Robinson "**Criminal Law Defenses**; A systemic Analysis". This is why in certain jurisdictions like Italy, her Penal code Article 52 allows it to be a complete defence. Similarly, with the penal code in Germany as per sections 49 and 50.

Modern deontologists focus much attention on rights.[22] It might be thought that this focus is merely a preference, for rights are often taken to be correlative with duties. For example, where this relation holds, if I have a right not to be punched, you are under an obligation not to punch me, and conversely. Thus, deontology may be articulated through either related elements. Deontology is limited in principle. Even if deontology were ideally contextually sensitive and epistemically sound,

[18]R V DUDLEY AND STEPHENS (1884) 14 QBD 273 DC
[19]US V HOLMES (1840), 26 F. Cas. 360 (C.C.E.D. Pa.1842)
[20]SOUTHWARK LBC V WILLIAMS &ANOR. [1971] Ch.734.
[21]See AmnonGoldworth, Introduction to JEREMY BENTHAM, Deontology together with a Table of the springs of Action and the Article ON Utilitarianism.
[22]JOEL FEINBERG, RIGHTS,JUSTICE, AND THE BOUNDS OF LIBERTY (1980)

it still would be theoretically insufficient. Deontology simply is not a comprehensive moral theory, and thus cannot exhaustively account for our moral intuitions.

CONCLUSION

With these reasons discussed above, the courts of the common law jurisdiction ought to decide in a more utilitarianism view and be more compassionate to the defendants who committed the offence when it was necessary to be done. If other jurisdictions like; Germany and Italy could do and accommodate it, so to why not the English courts. With the philosophical view discussed

RECOMMENDATIONS

A good recommendation for the courts could be to approach cases with not only a utilitarian perspective, but also with references to the cases as above where the defendants did not have the cold blooded to commit the malice but instead are pressured to do so. In addition, it would be an irony if the courts themselves uphold the concept of equity, yet they are not flowing in the waves of equitable lines [in this very context, the courts would have behaved inequitably].

The Judges and the Jury alike should also go for training as a solution to be more sensitive to defendants who have committed a crime and at same time be more compassionate on deciding cases. In addition, the legislative and executive bodies ought to pass a legislation where the courts ought not convict a person who committed a crime in a necessity capacity as illustrated above and rather let them be free due to the prevailing unavoidable circumstances.

Also, as a social change I would urge the society to be more understanding to the defendants of a crime since it is needed in a way that it can be deduced that one of the reasons judges convicted the defendants was due to societies' influence/pressure, bold thirsty view towards those who committed crime. More public awareness campaigns should be made to be more compassionate to both parties in situations like this, schools and parents ought to teach this too as a way of transforming the younger generation in order /with the view to understand that most people do commit a crime out of necessity, not for the fun of it or with the criminal law factor of intention (mensrea).

UWA, RAPE AND MURDER: THE STANCE OF THE LAW

BY OMOH MONDAY OMOKHAGBOR

INTRODUCTION

These are the most dreaded and unprayed-for phenomena-rape and murder. Before I treat the two phenomena, I would like to throw some illuminating Lights on rape, rape as it is called, is a double edged sword that can Pierce from the both sides. It terminates the hope of the victim, it drains the courage of the victim. It is unarguably jeopardizing compare to whatever endemic disease, you can ever contemplated on. Yet, it can be contained and curbed in its entirety, as a menace. But it remains adamantly endemic in our contemporary society, because lingering efforts had not been put in place to do the needful.

This unfaithful, uncalled-for, uncared for, and undesired Visitor had profusely harvested from where it did not plant. It had reaped and stealthily stolen lives, joy, careers, dignity, courage, Fidelity, and pride. It had deprived brave men and women of their divinely endowned virtues. It had infused pessimism into multitudinous lives. It presence collapses a readily structured hope of brighter tomorrow.

Before I hit the whet nails on the Wood, I would wantto painstakingly define what the two imperative headlines are: Rape and Murder. According to Black's Law Dictionary, Rape in criminal law. The unlawful carnal knowledge of a woman by a man forcibly and against her will. From the definition, it is Crystal obvious that, rape is an heinous crime. Therefore, it would be pertinent to say that, it is an inhumane attitude against human. If this callous act is being recorded or seen in a well-meaning country, it is aim at disfiguring the reputation of such Country. In 2018, it was statistically proven that, Nigeria did records 2Million cases of rape annually. This is unheardful, but our Government had folded her hands against it. See M.C. v. Bulgaria, a girl who was almost 15 years old and a citizen of Bulgaria claimed that two men had raped her in Bulgaria. When the Bulgarian officers could not find sufficient proof to show that she was physically forced to have sex with the men, they closed their investigation. While the Bulgarian Supreme Court held that the member state(Police) ought not to have closed the case simply because of lack of substantial or sufficient evidence. So, it is a passionate suggestion of mine for the Federal, State, and Local Government to always swing to action whenever a heinous crime is bringing up its ugly head, to ameliorate wherever it is rising from speedily. Rape as a henous crime is not lacking in the Laws of Nigeria. According to S.357 of Criminal Code Act 2004, rape is any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.

Despite this, the stringent force of law over time did not hold magnetically the perpetrators of this devilish act. In the trending tragic, lamentable and deplorable occurrence-Uwa's rape. It is appallingly disheartening and profusely breathe-taking that such callous and inhumane act could still be recorded in this 21st Century. Although, it is amazing to have known that law is not silent this, and that the stand of the law is illuminatingly obvious to every person, as it is enshrined in S.357 of CCA, as cited thereup.

Cooperatively, the onus to finding the suspect(s) is on every person, and not the Forces of the FG only. As it is enshrined in S.20 of Administration of Criminal Justice Act 2015 ACJA, A private person may arrest a suspect in Nigeria who in his presence commits an offence, or whom he reasonably suspects of having committed an offence for which the police is entitled to arrest without warrant. So, this actually reposes the duty on every person to nose round for the culprit(s). Indubitably, it is also the constitutional right of the Police, as it is enshrined in S.18 of the ACJA 2015. In the long run, it is expected that, all hands should be on deck, to get the work of investigation and apprehension done swiftly. Although it is highly pertinent to opine that the Police Force have the Lion share on this note. Because in S.14(b) of CFRN, it was reliably and confidentially stated that the welfare of the people is the duty of the Federal Government. One of the Legal Maxims says, Saluspopulisupremalexesto "the welfare of the people is to be the highest law". Therefore, going with this, the onus is much on the FG and its agents(Force) to get the work done promptly. The Government should stand up to her feet in security wise, to ameliorate this alarming increase of rape, et al. This should be used as deterring means deter many other persons who might have probably been nursing such intention to dare the Law. In this, let Justice be got, justice and nothing but Justice.

It is tear-jerking to seeing that, the insecurity in the country is where it is, because the Government had refuted to sit up to tackling it with both hands, and to equally instigate some preemptive measures to curbing it, if possible in it entirety. In the case of Simon Okoyomon v. The State, in this case, the accused was charged with having unlawful knowledge of on Rose Ibio, a girl of between 11 and 12 years. And also, in Jos N.A. Police v. Allah N.A. Gani, in the case thereup, the victim complained that the accused "lied on me" the trial refused to accept that as substantial evidence for sexual intercourse. Albeit, the aforementioned cases are not focal points now, they were cited purposely to abreast with some facts of how challenging it is, in this part of this world.

Moreso, this issue of Uwa rape was not just a rape, as the records have it that, "after she was raped, her head was smashed dead in the very spot she was raped". It was what I called "a microcosm that imbeds macrocosm"(small factor that contains larger or many factors) that has it full length in this issue. It was a deprivation of fundamental human right (murder) as enshrined in S.33(1) of CFRN. This is one of the inalienable rights, to which every person in Nigeria as time being, being a Nigerian is entitled to. It states; "every person has a right to life, and no one shall be deprived intentionally of his Life. This, the evil rapist could not take an apt cognizant look at before he undertook his evil endeavour. It is also penned in S.319(1) of Criminal Code Act(CCA) that, subject to the provision of this section any person who commits the offence of murder shall be sentence to death. Therefore, having known the stance of Law, it is my agog pleading with the every person, the Police Force to hasten the investigation and apprehension and the Judiciary to

ensure Justice and nothing but Justice to be done on this issue, squarely. Whoever responsible for these heinous crimes must be brought to book, and coerce to face the wrath of the law.

The urchin(s) did not only infringed the Grundnorn but also some relevant statutes, Quarantine Act S.4, which confine the movement in everywhere in Nigeria, considering the intensifying nature of the pandemic novel Covid-19 in Nigeria. I credibly known, without being told that these offences were committed before the restriction on movements was lifted. Therefore, whoever would be caught as suspect(s) would be made to face S.5 of Quarantine Act 1929.

Nevertheless; it is a certainty that, if we do not take it stringent with the suspect (s), the posterity of the female genders in this young country-Nigeria would be placed on siege perpetually.

In conclusion; I would say, Nemomalus Felix "No peace for the wicked" that peace should not allow to dwell with the perpetrator(s) of this cruel act. I equally plead, still, that S.358 of CCA, where it is enshrined that, any person who commits the offence of rape is liable to imprisonment for live, with or without canning. That is a punishment for the offence of rape. And also the punishment for the offence of the crime of murder, as penned in S. 319(1) as aforementioned thereup. In this matter, it is a huge expectation on the Judiciary to ensure that justice is being endued at the end of this darkest tunnel. I hereby reiterate that, NemoMalus Felix, the perpetrator(s) of these evil acts should be left with no peace.

Traditional Technology and Patents in the Era of Green Industrialisation in Nigeria: Regarding the Disregarded

OluwatobilobaOlatunji[23]

Abstract

The paper discussed the advance the position that Nigeria's indigenous technologies present significant opportunities for local economic transformation and, to some extent, for global competitiveness. It also largely examines the relationship between Green Industrialisation, Patent law and Traditional Technology. This is with a view to identify the shift towards the Green Economy while examining the Indigenous Knowledge (IK) and TraditionalTechnology system of economies.

Keywords: Green Industrialisation, Nigeria, Patents, Traditional Technology, Indigenous Knowledge

I. INTRODUCTION

African countries cannot abandon "brown" industries – those that depend on oil, gas, and minerals – and create a green economy overnight. But they can use them as a tool to achieve a clean, sustainable economy.[24]As the world grapples with the challenges of globalisation, global warming and climate change; the latter two being the direct consequence of fossilised energy use, the new thinking globally is how to shift towards a green economy with emphasis placed on the use of non-fossil fuels (alternative and renewable energy).

The bane of the African journey is the sluggish movement towards industrial and technological development. It therefore means that Africa as a whole now has the twin problems of meeting her needs as well as looking for ways to develop, acquire

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[24]GBADEGESIN T.I. Project Syndicate: 'A Green Industrialization Strategy for Africa', 2019.

and deploy appropriate Alternative Technologies(Traditional Knowledge Systems) and Clean Energy Technologies. Proffering a green policy framework for the development of an appropriate integrated energy mix that will enable Nigeria achieve her energy targets without compromising issues of sustainable development.[25]

It is pertinent to note that the focus of this work is on evaluating the relationship between Green industrialisation and Traditional Technology while analysing the contribution of patent laws to green industrialisation in Nigeria.

II. STATEMENT OF THE PROBLEM

Industrialisation is not an alien notion to the Nigerian economy. The Greening aspect of it however, is a staggering innovation and has not been effectively incorporated into most development projects. The dreadful breakdown of non-traditional techniques in the agricultural, environmental, medicine and energy sector in Africa has made it critically necessary for Africa's policies to revert to its age-old Indigenous agricultural technologies. A clear understanding of the role traditional technology can play in the development of Africa and 'Greening' of the sectors, and ultimately the promotion of patents for green technology.

III. AIMS AND OBJECTIVES OF THE STUDY

This study seeks to attain the following objectives:

a. To assess the shift from modern techniques to traditional knowledge systems.

[25]Bubou, GM, Ogungbemi, AA, Jonah-Alu, LA &Ejim-Eze, EE (2010) 'The green economy paradigm: How can Nigeria make the shift?' In Proceeding of the "2nd International Conference on Renewable Energy for Sustainable Development in Africa", organised by National Centre for Energy Research and Development (NCERD) in collaboration with ENEA, Italy, held at Abuja, between the 27-29 July, 201

b. To identify and ascertain the relationship between green industrialisation and traditional technology.
c. To examine the role of patent law in the era of green industrialisation
d. To ascertain the reach of traditional technology in the medicine sector.

IV. GREEN INDUSTRIALISATION AND TRADITIONALTECHNOLOGY

A. An Overview of the Concept of Green Industrialisation

Industrialisation is not a concept that is new to the Nigerian economy. The Greening aspect of it however, is a staggering innovation and has not been effectively incorporated into most development projects. Green industrialization transforms manufacturing and allied industrial sectors by introducing more efficient, productive and responsible use of raw materials so that they contribute more effectively to sustainable industrial development.

In this paper, the definition,"green industrialization" is adopted from the United Nations Industrial Development Organization.[26] In that definition, green industrialization has two main dimensions: Industries that green themselves and; Green enterprises-that is, enterprises which offer environmental goods and services are created. With respect to the first dimension, industries can green themselves by the concept of decoupling.

At the enterprise level, decoupling is used to describe improvements in the use of materials, energy and water inputs, and/or a reduction in the release of pollutants, with respect to product outputs.For example, enterprises can: Substitute fossil fuels

[26]UNIDO, *Annual Report on Industial Development 2009*.

with renewable energy sources. This in turn improves occupational health and safety, reduces pollutant discharges and waste disposal to move towards compliance with environmental norms.

Industrialisation in its entirety to be understood, it is necessary that the concept of green technology is examined. This in turn would make the comparative analysis between the technologies in place, and the traditional knowledge systems clearer while emphasizing the role of intellectual property.Green technology is a general term often used interchangeably with "clean technology."[27] Other terms such as "environmental technologies," "climate related technologies," and "mitigation and adaptation technologies," or variations thereof, essentially refer to the same thing. To avoid confusion, the term "green technology" has been adopted in this paper and shall be taken to mean technology which is used, or may be used, to promote sustainability, reduce greenhouse gas emissions, or otherwise assist in the solution to climate change.[28]

B. Traditional Technology in the Era of Green Industrialisation

Rural communities in Africa are greatly endowed with Indigenous knowledge (IK) regarding how to carry out activities to ensure survival and over time notable progress in development has been made using this knowledge.[29] Many Indigenous people

[27] It is noted that the term 'sustainable technology' is not preferred as it suggests that the technology itself is sustainable rather than the technology being used to achieve sustainability

[28]Jonathan M.W.W. 'Developing and Diffusing Green Technologies: The Impact of Intellectual Property Rights and their Justification' (Unpublished Masters Thesis).

[29]Aluko, Y. A. 'Women's Use of Indigenous Knowledge for Environmental Security and Sustainable Development in Southwest Nigeria *'The International Indigenous Policy Journal*, 20189(3).

believe that there is a holistic interconnection among all things on the planet: animals, plants, natural forces, human beings, and the supernatural life. Indigenous modes of traditional farming, fishing, pastoralism and herding, foraging, and forestry are based on long-established knowledge and practices that help ensure ongoing agricultural diversity and the preservation of valuable landscape and seascape features, livelihoods, and food security[30]

Traditional Technology is sociologically perceived as reliant on Indigenous Knowledge systems (IKS). They are knowledge unique to a given culture or society; its techniques, methods of solving problems, manufacturing products. The widespread study of Indigenous Knowledge systems accept the idea that development efforts that ignore local circumstances, local technologies, and local systems of knowledge have wasted enormous amount of time and resources and would yield little success. This traditional approach usually examines problems in their entirety, together with their linkages and complexities relying on traditional values and the people, the culture, the knowledge they possess, their way of life etc. Globalization however hypes the importance and network of interchange. Information is diffused from one state or country to another and the influence and impact does not allow retention of local uniqueness. But in some instances the outcome of a newer version is better accepted.

[30] Food and Agriculture Organization of the United Nations [FAO], 2009

[31]Modupe, A. F., Adeyinka, A. T., &Aremu, J. O. 'Textile Industry InYorubaland: Indigenous Knowledge And Modernity In TheEra Of Globalisation'*Advances in Social Sciences Research Journal, [2018]*5(4),282-292.

The appalling failure of non-traditional agricultural techniques in Africa has made it critically necessary for Africa's agricultural policies to revert to its age-old Indigenous agricultural technologies.[32], in his study with the Ikale-Yoruba people, has argued that the utilisation of the Ikale's Indigenous Knowledge system enabled Ikale farmers to become the undisputed regional experts in food crop production in south-western Yoruba land during the period under review. He further argued that modern approaches to agricultural development in Africa will continue to fail unless they take into consideration Africa's home-grown innovative farming techniques and IK systems. In essence, Yoruba IK finds application and relevance in all spheres of human activity and forms the basis of development.

A careful examination of Yoruba intellectual traditions reveals the extent and ramifications of Yoruba knowledge, which, if properly studied, would reveal an uncommon commitment to inquiry, research, investigation, and the functional application of knowledge to solving human problems.

The first acceptable characteristic of indigenous knowledge is the component of knowledge from previous generations. Woodley[33] noted that, the knowledge set is influenced by the previous generation's observations and experiment and provides an inherent connection to ones surroundings and environment. The knowledge is characteristic of the local climate, flora and fauna, and cultural traits.[34] It is further

[32]Ogen, O. 'The Akoko-Ikale: A Revision of Colonial Historiography on the Construction of Ethnic Identity in South-easternYorubaland' History *in Africa*,200734, 255-271.
[33]Woodley, E. 'Indigenous Ecological Knowledge Systems and Development' *Agriculture and Human Values1991* 8 (1), 173-178.
[34]*Ibid*.

asserted that, indigenous knowledge systems is not transferable but provides relationship that connects people directly to their environment and the changes that occur within it. Further, indigenous knowledge systems is learned and identified by communities and people within a cultural context.[35]They noted emphatically that, this knowledge base is transcribed and understood by participants through actions, such as, production, methods, verbal through sayings and myths or cultural events which are unique to the community and environment.

The advent of globalization, many subsistence societies are fusing modern technologies with their traditional practices- Therefore traditional knowledge in a locale are influenced by "immutable mobiles" and adapted many cultures adapt certain aspects of this knowledge base to the characteristic in the zone.[36] The final method of modifying local knowledge systems is with the incorporation of ideas into existing knowledge system. AsoOke production in Yoruba land as understood by participants through actions such as production methods and cultural events which are unique to the community and environment follow these adaptations. The advent of globalization has further enabled the fusing of modern technologies with this traditional production practices and has become adapted. Modern ideas are also incorporated into existing knowledge systems to produce a new version that has further developed the economic interest of the industry.

