LAW AS A SOCIAL MEDICINE: ACASE OF LAW ABUSE, ADDICTION, AND OVERDOSE IN NIGERIA

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Discussions of the utility of the laws in Nigeria are not novel amongst scholars, lawyers, law students, and political scientists in Nigeria. Laws are generally agreed to serve multifarious purposes including goals parallel to medicine in man. The way Medicine has functions which vary from preventive, curative, and rehabilitative, so also can a law be to prevent, cure and rehabilitate a sick society. These different health care functions can be discussed withthe curative function of law thus: What should be the course when the medicine is the cause of the sickness?or when the sickness is due to overdose of drugs, or drug abuse? The writer explains the illnessof Nigeria from the perspective of the sociological jurisprudence, concluding that not just any law is sufficient as a medicine but a carefully prescribed law, the same way prescription has to be done by an expert for the drug to function maximally in the human body, noting that in reality, the law can either act to cure, prevent and rehabilitate the society of social ills or destroy, exacerbate and permit societal ills.

1.0 INTRODUCTION

In differentpolities, laws serve differing functions including but not limited to: maintaining social control, ensuring justice, fostering public peace, maintaining law and public order, provision and protection of the rights and obligations, providing equity and equality, ordering in change, and social reform in recognition of the dynamic nature of human society and resolving conflict with justice being set as the object. The importance and effect of these laws cannot be over-emphasized, hence the danger bred when the effect of the laws are negative should also be given paramount attention.This negative effect results in an inadequacy of the law, and now, in the words of Pierre Lepaulle[1], "we have come to a period when… there is a real inadequacy in the law", except in Nigeria, we have, for far too long, been stuck in an era of the inadequacy of the law.

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[1] Pierre Lepaulle, 'The Function of Comparative Law with a Critique of Sociological Jurisprudence' [May, 1922], *Harvard Law Review*, Vol. 35, No. 7, pp. 838-858. <https://www.jstor.org/stable/1329398> accessed: 26-07-2021.

2.0 THE SOURCES OF NIGERIAN LAW

Nigerian lawsare traceable to several sources which include:

1. Customary Lawis the organic system of the normative body of rules, customs, traditions, and practices indigenous to the people of Nigeria also called *lexnon-scripta*, which were existingbeforethe colonial intervention, which regulated the societies and gave them a sense of peace, stability, and unity while mirroring their culture.Some customary laws which have beenaccepted by the people it regulates are still relevant and valid in contemporary Nigeria, with some even receiving judicial notice, despite it being subject to compatibility, repugnance, and pubic policy tests.

2. Islamic Lawis a religion-based body of rules, founded on the Holy Koran and the teachings of Prophet Mohammad. Its introduction is due to the success of theIslamisationprocess in present-day Northern Nigeria and a consequence of the Trans-Saharan trade and migrations which linked theKanem Bornu Empire and the Fulani Hausa states to the Arab world.[2] It is different fromthe customary law in Southern Nigeria in sense of itscodification, non-ethnicity, rigidity, and universality[3].

3. English Lawwas a by-product of the colonial rule, with Nigeria having no choice in its imposition as concisely explained by Hon. Justice Prof. Nikki Tobi J.S.C[4]. The English Law which operates in Nigeria is made up of two strands: the received English law and the extended English law. The former consists ofEnglish Common Law, the doctrines of Equity, and the Statutes of General Application in force in England on or before the 1st of January, 1900, which were received by some local statutes,e.g the Interpretation Act[5].

4. The Nigerian Constitution.A Constitution is the basic legal document of a country. It is the *fons et origo*of the jurisprudence and the legal system of a nation[6]. The Constitution of the Federal Republic of Nigeria 1999[7] is the supreme and fundamental law of the country[8].

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[2] Adamu, M, *The Hausa Factor in West African History*, 1978; Osaghae, E. E, *Crippled Giant: Nigeria since Independence* (John Archers Publishers Ltd 2015) 2.
[3] Per Wali, J.S.C. in *Alkamawa* v. *Bello* [1998] 8 NWLR (Pt. 561) 173.
[4] Tobi, N., *Sources of Nigerian Law* (MIJ Professional Publishers Ltd 1996) 17.
[5] Section 45(1) Interpretation Act, CAP I 23, LFN 2004.
[6] Per Tobi, J.S.C. in *A.-G. Abia State* v. *A.-G. of the Federation* [2006] 16 NWLR (Pt. 1005) 265.
[7] The Constitution of the Federal Republic of Nigeria 1999 (as amended) 2011, hereinafter referred to as CFRN, 1999.
[8] Section 1(1) of the CFRN provides for its supremacy and states its binding force on and over all authorities and persons throughout the Federal Republic of Nigeria. With such effect, any legislation, custom or tradition contrary and inconsistent to its provisions is void to the extent of the inconsistency

