INTERROGATING INHIBITIONS TO HUMAN RIGHTS IN NIGERIA WITHIN THE FRAMEWORK OF CULTURAL, MORAL AND RELIGIOUS VALUES IN AFRICAN JURISPRUDENCE

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Abstract

One core principle of jurisprudence with phenomenal support over the years amongst legal scholars, including human right lawyers is that society and law ought to inter-relate in their functions, to ensure social relations of law rather than its metaphysics or formal logic. Although the poor development of human rights over the years is traceable to several causes but its evolution to issues that challenge some well entrenched values that form the thrust of African philosophy of law appears to be responsible for apathy towards human rights, in its universal outlook in recent times. Using cultural, moral and religious values in African society as benchmark, this paper found that unwieldy evolution of human rights beyond the original text in 1948 to issues that trample upon well entrenched core values of the society may never attract adequate sympathy for enforcement in a culture-centred society as exist in Nigeria. The paper thus recommended that enforcement of human rights be relativised to reflect core-values of each people if the lofty dreams of the founding fathers of universal human right must attract societal sympathy.

Key Concepts: Culture, Morality, Religion, Human Right, and African Jurisprudence.

Introduction

Anyone following up development of human right from its original text in 1948 would attest to the stride evolution of human right concept has taken to personal issues including, right of women and children, certain democratic principles alien to some cultures and more recently, to issues like homosexuality, same-sex marriage, gender transplant and abortion, some of which create apathy towards whatever human right imports in the twenty first century.

Apart from cultural complexities of various ethnic groups making up the Nigerian State as primary inhibition to growth of human tight ideals but evolution of human right to issues that challenge some well entrenched core values of various ethnic groups in Nigeria seems to further widen the gap between the people and human right ideals. Legal thought must reflect each people's trend of sociological thinking for each dispensation because, society and law ought to inter-relate in their functions in a manner described by Jegede as "the social relations of law, rather than its metaphysics or its formal logic"1

Using some moral and cultural values as case study, this paper examines some of the grounds allegedly inhibiting the growth of human rights in Nigeria with a conclusion, not only that some of the grounds are not as entrenched as claimed but that an unwieldy evolution of human rights that trample upon well entrenched core values of the society may never attract adequate sympathy for enforcement, in a value-centred and multi-religious societies as exist in Nigeria

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1 M. Jegede *What's Wrong With The Law''* (Nigerian Institute of Advanced Legal Studies Press, 2009)14

Clarification of Terms

For clarity, some of the key concepts in this paper as explained here while the rest are clarified as discussion as the paper progresses. However, for brevity, only morality and religion are clarified at this point while culture and values are discussed as necessary aspect of African jurisprudence, alongside the concept of human rights which will be clarified from the discussion on how various concepts affect free application of the human rights law in the Nigerian society.

Morality

The word "moral" or "morality" has been variously defined as "principles of right and wrong standard of behavior",2 "pertaining to character, conduct, intention, social relation, etc"3; a body of standard or principles derived from a code of conduct from a particular philosophy, religion and culture from a standard that a person believes to be universal;4 a code of value regarded in a community or society as a guide to choices and actions that determine the comic of life;5 set of norms dealing "basically with humans and how they relate to other beings, both human and non-human … with how humans treat other beings so as to promote natural welfare, growth, creativity and meaning as they strive for what is bad and what is right over what is wrong".6 These definitions appear too scanty and pointing to difficulty in harnessing views of various Scholars into a single working perception as intended in this paper. No wonder, Rustin said: "morality is a hard thing to measure. It cannot be quantified. It is the internal fire of quality inside us that leads us to make the right decision".7