[35]Bebbington, A. 'Indigenous agricultural knowledge systems, human interests, and critical analysis: Reflections on farmer organization in Ecuador' [1991] (8) *Agric Hum Values* 14–24.
[36]*Ibid*

Modernity is perceived in the context of change from an older trend to a more contemporary acceptable pattern or designs in aso-oke: in context, its production, design and marketing strategies. The word modern in its grammatical context is defined as something or occurrence of a present or recent time or times, of styles, in art, music, fashion, new and intended to be different from traditional styles. Modernity connotes contemporary, the condition of being new or modern. In defining globalization, various scholars have acceded to the idea of space/time compression.[37] In modern and postmodern literature, technology in its various forms is necessary for development and has accelerated the varied conceptions of globalization of international relations especially in the area of economic relations.

Globalization of different aspects of state and society in its various manifestations would not have occurred without the input of scientific and technological and accompanying structural changes. Science and technology are said to be inherently transnational, integral to the internationalization of the economic transformation of states especially through the influence of telecommunications technologies.[38]Grint expressly propounds on the fact that globalization is the capitalist enterprise envisioning the whole world as a unified system of the area and the peripheries, with the peripheries aspiring to adopt the political economy of the former

[37]Hartmann, L., Patrickson, M., Andrew Brown 'Organisational Culture London ' *Journal of Management & Organization*, 1995 *1*(1), 57-57.
[38]*Pearson* F.S., *Payaslian* S. (*1999*)

and with the gradual internationalization of the Euro-American socio-political, economic and technological cultures. [39]

It is further explained as the gradual connection between different societies.[40]Assessing the politics of globalised science and technology, it was asserted[41] that a fact of modern and "post- modern" life lay emphasis on the positive impact of technology on economic development, while further explaining that telecommunication technologies have accelerated the globalization of international relations albeit in the constant promotion of indigenous knowledge networking.

From the Nation state perspective, the centrality of science and technology in modern political economy is problematic. Weighing a two side to the coin, on the one hand, science and technology are the foundations for the structures of national industrial production, capital, and information capabilities, all of which contribute to national economic and military power and security; yet in facilitating the internationalization of economic relations, they also challenge the sovereignty of the nation-state.

The Effect of Traditional Technology and Medicine on the Corona virus Pandemic in Nigeria

Traditional medicine is the sum total of knowledge, skills, and practices based on the theories, beliefs, and experiences indigenous to different cultures that are used to maintain health, as well as to prevent, diagnose, improve, or treat physical and

[39] Advances in Social Sciences Research Journal [2018] 5(4)
[40]*Grint*, K. The Sociology of Work, (2nd edition), Cambridge: Polity Press 13(4)
[41] Pearson and Payaslian (1999)

mental illnesses.[42] Traditional medicine that has been adopted by other populations (outside its indigenous culture) is often termed complementary or alternative medicine (CAM).[43] An examination of the novel corona virus (Covid-19) pandemic and the measures taken to combat its widespread and eventual vaccination, suggests a shift towards traditional techniques. A fine example of this shift is China.

In China,traditional medicine is reportedly being used to treat patients with Covid-19, which emerged in the country in December last year. Hubei province health commission head Wang Hesheng said that treatment at Wuhan hospitals involves a combination of Traditional Chinese Medicine (TCM) and western drugs.[44] He added that TCM has been used to treat more than 50 percent of infected people in the province.

International drug development agencies are now looking at natural medicinal plants as sources of new drugs, a dimension known as 'bioprospecting'.[45] Today, a large section of the world's population relies on traditional remedies to treat plethora of diseases due to their low costs, easy access and reduced side effects.[46] Many

[42]WHO. Legal Status of Traditional Medicine and Complementary/Alternative Medicine: A World Wide Review. Geneva 2001.
[43]Gurib-Fakim, A.'Medicinal plants: traditions of yesterday and drugs of tomorrow'*Molecular Aspects of Medicine*, 2006 27(1), 1–93.
[44]CGTN:*Hubei shares latest in prevention and control of COVID-19* , 15-Feb-2020 Wuhan, China
[45]Isoun, T. T. (2005). Welcome address by the the Honourable Minister of Science and Technology, Prof. Turner Isoun, Presented at the National Conference on Traditional medicine and Intellectual Property Rights (IPRs) Organised by National Office for Technology Acqisition and Promotion (NOTAP) and Nigeria Natural Medicine Development Agency (NNMDA) held on 1-3 December at Sheration Hotel and Towers, Abuja [Internet] <http://www.prometra.org/Documents/IPRWelcomeAddressIsoun>
[46] . Brander, G. C., Pugh, D. M., Bywater, R. J. and Jekins, W. L. (1991). Veterinary applied Pharmacology and therapeutics 5th ed. ELBS &BaillereTindall, London. p. 79-122.

industrial drugs are derived as a result of knowledge got from folklore medicine.[47]There is therefore, a renewed interest in the investigation of natural products and herbal medicine for their active ingredients.[48]

Preliminary collated results for the evaluation of traditional medicines using protocols developed by WHO Regional office for Africa (AFRO) in the treatment of HIV/AIDS, malaria and sickle cell anaemia are reportedly very encouraging.The work of the Malagasy Institute for Applied Research (IMRA) on malaria has resulted in the discovery of a new medicine which is effective against chloroquine-resistant strain of Plasmodium falciparum[49]

Globally, countries have been slow to embrace green technology because of the lingering belief that environmental regulations erode competitiveness.[50]It may then be said that it is necessary for Africa to adopt a cautious approach in attempting large-scale investments in green technologies. The main problem with green investmentsis that costs were made worse by regulations. Investing in environmentally friendly agricultural equipment, for example, requires heavy upfront costs and the transition from the existing mode of production to the new one requires complementary technical innovation.

V. PATENT LAW IN THE ERA GREEN INDUSTRIALISATION IN NIGERIA

[47]George, C. F. (1980). Clinical pharmacology: drug development. Br. Med. J. 281: 1397

[48]Ranaivoravo, J. (2003). Laboratory and clinical evaluation of traditional medicines for care and treatment of malaria: Experience of the Malagacy Applied Research Institute. <http://www.afro.who.int/press/periodicals/healthmonitor/jan-jun 2003.pdf>

[49]Kasilo O.M.J. and Trapsida, J.M. 'Regulation of traditional medicine in the WHO African region,' *The African Health Monitor*, 2010 13, 25–31.

[50]Porter M.E., Claas van der Linde, 'Green and Competitive: Ending the Stalemate' *Harvard Business Review*, 1995

The growth of industrialization globally was helped and sustained in no small measure by the protection of intellectual property rights (IPRs), which ensured that every man had the right and potential to benefit from the fruits of his sweat and ideas. One of the mechanisms that has helped to ensure this consistent stride in the area of protecting ideas and inventions over the years has been the use of patents. From the earliest known grant of the Letter Patent under the Venetian Statute by the Italian province of Venice in the year 1474 and the English Statute of Monopolies 1623, the use of patents has gained global recognition in protecting new and inventive devices.[51]A patent is a right granted to anyone who invents any new and useful process or fundamentally impresses an existing process. In order to protect an invention it must be novel or essentially better in some way than what was previously made, or a better way of making it.[52]

In Nigeria, the Patents and Designs Act (PDA) does not define the term 'invention,' for the purposes of granting a patent. However, the Oxford Advanced Learner's Dictionary defines an 'invention' as 'a thing or an idea that has been invented,' or 'the act of inventing something.' It must be said that for our present purposes, the Advanced Learners' Dictionary define the term 'invent' as meaning 'to produce or design something that has not existed before.' This definition does not fully capture the essence of 'invention' in the context of granting of patents, because patents can be granted over something that has been produced before but later

[51]'History of Patent Law' at < http://en.wikipedia.org/wiki/History_of_patent_law>
[52]The Patents and Designs Act ,CAP P2 LFN 2004 (the 'Patents and Designs Act").

engineered to be applied in a different way in a manner that qualifies as an inventive process.

Consequently, an attempt to precisely define an 'invention' is perceived as unhelpful for the present purposes in accordance with the stance taken by the Court in *Crossley Radio Corporation v. Canadian General electric Co Ltd*,[53] in stating that: '*It would be idle to attempt a comprehensive definition. In certain cases, the decision must necessarily be the result of nicety. It is a question of fact and degree…depending upon practical considerations to a large extent rather than upon legal interpretation.*[54]

In comparing the practice of IP in Nigeria with the practice in other countries of the world, it is imperative to note that Nigeria is still very much reliant on the English Laws. Intellectual property laws have a distinct role in shaping both the development of technology in general as well as green technology.[55]However, the precise extent intellectual property rights shape the development of and diffusion of green technology is not entirely clear because few comprehensive studies have been conducted assessing the impact intellectual property rights have on the various categories of clean technologies.[56]

Due to the nature of the issue, it would be a difficult, if not an impossible, task to ascertain in empirical terms, the extent to which intellectual property rights have

[53][1936]D.L.R. 508.
[54]F.O. Babafemi, Intellectual Property: The Law and Practice of Copyrights, Trade Marks, Patents and Industrial Designs in Nigeria (2006) 348.
[55]While technology also has a role in shaping law (e.g. development of the internet and file sharing technologies and copyright law), this is outside the scope of this paper.
[56]INTERNATIONALCENTRE FOR TRADE AND SUSTAINABLE DEVELOPMENT, CLIMATE CHANGE, TECHNOLOGY TRANSFER AND INTELLECTUAL PROPERTY RIGHTS, 1 (2008)<http://ictsd.org/i/publications/31159/?view=document>

hindered (or encouraged) the development of and diffusion of green technologies.Interestingly, the greatest contributing factor to the increasein greenhouse gas emissions arises from industrial development; patentlaws encouraged industrial development because both were developedduring the commencement of industrialisation.[57] Although technology is often blamed for the cause of "man-made" climate change, it is also widely recognized as a solution to the same.

Technology and knowledge have played an important role in economic growth of major world economies like the UK, USA and emerging economies like the BRIC countries i.e. Brazil, Russia, India and China.Intellectual property through globalization and technological innovation has come to reveal an enticing allure in corporate strategy affecting company ratings.One of the consequences of global trade that started at the beginning of the 1990s in the developed countries was the creation of a deliberate connection between trade law and IP policies to use trade measures to curb piracy of intellectual property rights which led to the TRIPS Agreement.This agreement establishes global standards for IP protection that would be binding on both developed and developing countries which includes enforcement and border measures.

The benefit of intellectual property laws has been particularly recognized in relation to patent rights.[58] In order to advance the use of patent rights to promote innovation in green technology, a number of jurisdictions have launched "fast-track"

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[57]Derclaye, E. 'Patent Law's Role in the Protection of the Environment—Re-Assessing Patent Law and its Justifications in the 21stCentury'*International Review of Intellectual Property and Competition Law* (2009) 40, 249.

[58]Press Release, Intellectual Property Office: UK to Fast-track International Patent Applications (May 28, 2010), <http://www.ipo.gov.uk/about/press/pressrelease/press-release-2010/press-release-20100528.htm>

schemes for patent applications, which involve a green technology subject matter.[59]In June 2012, the People's Republic of China's State Intellectual Property Office (SIPO) initiated its fast-track examination scheme for inventions related to green development, which will cover inventions relating to low-carbon emissions, energy and resource conservation, and environmental protection.[60]

Under SIPO's "Administrative Measures on Prioritized Examination of Patent Applications," applicants would be able to request prioritized examination of their applications, and such an examination may be completed within one year from application. Japan and the United Kingdom's Green Channel scheme, launched[61] implemented accelerated examination procedures for inventions involving green technology.[62]The United States Patent and Trademark Office ran a Green Technology Pilot Program said to "*encourage [their] brightest innovators to invest needed resources in developing new technologies and help bring those technologies to market more quickly*."[63]3533 patents were granted out of 5550 applications pertaining to green technologies including greenhouse gas reduction applications pertaining to

[59]*Ibid*

[60]Peter Leung, Managing Intellectual Property, *How China's New Fast Track for Green Patents Compares* (2012), <http://www.managingip.com/Article/3064265/How-Chinas-new-fast-track-for-greenpatents-compares.html>

[61]U.K. Intellectual Property Office, *Green Channel for Patent Applications*, (2009)<http://www.ipo.gov.uk/pro-types/pro-patent/p-law/p-accelerated/pro-p-green.htm> accessed May 19 2020

[62]Japan Patent Office, *Outline of Accelerated Examination and Accelerated Appeal Examination* (2010),<http://www.jpo.go.jp/cgi/linke.cgi?url=/torikumi_e/t_torikumi_e/outline_accelerated.htm> May 19, 2020

[63]Press Release, U.S. Secretary of Commerce Gary Locke: United States Patent and Trademark Office, The U.S. Commerce Department's Patent and Trademark Office (USPTO) will pilot a program to accelerate the examination of certain green technology patent application (Dec. 7, 2009) (quoting U.S. Secretary of Commerce).

environmental quality, energy conservation, and development of renewable energy resources or greenhouse gas emission reduction.[64]

VI. THE WAY FORWARD: THE NEED TO EMPHASIZE TRADITIONAL SKILLS AND TECHNIQUES

This paper has largely examined and analysed traditional technology using green industrialisation as its mirror. The role of patent laws have also been considered. Therefore, it is only appropriate to posit that a fusion between the above subject matters has been established. The challenges that face the promotion of traditional technology is numerous as such, it is necessary that recommendations are given as to how to move forward:

It is wrongly assumed that African people are backward because the means of production known among the Europeans were not present in Africa or because our ancestors used different methods to build their houses, to farm, to dress and to cure themselves of physical or spiritual distress. To many scholars according to Okon[65], any movement to adopt and strengthen traditional technologies is backward and primitive. Such people Okon added, argue that the most pressing technical problems connected with man's earthly welfare have been solved through the use of techniques which are either very advanced or are related to traditional skills.

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[64]United States Patent and Trademark Office, *Green Petition Report Summary* (2012), <http://www.uspto.gov/patents/init_events/green_report_summary20120426.pdf> accessed 19 May 2020

[65]United States Patent and Trademark Office, *Pilot Program for Green Technologies Including Greenhouse Gas Reduction* (Notice Docket No. PTO-P-2009-0038), 74 Fed. Reg. 64,666 (Dec 8, 2009)

This view is based on five false assumptions: first, that research results, in any part of the world are international property; as such any country can demand and obtain access to them. Secondly, that all existing inventions can be readily transferred from their country of origin. Thirdly, that all our technology needs are such that could be fully satisfied from sources remote to us. Fourthly, that the economy of any nation can support the importation of technologies required to satisfy all her needs. Finally, indigenous technology is too rudimentary to be used even as a springboard for the development of the more advanced systems and processes required for the solution of many contemporary technological problems.

VII. CONCLUSION

There is a moral distinction to be drawn between traditional technologyand green technology. As discussed in this paper, there is an urgent need for theworld to make a joint effort to reduce greenhouse gas emissions and tomitigate climate change. Green technology is recognized to be the tool toeffect the mitigation. The fact that climate change affects every singleperson in the world and affects future generations is what sets greentechnology and traditional technology apart, and warrants special treatment.There is absolutely no doubt that intellectual property rights have animpact on the development and diffusion of green technology. Thequestion, however, is whether the impact impedes or facilitates thedevelopmentof the diffusion of green technology, and, if so, whether theimpact necessitates and warrants taking measures to improve development.

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GENDER BASED VIOLENCE AND ITS PUNISHMENT IN ETHIOPIA

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Abstract

The research discussed gender based violence against women which is the most extreme expression of women's unequal gender relations in the society. It is first and foremost a violation of women's human rights, and a global health issue that cuts across boundaries of economic wealth, culture, religion, age, and sexual orientations. Among such violence intimate partner violence, domestic violence, female genital mutilation/cutting, sexual assault, rape, marriage by abduction and early marriage are the most common in Ethiopia. Due to the existence of that violence Ethiopian women passed a detestable history from the imperial era till date. This article explored violence against women in the context of culture. Education of women, creation of awareness, amendment of punishments provided for gender based violence in the criminal law and effective law enforcement institutions are some of the practical strategies I recommend to mitigate the incidence of gender based violence against women in Ethiopia.

*Law student at Bahir Dar university school of Law, the author is very much indebted to Mr. Ofodum, Chukwunonso Charles (founder of African Law students association) who invited me to make this contribution, I would like to express my profound gratitude to my instructor Haile Guesh of Bahir Dar University school of law for his unrestricted assistance in every aspect to achieve my article. The author can reached at hailemariameyayaw48gmail.com

1. Background of the study

1.1 Introduction

As per WHO (World Health Organization) definition, violence is the intentional use of physical force or power against another person or group which has a high likelihood of resulting in injury, death, or sexual or psychological harm. Violence against women is a global phenomenon, coerced into sex or abused in her life time. Violence against women is perhaps the most pervasive but least recognized human rights abuse in the world. Women are frequent targets of both physical and sexual assault not only by strangers but by partners and acquaintances as well. Violence against women a global phenomenon, as more than one in three women worldwide is beaten, coerced into sex or abused in her lifetime. This violation of women's human right is reflected in international agreements such as the convention on the Elimination of All Forms of Discrimination against Women, Protocol to the African Charter on Human and People Right on the Right of Women in Africa. Ethiopia is composed of traditional societies that are particularly harmful to women. For example we have abduction, rape, early marriage, and female genital mutilation etc. within the existence of these traditional practices even if Ethiopia is the member of the international conventions I mentioned before but still women are the target of these violations. The study explores the prevalence and correlates of physical violence and rape and their measurements in Ethiopia.

1.2 Statement of the problem

In Ethiopia there are very limited studies conducted in the areas of GBV (Gender Based Violence). The studies that were conducted before mainly discussed gender based violence as the single part of women's inequality with men. However, there are very few studies undertaken gender based violence as a particular and a major topic of the study. Furthermore, they focused on a particular category of gender based violence such as early marriage, abduction rape and etc. therefore this article intends to fill this gaps by looking at gender based violence from the perspective of legal bodies, its punishments, victims of gender basedand violence health institutions to see major causes of that exposed young girls and women to gender based violence and its measurements by the legal institutions.

1.3 Objectives of the study

The objectives of the study are to examine the contribution of legal institutions in mitigating the problem of gender based violence , to assesses whether the punishments provided in the criminal code is sufficient to reduce gender based violence , to clarify the social, economic and political consequences of gender based violence against women and to identify the major cause of gender based violence .

1.4 Research questions

To achieve the objectives mentioned above, the study will answer the following questions;

1. What are the causes that increase vulnerability to GBV (Gender Based Violence)?
2. What are the negative consequences that females gender based violence victims will face during and after the incident?
3. Are the existing punishments available in the criminal code for gender based violence sufficient?