5. Nigerian Legislation generally comprisesOrdinances[9], Acts[10], Laws[11], Decrees[12], Edicts[13], and Bye-Laws.[14]

6. Case Lawsare laws based on the application of the doctrine of *stare decisis*, that Judges must follow the precedents and principles of law declared by superior courts. In both civil and criminal cases, Judges usually state the reasons for their decision, the *ratio decidendi*, when giving a ruling or judgment and when a later case arises involving similar fact, the Judge will refer to the reasons for the decision in an earlier case and apply the legal principles therein if they align with the principles of law to be applied in the instant case, while in adherence to the hierarchy of the court system. The law so laid down in earlier cases is called case law or judicial precedent.[15]

3.0 LAW AS A SOCIAL MEDICINE

"Law as a social medicine" became popular after its use by Pierre Lepaulle, a student of a former Dean of Harvard law school, Roscoe Pound. Lepaulle noted that in the medical profession before the nineteenth century, whenever a novel case was brought before a medical practitioner, the doctor would try to muster what he could out of his experience by analogy, or to get inspiration from the spirit of his profession, or to use the common sense he had left, and then, trusting the gods, he would try a remedy and if the patient became worse, the doctor would try something else. However, upon the development of anatomical and physiological studies in the nineteenth century, the doctors quickly availed themselves of the new knowledge and took advantage of the facts discovered by these sciences to direct their art[16], to him, Medicine is an 'art' based on factual sciences. Over time, studies have undergone to understand the organism of society, these studies looked at the evolution of the social organism while others looked at the functions of fractions of the institution of this social organism.

[9] Ordinances are laws passed by the Nigerian Central Legislature before October 1, 1954 when the Nigerian (Constitution) Order-in-Council 1954 introduced a federal Constitution into Nigeria.
[10] An Act is an enactment by the Federal Legislature before January 16, 1966 and an enactment of the National Assembly during democratic dispensations.
[11] Laws are those legislations which are enacted by the State/Regional Houses of Assembly during civil democratic regimes.
[12] Decrees are laws made by the Central Authority in a military regime, but those decrees which have been designated Acts by virtue of the Adoption Order 1980 are also included, and are generally known as "Existing Laws"
[13] Edicts are laws made by the State Administration in a military regime.
[14] Akpederin, E. K., *General Principles of Nigerian Law: A Tutorial Approach*. (Simpliciter Publishers 2012), 21-22.
[15] Malemi Ese, 2012. *The Nigerian Legal System: Text and Cases*. (Third Edition, Princeton Publishing Co 2012) 36.
[16] *Ibid. note 1.*

To Pierre, the law has a curative purpose in society. A society can, like a living organism, fall sick, therefore, where the social organism is sick, the appropriate therapy is the law. Lepaulle's "law as a social medicine" came after Roscoe Pound's thought of "law as a social engineering". Whilst Pound saw society as a machine, Lepaulle saw it as an organism. To Pound, the jurist works to reduce the breakdowns and frictions in the society by providing information of human wants to the judges and legislators to prevent a disconnect between the law and the society whilst to Lepaulle, the law exists to cure the illnesses of the society, since the society is an organism, though sociological rather than biological, it can, like a biological organism, be ill and where ill, it, like a biological organism, needs medicine, and law plays the function of medicine to the society. Like all views and estimation of jurists, the conjectures of Lepaulle are not without criticisms which includes notions that where the society is sick, the law may not be sufficient in curing the illness, they posit that other extra-legal factors like morality, customs, religion may need to be considered in coming up with an apposite medicine for the society.

4.0PURPOSE OF MEDICINE AND DRUGS

Similar to purposes of the law, medicine in man serve some purposes which include but are not limited to the curative purpose, preventive purpose, and rehabilitative purpose.

1. Curative purposeconsists of health care with its principal intent being to relieve symptoms of injury and or injury, to protect against the complication of the illness or injury that could threaten normal bodily function, to reduce the severity of an illness or injury, or to protect against exacerbation[17].

2. Preventive purpose/care is any measure aimed at avoiding or reducing the number and or the severity of injuries and diseases and their complications[18].

3. Rehabilitative careis the strategy aimed at empowering persons with disabilities arising from health conditions to achieve andmaintain a decent quality of life, optimal functioning, and inclusion in their society.