For Kant, moral theory is deontological in the sense that "actions are morally right in virtue of their motives" driven by duty and not just inclination to act in a particular manner.8 As he reasoned, therefore, the ultimate principle of morality must be a moral law conceived so abstractly in a manner that is capable of guiding people to the right action in application, to every possible set of circumstances, so that the only relevant feature of the moral law is its generality by which it can be applied at all times to every moral agent. Such moral obligation he said, arises even when other people are not involved, like in the case of moral duty not to take one's life, to waste one's talent.9 By this, morality is presented as advocating on a generalized note that it is

2 A.S. Hornby, *Oxford Advanced Learner's Dictionary*, 5th edn (Oxford University Press, 1998)755.

3 Brayan, Black's Law Dictionary, 8th edn (Thomson Reuter Business, 2009) at 909

4 P. Gant, Wikipedia at <*aynrandlexicon.com/lexicon/morality.html*> accessed on 22-02-2021.

5 *Ibid*.

6 H. Pearson, 'The Nature of Morality'<*www.pearsonhighered.com*>accessed on 22-02-2021.

7 N. Rustin, and Gilford, N.T., 'Morality and Religion' <*http://www.teenink.com/openion/spirituality religion/article/40825/morality-and-Religion/*> accessed on 22-02-2021.

8 I. Kant, 'Law and Morality: A Kantian Perspective' <*www.jstor.org/stable/1122670/*> accessed on 22-02-2021; H. Khan, 'Law and Morality'<*trello.com/c/.../512-law-and-morality/*> accessed on 22-02-2021.

9 I. Kant, 'Law and Morality: A Kantian Perspective' <*www.jstor.org/stable/1122670/*> accessed on 22-02-2021; H. Khan, 'Law and Morality'<*trello.com/c/.../512-law-and-morality/*> accessed on 22-02-2021.

always wrong to act otherwise than we expect of others, reminiscent of the Christian expression of the golden rule, to do to others only as you expect others to do unto you, which is a generalized concern for all human beings. What this means in Khan's estimation is that men should "act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means".10 This is what Edgar refers to as internal morality that gives its subject an inner drive to act well, even without any outward pressure.11 Distinguishing morality and moral rules from legal rules, Samba said moral rules "do not even in principle admit of change by legislation, for it would mean that some acts, which have been morally wrong, shall by legislation become morally permissible".12 He said in moral arguments, final settlement is unattainable due to the nature of moral disputes, for the notion of adjudication is logically inconsistent with that of a moral conflict.13 Looking at morals from similar perspective, Adaramola described morality as a persuasive system whose rules, in the last resort, are enforced by internal force.14 As he put it:

> *One of the peculiarities of morality is that its rules apply to conscience only, and require to be complied with, in any event, by the internal self-will of the addressee. Their eventual enforcement lies in social pressures and in overt and covert psychological pressures of the community.*[15]

Looking at morality from the perspective of internal force required for effectiveness of the law, Elegido said "morality can teach us that every man should contribute to the general need of the community" which is the normative force or obligation that the law requires to create effect.16 It is for this reason the learned author talks about morality as a complimentary part and parcel of the law.17

Looking closely at these various clarification, it is obvious that all the Scholars are agreed that the realm of morality dwells only in the internal to humanity although most of the authors fail to relate their definitions to the reality of morality as forerunner of a sociologically acceptable law to each society because, we cannot talk about morality outside the province of the culture of each society. Therefore, in this paper, morality would rather be approached as human tendency dictating that we do what is right and avoid what we believe to be wrong, in each society, thus creating inner compulsion which the law necessarily requires as a normative force, guided by the values of each society, to create effect for her legal norms.