List of acronyms and abbreviations

WHO- World Health Organization
GBV- Gender Based Violence
FDRE- Federal Democratic Republic Of Ethiopia

Types of violence against women in Ethiopia

Abduction: it is a cultural practice of taking a girl as a wife by force, which is against the guaranteed constitutional right of enteredin to marriage by their free and full consent as clearly provided under art 34(2), we can also see art 35(5) harmful customs, laws and practices that oppress or cause bodily or mental harm to women are prohibited.[66] But there are a number of women who entered into marriage without their consent especially those who lives in the rural areas. Statistics show that in the region of Southern Nations, Nationalities and Peoples, 87% of women enter in to marriage through abduction. We can also see art 587 of the criminal code which tells us abduction of a woman is a crime irrespective of the conclusion of marriage afterward.[67] The second most common violation of women's right is early marriage which refers to any marriage where either or both of the spouses is younger than 18

[66]Constitution of Federal Democratic Republic of Ethiopia, proc No. 1/1995, art 3492).
[67] Criminal code of Federal Democratic republic of Ethiopia, proc no. 414/2004, art 587.

years old. But it is very rare to see early marriage on the side of men in Ethiopia rather it is most common practice on women. Although this violation of women's right practiced in the nation as a whole, statistics show that rates differ from region to region. For instance:

Amhara-82%

Tigray-79%

Benshangul- 64%

Gambela- 64%

Afar-46%

It can be claimed that any early marriage is abduction as the child is not old enough to make fully informed consent. This early marriage is also a crime as provided under art 648 of the criminal code of the federal Democratic republic of Ethiopia. The other one is female genital mutilation which means cutting or removing parts or all of the female genitalia. It is usually undertaken without anesthetic, which leads to serious infections, serious problem during sexual intercourse and child delivery. This harmful practice is prohibited and recognized as a crime under art 565 and 566 of criminal code.[68] The other is sexual harassment which is unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature by people with some form of power over the victim. It is usually common in the workplace and schools. It is also a crime and prohibited act as provided under art 624 and 625 of criminal code.[69] The other one is trafficking which recruitment, transportation, is harboring and receipt of people for the purpose of slavery, forced labor, servitude and exploitation. Women are usually trafficked for forced prostitution and forced labor. This act is also a crime as provided under art 635 of the criminal code.[70]

The last but not the least violence against women's right is rape. Webster's dictionary (1975) defines it as the illicit carnal knowledge of a woman without her consent, effected by force, duress, intimidation, or deception as to the nature of the act. Allison Morris,in her book women, crime and criminal justice, writes of rape as motivated by anger(involving an expression of hostility towards women and a desire to humiliate them) and power(involving the assertion of dominating over women).[71] Shortly rape is

[68] art 565 of FDRE criminal code
[69] art 624 of FDRE criminal code
[70] art 635 of FDRE criminal code
[71] Allison Morris, women ,crime and criminal justice

forced, unwanted sexual intercourse with a girl or a woman without giving her consent.

Cause of rape

even though the potential cause of rape are varied and controversial, because of personal and cultural beliefs as well as economic status, the most commonly attributed cause of rape are inequality in gender power relations and the anger and sadism of the rapists. In Ethiopians case there is a range of other complex contributing factors, such as culture and tradition, poverty and war. Culturally transmitted assumptions about men's dominance over women, men's power over women, etc. contribute highly to the ever increasing number of rape cases reported. Ethiopians are defensive about any criticism directed against their society. They are proud of their culture or social system and they don't appear to want to change it. Even when women speak about violation of their rights, they are told that they are becoming 'westernized', even by those who are educated. Ethiopian culture tolerates sexual violence against girls and women. Kidnapping and the concomitant raping of a woman, as one way of acquiring a wife, is a common occurrence. The social acceptance of this practice has created conducive situation for the rapid rise of rape in the country.

Poverty drives women and children into streets which make them vulnerable to rape. Rape is used in most wars as revenge against certain races, ethnic groups and religious communities. This happened in almost the wars that history known in our country.

Consequences of violations of women's right

Because of abduction and early marriage it leads to termination of women's education and cutting of opportunities to get educated. It also leads to disagreement and eventual divorce or separation, thereby creating instability and disturbance within the family, it also impact on sexual health of girls, pain associated with sexual intercourse as a result of psychological and physical immaturity of their sexual organs, complications during pregnancy and child birth such as fistula and other problems.

When we see the consequences of rape which is the main issue of the article, we can classify it's consequence as psychological, social, economic and health problems.

Since the raped women suffers some degree of physical injury and threats of violence compounded by the presence of weapons and intimidating verbal abuses by the rapists, they will face psychological consequences like fear and phobia, self-blame,shame,loss of control over oneself, confusion, hatred towards men, diminished self-esteem, fear of being alone, thoughts of suicide, desire for revenge, etc. Because of rape is associated with social stigma, the victims lose their dignity and respect in society. They also find it difficult to participate in social activities, as a result of which they alienate themselves from society. In rural areas, when a woman is abducted and raped, she will no longer get a husband unless her rapist marries her, which of course will add to her misery. She will run away cities where nobody knows her, only to face prostitution, streets and other social problems. Since women are the highest portion of one's country population their participation is very essential to achieve the development of one's country. So in order to participating women, education is mandatory. But among the primary reason of why girls do not pursue their education in Ethiopia is because of they get raped on their way to school or fear of being raped. These and other related short comes leads to the exclusion of women from participating national development program.

Rape brings significant health problems to women, especially it cause to unwanted pregnancies and transmissions of STDs including HIV/AIDS. In addition to this as we know in Ethiopian law, there is no provision for the right to abort even in cases of rape, as women cannot legally abort, they are obligate to resort to illegal and unsafe options, usually carried out by incompetent people, they suffers infections, perforation of uterus, and torrential bleeding and even they may be lost their life.

Extent of rape in Ethiopia

As we know currently everybody is stay in home due to the COVID-outbreak, and the vulnerability of women to rape is highly increase. Even if rape in, Ethiopia is one of the most unreported crimes due to the prevailing attitude that it is shameful and degrading to the victims, but women child and youth bureau of Addis Ababa city administration reported that 183 girls were raped within one month. Among the raped girls some of them were raped by their fathers, this is so sorbid and impiousness.

Punishments puts on the criminals who commit gender based crime against women in FDRE criminal code and other statutes.

As we can read from the preamble of the criminal code of the federal Democratic republic of Ethiopia the main cause of amending 1957 penal code is its failure to acknowledge the grave injuries and sufferings caused to women and children by

reason of harmful traditional practices. And as clearly provided under article one of the FDRE criminal code the purpose of criminal law is the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes.

Know let us see the provided punishment of harmful traditional practices and violations against women. When we see punishment for crimes of female genital mutilation as clearly provided under art 565 of the criminal code whoever circumcises a woman of any age, is punishable with simple imprisonment for not more than three months, or fine not less than five hundred birr.[72] It is so slight punishment compared to the crime. Because the crime cause physical injury and it has no any benefit for girls. The other one is punishment for abduction of a woman as clearly stipulated under art 587(1) of the criminal code, states that whoever with intent to marry a woman abducts her by violence, or commits such an act after having obtained her consent by intimidation, threat, trichery or deceit, is punishable with rigorous imprisonment from three years to ten years. It is also not as such heavier punishment since the crime is against women's right of entering in to marriage by their free and full consent. We can also see article 588 of criminal code abduction of an unconscious or defenseless woman, whoever knowing her conditions, intentionally carriers off an insane, feeble-minded or retarded woman, one not fully conscious, or one who is incapable or has been rendered incapable of defending herself or of offering resistance, is punishable with rigorous imprisonment from five years to fifteen years.

When we see punishment for early marriage as provided under article 648(1) and (2) of the criminal code, whoever concludes marriage with a minor apart from circumstances permitted by relevant family code is punishable with rigorous imprisonment not exceeding three years, where the age of the victim is thirteen years, where the age of the victim is thirteen years or above, or rigorous imprisonment not exceeding seven years, where the age of the victim is below thirteen years. Again the punishment is not enough compared to the consequences of the crime on the girls as i mentioned before. When

When we come to the punishment for the crime of rape which is the main issue of the article, as clearly provided under article 620(1) of the criminal code, whoever compels

[72] article 565 of FDRE criminal code

a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from 5 years to 15 years. Look, it is very slight punishment compared to the psychological, social economical and health problem consequences on the women as I mentioned before. Not only this even if the crime is committed on young woman between thirteen and eighteen years age or a woman of incapable of understanding the nature or consequences of the act, or of resisting the act, due to old-age, physical or mental illness, depression or any other reason or by a number of men acting in concert, or by subjecting the victim act of cruelty or sadism, the punishment is rigorous imprisonment from five years to twenty years as provided under article 620(2)(a, c and d) respectively. Where the rape has caused grave physical or mental injury or death, the punishment shall be life imprisonment. It is so unjust and unfair when the punishment is only life imprisonment for those criminals who causes the death of girls due to the crime of rape.

We can also see 2014 code of conduct on the prevention of school related gender based violence in schools enacted by ministry of education, as provided under article 4(2(15) cum article 5(a) of the regulation punishment for rape committed in schools is prohibiting from attending in any schools in the country for 5 years. It is so very slight punishment and seems to encouraging the rapist.

Recommendation

Other than giving affirmative action without give attention to the protection of women's right, government should give focus and attention to the gender based violence against women especially rape and the section of criminal code which govern rape should be amended by the special statute and impose heavier punishment like death penalty, or castration and at least life imprisonment on case by case method, Unless otherwise we can't extinct or diminish the crime of rape.

Finally, I suggest that government should strength the role of the judicial system, particularly the police, judge and prosecutors through training on enforcement of law.

Conclusion

Generally, even if girls are vulnerable to rape in anytime throughout the country due to the slightness of the punishment but their vulnerability to rape during stay at home rule is much more than anytime else. And we are not sure that up to when the COVID-19 will sustained and other COVID-19 like pandemic will not come in the future and

so as to minimize and eliminate the crime of rape and other gender based violence against women the punishment should be amended and impose heavier punishment on the criminal.

JUNGLE JUSTICE/MOB ACTION; ILLEGAL APPROACH: THE LEGAL PACE

Arthur: Unknown

INTRODUCTION

"This is not purportedly written to foment gross-misconduct{s}, Criminality and its callous brothers, but to avert the incessant breaching of the citizenries' fundamental rights to life, and right to fair hearing".

Empirically, before the definition of the soulless and illegal term[Jungle justice/mob action] is given, I will like to state paraphrasingly, Chief GaniFawehinmi [SAN]: "it is unlawful to be lawful in a lawless society. He concluded that unless government is ready to obey Court Judgement, not minding whose ox is gored, this act of lawlessness and impunity called Jungle justice will continue in great proportion". The words of the ever celebrated Legal Lord were not without reasonable substance that ought to have propelled total adherence to the laws. The truth is that, every person is seeing the country from his standing pole. Like seven blind men who were told to cut the elephant from the neck, everyone of them started cutting it from where his hand could touch, believing that that was the neck. That is the situation of some Nigerians. Until Nigerians see one thing from the stand point of law, this, and many other lawless acts will persist in their coexistence. Personally, I see jungle Justice as an unlawful illegal or non-judicial killing of suspect who is alleged to have committed a criminal offence.

Authoritatively, according to Black's Law Dictionary, Jungle justice or Mob Action is an assemblage of many people, acting in violent and disorderly manner, defying the law, and committing, or threatening to commit, depredation upon property or violence to persons. Lamentingly, it is so sad enough to always see persons executed with this cruel tool of unsocial and illegal engineering maliciously under the cover of keeping side with law, deliberately taking law to their hands. As it was once said by Barr. OkekeOnyekabuchi; "jungle Justice is not justice at all, but a travesty of Justice, since it does not guarantee fairness to anyone". Truly, jungle Justice/Mob Action is a threat to the elementary rights of the citizenries. It slaughters human right upon the altar of exasperation and infuriation where Justice is always voided.Over the years, Nigeria had recorded countless number of the cases of jungle Justice/mob Action, which had glaringly thrown some muds on the living and dying fame of the country.

Conspicuously; it is always a deliberate attempt by some societies in Nigeria to addictively perpetuate this callous act, basically to smuggle the rudimentary rights of the citizenries. Jungle justice/mob Action had maliciously infringed the law by jumping above the edge of protection around the Citizenries. As it is enshrined in Sec.33[1] CFRN 1999 as amended; every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. As it is obviously stated in the section and subsection thereup, no person has the right to take the life of another person in the name of keeping side with law. Except if such person was convicted by a Court in Nigeria for a criminal offence, the killing which can only be done the law enforcement agencies and not ordinary person. Therefore, any other person found functioning in this cadre is breaching the fundamental right of life of that person who such action was taken upon/the victim. Such

perpetrator of this act had taken the law into his hands, and had to be brought to book for the lingering wraths of the law have its way.

Credably, I know that, it will not be extraneous to opine the manner with which suspect(s) are to be arrested, as it enshrined in Sec.20,21,22,23 of Administration of Criminal Justice Act, ACJA 2015, it is legally required, stating Sec.23[1][b] that a private person who arrests a suspect without a warrant shall immediately hand over the suspect so arrested to a police officer, or, in the absence of a police officer, shall take the suspect to the nearest police station, and the police officer shall make a note of the name, address and the other particulars of the private person making the arrest. And where there is reason to believe that the provisions of section 18[1] of this act, a police officer shall re-arrest him. Also Sec.18[1] which states the right of police officer to arrest suspect without warrant. So, it is not constitutionally and legally expected of the society to exert their infuriation in this cruel form, but rather to also play the role of a watchdog and a predator seeking prey to feed on. It shall be worthwhile to say that, any person/society shall be made to face the dreaded wraths whenever this is breached(that is, the commission of the heinous crime: murder). This parchydermatous act {Jungle justice/Mob Action} is not just an infringement of the citizenries right to life but also that of fair hearing. As it stands out in Sec. 36[5] CFRN 1999 as amended; every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty: providing that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts. Even in Sec.6[a,b,c,d&e], the considerations and chance to be given to the suspect are aptly stated therein.

Infallibly, I fearlessly want to say that this practice is anachronistic, archaic, illegal, local and antique deterring approach. It is a soulless that should have been abhorred and detested, which knowingfully well the Constitution is not in alignment with it. Trial by ordeal as it is legally known as banned approach of punishing those culprit of a particular criminal offence, settlement of disputes between two parties. But, favourably speaking, the law had silent, taken the deadly stings of trial by ordeal[Jungle justice/mob Action] in its entirety, as it can be seen in Sec.208 of Criminal Code Act, CCA 2004: Any person who directs or controls or presides at any trial ordeal which unlawful is guilty of a felony, and is liable, when the trial which such person directs, controls or presides at results in the death of any party to the proceeding, to the punishment of death, and in every other case to imprisonment for ten years. Affirmatively, having unearthed the masked face of the law on whoever[any person] that is perpetrating the heinous act. It will be pertinent to also state why suspect shall not even be tortured as it can be found in Sec.8[1][a][b] ACJA 2015: A suspect shall: be accorded humane treatment, having regard to his right to the dignity of his person, and not be suspect to any form of torture, cruel, inhumane or degrading treatment. Written thereup must be observed and not by burning God's Creation to ashes without properly judicial trial(s). I see this soulless act as a premeditated act of wickedness. I holistically plead that the law and the law enforcement agencies should not be silent over this. For, it rubbing the parched image of the underdeveloped young country [Nigeria] in the muds, and it shall continue to be, if pre-emptive legal measures are not taken to tackle it timely. Although I do see this atrocious local administration of Justice [Jungle justice/mob Action] as what can be referred to as "homo hominilupus[man (is a) wolf to man] in legal Maxim. So credably, it is an exertion of the element of evil/the evil tendency in man. It is high time this atrocious act is deterred and extirpated in its entirety, if Nigeria must sustain, obtain, and attain the civil and democratic cadre in the international societies.

This soulless act had grown over times and it had been in existence over the years, and its incessant spreading/increment is vehemently threatening the legal development of this Country. Because, if this is yet practised and seen in this country, it therefore means that the clench of the law cannot apprehend the fomenting strength of criminality. And it will always make the law in this part of the world seemingly susceptible and feebly enacted that hold the wrist of crime. This also has more answers to give to the most prevalent questions of; where are the fundamental rights? Where is equity? Where is democracy? Where is the civil society whose lubricated wheels ought to have been the law? Nevertheless, if these questions thereup can be answered favourably, we must say NO to jungle justice/mob Action and unmuffle the mute Constitution/laws of the country that deal punitively with this parchydermatous display of wickedness. Over the years, Nigeria had recorded countless number of Justice justice/mob Action, just five months ago, it was revealed by Daily Trust Newspaper that No fewer than 104 persons have fallen victim of jungle justice in at least 26 of the 36 states of Nigeria between January and December last year [2019]. A review of Newspaper reports by Daily Trust indicates that out of the number of victims within the period, 73 were reportedly killed by mob Actions, while 31 others sustained various degrees of injuries from incidences of severe beatings. Some of the victims which were suspected to have committed crimes such as armed robbering, kidnapping and other related actions, were either stoned to death or set ablaze in the process at the very spot of commission. The cases of jungle justice/mob Action were in high proportion and incessantly occur in Lagos and Bayelsa States, followed by Abuja, Cross River, Benue and Delta States. The other States where cases of Jungle justice/mob Action resulting in deaths and injuries to Victims were documented are Anambra, Ondo, Katsina, Ekiti, Edo, Enugu, Abia, Kwara, Oyo, and Nasarawa States. Others are, Ebonyi, Zamfara, Kaduna, Imo, AkwaIbom, Kogi, Nigeria, Ogun, and Plateau States. Among persons that fell victim were Police officer, one-chance robbery suspect, suspected motorcycle thieves, allegedly homosexuals, and cattle rustlers. One of the eccentric incidence of jungle justice was reported from Liokom Village in Wanihen Community, Yola Local Government Area of Cross River State, on may 29, 2019, where a man was allegedly buried alive by angry villagers for beheading his elder brother. Daily Trust Newspaper also revealed another outrageous incidence of Jungle justice that was done on a young boy identified as TemitopeAdeoye who was burnt to death after he was said to have been falsely accused of being a thief at Cele-Ijesha Area of Lagos State on Monday, February 11, 2019. Temitope, who worked at Tin Can Island, Apapa Port, was on his way from the Office that evening, when he met his death ugly. He was said to have highlighted at Cele-Ijesha Bus-Stop, and was about to mount the commercial motorcycle that would have taken him home when some boys in the area shouted “thief, thief” and pointing at him. Before he could say anything, he was rough handled, beaten up, stabbed and then set ablaze-what a man cruety to man! The jungle justice case I shall not forget in a hurry is the disheartening case of four students of the University of Port Harcourt in Nigeria on October 5, 2012, who were beaten and burnt to death by Lynch mob, for allegedly stealing a Blackberry Phone and a Laptop. Also, in 2012, a little boy was burnt alive at Surulere, Lagos after which it was said that he merely alleged to steal.