4.1Drug abuse, and drug overdose

[17] The curative purpose whilst focusing primarily on the health condition, consists of processes including diagnosis establishment, prescription and or therapeutic plan formulation

[18] It involves a process to enable people to improve their health through the control of some of its direct and immediate determinants including a careful consideration of wide range of expected outcome.

Drug overdose or drug abuse affects the human mind and brain in various ways, causing changes, either short-term or long-term which include depression, paranoia, hallucinations, giving rise to drug addiction. Drug abuse differs from Addiction in the sense that while Drug abuse refers to the use of legal or illegal substances in ways it should not be used, e.g using more than the prescribed quantity or dosage of drugs, Addiction, refers to that dependency on the drugs, irrespective of its effect on the user's body or mind.

Drugs in this sense include Hallucinogens like LSD, Angel dust, inhalants like laughing gas, marijuana, cough syrup, alcohol, most of these drugs have their medicinal uses and purposes which can be either curative, preventive, or rehabilitative but when used outside of the prescription made by medical personnel or in ways it should not be used, it will amount to drug abuse. Addiction is a disease that affects the brain and the mind, hereby having a ripple effect by affecting the behaviour, leading to the irresistible urge to use drugs irrespective of the harm caused by the usage therein and it has been linked to having the effect of causing anxiety and mood disorders. Not all drug abuses lead to addiction as the addiction to drugs depends on nature and nurture. It should be noted that in as much as the drug is used in a way prescribed by a medical personnel/ expert, it cannot be drug abuse.

5.0 LAW ABUSE IN NIGERIA[19]

There seems to be some semblance between drug abuse and law abuse. Laws can be abused either by its misuse, its over-dependency especially when other regimes should be relied upon, its misapplication, or impropriety or unsuitability of the law in itself or in connection with the time, place, or circumstance in which it is meant to cure. This abuse of laws can stem in various ways thus;

1. **Existence of obsolete laws, Inherited and over-borrowing laws.** Nigeria's history cannot be discussed the British colonial system, similarly, the history of legal practice and our legal system is traceable to the British colonial administration. Upon independence, Nigeria had as part of its sources of laws, the Common Law of England, the doctrines of Equity, and the Statutes of General Applicationin addition to our indigenous legislations, Case law, and Islamic law, and Customary laws that did not fail therepugnancy test. Despite our obtaining independence more

[19] Law Abuse in this sense is not an utter abuse and disregard for the rule of law and the legislations, a practice which is popular in Nigeria, even amongst the law enforcement agencies, its agents, the ruling class and the political elites. Law abuse is used in a similar sense as drug abuse.

than fifty years ago, some of our most important laws are those applied in England copied and pasted into our Laws of the Federation without having a second look as to their fitness to our polity.

His Lordship, Hon. Justice DahiruMusdapher opined that the Nigerian legal system is still weighted down by colonial enactments and institutions. Some of the inherited laws that regulate criminal, civil, and commercial activities in Nigeria are still unchanged since their introduction, save for minor alterations and amendments, leaving Nigeria legally backward and incomparable with its contemporaries and the colonialists that bequeathed uswith these laws, who are currently years ahead of us with current laws that meet the prevailing social, political and economic situation of their people.[20] While it is true that some of the inherited laws have not diminished in relevance, the continuous reliancecan be said to lead to the social illness of "legal stagnation", one of the illnesses of Nigeria. 'Legal stagnation' inhibits the proper development of 'Nigerian law', as such, is not in tandem with the current needs of the Nigerian society, leading to problems of effectiveness and creating a disconnect between the law and the society as a whole[21].

Some of the old inherited and borrowed laws which are unrealistic to the society and the current times are;

(a) The sale of goods act of 1893. This act is older than Nigeria either as an independent State or the name "Nigeria" itself but is still functioning as the law regulating a sensitive commercial aspect of the country, the sale of goods. Although some States of the Federation, Lagos being the forerunner, has amended it, bringing it in touch with today's reality in the state, the question of its use remains, as to why would a law so old, out of touch with modernity and the society, still exist as the National legislation regulating the sale of goods in Nigeria when it can be amended or repealed and replaced with a statute both current in terms of time and societal demands.

(b) The Criminal code Act. William Friedman rightly maintained that the criminal law of a particular society should reflect the society's social consciousness,[22] but this proposition is different from the reality of the Nigerian Substantive Criminal law system which is mainly

[20] "Law Reform in Nigeria: Challenges and Opportunities." Lecture delivered by His Lordship, Hon. Justice Dahiru Musdapher, *supra* 8-9.