Religion

Despite disagreement on the etymology and *philological* derivation of the word religion, scholars seem to agree that its *philological* source connotes the relationship

10 *Ibid.*

11 *Ibid.*

12 R. Edgar, *Jurisprudence: The Philosophy and the Method of the Law* (Universal Law Publishing Co, 1962) 290-292.

13 F.N. Samba Fundamental Concepts of Jurisprudence (Bookmakers Publishing, 2007) at 11

14 *Ibid.*

15 F. Adaramola, *Jurisprudence*, 4thedn (Lexis Nexis Butherworths, 2008) 73.

16 Elegido, Jurisprudence (Spectrum Books Limited, 2002) *at* 359.

17 *Ibid.*

and communion between the creature and its creator; man's natural and innate consciousness of his dependence on a transcendental super-being to which man yearns to express his loyalty through worship.18 It is on the same basis the *New Concise Bible Dictionary* defines religion as "the outward expression of belief" in a deity19 although it excludes the content implication of what religion implies. But *Black's Law Dictionary* gives it a wider outlook when it defines religion as man's relation to divinity, a form of belief in the existence of superior beings exercising power over human beings, through imposition of rules of conduct thus presenting religion as the relationship and communion between the creature and its creator, guided by definite rules of conduct.20

As Iwe put it, religion is the repository and custodian of human and social values; an indispensable agent of social control and defender of established norms and values; "the prophet and conscience of the society…the dynamic conscience of the society" which manifested in its contribution to the abolition of slave trade, acceptance of twin babies and their mother in Africa; fight against racism, anti-Semitism, Apartheid in South Africa and such other morally depraved practices of the society at various times.21

Indeed, the domestic ethics of both Europe and America is rooted in Christian tenets and in Nigeria, the contribution of religion to the discipline and stability of family life and to public morality and order in general, cannot be ignored by any honest citizen or observer.22 Beyond this, Islamic religion is perceived by adherents as the dogma by which every aspect of believers is regulated, moulded and organized, thus presenting religion as the totality of the value for which a Muslim is rated.23 This sums up religion as instrument that helps define the relationship between the creator and his creature through its core belief system, dogma and doctrines, providing man with spiritual and adequate philosophical and spiritual outlook of life; geared towards equipping man with adequate and practical guide in his moral life.24 It is a forum or avenue of organized instruction on how the innate quest of man to commune with the deity in whom he believes may be met. By the use of the phrase "forum or avenue of organized instruction" here, it is intended that in this paper, "religion" denotes "organized or institutional religion with recognized role in the society" as in the case of Christianity and Islam (including

18 N.S.S. Iwe, 'The Inseparable Social Trinity: Religion, Morality and Law' being a paper delivered at the inaugural lecture of the department of religious studies and philosophy, of the University of Calabar on 14th August 2003. <*www.nuc.edu.ng/nucsite/.../ils-110.pdf*> accessed on 28-02-2021.

19 Williams, D. *New Concise Bible Dictionary* (Inter-Varsity Press, 1983)471.

20 A.G. Bryan, *Black's Law Dictionary*, op.cit. 988.

21 Iwe, *op.cit.*, *at 14.*

22 *Ibid*

23 *Ibid*; T. Okereke, *Religion in Public Life* (Assumpta Press, 1974) 1-4; Iwe, *op.cit.*

24 N.S.S. Iwe, 'The Inseparable Social Trinity: Religion, Morality and Law' being a paper delivered at the inaugural lecture of the department of religious studies and philosophy, of the University of Calabar on 14th August 2003. <*www.nuc.edu.ng/nucsite/.../ils-110.pdf*> accessed on 28-02-2021.

traditional religion, where applicable) that are religious groups that have influenced the social, moral, ethical and political lives of the Nigerian people and by inference, the platform of their Jurisprudential development, over the years.

This is the perspective from which religion will be approached in this paper, as a guide and molder of thoughts and conscience, towards ensuring social harmony, which is also the ultimate aim of morality and the law. For the avoidance of doubt, it is imperative to state that because of the interface between each African societal values and their moral and religious practices, it appears that not much can be achieved if this paper only discusses issues considered as moral and religious inhibitions to application of human right laws in Nigeria without first dealing with cultural and religious values in Africa in general and then, the Nigerian core values. This, will, in the opinion of this paper, ensure proper appreciation of the discussion on issues that inhibit application of human rights law in Nigeria.