Unapologetically, I deem it pertinent to abreast us with some courts Cases and some Legal masquerades’ relevant assertions/obiter dictum cum judicial precedence. A legal practitioner, AbubakarSani once said, Jungle justice is a criminal offence. He said “if a suspect or any person is found committing an offence, the only power you have under the law is to apprehend him, if you can and handle him over to appropriate law enforcement agencies”. The extract above was aptly asserted, because the only legal duty the society on suspect for a particular crime is elementarily to bring the suspect to book and not to prosecute. Justice Muhammad of the Nigerian Supreme Court, in the Case of Spiess V. Oni has this to say: “my noble Lords law is meant to provide peace, security, protection, Concord and purposed co-existence amongst citizens. No reasonable society will encourage resort self-help for whatever reason and not certainty on mere suspicion”. These purposes of the law as so opined by the erudite learned justice of the Supreme Court of Nigeria had

over times been infringed with impunity. Also, in one of the celebrated case of Kaza V. State; the supreme Court vehemently frowned at the lynching of a Muslim by his music brothers who accused him of insulting prophet Mohammed and slaughtered him on the out-skirts of the city as a result. In dismissing their appeal and upholding the sentence of death by hanging imposed on them by the High Court of Kebbi State for culpable homicide, the Supreme Court condemned the evil of mob Action/jungle justice.

Suggestively; having known that it will not be out of place to suggest some pre-emptive measures that can ameliorate this callous act. It is my discretion that these followings shall go a long way to restoring the hope of this evil-inhabited-society[Nigeria].

[1] Educating the society about the requisite laws, duties and punishiments. It is almost a general beliefs that, if the masses can be inculcated and educated about the law requires of them, their duties and the punishments that follow when these law is infringed upon. The socitey would sit-tight, and thereby relinquish taking the law into its hands.

[2] The Criminal Justice System in the Country {Nigeria} must be reinvigorated to always ensure that those perpetrators of the heinous act shall be brought to book promptly. In this line, DrAmaechiNwaokolo once said; “in order to avoid jungle justice in Nigeria, the judicial system must restore confidence in people who seek justice. The criminal Justice System and the law enforcement agencies must be allowed to work very effectively”.

[3] Public Enlightenment: The public should be enlightened by the relevant authorities such as the National Orientation Agency, on the need for Nigerians to desist from taking the laws into their hands and to report criminals/suspects to appropriate agencies. This was also suggested by DrAmaechiNwaokolo.

In conclusion; It is apt to be abreast with the position of laws[legal pace] on this soulless act[Jungle justice/mob Action], as seen in Sec.207,208,209 of Criminal Code Act, CCA 2004. These sections which referred to this heinous, archaic, antique and cruel approach of administering justice as Trial by Ordeal. The sections mentioned thereup equally repealed the unfriendly friend legal and human development-Jungle justice/mob Action, inspire of this, some societies had deliberately refuted to turn off from. I hereby want to legal sound it as a deterring warning that our duties as Citizenries are not to prosecute but rather to help the law enforcement agencies in bringing the suspect[s] to book. As it is seen in Sec.20, 21,22, and 23 of Administration of Criminal Justice Act, ACJA 2015, and not to punish, beat, kill, and burn such suspect[s] during the process of apprehension. Inhumane treatment should be prohibited during apprehension on the ground of helping the law, thereby, taking the laws into their hands. It can also stand out in Sec. 8[1][a][b] of Administration of Criminal Justice Act, ACJA 2015 as aforementioned, that; “A suspect shall: be accorded humane treatment, having regard to his right to dignity of his person, and not be subjected to any form of torture, cruel, inhumane or degrading treatment. The law is wiser than we think. Let the perpetrators of this act be guided, as the law will not take it friendly with them. Seeing the dignity of Nigeria restored is my utmost desire.

LEGAL FRAMEWORK ON ENTERTAINMENT LAW AND INDUSTRY IN NIGERIA: CHALLENGES AND PROSPECTS

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ABSTRACT

The Nigerian entertainment industry has been estimated to be a huge goldmine that is presently under-utilised. The global perception is that the Nigerian entertainment industry is one of the country's most profitable sectors. "However, we have another opportunity, another Oil and Gas has emerged in the Entertainment sector. People don't realize it but it's a gold mine. And we have another opportunity to ensure that from this nascent stage, we can begin to develop the competencies and skills to ensure that our own lawyers can handle the transactions that emerge"[73]. This excerpt is from the submission by the Chairman of Nigeria Bar Association Section on Business Law, Mr. OlumideAkpata. From this, it is safe to say that Entertainment law is now a very significant aspect of law for the legal profession in Nigeria. Entertainment law is still gaining a reasonable amount of limelight in the legal practice of Nigeria. Entertainment law is the regulatory framework for the Entertainment industry. This article highlighted some challenges faced in the Entertainment law and industry in Nigeria and as well offer recommendations to help eliminate these challenges.

Key words: entertainment, lawyers, challenges, recommendations.

1. INTRODUCTION

Entertainment is a form of activity that holds the attention and interest of an audience, or gives pleasure and delight. It can be an idea or a task, but is more likely to be one of the activities or events that have developed over thousands of years specifically for the purpose of keeping an audience's attention.Entertainment law is a regulatory framework of the entertainment industry. The activities in Entertainment law are Intellectual Property related. The laws associated with Intellectual property in Nigeria compose the legal framework of the entertainment industry. These laws are[74];

1. The Copy Rights Act Cap C28 LFN 2004.

[73]Ifeoma Peters, "The Roles of Legal Practitioners in Entertainment Industry," DNL Legal and Style, November 29, 2017. https://dnllegalandstyle.com. Accessed April 20, 2020.
[74]UwaAirende, "The Law and Entertainment in Nigeria,"Manifield Solicitors, August 20, 2018. https://www.manifieldsolicitors.com. Accessed April 20, 2020.

2. The Trade Marks Act Cap T13 LFN 2004.
3. Patents and Design Act Cap P2 LFN 2004.
4. Companies and Allied Matters Act Cap C20 LFN 2004.
5. Companies Income Tax Act Cap C21 LFN 2004.
6. Personal Income Tax Act Cap P8 LFN 2004.
7. Constitution of the Federal Republic of Nigeria, 1999.

Entertainment law is the entire legal services to the entertainment industry. Although Entertainment law is the current gold mine of the legal profession in Nigeria, there are some challenges affecting its full effectiveness. Some major challenges faced in the Entertainment sector in Nigeria will be addressed and recommendations suggested in this article.

1.1 STATEMENT OF PROBLEM

Entertainment law is the present gold mine in Nigeria's legal practice. Although still new in the game, it has some number of challenges affecting its effectiveness in Nigeria which as well affects the entertainment industry. It is therefore necessary to address these challenges as well as offer recommendations to solve them.

1.2 OBJECTIVES

This article aims to tackle the following research questions:

1. What's the legal framework of Entertainment law?
2. What are the challenges faced in Nigeria's Entertainment industry?
3. What are the recommendations to help cushion these challenges?

1.3 LITERATURE REVIEW

The literature review for this article was conducted during the Corona virus (COVID-19) pandemic in 2020.The primary objective was on literature addressing the challenges faced by the entertainment law and industry in Nigeria. The entertainment industry represents creative initiatives. Presently in Nigeria, the entertainment industry is the goldmine of the legal profession. The regulatory framework for the entertainment industry is Entertainment law. Most of the sources consulted highlights piracy has a major challenge affecting the entertainment industry. The review of literature and research in progress addressed the following issues:

- Challenges faced in Entertainment law and industry in Nigeria.
- Recommendations to help cushion these challenges.

Key sources that have been consulted in the literature review include:

- "The Law and Entertainment in Nigeria" written by UwaAirende
- "How Piracy Threatens Nigeria's Entertainment Industry" written by Jill De Villiers
- "Entertainment Law Overview" by Justia

"The Law and Entertainment in Nigeria" written by UwaAirende (2018) has been used as a source to highlight entertainment laws in Nigeria governing the entertainment industry. These laws stated are intellectual property related. This is because activities in the entertainment industry are intellectual property related. This source advanced its argument that Entertainment law is a gold mine in Nigeria, the writer further addresses the challenges facing the entertainment industry.

"How Piracy Threatens Nigeria's Entertainment Industry" written by Jill De Villiers (2017), this source stipulates that "piracy is best practiced in the infamous stalls of Lagos' Alaba market, bursting with CDs and DVDs that come from everywhere but the hands that made the content they hold". This stipulation is quite true to a reasonable extent. It is worthy of note that there exist a digital form of piracy which is done online. This source fails to recognise other challenges that threaten Nigeria's entertainment industry.

"Entertainment Law Overview" by Justia (2018), this source acknowledges that entertainment industry deals with the digital form of piracy. This source states that "the rise of the Internet era has created a host of problems for record companies, which struggle to compete with the increasing rate at which music is distributed online free of charge with or without the artists' consent." This is a major problem faced by the entertainment industry especially the music sector. This challenge is also faced in the filming industry. Most movies downloaded online are mostly downloaded from websites offering pirated movies. Persons tend to download movies from website offering pirated movies because it is way cheaper.

In conclusion my Article seeks to contribute to knowledge by addressing the legal framework on Entertainment law in Nigeria. This Article also discussed the challenges faced in Entertainment law and industry in Nigeria; and further offers recommendations to help cushion these challenges.

2. ANALYSIS OF THE LEGAL FRAMEWORK ON ENTERTAINMENT LAW IN NIGERIA

Entertainment law is the regulatory framework for the entertainment industry. The laws associated to Entertainment law are intellectual property related. These laws regulate the legal framework of the entertainment industry. These laws are;

1. The Copy Rights Act Cap C28 LFN 2004.
2. The Trade Marks Act Cap T13 LFN 2004.
3. Patents and Design Act Cap P2 LFN 2004.
4. Companies and Allied Matters Act Cap C20 LFN 2004.
5. Companies Income Tax Act Cap C21 LFN 2004.
6. Personal Income Tax Act Cap P8 LFN 2004.
7. Constitution of the Federal Republic of Nigeria, 1999.

2.1 THE COPY RIGHTS ACT CAP C28 LFN 2004

This act provides for the definition, protection, transfer, infringement of and remedy and penalty thereof of the copyright in literary works, musical works, artistic works, cinematograph films, sound recordings, broadcast, and other ancillary matters. Copyright has been defined by the Black's Law Dictionary as "the right of literary property as recognised and sanctioned by positive law. A right granted statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them."[75] This act also established the Nigerian Copyright Commission to be responsible for all matters affecting Copyright[76].

2.2 THE TRADE MARKS ACT CAP T13 LFN 2004

This act defines a trade mark as any sign or combination of signs capable of distinguishing the goods or services of one undertaking from the goods or services of other undertaking including words such as personal names, letters, numerals and figurative elements[77]. This act provides for the registration of trademarks in Nigeria.

2.3 PATENTS AND DESIGN ACT CAP P2 LFN 2004

This act provides for the registration and proprietorship of patents and designs in Nigeria and other matter ancillary thereto. Patent is an exclusive right granted for an

[75]The Law Dictionary, featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Edn. http://thelawdictionary.org. Accessed May 12, 2020.
[76]Under Section 34 (3) (a) – (f) of the Copyright Act Cap C28 LFN 2004. www.nlipw.com. Accessed May 12, 2020.
[77]Section 1 of the Trade Marks Act Cap T13 LFN 2004.

invention, a product or process providing or offering a new practical solution to a problem or dilemma[78]. Patent application in Nigeria is regulated by this act.

2.4 COMPANIES AND ALLIED MATTERS ACT CAP C20 LFN 2004

This act was promulgated by the Companies and Allied Matters Decree No 1 of 1990 which repealed the Companies Act of 1968[79]. This act establishes the Corporate Affairs Commission[80], in order to provide for the incorporation of companies and incidental matters, registration of business names and the incorporation of trustees of certain communities, bodies and associations. This act is a significant piece of legislation which impacts the Nigerian business climate and Micro, Small and Medium Scale Enterprises (MSMEs)[81].

2.5 COMPANIES INCOME TAX ACT CAP C21 LFN 2004

This act provides for the taxation of companies in Nigeria. This act governs the administration of company income tax which is applicable to companies. This act further makes provision for the current tax rate payable by a company in Nigeria which is 30%[82]. Companies in the entertainment industry such as record labels, film makers inter alia are incorporated companies and therefore eligible to pay companies income tax and nonpayment of same attracts a sanction.

2.6 PERSONAL INCOME TAX ACT CAP P8 LFN 2004

This act provides the conditions for deeming income taxable in Nigeria[83]. This act provides that the gain or profit from an employment shall be deemed to be derived from Nigeria if the duties of the employment are wholly or partly performed in Nigeria or the employer is in Nigeria, unless the duties of the employment are wholly performed, and the remuneration paid, in a country/ territory other than Nigeria except during a temporary visit or leave in Nigeria[84]. All participants in the entertainment industry are eligible to pay his or her personal income tax and failure to do so attracts a sanction.

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[78]WoyeFamojuro and OyeolaAdeola, "Patent Registration in Nigeria," Lexology,March 12, 2019. https://www.lexology.com. Accessed May 12, 2020.
[79]"Summary: Benefits of the Companies and Allied Matters Act (#CAMA) (Repeal and Reenactment) Bill, 2018 (SB. 355)," Medium, May 16, 2018. www.medium.com. Accessed May 13, 2020
[80]Section 1 (1) – (3) of the Companies And Allied Matters Act Cap C20 LFN 2004.
[81]Ibid 7
[82]Ibid 2
[83]"Nigeria – KPMG Global," KPMG,June 1, 2019. https://home.kpmg. Accessed May 13, 2020.
[84] ibid

2.7 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999

The constitution of Nigeria contains laws that govern the activities of the nation. Any law that is inconsistent with its provision shall be void[85]. Therefore the provisions of the constitution must be taken into consideration in going about the activities of the entertainment industry as the constitution is supreme[86].

3. CHALLENGES FACED ENTERTAINMENT LAW AND INDUSTRY

The following are highlighted challenges faced in Entertainment law and industry in Nigeria;

1. Piracy.
2. Lack of finance.
3. The inadequacies and lack of enforcement of laws governing Entertainment law in Nigeria.
4. Failure to hire the services of a lawyer at the initial stage of a contract.
5. **Dearth of Judicial precedent in Entertainment law.**

3.1 PIRACY

Piracy is a major challenge affecting the entertainment industry in Nigeria. Piracy is the use of works protected by copyright law without permission, infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works. These copies are hawked in form of CDs and DVDs by the roadside or in kiosks, and on the streets. The users also contribute to this challenge; they prefer cheap prices to original standard/controlled prices since they contain the same contents[87].Pirated copies of movies strive in the streets because many individuals are willing to buy these copies as a result of its cheap rates. This is due to the fact that most original copies are purchased at a higher rate. According to Aikomu (former Nigeria vice president in 1989) Piracy inhibits creation and is consequently detrimental to the attainment of social goals in the field of education, research and cultural promotion[88].

Most celebrities prefer using the internet for the distribution of their works rather than CDs and DVDs.Yoruba pop music sensation, Olamide said, “Right now. It’s online.” Phyno, when speaking about selling physical records he said, “It isn’t what it’s

[85]Section 1 (3) of the Constitution of the Federal Republic of Nigeria, 1999.
[86]Ibid 2
[87] “Curbing Piracy In Nigeria Entertainment Industry: Prospects and Challenges,” Naira project. https://nairaproject.com /projects/4914-curbing-piracy-in-nigeria-entertainment-industry-prospects-and-challenges.html. Accessed April 28, 2020,
[88] ibid

supposed to be. Mediums like iTunes, Spotify, tidal, and amazon, pay[89]."The internet era has contributed to the increasing rate of piracy online. For instance, songs are put up online by some persons free of charge with or without the artists' consent. Although downloading these songs from pirated websites is most times cheaper, the monetary value of these songs is not recognised. Music labels frequently bring lawsuits against websites that illegally pirate and redistribute music and other media[90]. As at 2014, an estimated figure of N82 billion was reported to have been lost by Nollywood alone to piracy[91].

Piracy is a serious crime punishable under the law. But why is this element still operative in Nigeria?

3.2 LACK OF FINANCE

This is another challenge affecting the entertainment industry in Nigeria. Lack of access to financing of the entertainment industry has been a major drawback for the industry. This necessitated the National Film Corporation (NFC), the Nigerian Copy Right Commission (NCC) and Nigeria Broadcast Commission (NBC) to jointly endorse the establishment of the National Film Development to tackle this issue of lack of finance for film production activities in Nigeria[92]. This challenge is also occasioned as a result of inflation in the country's economy.

KunleAfolayan in an interview stated that; "Financing movie project is still a major, major issue in Nigeria."[93] AY Makun in a chat stated that; "The major challenge is access to funds but people who are doing what they are doing in Nollywood now are individuals who strongly believe in moving Nollywood forward and at the same time trying to get involved in the business to make money for themselves."[94]

3.3 THE INADEQUACIES AND LACK OF ENFORCEMENT OF LAWS GOVERNING ENTERTAINMENT LAW IN NIGERIA

This challenge is one of the factors encouraging piracy in Nigeria. Dr Samuel Andrews, an expert once said[95] "The copyright laws in Nigeria are grossly inadequate

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[89]Jill De Villiers, "How Piracy Threatens Nigeria's Entertainment Industry," *CNBC AFRICA*, April 4, 2017. https://www.cnbcafrica.com. Accessed May 3, 2020

[90] "Entertainment Law Overview,"Justia, April 25, 2018. https://www.justia.com. Accessed April 28, 2020.

[91]ibid 4

[92] Ibid 2

[93]GbengaBada, "Here's what KunleAfolayan and Fabian Lojede Have to Say on Film Funding," Pulse Nigeria, May 24, 2019. www.pulse.ng. Accessed May 4, 2020

[94] ibid

[95] "Nigerian Copyright Law Inadequate-Expert," Economic Confidential, May 7, 2018. https://economicconfidential.com/2018/05/nigerian-copyright-law-inadequate-expert/. Accessed May 3, 2020

to address the emerging trends in protection and enforcement". The Nigerian-American trained Intellectual Property (IP) expert, told newsmen that the law enacted before the incursion of information technology and digital platforms, were not strong enough to effectively, Boston Law School, noted Nigerian entertainment industry offers great investment opportunities that can transform the economy. He noted that the opportunities could not be adequately explored because of the weak copyright laws which discourage investors. "Nigeria suffers from legal lack, and that is a big problem check piracy. The laws are also not adequate to attract investors in the nation's entertainment industry. At a reception organized in his honour by colleagues and industry stakeholders in Abuja, the Doctor of Juridical Science Intellectual Property from Suffolk University stated our laws are not up –to- date to confront the realities of digital economy. "The laws do not protect the creators enough, as most of the copyright infringements are done on the cyberspace.

"There a lot of leakages in both the movie and music industries, creators are being exploited by pirates because our copyright laws are not up-to-date to confront the realities of this digital era. "Nollywood, by statistics, is acclaimed to be the second highest employer of labour in Nigeria today, and this feat should attract both foreign and local investors for it to contribute more to the economy. "However, they are aware that our copyright laws are not strong to protect their investments, and they are afraid to lose their huge investments to piracy," he said. He stressed the need for a copyright framework that will properly address current right protection challenges in Nigeria and keep pace with global trends on copyright contents. The IP expert who was a contributor to the Draft Copyright Bill, for the reform of Copyright protection framework, commended the Nigerian Copyright Commission (NCC) for the initiative. He however called on relevant government organs, especially the National Assembly, to take speedy actions towards ensuring that the bill becomes operative. He added that there was need for Nigeria to use international copyright laws to develop her economy by domesticating copyright treaties it has signed over the years.