[21] His Lordship, Hon. Justice (Dr.) A. Nnamani agreed with this view in his address delivered at the University of Calabar Law Week on the 3rd of June; Nnamani, A., 1989. "The Role of Law Reform in the Development of the Law." p. 5.

[22] Friedman Williams, *Law in Changing Society* (London, 1959) p. 165.

borrowed and imposed by the British from Queensland. The borrowed and imposed nature of the majority of the laws regulating criminal matters in Nigeria creates adisconnectionbetween Nigerian Criminal law and society. The Criminal code initially enacted in 1904 for the Northern Protectorate was later enacted on June 1st, 1916 for Nigeria after its amalgamation; it used the 1899 Queensland Criminal code as its model. At its time of enactment, our societal peculiarities were not considered, understandably so, since we were not an independent State. But upon gaining independence and with the current incentive of our legislators, one would think that the criminal legislation of Nigeria would be amended with our peculiarities and volkgeist in mind and those unneeded provisions would be repealed, but it hasn't. This old code is still applicable in Nigeria despite some of its provisions being so clearly out of touch with the reality, time, and societal realities, causing some of its provisions to be more of 'unenforced laws' than laws[23]. Some of these outdated provisions are;

(i) The offence of bigamy in our criminal code[24]. Nigeria is a polygamous society and the offence of Bigamy simply criminalizes marrying a person while legally married to another person. The usefulness of the offence of Bigamy in Nigeria has been called out several times by legal practitioners. While some opine that the law existing and being ineffective has no drawback, others believe that the offence of Bigamy is clearly against the spirit of the people, clearly against the culture, practices, traditions, and norms in the society. It is hereby noted that the ineffectiveness of law, is in itself, a drawback, and a law should not be so-called if it is recognised more in its disregard and violation than in its enforcement.

(ii) Section 129 of the Criminal Code. This section criminalizes the advertisement of reward for the return of stolen or lost property, irrespective of it being coupled with the promise that "no questions will be asked". This provision is averse to developing principles of Restorative justice in Criminal law and justice.

(iii) The definition of "things capable of being stolen". Not all properties are capable of being stolen[25]. A parcel of land cannot be stolen under the criminal code since it is immovable but this is out of touch with the practice of land grabbing popular in the Western part of Nigeria,

[23] Unenforced laws are simply laws, both unenforced and ignored by law enforcement agencies but nevertheless, valid laws since they are made by the proper authorities, in the proper way and with due regards and adherence to the proper procedure.
[24] Section 370 of the Criminal Code Act of Nigeria 1916, Cap C38, LFN 2004
[25] Section 382, *Supra.*

as such, Lagos, although not expressly stated[26], allows development in this aspect, as it has been concluded that land, though immovable, can be stolen under the law, thereby criminalizing the act of land grabbing. Also, under the Criminal code, a corpse is not capable of being stolen, but the reality of our society's practice and tradition, wherein the dead is regarded as an important part of the living, and we believe that life does not end with death, it reflects a need to protect the sanctity of burial grounds and cemetery due to the practice of grave robbery and grave-digging to get body parts of the dead to be used for reasons presumed to be fetish in nature. Our criminal law needs to reflect the culture and practices considered to be for public benefit since digging up dead bodies can also have an adverse effect, health-wise for the living, due to the possibility of pollution, etc.

The researcher is not absolutely against the copying of laws, the writer merely insists on the appropriateness and suitability of the law to be copied with our social situation and social ills.

2. **The multiplicity of laws and legal pluralism.** One of the contributors to the nightmares of our legal systemis the multiplicity of laws and legal pluralism or simply put, the existence of multiple systems of legal systems within the confines of a state"[27]. In Nigeria, there have been instances wherein a particular subject matter is regulated by different systems, with each law differing on positions and provisions, leading to confusion and uncertainties as to the applicable norms[28], legal pluralism is not noteworthy merely due to the co-existence of multiple, uncoordinated and/or overlapping bodies of law, but more, to the diversity amongst them, ranging fromdiffering claims of authority to conflicting norms, styles, and orientations.