Cultural and Religious Values in African Jurisprudence

The word "African" that qualifies the concept of conventional jurisprudence here implies that certain features are peculiar to African jurisprudence.25 Before looking at those features, especially regarding cultural and religious values, it is imperative to mention that since jurisprudence is all about philosophical theories of law, the term, African jurisprudence26 presupposes existence of African law, variously described from one African jurisdiction to the other.27 Thus, the expression, African jurisprudence implies general theories or philosophy behind application of customs that have assumed the force of law from long usage, which a particular community accepts as binding in their particular relationship.28 As diverse as African communities are, so are their customs and customary laws, characteristically flexible enough to reflect acceptable usage of each community at each given time.29 Although evolutionary changes in law in line with societal phenomenon is not peculiar to African indigenous laws, its peculiar feature that is relevant to the present paper is its adaptability to each community and its flexibility to reflect different dispensation.30 What this sums up to is that relativism is an indispensable feature of African jurisprudence thus explaining aversion of the people to any law that is not only alien to their values but rigid and non-reflective of their current usage.

In this paper, traditional criticism of African law will only be pointed out without

25J. Murungi, 'The Question of an African Jurisprudence'<*http://www.blackwellreference.com/public/ tocnode?id=g978140514561-chunk-g978140514567145*> accessed on 28-02-2021.

26 F. Adaramola, *Jurisprudence*, 4thedn (Lexis Nexis Butherworths, 2008) 73.

27 *Ibid*.

28 Trevor-Roper, H., *Rise of Christian Europe* (London: Thomas and Hudson, 1964) .9; A.H. Joote, *Africa and the American Flag* (ATC Publishers, 1954) 207.

29 E.S. Hartland, 'Primitive Law' <*books.google.com/.../primitive-law*> see also Idowu, W., *African Philosophy of Law*<*philosophy.oauife.edu.ng/index.php/...*> accessed on 28-02-2021; J. Murungi, 'The Question of an African Jurisprudence: Some Hermeneutic Reflection'<*http://www.britishcourt.org/voices-magazine /how-traditional-justice-nigeria-changing*>accessed on 28-02-2021

30 W. Idowu, 'Law, Morality and the African Cultural Heritage: The Jurisprudential Significance of the Ogboni Institution' *Nordic Journal of African Studies* (2005) 14(2) 175-192; H.O. Oruka, 'Sagacy in African Philosophy' in S. Tsenacy, (ed) *African Philosophy: The Essential Reading* (Parafon House, 1991)

detail explanation for two reasons. Firstly, so many authors have invested a lot of scholarship to defend several of the criticisms some of which reflect African philosophy several centuries ago, as if the so-called advanced jurisprudence did not pass through such dark ages in their philosophical evolution process.31 Secondly, it is evident that some of the issues raised against African laws are Western-based, with all the prejudices against everything African, forgetting that African laws, and African philosophy must of course, reflect the peculiarities of African setting.32 In this paper therefore, some of these criticisms will only be mentioned and those with particular relevance to the issues of cultural and religious values in African jurisprudence will form the thrust of the discussion here. Needless to say that the impression that African jurisprudence is otiose and borne out of misconceptions including the myth that Africans do not have defined history of organized administration;33 that Africans had little or no system of laws before the arrival of the Europeans;34 that African jurisprudence has no respect for individual rights;35 that African jurisprudence is only positive without negative attributes for correcting breaches;36 that the basis of obligation in African jurisprudence is belief in or fear of supernatural powers;37 that there is no such thing as unity of African laws;38 that political basis of African jurisprudence is non-democratic;39 that African jurisprudence lacks literary philosophical significance for general jurisprudence;40 and that it does not accord with modern jurisprudential thinking.41 This run-down of prejudice has no doubt relegated the growth of African jurisprudence over the years but recent thought on the need to connect the people's conception of law to their history and values, point to the need to reawake promotion of African jurisprudence for a more meaningful rule of law.42