"The Draft copyright Bill initiated by the NCC a few years ago is a step in the right direction, as it will reposition Nigeria's creative industries to compete more effectively in the Global market."However, policy makers, NASS and the federal executive council, should take practical steps to ensure those recommendations translate into law," he urged.

The excerpt above has done a great deal in explaining the challenge of inadequacies and lack of enforcement of entertainment law in Nigeria which regulates the entertainment industry. Furthermore, most of Nigeria's Intellectual Property laws which govern the country's Entertainment law are old and out of sync with the trends in the 21st Century global market place. There is also a lack of coordination among various agencies whose regulatory functions impact Entertainment law in the country which largely makes the entertainment industry easily vulnerable to infringement.

3.4 FAILURE TO HIRE THE SERVICES OF A LAWYER AT THE INITIAL STAGE OF A CONTRACT

Often times, upcoming acts sign contracts at a point where they are hungry for fame and have little or no cash, which makes them vulnerable to the managers who seem to hold their future. These contracts are usually drafted to exploit these upcoming acts in the entertainment industry. There is this believe that hiring a lawyer at the initial stage of a contract is too expensive and unnecessary. Persons who believe this fail to realize that the consequence of entering a contract without complete understanding of what the contract entails. The effects of such contracts without the services of a lawyer at the initial stage will be disastrous. This can be avoided by hiring a lawyer to scrutinize and even seek to expunge parts of the agreement that is not favourable or their part because once the contract is signed, parties are bound which could transcend to indirect slavery for the number of years the contract subsist[96].

3.5 DEARTH OF JUDICIAL PRECEDENT IN ENTERTAINMENT LAW:

Another challenge affecting Entertainment law in Nigeria is the dearth of cases. Judicial precedents are greatly needed to enhance Nigerian jurisprudence in this area. The inadequacy of competent judges skilled in Intellectual Property laws which govern Entertainment law in the nation's judiciary is a major determinant of this challenge. The dearth of judicial precedent in Entertainment law greatly affects the entertainment sector.

4. CONCLUSION

[96]Ibid 2

In summary, this article addresses some major challenges currently faced in Entertainment law and industry with Nigeria as a reference point. Challenges have been stated and recommendations suggested.

5. RECOMMENDATIONS

The following are recommendations which this article seeks to suggest in addressing the challenges highlighted;

1. Specialised courts to handle matters relating to Entertainment law.
2. Adherence and enforcement of laws pertaining to Entertainment law in Nigeria.
3. Avenues should be set up to handle the issue of finance in the industry.
4. Legal services of lawyers should be taken more seriously by upcoming acts before entering a contract.

5.1 SPECIALISED COURTS

Having specialised courts to handle matters relating to Entertainment law in Nigeria will be a welcomed development by many. It is advised by many, especially legal practitioners for distinct specialised courts to hear matters pertaining to Entertainment law. Intellectual Property (IP) Rights Lawyer, **Mr. RocksonIgelige stated at** the Intellectual Property Law Symposium and Awards held at the Faculty of Law, University of Abuja in Gwagwalada that[97]; "We also need specialised IP courts just as we have election tribunals so that we can move forward and have enough judicial precedents on IP matters."

It is worthy of note that the same principles applicable in Intellectual Property law follows suit in Entertainment law. Thereforeclamouring for specialised Intellectual Property courts is the same as clamouring for Entertainment law courts in Nigeria. Having in place this recommendation in Nigeria's Entertainment law, three challenges stated in this article will be eliminated. These challenges are; piracy, dearth of judicial precedents, inadequacies and lack of enforcement of laws governing Entertainment law in Nigeria.

If a development like this should exist in Nigeria, this will help the entertainment industry a great deal.

[97]ShekwogamiTadanyigbe, "Expert Seeks Special Court for Intellectual Property Internet Fraud Cases," *NNN*, September 19, 2019. Accessed May 4, 2020. https://nnn.com.ng/expert-seeks-special-court-for-intellectual-property-internet-fraud-cases/

5.2 ADHERENCE AND ENFORCEMENT OF LAWS

There is a great need for the adherence and enforcement of laws pertaining to Entertainment law in Nigeria. The government, therefore, needs to strengthen the enforcement procedure with modern equipments because we already have the laws on ground[98]. An expert explained that if Nigeria copyright laws are strengthened, piracy will be curbed, and local creators will reap more values for their work, while Government will generate a lot of tax revenue from the industry[99]. He added that local and foreign investors will then have confidence that they are protected if they come invests in the industry.

Although the Nigerian Copyright Act 2004 criminalises the infringement of intellectual property and theft, piracy has remained a booming business in Nigeria. Stakeholders said the poor enactment of copyright laws, failure to prosecute offenders, as well as corruption, are to blame[100]. Once agencies are set in place to follow this recommendation, there will be a reduction of piracy and also Entertainment law will be strengthened in the country. This will be done to the advantage of the entertainment industry.

5.3 AVENUES TO HANDLE THE ISSUE OF FINANCE

Avenues should be put in place to tackle the issue of finance in the entertainment industry. Although some machineries are already present in Nigeria's entertainment industry, still more can be done. Fabian Lojede, a key figure in the TV series 'Jacobs Cross' stated in an interview that; "I do know that I think we do have BOI (Bank of Industry) but I wouldn't necessarily call BOI soft grants because there is an interest rate and soft funds for the film is really money you're not meant to pay back. Not one you're supposed to pay back with an interest that really is a loan and not necessarily soft funding."[101] He further said that the Nigerian government needs to back Nollywood. He said the government really needs to understand that the international image of the country, the social and economic importance of the film industry is way too overwhelming for the private sector to make the industry thrive on its own.

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[98]ibid
[99]Ibid 14
[100]Jayne Augoye, "Review of the Nigerian Entertainment Industry in 2018," Premium Times Nigeria, December 29, 2018. www.premiumtimesng.com/entertainment/naija-fashion/303303-review-of-the-nigerian-entertainment-industry-in-2018.html. Accessed April 28, 2020
[101]Ibid 12

The establishment of the Creative Industry Financing Initiative (CIFI) in May 2019 by the Central Bank of Nigeria (CBN) in collaboration with the Bankers' Committee is one of the machineries put in place by government to tackle the issue of finance in the entertainment industry. The Nigerian government is already a step ahead regarding this recommendation, still more can be done.

5.4 HIRING THE SERVICES OF A LAWYER

The need for a legal representative when drafting a contract cannot be over emphasised. Legal services of lawyers should be taken more seriously by upcoming acts before entering a contract. It's very common for upcoming acts to sign contracts without seeking the services of a lawyer. These upcoming acts are really vulnerable at the initial stage of the contracts. They tend to focus more on the fame aspect of the contract and not whether 'they' become slaves in the contract.

This recommendation should not be taken lightly by upcoming acts in the entertainment industry, this will help Entertainment law in Nigeria a long way.

Finder's Right in Nigeria; Analytical discourse.

Abstract

The common misconception overtime has being that the finder of a chattel is deemed to own same or exercise the right in lieu for the real owner. This controversy has generated a clash over the claim of title to chattel between the finder and the owner. This work critically analyzed the right of a finder, its extent, scope and limitation also examine its application, justification in Nigeria corpus juris.

Introduction

The question of a finder and the right possessed in respect of another's chattel is discussed under the premises of identified chattel within the ambit of the law, it

draws our attention to the question; what are chattels? Chattels refers to physical, tangible articles that are capable of being owned. It can to some extent be equated to goods as defined in ***section 62 Sale of Goods Act 1893***" *Goods includes chattel personal other than things in motion or money, emblements, industrial growing crops, things attached or forming part of the land which are severed or agreed to be severed under the contract".* Similarly,***section 2 Criminal Code*** defines property" *anything capable of being subject of ownership".*

From the foregoing, chattel are deemed to be physical, it can be felt, touched, sensed and owned, it exist in various form ranging from personal belonging to artifacts which can be owned and possessed by an individual or group.

Chattel in the custody of a person can take two forms; either as the owner or as a possessor. However, the law deems possession to be ninth tenth ownership as the owner should at all time be in possession of his chattel save when same is being pledged, leased or title transferred to another. Most time, reports of lost chattel comes up, this exist when the owner of the chattel intentionally or unintentionally parts with the chattel in his possession. This can take the form of mislaid, abandonment or deliberate disposal of chattel. The law comes in to protect the right of the owner if such displacement was unintentional, on the other hand is the finder who is entitled to some right of possession as a result of the role played. This contradiction and placement of rights is the hallmark of this work.

WHO IS A FINDER

According to **Black's Law Dictionary**; *a finder is one who discovers and takes possession of another's personal property.*

A finder is one who lawfully comes to the possession of another's personal property which was then lost. In ***Parker V British Airway Board(1982)1 QB***. **Donaldson LJ** held a finder as one who comes in possession of a lost chattel .The LawLord laid down the obligations of the finder as follows;

- The finder exercises no right unless the item is abandoned or lost.
- The finder must take the item under their care to gain rights.
- If the finder takes it into their care with dishonest intent or in the course of trespassing, then they acquire only limited rights.

- The finder only acquires right against the whole world as a whole. The true owner and anyone with prior right to keep the item that existed when the finder took it into their care have better rights to them.
- Employees finding items in the course of their employment are finding it on behalf of their employer unless agreed otherwise.
- The finder has an obligation to inform the true owner that the item has been found and where it is by whatever means are reasonable in the circumstances. In the meantime, they have to take care of the item.
  From the established obligations of finder of chattel, it is pertinent to know that a finder if chattel exercises right over the chattel against the whole world except the true owner, this was established in the leading case of ***ARMORY V DELAMIRIE(1722)ER 505***
  A finder exercises certain right of possession to keep the chattel and to embark on a search employing every reasonable means to get to the true owner; he only acquires the chattel by appropriation by law when the search proves abortive.

APPLICATION OF FINDER'S RIGHT IN NIGERIA.

Before distilling the categories of finders right it should be brought to light that the right of a finder is a common law doctrine formulated in England and its environs and has become applicable in Nigeria as Received English law by virtue of **Section 32 Interpretation Act** which provide thus;

"Subject to the provision of this section and except in so far as other provision is made by any Federal law, the common law of England, doctrine of equity, together with the Statute of General Application that were in force in England on 1st January,1900. Shall in so far as they relate to any matter within the legislative competence of the federal legislature be in force in Nigeria".

The issue of position and rights of a finder emerges in several ways, and can be classified as follows;

2. *Finder and owner of found chattel:* This arises in two situations; abandoned property and lost property. In abandoned property, it is a question of fact as to whether the owner has really abandoned the property, if yes the finder is preferred against the owner. In ***HASLEM VLOCKWOOD(1891).*** where the

plaintiff raked abandoned horse manure which accumulated in a public street, the manure belonging to the owner of the horse who brought an action, the court held that the may originally belonged to the owner of the horse that dropped it but when the owner abandons it property divest to the person who first claims it. Whereas in the case of lost property, it is for the owner to prove ownership. If successfully proved, the finder is entitled to monetary compensation for the act of finding and safe keeping of the chattel.

3. *Finder and Strangers:* It is established in **ARMORY V DELAMIRE(supra)** that a finder is to keep the chattel found against all but the true owner. A stranger here refers to those who do not have any deal with the article found or the premises wherein it was found. The law here is that the finder can keep and exercise right of possession over the chattel against all including strangers to the exclusion of the real owner. See ***LOUCKS V GALLOGLY(1892) 1 Misc. Rep. 22.***

4. *Finder and occupant of premises in which the chattel is found:* The law of land ownership entails that the land owner owns everything on the land, under the maxim *quic quid plantatur solo solocedit* , it thereby follows that where the chattel is found on the land, the presumption is that it is owned by the owner of the premises, that is stronger is the claim of the land owner against the finder. However, in determining this the court consider the nature of the premises, for instance, an article found on a public place is mostly held to be in favor of the finder if the true owner is not found. In ***BRIDGES V HAWKESWORTH(1851)1 QB.*** The plaintiff found banknotes on the floor of the defendant shop he plaintiff handed the bank notes to the defendant after three years the plaintiff noticing that the owner has not been found requested from the defendant the banknote on refusal he brought an action, the court held owing to the location of the found note, the plaintiff has right over the defendant relying on *Armory v Delamire.*

   If the chattel is found beneath the land, it is presumed to be owned by the owner or occupier of the land. See ***ELVES V BRIGGS GAS CO(1886)33 ChD***.

   Furthermore, in determining the owner of a chattel found laying on the land, the court would consider the question of possession;

   4. In the case of an occupier and a visitor, the occupier's right overides that of the visitor except otherwise agreed before the chattel is found.

- Chattels found on an empty land would be considered based on who exercises control, dominion over the pieces of land.

- *Finder and master:* Here we look at the contractual relationship between the parties; if the finder is an employee and finds the chattel in the course of his employment under a contract of service, the law is that the employer is preferred against the employee(finder). In ***BRANDON V BANK.*** Here valuables found by a servant were held to be in possession of the master. Where on a contract for service for independent contractor, the court looks at the agreement between the parties, the premises wherein the chattel was found in establishing the owner of the chattel.

- *Finder and other finder:* The law is that when more than one finder finds a chattel, the chattel is deemed owned by the first finder. In ***CLARK V MALONEY***, Clark found pieces of log which he tied at a creek, the defendant Maloney took possession, Clark sued and the court held that the first finder of a lost property has superior title to any other finder. However, mere discovery by a person does not give the right of a finder, the discovery must be backed by appropriation before the individual is tagged a finder.

JUSTIFICATION OF FINDER'S RIGHT IN NIGERIA

As earlier stated, by virtue of **Section 32 Interpretation Act** the common law doctrine of finder's right is made applicable in Nigeria. The justification for this right is to protect the finder of the chattel and bestows same with right over the chattel against all except the true owner.

> **Section 44(2)(k) Constitution of the Federal Republic of Nigeria 1999 as amended. Provides;**
> *Nothing in subsection (1) of this section shall be construed as affecting any generallaw*
> *(k) Relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry.*

From the above section, the law justifies the taking of possession for the purpose of investigation or enquiry. This provision is in accordance with finder's right doctrine, a

finder takes possession of found chattel and must takereasonable steps to locate the true owner (enquiry), failure to would attract liability for the tort of conversion under civil law or offence of stealing under criminal law.

> **Section 385(5)Criminal code**provides
> *When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed fraudulent if at the time of conversion the person taking or converting the thing does not know who is the owner and believes on reasonable ground that the owner cannot be discovered.*

The finder would be liable or guilty if on finding the chattel fails to take reasonable steps or reasonably believe that the owner cannot be found, provided the act is done honestly or the steps taken proves abortive such person can retain the property in his possession. In ***R V VEGA(1938)4 WACA 8***. The accused removed and used some corrugatediron sheets belonging to the government his conviction for stealing was quashed because he acted in good faith and reasonably believed that the sheet were abandoned.

CONCLUSION

In synopsis, a finder of a chattel retains right to keep the chattel against all except the true owner. Reasonable steps must be taken by the finder to locate the true owner except where the property was abandoned; the presumption of the law takes effect. Nigeria corpus juris has recognized this right and its application in our judicial system is highly commendable.

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SIGNING WITHOUT PEN: DETERMING THE LEGAL VALIDITY OF ELECTRONIC SIGNATURE IN NIGERIA.

By

Ekhorutomwen Gabriel Ekhator[102]

Abstract

In a legal environment, signature is commonly the means of authenticating document. Before now what was the commonest form of signature was a handwritten signature of the signor indicating his "acceptance" or "consent" to a legally binding commitment such as contractual terms or payment. With the advent of computers, this form of signature has changed, what is now prevalent is an electronic signature authenticating an electronic document.

In this article I have explored the meaning, forms and functions of electronic signature and discussed legal framework on electronic signature particularly in context of Nigeria.

1. Introduction

A signature is "any name or symbol used by a party with the intention of constituting it his signature".[103] The main purpose of statutes requiring a particular document to be signed by a particular person is to confirm the genuineness of the document.[104]The feature and function of a signature was endorsed in the case of *Goodman v. J. Eban*

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[103]*Alfred E. Weber v. Dante De Cecco*, 14 October 1948 (1 N.J. Super. 353, 358)
[104]*Lobb v. Stanley* (1844)5 QB 574, 114 E.R. 1366

Ltd,[105] where the court said that the essential requirement of signing is the affixing in some way, whether by writing with a pen or pencil or by otherwise impressing upon the document, one's name or "signature" so as to personally authenticate the document.

Prior to the advent of computers, a handwritten signature wasthe only universally acceptable mode for individuals to make apparent on paper-based documents that they are who they say they are and that, often, they agree to be bound by whatever they are signing.[106]Signing a document is, first and foremost, an act of will. Therefore, it is very important for the individual signing a document to have the assurance that he fully saw and understood what he signed,[107]because after signing the signor is usually held bound by whatever he signed.[108]

The Legal signature requirement as a condition for the validity of certain acts in common law jurisdictions is traceable to the Statute of Frauds[109] which was originally passed in Great Britain in 1677for the prevention of many fraudulent practices and perjury.

With the onset of the electronic age, and the rapid development of newer technologies, online security becomes more significant as security compromises are one of the major barriers to building users'trust in electronic commercial transactions, electronic signature made its appearance and has been considered an equivalent to traditional

[105]*Goodman v. J.Eban Ltd* [1954] QBD 550

[106] Lord Denning in *Goodman v. J.Eban* [1954] QBD 550 at 56 said: "In modern English usage when a document is required to be signed by someone that means that he must write his name with his own hand upon it"

[107] Valentin Pau and LuminitaCopaci, 'Digital Signature: Digital Protection Method' (2016) 2016 Int'l ConfEduc& Creativity for Knowledge-Based Soc'y 11

[108]*L'Estrange v. F. Graucob Ltd* [1934] 2 KB 394

[109]Statute of Frauds, 29 Car. II, c. 3 (1677) (Eng.). Section 4.

handwritten signatures or stamps,[110]and as a means of ensuring authenticity of electronic documents and security.

The article examines the meaning, forms and functions of electronic signature and discussed legal framework on electronic signature particularly in context of Nigeria.

1.1Statement of Problem

The advent of electronic gadgets particularly internet has brought about a revolution in the way wetransact. However, the growth of information technology posed a profound concern of security and authenticity of the transactions carried out via electronic means. This concern called for security, authentication and identification measures on electronic devices and the internet to prevent fraud and malicious transaction. In Nigeria there is no particular legislation on electronic signature there are however legislations recognising electronic signature.

Therefore, it behoves us to examine these legal responses particularly in Nigeria in determination of the validity of electronic signature.