In some instances, the existence and applicability of statutory law which is subject to the legislative lists in the Constitution, the Customary Legal System, the Islamic Legal System, Case law, and the English Legal Systemin separate geographical entities within one geographical entity hasresulted in conflicts overtime, giving rise to a conflict of laws questions of choice of law, jurisdiction, and recognition and enforcement, as well as questions on the hierarchy of the different internal legal systems, as well as issues of ultra vires statutes, and Constitutionality of laws. In other instances, the multiplicity of laws can also stem from multiple statutes regulating

[26] Section 278 of the Criminal Law of Lagos State.
[27] Hooker, M. B., 1975. *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*. (Oxford University Press) 1975, 2.
[28] Tamanaha, B. Z. 'Understanding Legal Pluralism: Past to Present, Local to Global.' [2008] *Sydney Law Review,* Vol 30, 375.

the same conduct or subject matter, and sometimes, the multiple laws may provide conflicting provisions and positions. For example, in Lagos, there was the Registered land law of 1965, the Land Instrument registration law of 2003, the registration of titles law of 2003, and the Electronic Documents Managements System law of 2007 which regulated land registration in the state until their harmonization into the Lagos State Land Registration Law 2015.

3. Impractical and inadequate provisions. This has a close connection to the "over-borrowing of laws". The laws in Nigeria stem from government policies that are made by the government officials to regulate the lives of the general populace consisting of a high percentage living in poverty. Most of the laws are greatly disconnected from the people in various aspects e.g some of the laws are made without due regard to practical conditions, either economic, social, or otherwise of the people, the law is meant to govern. For example;

(a) Section 129of the Criminal Code criminalizes the public offering, printing, publication, or advertisement of a reward for the return of stolen or lost property, while purporting that no question will be asked, or publicly offering to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property. This provision simply put, purports to bar the owner of stolen property from attempting to recover such stolen property via self-help where such is by the public demand of the return of the property in exchange for silence, or and more.

(b) Section 218 of the Criminal Code provides for the offence of Defilement of girls below 16 and section 221 of the Criminal Code criminalizes the defilement of girlsunder 16 and above 13 years and idiots. The impracticality of this section is not in the act it criminalizes but in the limitation period it imposes. The sections provide that a prosecution for the offenses must be commenced within **2 months** of the commission of the offence. This section or rather, the limitation period does not give regard to the psychological effect of the defilement on the defiled child. The limitation period does not afford the time count to start from the date the defilement is discovered by a person of the age of majority or full capacity who can act for the minor defiled or report to the appropriate authorities, it starts from the date of the defilement. It does not give regard to the psychological effect of fear, withdrawal, etc which results from the trauma, it does not give regard to the time used in obtaining evidence to prosecute. Some thinkers might think that the time limitationis imposed to speed up the obtaining of evidence due to the sensitivity of the offence

and the possibility of the evidence's dearth over time, and this writer agrees but goes further to posit that the time limitation, which should not be a period as little as two months, should be expressly stated to apply to only evidence gathering and obtaining, leaving the prosecution open to a much wider time. The time should give regards to the delicate peculiarities of the offence which could include; threat to the defiled child's body, a threat to the defiled child's family members, convincing the child that no one will believe her, etc. A balance of the child's mental health after the experience, with the sanctity of the evidence to be obtained or tendered, the concept of time limitation should apply here, albeit not as short as 2 months, but not to the prosecution.

F. RECOMMENDATIONS AND CONCLUSION

The writer is neither suggesting that the whole drug be disposed of nor should the baby be thrown with the bathwater, the writer simply posits that where appropriate, other mediums to cure the sick body should be considered and adopted. The writer recommends that there be an understanding of the society's peculiarities, distinctiveness and the ills to be cured before laws are enacted and promulgated. The same way there exists other ways to cure a sick body aside recommending new drugs, so also sometimes, the way to cure the sick society can be by simply properly executing the already existing law appropriately, amending the already existing law to fit the society, or considering other extra-legal factors like morality, religion, tradition, the society itself, standard of living, wealth distribution, environment, etc. which might in some instances, be more effective in curing the particular illness than law.

Lastly, where, in appropriate circumstances, a law is being reviewed, experts in that field should be consulted and their opinions considered in such instances, with due regards being considered as to our society's uniqueness and its volkgeist.

In conclusion, the law-making procedure is beyond 'ayes', 'nays', and 'the ayes have it' in the legislative houses. It affects the lives, liberty, dignity, security, and freedom of millions of people. It goes to the existence of the state and the proper development of the state. Nigeria already has enough factors causing its sickness, an overdose, addiction of laws, or rather, too much of laws even where not needed. If Nigeria is to stop its regress and commence its progress, it will need to not be made to take drugs that are either bad for it or are not needed at the particular time and focus on those appropriate as social medicine with regards to the place, time, convenience and

history. If Nigeria's legal system is to foster progress in the best possible way, we will need our drugs to at least be carefully prescribed and properly applied as required.