An examination of cultural and religious values of various African societies and anthropological findings of various scholars would reveal that criticism of African jurisprudence arises from prejudice against the black world, resulting in scuttling the growth of African jurisprudence and consequent foisting of Eurocentric principles on Africans, including Nigerians, in the name of general jurisprudence.43 The assertion that African jurisprudence lacks historical past or literary antecedents upon which any

31 D. Idowu, *op.cit*., at 11.

32 Russel, B., *Why I am not a Christian* (New York: George Allen and Unwin, 1957) 22; Gluckman, M., 'Order and Rebellion in Tribal Africa' in Idowu (ed)*op.cit*., at 76.

33 Samba, J.N.,*Fundamental Concepts of Jurisprudence* (Makurdi: Bookmakers Publishing, 2007) 15.

34 The Ghana Interpretation Act, 1960 defines it as 'rules of law which by custom are applicable to particular communities' not being rules enacted; Sierra Leonean Local Courts Act, 1963 defines it as any rule, by which rights and correlative duties are administered in a particular case; Eastern Region of Nigeria's Courts Law no21 of 1956 and the Evidence Act cap.112 LFN, 1990 define it as African Law, being customary law as 'a rule or body of rules which obtains the force of law arising from established usage applicable to particular course, dispute or question'.

35 Murungi, *op.cit*., at 5.

36 *Ibid*.

37 Samba, *op.cit*. See *EshugbayiEleko v Officer Administering the Government of Nigeria* (1931)AC662 at 673.

38 F.U. Okafor, 'Legal Positivism and The African Legal Tradition'*International Philosophy Quarterly*. [1984] vol.242.

39 W. Idowu, *op.cit*. at 78.

40 E.E. Moore, 'Race and Racism in the Works of David Hume', *Journal on African Philosophy.* [2002]. Vol.1 at 1.

41 W. Idowu, *op.cit., at 14*

42*Ibid*, at 56, 82.

43 *Ibid*, at 82.

helpful jurisprudential developments could be built, can be easily debunked by the pride of place the history of Egyptian civilization occupies in anthropological findings, similar to anthropological findings on Ethiopia's early connection to outside world and literary representations in that behalf.44 This is why Moore described Hume and Hegel's representations of African literary contribution to philosophical developments as racial and lacking in "empirical methodology to explain racial and cultural differences in human nature".45

In African traditional religion, one cannot talk of law without religion because it is generally believed that Africans are incurably religious and that every sphere of African possibility is influenced by religion, including African idea of law46 This is why the Barotse of Zambia would rather define law in terms of general ideas about justice, equity and fairness, equality and truth represented in the "laws of human-kind or laws of God".47 Amongst the Yorubas where traditional religion of the Ogboni fraternity oversees administrative and legal set up of the community, a form of democratic checks and balances by which a white traditional calabash was opened by the Ogboni religious body to herald end of a despotic monarchy was the vogue.48 It is in such traditional values the Yorubas have adage such as *ikitioseniobenge*, meaning that only "the finger that offends is that which the king cuts" and *nitorri a beaseni afiiloruko* meaning that "we bear names for purpose of identification in case we commit offences".49 The Igala people of Kogi State of Nigeria like their Yoruba kins hang up to traditional jurisprudential values that "magbomuenekateadalen" meaning that both sides to a conflict must be heard because that is the standard of the gods.