1.2Aims and Objectives

The aim of this article is to examine the legal framework on electronic signature in Nigeria and its validity.

The main objectives of this article are to:

1. Examine the concept of electronic signature.
2. Highlight the forms and functions of electronic signature.

1.3Literature Review

[110] F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (Oxford: Routledge, 2010), pp. 77–87.

Although there are volumes of materials on the subject matter of electronic signaturein other jurisdiction, there are dearth of materials on the subject matter in Nigeria. This is not to say however, that the researcher never laid her hands on any useful material, at this juncture, it imperative to acknowledge the works of some researchers who have dealt with this area and whose works share close proximity with the subject matter of this research.

Saulawa and Marshalin their work "The Relevance of Electronic Signatures in Electronic Transactions: An Analysis of Legal Framework" [111]analyse the legal framework on electronic signatures in electronic transactions in Nigeria, the article majorly focused on United Nations Commission for International Trade Law Model Law on Electronic Signatures 2001 (UNCITRAL), Evidence Act 2011 and the Electronic Transaction Bill 2011. The article did not carry out an in-depth examination on the concept of electronic signature.

Elvis Asia writing on proof of electronic signature in Nigeria,[112] agrees with the fact that electronic signatures are binding and admissible in court in Nigeria. The author expresses concern on the issue of proof of electronic signature in Nigeria. The author defines electronic signature as "an electronic process which signifies consent to a transaction or record".[113] The author noted that there is no sufficient guide on proof of electronic signatures under the Nigerian law, and advise that parties to an electronic

[111]Mu'azuAbdullahiSaulawa and Junaidu Bello Marshal, 'The Relevance of Electronic Signatures in Electronic Transactions: An Analysis of Legal Framework' (2015) 34 Journal of Law, Policy and Globalization 5

[112] Elvis Asia, Covid- 19: Dealing with the Challenge of Definition and Proof of Electronic Signature Under Nigeria Law<https://dnllegalandstyle.com/2020/covid-19-dealing-with-the-challenge-of-definition-and-proof-of-electronic-signature-under-nigeria-law-elvis-asia/>accessed on the 14 May 2020

[113]Ibid

transaction should adopt methods, systems and conduct that would make the proof of electronic signature easier.

This articleexpands and adds to views expressed by these scholars by attempting an analysis of the laws on electronic signature in Nigeria. This article also examines the concept of electronic signature, its forms and functions.

2. Definition and Concept of Electronic signature

The term "electronic signature" is a generic, technology neutral term that refers to the many ways in which a person may indicate consent to and an association with an electronic document. Unfortunately, there is no statutory definition of what amounts to an electronic signature in Nigeria and the courts have not had the opportunity to define it.

The UNCITRAL Model Law on Electronic Signatures defines an "electronic signature" more specifically as "data in electronic form in, affixed to or logically associated with, a data message and to indicate the signatory's approval of the information contained in the data message".[114]

Lim[115] defines electronic signatures simply as an electronic confirmation of authenticity. As simple as this definition is, the definition encompasses all forms of electronic identification, from the very informal (and insecure), such as initials at the end of an email, to the very formal (and highly secure).

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[114] UNCITRAL Model Law on Electronic Signatures (2001) Article 2.

[115] Yee Fen Lim, 'Digital Signatures, Certification Authorities: Certainty in the Allocation of Liability' (2003) 7 Singapore Journal of International & Comparative Law 183.

Electronic signatures extend the function of handwritten signatures to electronic documents, providing a way for two parties to conduct business confidently in an electronic environment. Electronic signatures aim at creating the same level of confidence associated with handwritten signatures.

3. Forms of Electronic Signature

According to Wang "Electronic signatures can take many forms and can be created by many different technologies. Common forms of electronic signatures include but are not limited to password or personal identification number (PIN), e-mail signatures, smart cards, biometrics, scanned signatures and digital signatures".[116]

The commonest of these forms of electronic signature will now be examined hereunder.

3.1Picture-Scanned Signatures

This is a scanned image of a handwritten signature in digitalized form. The image is developed from a traditional signature that is scanned, and transferred to an electronic document, the digital image file could then be attached to the document file as an electronic signature.[117]While it is convenient and less costly to use picture-scanned signatures. It is however very easy to forge such a signature as much less skill and effort is required to scan a paper.[118]

3.2E-mail signatures

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[116] F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nded, Oxford: Routledge, 2014), 130

[117] F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nded, Oxford: Routledge, 2014)

[118] Ibid

This type of Electronic signature is formed by printing the name, and title of the sender on the electronic mail or by attaching a scanned signature of the sender to the email. In recent years, more and more e-mail signature software has been launched to help users develop a more secure e-mail signature; for example, some signature creation software may help in the creation of "handwriting" signs/symbols to accent the individuality of the user's signature in e-mail messages.[119] In the Singaporean case of *SM Integrated TranswarePte Ltd v Schenker Singapore (Pte) Ltd*,[120] it was held that names typed in an e-mail correspondence constituted valid signatures.

In *Doherty v Registry of Motor Vehicles*,[121] the Court held that a police report in email format, that identified the officer making the report and stated that it was made under penalty of perjury, was effectively signed by the reporting officer, even though the report did not contain a handwritten signature. In coming to this conclusion, the Court followed earlier decisions to the effect that statutory signed writing requirements do not necessarily require a handwritten signature. In some case mere acknowledgement of an email by the sender or recipient amount to signing.[122]

3.3Digital signatures (advanced electronic signatures)

A Digital signature is the use of public key encryption systems, to ensure the authenticity of electronic messages and guarantee the integrity of the contents of these messages. A digital signature is"an asymmetric key operation where the private key is

[119] ibid
[120] [2005] SGHC 58.
[121] Mass. No. 97CV0050
[122]*AshakacemPlc v AsharatulMubashshurun Investment Ltd* (2019) LPELR-46541(SC)

used to digitally sign data and the public key is used to verify the signature".[123]Digital signatures "provide authenticity protection, integrity protection, and non-repudiation".[124]

Digital signatures are created and verified by using cryptography,[125] Digital signatures use what is known as public key cryptography, which is often based on the use of algorithmic functions to generate two different but mathematically related "keys"[126] for the encryption and decryption process, which are known as a private key and a public key.[127] Digital signature is the only form of electronic signature which satisfies all three of the UNCITRAL security evaluation factors, i.e., that an electronic signature should: (1) authorize; (2) approve; and (3) protect against fraud.[128]

Digital signatures are easily transportable, cannot be imitated by someone else, and can be automatically timestamped.[129]

3.4Personal Identification Number (PIN)

Personal identification number (PIN)' is "a set of numbers or characters generated and shared between the system and the user".[130]PIN is the most widely used method of

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[123] Electronic Authentication Guideline, National Institute of Standards and Technology (NIST) US Department of Commerce, Draft NIST Special Publication 800–63–2, February 2013. Available at: http://csrc.nist.gov/publications/drafts/800-63-2/sp800_63_2_draft.pdf

[124] ibid

[125] "Cryptography is the act of secret writing composed of a series of ciphers and codes used to hide the content of a message". F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nded, Oxford: Routledge, 2014), p. 130

[126] United Nations Commission on International Trade Law, *Promoting Confidence in Electronic Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods* (Vienna: United Nations Publication, 2009)

[127] F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nded, Oxford: Routledge, 2014),130

[128] K.H. Pun, Lucas Hui, K.P. Chow, W.W. Tsang, C.F. Chong & H.W. Chan, 'Review of the Electronic Transactions Ordinance: Can the Personal Identification Number Replace the Digital Signature?' (2002) 32 Hong Kong Law Journal 241, 252

[129] Mohammad HasanMurad, 'A study of Digital Signature and its Legal Implications in Context of Bangladesh' (2010) 6 IIUC STUDIES 111

"authentication" for purposes of access control and identity verification in a broad range of transactions, including most internet banking transactions, cash withdrawals at automated teller machines and consumer credit card transactions.[131]

3.5Biometrics

A biometric is "a measurement used to identify an individual through his or her intrinsic physical or behavioural traits".[132] Common traits that may be used for recognition in biometrics include DNA; fingerprints; iris, retina, hand or facial geometry, facial thermogram, ear shape, voice, body odour, blood vessel patterns, handwriting, gait, and typing patterns.[133]

3.6Biodynamic version of a manuscript signature.

This is an electronic version of a handwritten signature that is signed directly on an electronic document with the aid of electronic pen and pad. After signing on the pad the signature is automatically reproduced on the computer screen, and a series of measurements record the behaviour of the person as they perform the action.[134]Virtually all Nigerians are familiar withthis form of electronic signature, this is the form of electronic signature used in Bank Verification Number (BVN) registration in Nigeria.

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[130] F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nded, Oxford: Routledge, 2014), 129

[131] See Enas M Qutieshat, 'The Use of Electronic Signature in Validation of Electronic Contracts from the Jordanian Perspective' (2019) 89 JL Pol'y& Globalization 62

[132] United Nations Commission on International Trade Law, *Promoting Confidence in Electronic Commerce: Legal Issues on International Use of Electronic Authentication and Signature Methods* (Vienna: United Nations Publication, 2009)

[133]Ibid; see also Enas M Qutieshat, 'The Use of Electronic Signature in Validation of Electronic Contracts from the Jordanian Perspective' (2019) 89 JL Pol'y& Globalization 62

[134] S. Mason, *Electronic Signatures in Law* (London: Institute of Advanced Legal Studies, 2016)

With the advent of smart phone, there became ease of writing and signing on phone note app. In *In re Estate of Javier Castro,*[135] the testator and his witnesses signed his Will on a tablet using a stylus. The court found that the testator's signature satisfied the legal requirements of the Wills Act stating, "The tablet application also captured the signature of Javier. The signature is a graphical image of Javier's handwritten signature that was stored by electronic means on the tablet."[136]

4. Functions of Electronic Signature

Generally, signature serve four specific functions as identify by the American Bar Association: Evidence, Ceremony, Approval, Efficiency and logistics.

In addition to these functions, qualified electronic signatures (digital signatures) serves the following purposes and functions:

4.1 **Authentication:** Electronic signature provides authentication of the identity of the signer by attributing the message to the signer, to know who participated in a transaction.[137] The rationale of this function is based on the fact that digital signatures cannot easily be forged, unless the signor loses control of the private key either accidentally or intentionally

4.2 **Integrity:** Electronic Signature protects the integrity of the electronic document it is attached. Documents that are authenticated by a secure electronic signature are entitled to a presumption of integrity, that the signature is that of the person with

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[135] 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div., Ohio, June 19, 2013)

[136] ibid

[137] F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nded, Oxford: Routledge, 2014); Mohammad HasanMurad, 'A study of Digital Signature and its Legal Implications in Context of Bangladesh' (2010) 6 IIUC STUDIES 111;

whom it is associated and that the user affixed the signature with the intent of signing or approving the document.[138]

4.3 **Non-repudiation:** the inability of the signer to deny the signature. Since a digital signature is highly secured and a message can only be read by using key pair the signatory cannot, at least in theory, deny that he has not signed the document.[139]

5. Legal Framework for Electronic Signature in Nigeria

The various legal framework on electronic signature applicable to Nigeria will be discussed in this section.

5.1 United Nations Commission for International Trade Law Model Law on Electronic Signatures 2001 (UNCITRAL)

On 5 July 2001, UNCITRAL approved the Model Law on Electronic Signatures(hereinafter referred to as the Model Law).[140]The Model Law applies to electronic signatures that are used in the commercial sphere.[141]The Model Law is intended to provide help, guidance and act as an instrument for national states to use in forming legislation.[142] While states are encouraged to incorporate the Model Law on Electronic Signatures fully into their domestic legislation, changes can be made to the content.[143]The Model Law is not intended to interfere with the normal operation of the rules of private international law.[144]The objectives of the Model Law include the

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[138] F. Wang, *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China* (2nded, Oxford: Routledge, 2014)
[139] Mohammad HasanMurad, 'A study of Digital Signature and its Legal Implications in Context of Bangladesh' (2010) 6 IIUC STUDIES 111
[140] Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 25
[141] UNCITRAL Model Law on Electronic Signatures 2001Article 1
[142] Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 4
[143] Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 27
[144] Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 26

encouragement of facilitating the use of electronic signatures and providing equal treatment for all documents whether they are in electronic format or stored on a physical carrier.[145]The Model Law preserves party autonomy. It is not mandatory in character and provides for variation by agreement subject to any limitations that may be imposed by the applicable law.[146] The Model Law is founded on the principle of technology neutrality as indicated by Article 3, which provides that ". . . nothing in this law . . . shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in Art 6(1) or otherwise meets the requirements of applicable law".[147] In line with the principle of party autonomy, the Model Law allows the enacting state to designate a public or private authority to specify the types of electronic signatures that would meet the reliability criteria set out in Art 6, subject to the proviso that the recommended technology meet recognised international standards.[148]Whileinterpreting the Model Law, "regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith."[149]

The Model Law define Electronic Signature as "data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message".[150]

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[145]Guide to Enactment of the UNCITRAL Model Law on Electronic Signatures 2001 paragraph 5
[146] UNCITRAL Model Law on Electronic Signatures 2001 Article 5
[147] UNCITRAL Model Law on Electronic Signatures 2001 Article 3
[148][148] UNCITRAL Model Law on Electronic Signatures 2001 Article 7
[149] UNCITRAL Model Law on Electronic Signatures 2001 Article 4
[150]UNCITRAL Model Law on Electronic Signatures 2001 Article 2

According to Article 2 the Model Law envisages three parties taking part in the use and creation of an electronic signature: "Signatory",[151] "Certification service provider",[152] "Relying party".[153] In addition, provisions are made for the conduct of the various parties.

The signatory, as the holder of signature creation data that creates signatures that have legal effect, is expected to keep it under his control and take reasonable care to avoid its unauthorised use.[154]

The certification service provider has to meet a list of obligations under the provisions of Art 9(1) where the electronic signature used has a legal effect.[155] Article 10 deals with the issue of trustworthiness raised in Art 9(1).

The relying party is placed under an obligation to verify the reliability of an electronic signature.[156] Where it is supported by a certificate, The relying party is to take "reasonable steps to verify the validity, suspension or revocation of the certificate, and to observe any limitation with respect to the certificate"[157].

Where these parties fail to meet the obligations set out in the Model Law. Articles 8(2), 9(2) and 11 of the Model Law provide that they will bear the legal consequences of their failure to exercise their respective obligations.

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[151] a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents.
[152] a person that issues certificates and may provide other services related to electronic signatures.
[153] a person that may act on the basis of a certificate or an electronic signature.
[154] UNCITRAL Model Law on Electronic Signatures 2001 Article 8
[155] UNCITRAL Model Law on Electronic Signatures 2001 Article 9
[156] UNCITRAL Model Law on Electronic Signatures 2001 Article 11(a)
[157] UNCITRAL Model Law on Electronic Signatures 2001 Article 11(b).

In line with the principle of non-discrimination, the geographic location where the electronic signature was created or the certificate issued will not determine whether the certificate or electronic signature is legally effective[158]

According to Arts 12(2) and (3), a certificate or an electronic signature issued outside the domestic jurisdiction will be legally effective if it offers a "substantial equivalent level of reliability"

In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph 2 or 3, regard shall be had to recognized international standards and to any other relevant factors.[159]

Art 12(5) provides for freedom of parties to agree on the use of certain types of certificates and electronic signatures to be sufficient for cross-border recognition. However, this freedom is curtailed by relevant mandatory provisions of the applicable law.

The Model law is a good step taken by the United Nations Commission on International Trade towards the harmonisation of laws relating to electronic signature in cross-border electronic commerce.

5.2Evidence Act 2011

Prior to the enactment of the Evidence Act 2011, it was virtually impossible to admit computer generated documents as evidence in Nigeria.[160] The Enactment of the

[158] UNCITRAL Model Law on Electronic Signatures 2001 Article 12(1)(a).
[159] UNCITRAL Model Law on Electronic Signatures 2001 Article 12(4)
[160]*UBA v SaniAbacha Foundation for Peace and Unity (SAPFU)* (2004) 3 NWLR (Prt. 861) 516 the court held that the provisions of Section 97 (1) (b) and (2) (c) of the old Evidence Act do not cover the admissibility of computer printout even if they are duly certified and relevant; In the case of in *Yesufuv ACB* (1976)1 All NLR (Prt.1) 328 the Supreme

Evidence Act 2011 paved the way for the admissibility of computer generated documents by Nigerian Courts. This Act in turn laid the foundation for the legal recognition afforded electronic document and electronic signature in Nigeria.

The Nigeria Evidence Act 2011 make provision for the recognition of electronic signature in section 93(2) and (3). This section provides that:

> (2) Where a rule of evidence requires a signature,or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law or avoids those consequences.
>
> (3) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

By this provision, it is clear that an electronic signature is valid under Nigerian Law. While this is a good step taken by the Nigeria legislature, the Act however fails to define what constitutes an electronic signature, thereby leaving the court to decide on the bases of each case what amounts to an electronic signature. Also, the Act did not provide for the mode of proving electronic signature.

5.3Cybercrimes (Prohibition, Prevention, etc) Act 2015

Court in an obiter highlighted the need to amend the then Evidence Act in order to allow the admissibility of computerized statements of account.

The Act provides an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria.[161] The Act apply throughout the Federal Republic of Nigeria.[162]

The Cybercrimes (Prohibition, Prevention, etc) Act 2015provides in Section 17(1), with reference to electronic signature as follows:

> (a)Electronic signature in respect of purchases of goods,
>
> and any other transactions shall be binding.

Section 17(1) (b) presumedthe genuineness of an electronic signature in favour of the signor and place a strict burden of proof on the person who contends the genuineness of an electronic signature. However, this does not solve the issue of proof of electronic signature because the provision is only concerned with who should prove and not how it should be done.

In addition, Section 17(2) specifies the nature of transactions that would not be valid if an electronic signature is used and they include wills, death certificate, birth certificate, matters of family law such as; marriage, divorce, cancellation or termination of utility services, e.t.c.

The Act also failed to define what amounts to electronic signature in Nigeria.

5.4ECOWAS Supplementary Act A/SA.2/01/10 on Electronic Transactions within ECOWAS.

[161] Cybercrimes (Prohibition, Prevention, Etc) Act 2015, Section 1
[162] Cybercrimes (Prohibition, Prevention, Etc) Act 2015, Section 2

At the 37th Session of the Authority of ECOWAS Heads of State and Government held in Abuja On 16 February 2010, the Heads of State and Government of the Economic Community of West African States (ECOWAS) adopted Supplementary Act A/SA.2/01/10 on Electronic Transactions(ECOWAS Electronic Transactions Act) as a regional legal regime to govern electronic transactions within the ECOWAS region, it applies notably to all transactions whatever their nature and which take the form of electronic message.[163] However, the Act does not apply to transactions such as legally authorised gambling, including lotteries and legal representation and assistance services, as well as activities carried out by notaries public.[164]

The ECOWAS Electronic Transactions Act recognises that, "the main impediments to the development of e-transactions are linked to inadequate regulation on the legal recognition of data messages the recognition of electronic signature … and the absence of specific legal rules to protect consumers, intellectual property, personal data and information systems and lack of legislation peculiar to electronic transactions". [165]

Consequently, the Act aims to establish a regional harmonized legal framework for the governance of electronic transactions within the ECOWAS.

The ECOWAS Supplementary Act A/SA.2/01/10 on Electronic Transactions within ECOWAS recognised electronic signatures as a means of authenticating electronic transaction. In the ActAn "electronic signature" is defined as, "any data emanating

[163] ECOWAS Electronic Transactions Act 2010 Art.2.
[164] ECOWAS Electronic Transactions Act 2010 Art.3.
[165] ECOWAS Electronic Transactions Act 2010, Preamble

from the use of a reliable data procedure or identification procedure which guarantees its link with the act that is attached to".[166]

Under the Act, the use of electronic signatures is generally accepted for electronic transactions[167] and the process through which an electronic signature has been created is presumed to be reliable unless there is evidence that provesthe contrary.[168]The Act equates an electronic signature with a handwritten signature. However, for such equal treatment to apply to an electronic signature, such a signature must have been created by a secure mechanism that is under the "exclusive control" of the party making the signature, and the signature must have been based on a digital certificate.[169]

6. Conclusion

The evolution of information technology has dramatically increased the production of electronic documents throughout the world. While these electronic documents are produced with ease, there are however, backsides to them. Consequently, there became the need to address the backsides and this led to the introduction of electronic signature in ensuring the originality of the electronic documents.

The enactment of the Evidence Act 2011 and the Cybercrimes (Prohibition, Prevention, Etc) Act, 2015 recognisingelectronic document and signature is an important building block in the legal foundation necessary for the development of information technology in Nigeria, however, much is still needed to be done and the

[166] ECOWAS Electronic Transactions Act 2010 Art.1.
[167] ECOWAS Electronic Transactions Act 2010 Art.34(1).
[168] ECOWAS Electronic Transactions Act 2010 Art.34(2).
[169] ECOWAS Electronic Transactions Act 2010 Art 35

article recommends for the enactment of a legislation specifically on the electronic signature.

7. Recommendation

The article recommendsasfollows:

1. There should be a clear definition of electronic signature as is the case of the traditional signature to ensure they fulfil the same function.
2. Currently, in Nigeria, there are two laws recognising Electronic signature, one of the laws excluded certain documents from the scope of electronic signature and this leads to a sense of ambiguity. There is therefore a need for an Act to provide for clarity.
3. The Actto be enacted should also take cognisance of proof of electronic signature and the method of creating electronic signature.

LEGAL ASSESSEMENT OF ADBUCTION

By

OFODUM CHUKWUNONSO CHARLES ICON[170]

ABSTRACT

The research paper "The Legal Assessment of Abduction."The background to the engagement in the writing of this article is the need to solve the very intriguing abduction in Nigeira.The central research problem is that there is very little legal writing in this domain of legal research in Nigeria, which could aid and contribute to writing in this area, resulting in a severe dearth of jurisprudence. Secondly, the few available materials relating to the subject matter of this paper are scattered in several legislative documents.The research question answered is: what are the laws, procedures, judicial decisions, abduction, roles and evaluation of the performance of the institutions and authorities involved in abduction in Nigeria?The objective of this paper is to familiarize students, teachers, legal practitioners, investors and businessmen with the laws, researchers,government agencies, police, law makers, institutions, authorities, abduction and remedies available and services offered by the state of Nigeria in this regard. It also aims at assembling the various pieces of legislative enactments, dispersed in many texts and cataloguing them in a single document.The research methodology adopted is the qualitative method. Research materials for this paper were collected from primay and secondary sources. The primary sources include legislation - laws, codes, decrees ordinances, Ministerial decisions and orders, and secondary sources such as lawtextbooks, and journals. The significance of this article is that it would enlighten people about the roles of governmental institutions in the elimination of abduction in Nigeria with particular attention on the abduction in Nigeria and the relevant legal framework. The paper will enlighten the public of the other peculiar and specialized institutions, authorities,

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methods and procedures of land abduction and remedies in Nigeria which are different from those which some people are already familiar with in the courts and outside the court room.

General Introduction

Abduction: The action of forcibly taking someone away against their will[171]. The act *of* restraining another through the use *or* threat *of* **DeadlyForce** *or* through fra udulent persuasion. The requisiterestraint generally requires that the abductor intend *to* prevent the liberation *of* the abductee. Some states require that theabductee *be a* minor *or* that the abductor intend *to* subject the abductee *to* prostitution *or* illicit sexual activ ity.[172]

Child Abduction is the offense of wrongfully removing or wrongfully retaining, detaining or concealing a child or baby. Abduction is defined as taking away a person by persuasion, by fraud, or by open force or violence. There are two types of child abduction: parental child abduction and abduction by a stranger. Parental child abductions are the most common type.

When one parent abducts his/her child(ren) from the other parent it is often during or after a divorce action and is meant to circumvent the court or act in defiance of a court order regarding legal custody of the child(ren). Parental child abductions may occur within the same city, within the same state, country, or internationally. [173]

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[171] https://en.oxforddictionaries.com/definition/abduction> accessed on 29th September, 2018

[172] https://legal-dictionary.thefreedictionary.com/abduction> accessed on 29th September, 2018

[173] https://www.hg.org/child-abduction.html> accessed on 29th September, 2018

What is Child Abduction Law? Laws regarding parental abductions vary. In some states and countries this is a criminal offense, but not in all. In many U.S. states, if there is no formal custody order and the parents are not living together, the "abduction" of the child from the other parent is not considered a criminal offense. However, many states have made the abduction of a child across state lines by a parent a crime. The National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted the Uniform Child Abduction Prevention Act in an effort to bring state law uniformity to this issue.

When a stranger abducts a child, it can be for different reasons: abuse; torture; murder; extortion; ransom; or to raise the child as his/her own. Stranger child abductions are the least common.

Although these terms are often used interchangeably, abduction is generally distinguished from kidnapping, because kidnapping requires the use or the threat of force when taking and/or holding the kidnapping victim.

Congress has enacted many civil and criminal laws to address abductions, kidnapping, interstate and international child custody and visitation disputes. The U.S. is also a party to a treaty aimed at resolving international child abduction cases.[174]

Child abduction or **child theft** is the unauthorized removal of a minor (a child under the age of legal adulthood) from the custody of the child's natural parents or legally appointed guardians.

[174] Ibid

The term child abduction conflates two legal and social categories which differ by their perpetrating contexts: abduction by members of the child's family or abduction by strangers:

- Parental child abduction: unauthorized custody of a child by a family relative (usually one or both parents) without parental agreement and contrary to family law ruling, which may have removed the child from the care, access and contact of the other parent and family side. Occurring around parental separation or divorce, such parental or familial child abduction may include parental alienation, a form of child abuse seeking to disconnect a child from targeted parent and denigrated side of family.
- Abduction or kidnapping by strangers (from outside the family, natural or legal guardians) who steal a child for criminal purposes which may include:
  - extortion, to elicit a ransom from the guardians for the child's return
  - illegal adoption, a stranger steals a child with the intent to rear the child as their own or to sell to a prospective adoptive parent
  - human trafficking, a stranger steals a child with the intent to exploit the child themselves or by trade in a list of possible abuses including slavery, forced labor, sexual abuse, or even illegal organ trading[175]
  - **Sources and Methodology**

[175] www.wikipedia.com> accessed on 29th September, 2018

- Primary and secondary data were used in embarking on this work. Both primary and secondary sources of data were used as aids to drawing inferences, making deductions and comparisons.
- The main sources of secondary data were survey report, both published and unpublished materials. While the main source of primary data was the information obtained through oral interviews, personal contact with some of the scholars, written commentaries, as relevant legislation and case law. Secondary sources are: journals, articles etc.
- Data in this work were sourced from existing records or relevant document, research studies and literatures related to the research problem. Other materials from which data were sourced include business journals, business magazines, law journals, decided cases, law report, law dictionary, relevant legislation , written commentaries, daily newspapers as well as textbooks.
- Doctrinal method was adopted by the researcher to enable him to carry out the research.

Emerging Anti Kidnapping in Nigeria

First it was the Governor of Rivers State, EzebunwoNyesomWike, who in August 2015, signed the state's anti-kidnapping bill into law.

Assenting to the bill, the Governor said it would help the security agencies in their fight against kidnappings and their sponsors adding that criminals convicted for kidnapping and accessories to kidnap would forfeit their asset, funds and proceeds from kidnapping.

Just two days ago, another Governor, AbiolaAjimobi of Oyo state assented to a new kidnapping (prohibition) bill 2016, which prescribes death sentence or life imprisonment for any person who engages in kidnapping . according to the law, any kidnapper whose victim or victims die while in captivity will be liable to capital punishment while a convicted offender whose victim is released or rescued unhurt upon the payment of a ransom, will be liable to life imprisonment and be compelled to pay back the ransom.

The law futher prescribes various punishment for any person threatens to kill, maim or cause bodily harm in order to compel another person, corporate body or organization to do or obtain from doing any act as a condition for the release of the victim similarly anyone who makes an attempt to kidnap, aids or abets kidnapping will be sentenced to not less than 15 years imprisonment.

One must comment the oyo State of Assembly for a thorough job. Virtually everybody who plays one role or the other in a kidnapping case, including the person who plans his kidnapping in other to extort money from another person is captured in this law. However, one thing is enforcing it, making sure that no victim goes unpunished irrespective of his tribe, religious or statues. It is often said that Nigeria is not deficient in beautiful laws but what is lacking is the will to enforce these laws.

Just like Wike, Ajimobi has vowed to enforce the law to the letter. It is therefore our hope that these noble men would keep to their words and do everything within their powers to rid their states and indeed the entire country of this evil act which is threatening the good image of the country.

Recently I watched a documentary which traced the origin of kidnapping in Nigeria to the fight for the emancipation of the Niger Delta region. Following the environmental evils perpetrated by the oil multinationals in the creeks of the region, youths from Niger Delta decided to abduct some white oil workers as a way of drawing attention of international communities to their plights of the region. This actually yielded positive results as many countries began to sympathise with the region called for better treatment of the people.

Ironically, what began as a well planned and executed adventure latter turned to a misadventure as politicians in the quest to win at all cost employed kidnapping as one of the tactics as a way of intimidating their opponents . innocent fathers, mothers and relations of their political opponents were abducted. The perpetrators of this evil were paid to carryout their assignment. They in turn demand ransome before victims were released. It has therefore become a money spinner for many.

Today, the social evil which was regarded as Niger Delta problem by some people has spread to virtually all states of the country, the south from the south, West, East and North there seems to be no safe place. The abduction of over 200 school girls at Chibok, Borno State two years ago, the recent kidnapping of pastors in Kaduna State and other reported cases which took place in the north are indication that the issue has become a national problem, thus the need for stringent measures like the recent anti-kidnapping laws handle the matter.

However, while some people believe sever punishments like death penalty will deter many people from taking part in the crime, others do no agree with that. They observe

that since anti-kidnapping law came in being in Rivers State last year, kidnapping cases has not dwindled nor it is known that any kidnapper has been convicted and punished in accordance with the law.

This school of thought therefore believers that the problem does not lie on law but on morality, noting that since those in power used and still use these criminals to achieve their selfish desires, since some of our political leaders are cronies of kidnappers, and are ready to protect them at all cost, it will be business as usual.

They opined that unless politicians change their attitude to governance, no amount of law or death penalty can stop kidnapping and other social vices in the country.

Some analysts also say the rate of kidnapping and other crimes can be curtailed when our leaders both on the federal, state and local levels pay attention to the yearnings of the people. They insist that the poor economic situation of the nation has lured many young people to crime and they can only change through responsive, people-orientated governance not through laws.[176]

Senate Decision/Approval

The Senate passed a bill which outlaws abduction, wrongful restraint or confinement for ransom.

The Senate also approved death sentence for whoever engages in the act and a 30 years jail term for anybody that colludes with an abductor.

[176176176176]http://www.thetidenewsonline.com/2016/04/20/the-anti-kidnapping-laws/>accessed 29th September,2018

The bill sponsored by Isa Misau, APC-Bauchi, was passed into law after a consideration of the report by Senate committee on Judiciary, Human Rights and Legal Matters.

Presenting the report, ChukwukaUtazi, Enugu-North, said the bill sought to combat and prevent any form of kidnapping in Nigeria by giving wider powers to the Inspector-General of Police to ensure adequate policing of the crime.

The bill in Clause 1 (3) stated: "Whoever is guilty of the offence and then results in the death of the victim shall be liable on conviction to be sentenced to death."

Clause 3 of the bill provides a 30- year jail term to anyone who colludes with abductor to receive any ransom for the release of any person who has been wrongfully confined.

The report was unanimously accepted by the lawmakers after a voice vote.

The lawmakers' decision may not be unconnected to reported cases of kidnappings and arrest of its perpetrators.

In June, the Nigeria Police arrested a high profile kidnapper ChukwudumemeOnwuamadike, Popularly known as Evans.

Evans in August pleaded guilty to a two-count charge of conspiracy and kidnapping brought against him by the Lagos State Government.[177] Evans has been sentenced.

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[177] https://www.premiumtimesng.com/news/top-news/244560-senate-approves-death-sentence-kidnappers.html> accessed on 29th September, 2018

However, people should be acquainted with abduction/ kidnapping in Nigeria, lack of legal education has done more harm than good to Nigerian citizen.

Abduction of a Child in Reality

From the report in Punch Newspaper, certain facts are deducible and imperative, namely: A minor was taken away by an adult from the care and supervision of her parents in Bayelsa State to Kano State by an adult without parental consent. The minor was allegedly converted to Islam with or without her consent. Her abductor married her without parental consent. All efforts by her parents to rescue her were rebuffed by the Chief of a village in Tufa, in Kura Local Government Area of Kano State and by the Kano Emirate Council. The Emir of Kano and the Kano Emirate Council abetted the purported conversion and marriage of the minor. The abductor was given protection by the Nigeria Police Force.

In dissecting the legal implications of the above, I am guided by the need to obviate sensational submissions which are capable of causing ethno-religious altercations and acrimony. This article is not in anyway intended to offend the religious sentiments or sensibilities of those who are averse to a discussion of the subject matter under consideration. However, this cautious approach will not prejudice an analysis of the truth and justice of this case.

Nigeria has two basic penal jurisdictions; the North and the South. While the Penal Code applies to the Northern States and the Federal Capital Territory (FCT), the

Criminal Code applies to the Southern States. It should be noted that most States in the country have domesticated the provisions of both legislations with little or no modifications.

Abduction of a person by another is an offence punishable on conviction with imprisonment, fine or both, depending on the extent provisions of the applicable legislation.

Section 272[178] of the Penal Code which applies in Kano State where the suspect (Mr Yinusa) resides, defines abduction in the following terms: "Whoever by force compels or deceitful means induces any person to go from any place, is said to abduct that person. Section 273[179] of the Penal Code states that "whoever kidnaps or abducts any person shall be punished with imprisonment for a term which extend to ten years and shall also be liable to fine."

Under the definition Section reproduced above, the offence of abduction is constituted in the North when a person causes another to go from any place, either by force or through deceitful means. What amounts to deceit is a question of fact depending on the circumstances of the case. In the instant case, there is no argument about the fact that Mr Yinusa caused Ms Ese to go from a place (Bayelsa State) to Kano State. Whether this movement was orchestrated forcefully or through deceitful means

[178]Section 272 of the Penal Code
[179]Section 273 of the Penal Code

depends on certain considerations, the testimony of the suspect, the victim and that of her parents.

From the Punch Newspaper report, the mother and father of Ese stated in clear terms that their daughter was taken away by Yinusa without their knowledge and consent. According to Ese's mother, the suspect informed her "through phone calls that he did not kidnap her daughter as he took permission from one Dan Kano before he abducted her".

Also, in determining whether Ese was taken from Bayelsa to Kano by force or deceit, her age is a material fact that should be considered. As at August 12, 2015 when she was taken away, Ese was just 13 years old. I submit that a 13 year old girl, raised and brought up in a Christian community in Bayelsa State, where child marriage is an anathema, is incapable of appreciating genuine marital proposal from a man.

It is unlikely for a girl of her age in such environment to wilfully ignore her parents, follow a stranger to an unknown land, willingly convert from her religion (Christianity) to another (Islam) and marry her abductor. That is a logical impossibility. However, for argument sake, if this is possible, the suspect lacked the right to take her away or cloth her with the claws of matrimony as the Child Rights Act 2003 has clearly prohibited child marriages[180].

[180]Child Rights Act 2003

It is apposite to examine the position of the law of the locus criminis (the place of commission of the offence). The victim was taken from her parents' care and protection in Bayelsa State. The Criminal Code Cap. C38 LFN 2004 is applicable to all Southern States of Nigeria, Bayelsa inclusive.

On the offence of abduction, Sections 361[181] and 362[182] of the Criminal Code are reproduced below:

Sec. 361[183] states: "Any person who, with intent to marry or carnally know a female of any age, or cause her to be married, or carnally known by any other person, takes her away, or detains her, against her will, is guilty of a felony, and is liable to imprisonment for seven years."

Sec. 362[184]states:"Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful are or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour, and is liable to imprisonment for two years."

In substance, two separate offences are provided by Sections 361[185] and 362[186] of the Criminal Code. While the former is a general provision on abduction of women, the latter provides exclusively for the offence of abduction of girls under sixteen. The two

[181]Sections 361 of the Criminal Code
[182]Sections 362 of the Criminal Code
[183]Sections 361 Criminal Code
[184]Sections 362 of the Criminal Code
[185]Sections 361 of the Criminal Code
[186]Sections 362 of the Criminal Code

offences have distinguishable elements and arises in different circumstances. In the former section/provision, the operative words in Section 361[187] are "against her will". Thus, the offence is not constituted if the woman consents to being taken away or detained.

However, under Section 362[188] of the Criminal Code, any person who takes an unmarried girl under sixteen years of age out of the custody or protection of her mother, father or guardian without the consent of such mother, father or guardian is liable and guilty of abduction. Unlike Section 361[189] of the Criminal Code, Section 362[190] is a female child protection provision which dispenses totally with the consent of the child. Except with the express consent of the parent or guardian, no unmarried girl under sixteen years in Bayelsa State or any part of Southern Nigeria can be taken away for any purpose whatsoever.

The law on female abduction in the South is stricter than the law in the North which has lesser protective mechanism for the girl child. Section 363[191] of the Criminal Code reinforces the prohibitive provisions of Section 362[192] of the Criminal Code in two ways. Firstly, ignorance of the age of the unmarried female is not a defence to a charge of abduction under Section 362. Secondly, it is immaterial under the said

[187]Sections 361 the Criminal Code
[188]Sections 362 of the Criminal Code
[189] Ibid
[190] Ibid
[191]Section 363 of the Criminal Code
[192]Section 362 of the Criminal Code

provision that the unmarried female was taken with her own consent or at her own suggestion.