It is for such inter-relationship between African cultural values and African jurisprudence that Idowu maintained that "in the traditional sense, law and morality are not especially differentiated as a means of social and communal control" because in "traditional culture, it is unlikely that what is forbidden by the moral life of the community will be found enjoined expressly in their laws" as "laws and morals bear the essential character of taboos and therefore have the same source; the gods of the land".50 This is what Hartland describes as "primitive law" which Idowu attacks as misguided on the basis that justice must not be achieved by similar legal make up, insisting that the essence of law is for settlement of disputes and maintenance of law and order.51 Explaining these functions between African and Western laws, Elias said:

> *The two functions of law in any human society are the preservations of personal freedom and the protection of private property. African law, just as much as for instance English law, does aim at achieving both of these desirable ends.52*

It is for this reason it is contended that European conception of law and justices have to be down played in scoring African jurisprudence because they have little or

44 Moore, *op.cit at 2;* A.J. Aguda, *Nigeria in Search of Social Justice Through the Law* (Nigerian Institute of Advanced Studies Publication) 1-5,7.
45 W. Idowu, *op.cit*. at 74.
46 M. Gluckman, *The Ideas in Barotse Jurisprudence* (Yale University Press, 1965)20.
47 Moore, *op.cit*; T. Elias, *The Nature of African Customary Law* (Sweet and Maxwell, 1956) 18.
48 Elias, *op.cit., at 7.*
49 *Ibid*
50 Idowu, *op.cit., at 14.*
51 Idowu, *Ibid.*
52 Elias, *op.cit.*

nothing in common with African culture and should therefore not be wholly used to explain the basis of a recognized code of African law, founded on the peculiarities of African principles of justice, especially in criminal matters, inheritance, paternity of children or mortgage.53 However, this is not to say that African concept of law is totally unrelated to the European concept especially because of its long historical part in the evolution of African jurisprudence. Instead, the emphasis here is that the values on which European jurisprudence is built are not exactly the same as those of African societies so that an attempt to assess the rule of law, including the rule of human rights law of both societies on the same value indices, will be counter-productive.

Indeed, a closer examination of the values of various African ethnic groups would show that the basis of African jurisprudence transcends religious values to several other cultural values that should contribute to a better justice system of all continents of the world. For instance, amongst the Barotse, the basis of obedience to law is what Gluckman calls "ideal of justice inherent of right and obligations in the eyes of the responsible man" involving application of laws of rights and obligations in the light of the reasonable man.54 On punishment, African concept transcends the offender alone to his family and community as opposed to the individualistic system of the West.55

African Penal system also emphasizes reconciliation in line with African value system which emphasizes sanction such as ostracization, public ridicule and withdrawal of economic cooperation with stern caution to the operators, to avoid punishing the innocent because of grave consequence to the entire society.56

What this sums up to is that African jurisprudence, predicated on religious and cultural values tends towards mediating between communalism and the kind of individualism that is the bane of the western world, which is the pivot of universalism of human rights.

African philosophical model appears to be the moderation required to curtail the unwieldy province of individualism that seeks to exclude the individual from the integrated whole of the larger society, a situation that is alien to the people of Nigeria and their values. On such note, it is obvious that Africa, the continent where Nigeria belongs, has an excellent jurisprudential thought with refined, home-grown, indigenous thoughts on law, principally built on its traditional and religious values that ought to be properly developed for a more effective justice system, in a world where the quest for rule of law is becoming elusive.57 Unfortunately, the bane of African jurisprudence and Nigeria in particular has remained the continued relegation of African for Western jurisprudence in circumstances that Taiwo describes as "the chilling presence of Hegel's ghost and the continued reverence of that ghost by the descendants of Hegel" who engage in subtle relegation of African

53 M.A. Dlamini, 'African Legal Philosophy: A Southern African View' *Journal for African Science*. [1997] Vol.22. The Jurisprudence of Igbo people of Nigeria toes the same line; I. Oraegbunam, 'The Principles and Practice of Justice in Traditional Igbo Jurisprudence' <*scholarship.lawcornell.edu*> accessed on 05-03-2021

54 Idowu, *op.cit., at 12.*

55 Samba *op.cit.*.

56 Idowu, *op.cit* at 14

57 *Ibid.*

jurisprudence.58 In Nigeria, the relegation has been by the subjection of traditional, customary and religious values of the people to a forum of "validity test" amongst which is the "repugnancy test".59