From the standpoint of the law in the South, Mr Yinusa cannot legally assert that Ms Ese had consented or that it was on her own suggestion that he took her to Kano State. The effect is that it is not open to the suspect or any other person to contend that it is a case of "elopement", and not abduction. By Section 363[193] of the Criminal Code, making a case of elopement, no matter how cogent and plausible, will not avail the suspect. Once it is established by credible evidence, beyond reasonable doubt, that Ms Ese was less than sixteen years as at August 12, 2015 when she was taken away, and that her father and mother did not consent to her being taken to Kano State, the offence is complete.

The Child Rights Act 2003 (hereinafter referred to as the Act) has gone further to discuss cases of violation of child case. The Act was enacted by the National Assembly to protect the Nigerian child. It is applicable to every State in the North, the South and the FCT. Section 264[194] of the Act mandates every State in Nigeria to establish a Child Rights Implementation Committee.

Section 27 (1) & (2)[195] of the same Act states that:

(1) "No person shall remove or take a child out of the custody or protection of his father or mother, guardian or such other person having lawful care or charge of the

[193]Section 363 of the Criminal Code
[194]Section 264Child Rights Act 2003
[195]Section 27 (1) & (2) of the Act

child against the will of the father, mother, guardian or other person. (2) A person who contravenes the provisions of Subsection (1) of this Section commits an offence and is liable on conviction—(b) where the child is unlawfully removed or taken out of the State in which the father, mother, guardian or such other person who has lawful care of the child is ordinarily resident, to imprisonment for a term of ten years.

This provision in essence prohibits the abduction of a child, irrespective of gender, out of the custody or protection of his/her father or mother or guardian. Section 277[196] of the same Act defines a child as "a person under the age of eighteen". This is exactly what Mr Yinusa did. He took Ms Ese out of the custody and protection of her parents and out of the State (Bayelsa) where the said parents ordinarily resides. Thus, he can alternatively be charged under Section 27[197] of the same Act if the prosecutorial authority is of the view that the provisions of the Penal Code are not explicit enough. However, that will be an erroneous view.

Prior to the enactment of the Act, there was no clearly defined age of consent in Nigeria. The law was not certain on when a person is of age to marry. This led to the propagation of diverse theories on the subject, ranging from the test of puberty to religious and cultural doctrines. However, with the coming into force of the Act in 2003, capacity to contract marriage has been pegged by the National Assembly.

[196]Section 277 of the same Act
[197]Section 27 of the same Act

Specifically, Section 21[198] of the same Act provides that: "No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever. What this simply means is that marriage cannot take place in Nigeria except the two contracting parties are above 18 years of age.

Under Section 23[199] of the Child Right Act, 2003 , "A person—
(a) who marries a child; or
(c) who promotes the marriage of a child;
commits an offence and is liable on conviction to a fine of N500,000 (five hundred thousand Naira) or imprisonment for a term of five years or to both such fine and imprisonment."

Based on the provisions of the Act, the purported marriage between the suspect (Yinusa) and the victim (Ese) is not only null and void but an offence. It is totally, morally and legally reprehensible for the suspect to have abducted a naive minor who barely knows the intricacies of her body physiology and anatomy, let alone the very fundamental and daunting demands of marriage.

The attempt by some persons to use Islamic injunctions and allowances and the purported conversion of Ese as a cover for this brazen criminality must be resisted. How can someone's child be taken away from the parents all the way from Bayelsa

[198]Section 21 of the same Act
[199]Section 23 of the Child Right Act, 2003

State to Kano State and allegedly converted from her Christian faith to Islam just to satisfy the insane libido of a man that is old enough to be her father? It is even more troubling that the very educated and highly revered Emir of Kano, MalamMuhammaduSanusi II, had initially accepted custody of the victim and approved the purported conversion and marriage.

I do not know whether Sharia ascribes any regard for parental consent in Islamic marriages. Mr Yinusa reportedly claimed that he took "permission" from one Dan Kano, who I suppose is the leader of the Kano community in Bayelsa State, before abducting Ese. That makes the said Dan Kano an accomplice who should be arrested and prosecuted.

The issue is that this girl (Ese) has not been a Muslim all her life. Her parents are not Muslims and she was not raised in a Muslim community. In any case, Nigeria is a secular state by virtue of Section 10[200] of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

What will be the position of the Emir of Kano if her 13 or 14 years old grand daughter or daughter is taken away by a Christian man from his palace in Kano to Bayelsa State, converted to Christianity and married off by the abductor? Will MalamSanusi say that her grand daughter or daughter in such a situation be allowed to choose her faith and make her choices?

[200]Section 10 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

If the suspect had any sensible and sincere interest in the minor, to the point of conceiving the irrational idea of taking her as a wife, why did he not first convert to Christianity and subsequently approach Ese's parents when she attains atleast eighteen years of age? This had nothing to do with love. It is a crime that cannot be excused for any reason whatsoever.

This barbaric and criminal action by Yinusa must not go unpunished. If the suspect is not prosecuted for the abduction of Ms Ese to serve as a deterrence to other perverts whose libido have become a threat to the girl child in Nigeria, it would mean that Nigeria is not a country of laws. Such inciting impunity must not be allowed to fester in the 21st century.

Mr Yinusa who was domiciled in Bayelsa State prior to August 12, 2015 when he took Ms Ese out of the custody and care of her mother and father was bound by the provisions of the Criminal Code at the time of commission of the offence(s). The offence of abduction arose in Bayelsa. Therefore, he can be arrested and taken to the locus criminis to face trial. The Bayelsa Court will have jurisdiction in the circumstance to try him for abduction of an unmarried girl under sixteen without parental consent. Even if he had kept her within Bayelsa State, he will still be liable because the decisive test under Section 261[201] of the Criminal Code is whether Ms Ese had been taken out of the "custody" and "care" of her parents.

[201]Section 261 of the Criminal Code

I strongly recommend that the suspect be arrested and taken to Bayelsa State to face trial. In the event that this is not done, the authorities should ensure that Yinusa is diligently prosecuted in Kano State for abduction under Section 273 of the Penal Code and for contracting a void marriage contrary to Section 23[202] of the Child Rights Act, 2003. It is most probable that Ese has been sexually assaulted by her abductor. She needs urgent medical and psychological care and examination. She deserves compensation, not just her physical freedom.

The Kano Emirate Council should tender an unreserved apology to the Oruru family and Nigerians for abetting this scandalous action and criminality of Yinusa. It is not enough that the Emir of Kano has now accepted that Ese be returned to her parents. If the Punch Newspaper had not launched the Free Ese Campaign would the Emir had ordered the Kano Sharia Commission to liase with the Assistant Inspector General of Police Zone 1 for Ese's release?

It is also important for the Police authorities and the Nigerian government to investigate why this case lingered to this time. It is a sad commentary that the Inspector General of Police, Mr Solomon Arase, would declare that Ese's release was contingent on the availability and cooperation of the Emir of Kano. That is an insult on the Nigerian state. Why should the consent of the Emir be sought before the law is enforced? Is Nigeria a theocracy? Mr Arase has totally undermined the integrity and independence expected of his office. In saner climes, the Emir would have been

[202]Section 23 of the Child Rights Act

questioned by the police over his role in this case. The National Human Rights Commission should take a decisive position and action on this matter.[203]

Abduction in Nigeria

Kidnapping and abduction are offences under the Nigerian Legal System.

Earlier, I have discussed about arrest and I wish to state that arrest, kidnapping and abduction have different meanings in Law but may look alike in the eyes of many.

An arrest is a restriction, which is LAWFUL on an individual's right to liberty as contained in section 35 (1) (c)[204] of 1999 Constitution of the Federal Republic of Nigeria. Arrest may be with or without warrant of Arrest.

A police officer can arrest any person without a warrant where he reasonably suspects him to have committed an offence in any of the circumstances listed in Section 10 (1)[205] CPA and section 26 CPC[206]. Here commitment of an offence which makes the arrest LAWFUL is necessary. Which means that anything short of the lawfulness of a restriction of an individual's freedom is not an arrest and may be the other two classes. When a policeman uses deceit, force and threat to take away a person, it is not an arrest.

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[203] http://saharareporters.com/2016/03/01/legal-implications-abduction-forceful-conversion-islam-and-purported-marriage-citizen-ese>29thSeptember, 2018

[204] section 35 (1) (c) of 1999 constitution of the Federal Republic of Nigeria

[205] Section 10 (1) CPA

[206] Section 26 CPC.

Kidnapping is the taking away of a person by force, threat, deceit, with intention to cause him or her to be detained against his or her will. This criminal act may be done for ransom or for political or other purposes. Section 364[207] of the Criminal Code of Nigeria deals with this criminal act known as kidnapping which is now becoming very rampant in the country now. So many people do not understand the consequences of this act on the individual families affected directly and indirectly as well as to the image of this our great nation Nigeria. Some of the kidnappers and abductions see this act as business. Business indeed with other people's lives and liberty.

The same section 364[208] provides that any person who unlawfully imprisons any person or takes him out of Nigeria, without his consent; or unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovery to any other person of the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, is guilty of a felony and is liable to imprisonment for ten years.

It is to be noted that due to the gravity of this crime in the country, some states have put in place legislation with stiffer and harder sanctions as a determent. The question still remains: Does this stop or even eliminate this crime? To me as some have now tagged me "the legal pastor" it is greed, over-ambitiousness, without waiting for one's God-chosen time to arrive. Stupidity, foolishness, laziness; idleness and lack of fear of

[207] Section 364 of the Criminal Code of Nigeria
[208] Ibid

God in the persons involved usually lead to the commitment of these crimes. If one is not lazy and unnecessarily idle in this country one must survive and become fantastically rich without involvement in crime, if it's God plan that such a person must be rich. Always pray and wait for your time.

Abduction as an Offence

This is the unlawful interference with a family relationship, such as the taking of a child from his parent, irrespective of whether the person abducted consents or not. Also, it can be the criminal taking away of a person by persuasion, fraud, or by open force or violence.
Most people mix up kidnapping with abduction. Before I highlight their differences, let me first restate the key words that pertain to each of them.

ABDUCTION: (1) Taking away of a person (2) by persuasion (3) by fraud (4) by open force (5) by violence.
KIDNAPPING:(1) Taking away a person by (2) force (3) threat (4) deceit (5) without consent of the person (6) hiding the person in an unknown place or preventing his discovery to any other person of his hiding place (7) no access to the person.

Kidnapping and Abduction

The key difference is that Abduction is when someone uses deceit or force in order to take a person or a child away from their home or relative. Kidnapping is taking away

or forcefully transporting a person against their will and holding them in false imprisonment, a confinement without legal authority.Kidnapping is usually done for a motive or for ransom.

Abduction is the unlawful interference with a family relationship, such as the taking of a child from its parent, irrespective of whether the person abducted consents or not. Kidnapping is the taking or detention of a person against his will and without lawful authority.

The terms abduction and kidnapping are sometimes used interchangeably. At common law, kidnapping consisted of the forcible abduction or stealing or carrying away of a person from one's own country to another. Kidnapping is the taking away of a person by force, threat, or deceit, with intent to cause him or her to be detained against his or her will. Kidnapping may be done for ransom or for political reasons or by open force or violence.[209] See BELLO OKASHETU v. THE STATE,[210]Yusuf v. State[211], Abdul MajeedNasiru V Commissioner Of Police[212], OludotunOgunbayo v The State[213], Mr. Orji Asaa V. Mr. Frank Ojah[214]

The Legal Assessment of Abduction

[209]https://oraclenews.ng/kidnapping-and-abduction>accessed 29th September,2018
[210]BELLO OKASHETU v. THE STATE

[211]Yusuf v. State

[212]Abdul MajeedNasiru V Commissioner Of Police

[213]OludotunOgunbayo v The State

[214]**Mr. Orji Asaa V. Mr. Frank Ojah**

Recommendation

Abduction should be looked into and the act that established Abduction should be amended to accommodate the recent happening.

Conclusion

The researcher has successfully discussed The Legal Assessment of Abduction. Abduction is taking away a person by persuasion, by fraud, or by open force or violence. The researcher discussed types of Abductions, decided cases of aduction, Abduction as a reality, Abduction in Nigeria, Abduction as an offence etc a recommendation was given too.

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The court's jurisdiction when determining the validity of a customary marriage concluded outside the country

Written by Eileen Dexter, Candidate Attorney and Dingumuzi Ndhlovu, Associate

Introduction

The Recognition of Customary Marriages Act (120 of 1998) (the "RCMA") brought about fundamental changes to the legal position of a customary marriage in South African law. The RCMA ensured that a customary marriage is, for all purposes of South African law, recognised as a valid marriage.

However, a key question that arises ishow will our courts go about determining the validity of a customary marriage when such marriage was concluded outside the borders of South Africa? This question was delt with is the case of *ND vMM* (18404/2018) [2020] ZAGPJHC 113 (12 May 2020). This article will explore the various considerations that our courts take into consideration when determining the validity of a customary marriage in terms of the 'RCMA'.

Background of the case.

The plaintiff in this matter sought an order for divorce in the High Court of South Africa. The plaintiff contended that a customary marriage was concluded between herself and the respondent in 2011and that such marriage had broken down irretrievably.

The particulars of claim in this case alleged that a customary marriage was concluded between the parties "*during 2011*" at Steelpoort, South Africa. The material facts relied upon in the particulars of claim for the conclusion of the customary marriage were that:

1. The negotiated lobolo was paid on 3 September 2011. In the plaintiff's affidavit attached to the summons, she stated that the defendant's family, the M family, went to her family's place of residence (in the Kingdom of eSwatini)for the "*purposes of negotiating and subsequently paying lobolo*".
2. The two families celebrated by slaughtering of two cows which is a symbol of welcoming and appreciating what the M family has been paid.

3. The plaintiff was delivered in terms of Bapedi custom to the defendant's family on 4 September 2011 (at Steelpoort) The plaintiff stated that the M family took her to their family home in Steelpoort "*where they held a welcoming event for my arrival*".
4. Both parties consented to the customary marriage.

In determining if an order for divorce could be granted, the court first had to determine if a valid customary marriage was indeed concluded in 2011 and if the marriage was in fact valid.

The requirements for a valid customary marriage in South Africa:

The court considered the requirements for a valid costumery marriage which are set outin Section 3(1) of the "RCMA".

For a customary marriage entered into after the commencement of this Act to be valid-

(a) the prospective spouses-

(i) must both be above the age of 18 years; and

(ii) must both consent to be married to each other under customary law; and

(b) the marriage must be negotiated and entered into or celebrated in accordance with customary law."

The first two requirements were not at issue in this case, but the third requirement was the crux of the problemin determining the validity of the marriage in question. The court had to further also establish whether it had the necessary jurisdiction to hear the case as the marriage in question was presumably entered into in Swaziland.

Court finding on the issue of "if the marriage must be negotiated and entered into or celebrated in accordance with customary law:

The customs of the community to which a party belongs is the proper source of customary law. In this matter it was common cause that the amaSwati (Swazi tribe) customs had to be applied. Within amaSwati customs there could be further customs of smaller communities that could have become customary law. One community could warrant the 'marriage dance by the bride' as a crucial requirement for the concluding of a customary marriage whilst a neighbouring community might not consider this custom as a crucial requirement.

The wording of section 3 of the Act suggests that a customary marriage must be proven by way of proving compliance of such a marriage with "*customs and usages traditionallyobserved among the indigenous African peoples of South Africa and which form part of the culture of those peoples*".

In determining ifthis particular marriage was concluded in accordance with the amaSwaticulture the court looked into the formalities of a marriage solemnized in accordance with Swazi Lawand customs which included:

(i) the bride must be smeared with libovu (red ochre) during the marriage ceremony (umtsimba);

(ii) Lobolo (emabheka) cattle must be delivered in full or guaranteed.;

*(iii) The "lugege" and "insulamnyembeti" beasts must be handed over, and, the "lugege" beast must be slaughtered."*The court found that *there werea number of ceremonies performed at the wedding, but the legally significant one is the anointing of the bride with red ochre (libovu). Unless and until this has been done, she is not regarded as having been married.*

Furthermore,where the marriage takes place in a chiefdom, the chief is informed of such an event so that he could send a member of the Chief's Inner Council to represent him. This is done partly to provide proof of the marriagehaving been solemnized andpartlyto ensure that peace prevails during the ceremony."The court stated that the question arises in the light of the aforesaid,is what facts a court must find in order to determine that the customary marriage was negotiated and entered into in accordance with "*customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples*", as required by section 3 of the Customary Marriages Act. The degree of compliance with customary law requirements is relevant in determining if a customary marriage has been concluded on the facts of each case. A court necessarily must determine what the living customary law is, and to what degree it has been complied with. In case of non-compliance, it is the duty of the court to find that a valid customary marriage had not been concluded.

In the given case there was never any mention made about the "*anointing of the bride with red ochre (libovu)"* nor the presence of the Chief's inner circle.

The question around the jurisdiction of the court to make a declaration of validity of the marriage:

The court in this matter stated thatat best for the

plaintiff, a customary marriage was concluded in eSwatini. It was further established that in our law, the validity requirements for such a marriage would be determined by *lex loci celebration is*, the law of eSwatini where the wedding was celebrated.

The court was of the opinion that they would have been unable to grant the relief that theplaintiff seeks under the Customary MarriagesAct, as the cause of action the plaintiff relied upon as the Customary Marriages Act do not apply: (a) as it is a marriage in a foreign country and

(b) due to the definition of customary law in the Customary Marriages Act limited to South African customary law.

If the proper law pertaining to the marriage is eSwatini law, the court also found that it may have no jurisdiction to grant an order of divorce in the case of a customary marriage concluded in eSwatini (dependent on its status in that country as an official marriage), or may not have such jurisdiction before a customary law dissolution has taken place. The authorities that the court referred to, suggested that a customary marriage concluded in eSwatini could only be dissolved in a civil court in that country after following the customary law (and then it is a dissolution and not a divorce that serves before the High Court in that country).

Conclusion:

After the decision in DN v MM all customs including the smear of libovu (red ochre) must be practiced as officialrequirement for a valid customary marriage in the official customary law. A deviation can be allowed only if it can be proved that the living customary law of a certain tribe has evolved to such an extent that the bride being smeared *with libovu (red ochre)*can no longer be regarded as an essential requirement for a valid customary marriage. In our matter this is still one of the crucial customs that theamaSwati- tribe still practice today. In this matter the court found that besides the presumption that no valid customary marriage came into existence the court also did not have the necessary jurisdiction to hear the matter because the law that was to be followed in the matter was determined by the *lex loci celebrationis*, the law of eSwatini (law of Swaziland) where the wedding was celebrated. Because of thesefacts the court noted thatan order of absolution from the instance would be the appropriate order and not a dismissal of the action

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case by case basis and you should consult an attorney before taking any action contemplated herein.

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