By this principle, several practices of various communities in Nigeria have been declared unenforceable on the claim that they are either contrary to natural justice, equity and good conscience or that they are contrary to public policy or even modern concept of human right.60 Although it is conceded that this principle is a precursor to modern outlook of several customs but its application has remained one of the most divisive in the Nigerian legal philosophy; especially because the basis for its application is subjective.61

Societal Core-Values in Nigeria

Values of each people are subsumed in their culture which consists of the ideals, values or rules for living, including the way of thinking, feeling, believing and everything that people have, think and do as members of a particular society.62 Values are the beliefs, ideals and convictions that guide and direct behaviour, purpose and vision of members of each society. They consist of sociological ideals, customs, beliefs and institutions of a society, by which members of a group or society are identified; and as indices for defining who they are, how they are and what they are.63

Although Africa in general, and Nigeria in particular, is a heterogeneous society, certain core values cut across ethnic, cultural, linguistic and even religious boundaries that may safely be referred to as core-values of Nigerians. Such areas constitute the unifying province that is the basis of oneness of Nigeria's Nationhood, despite diversity of ideologies of each ethnic group. Such values include the need to show respect for elders; the requirement that already made children take care of their younger ones and their aged parents as a sign of responsibility; handshake as outward sign of acceptance of a person; the need to eat with the right hand; hissing as a mark of disrespect; the need to avoid crossing legs of an elderly person; the need to bow before an elderly person as a sign of respect; the need to show decorum as a mark of respect for the community and family where one comes from; sanctity of marriage, honesty, purity, hardwork, moral character, centralized interest of a larger family in how each person treats his wife and children; integrity and several of such rules of relationship, reflective of the central message of National Orientation Agency in Nigeria; which may be taken for granted on the basis of civility or human rights but revered in various communities in Nigeria.64

58 D. Taiwo, 'Exercising Hegel's Ghost: Africa's Challenge to Philosophy' *African Studies Quarterly* [1998] 1,4<*www.clas.ugl.edu/africa/asq/legal.html*> accessed on 05-03-2021.

59 C. Uweru, 'Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism'<*www.ajol.infojournal home*> accessed on 05-03-2021.

60 *Edet v Essien* (1932) 11NLR 17; *Laoye v Oyetunde* (1944) A.C 170;*EshugbayiEleko v Officer Administering the Government of Nigeria* (1931) A.C 662 at 673.

61 N. Okereaforezeke, 'Judging the Enforceability of Nigeria's Native Laws, Customs and Traditions in the Face of Official Controls', *Caroline Fourth Eastern Region Seminar in African Studies* (2001) 1-6<*www.ccu.edu/african/senses/papers/okereaforezeke 28marc1.htm*> accessed on 05-03-2021; 62.

62 R.N. Nwabueze, 'The Dynamics and Genius of Nigeria's Indigenous Legal Order', *Springs Indigenous Law Journal*, [2002] vol.1<*tspace.library.utoronto.ca/.../17103*> accessed on 05-03-2021.

63 *Ibid.*

64 T.C. Osanakpo, 'Imperatives of Core Values in the Nigerian Society' <*tcosnakoandco.com/imperative-of-*

From this insight, it is obvious that the people's core values or culture determine a great deal, the kind of laws and regulations that compel their obedience and compliance, most. This is where the issue of culture or core-values of a people point to the principles of sociological philosophy which insists on looking at the society as key to better understanding of the law because, law is not an absolute and static body of rules in itself but relative to time, place and society.65 As a one-time Presidential Adviser on ethics and values said, every nation or entity has its own peculiar values, serving its identity, although values of each nation attract and assimilate one another thus emphasizing their dynamism.66 This is the perspective from which emerging issues in jurisprudence in Nigeria, including attitude of Nigerians to Human Rights Laws must be approached because no matter the good intentions of any law, if it seeks to promote values that are totally removed from the core-values of the society, such law may only be honoured in breach.

In recent times, Human Rights have been interpreted to extend to freedom of women to do anything they like with their bodies, including obscene dressing, abortion, same-sex marriage, homosexuality and practices that are averse to moral and religious values of the Nigerian people, which quest has drawn a lot of public reprehension against human rights regime in Nigeria.67 Such issues that drive human rights farther away from the core values of the people only cause apathy against rule of human rights law because, every law is supposed to be the reflection of core values of its environment. As Tambuwal put it, the difference between the perception of the Nigerian State and that of the society on what constitute the rule of law, or non-entrenchment of the legal order in the value system of the people, could endanger the rule of law.68 While it is admitted that morality and religion do not hold exclusive influence on the people's disposition to law and the rule of law, it appears that in Nigeria's heterogeneous situation with diverse religious beliefs, and in the situation of interconnectivity of some religious beliefs and moral values of adherents, the reality of the rule of law in Nigeria will be driven farther away, into the abyss than it is now, if the moral and religious values of the people are discountenanced by following the notion of law of other jurisdictions, whose core values are alien to the Nigerian situation.

In Nigeria, the factors that affect the rule of law are varied, including the philosophy upon which the entire Nigerian

core-values-in-the-nigrian-society/> accessed on 05-03-2021.

65 T.K. 'Seventeen African Cultural Values' <*migrationolgy.com/Africa-cultural-values-travel-africa-17/*> accessed on 05-03-2021.

66 S. Jibril, 'Application of Ethics and Moral Values in Nigeria' <*nannewsnigeria.com/2015-application-of-ethics-and-moral-values*> accessed on 05-03-2021; Okumayih, *op.cit*. Centrality of African Culture by African Charter on Human and People's Rights as condition for better compliance of each people to the rule of law marks a major difference between the Charter and the Bills of Rights of the United Nations.

67 P. Okamayih, 'African Core Values and Identity on Precipe' <*nigerianobservernews.com/1709213/features/features8.html#.vy4h7z*> accessed on 05-03-2021.

68 A. Tambuwal, 'The Rule of Law as Fundamental Condition for Democracy and Good Governance in Nigeria' being a Speech Delivered by the Speaker of the Nigerian House of Representatives at the Annual Aminu Kano Memorial Lecture in Kano, on 11th April, 2013. <*elonbah.com/index. php/articles-mainmenu.15509-the-rule-of-law-as-fundamental-condition-for-democracy-and-good-governance-in-Nigeria*> accessed on 08-03-2021; S.M. Olokoba, and A.A. Owoade, 'Rule of Law and Justice System in Nigeria: The Command Law and Islamic Jurisprudential Approach' *Confluence Journal of Jurisprudence and International Law*, [2009] vol.2, at 166.

legal system is based. This situation has been adversely affecting rule of law, including human rights laws in Nigeria. For this reason, this paper is pressing for total overhaul of the philosophy of Nigerian laws, including human rights law with a view to repositioning the entire legal system, within the framework of Nigerian core-values and some other emerging indices in that behalf. From this spectacle let us now specifically examine the issue of moral and religious inhibitions to the application of human rights in Nigeria.

Moral and Religious Inhibition to the Application of Human Rights Law in Nigeria

The Nigerian human rights regime is entrenched in several international, regional and domestic human rights instruments. While some of the international instruments have been endorsed and domesticated, the rights as contained in the Constitution are segregated as justiciable and non-justiciable rights, respectively.69 In any case, some of the rights, especially those contained in the International Bill of Rights have since adopted the status of international customary law applicable as universal standard by which acts and policies of various States may be assessed.70 Beside these is the African Charter on Human and Peoples' Rights which has since been domesticated by Nigeria with peculiarities that mark out this instrument as a reflection of African values.71 Similarly provisions of the Nigerian Constitution on Human Rights no doubt reflect the collective ideals of these various international and regional human rights instruments; putting into consideration some moral, religious and social values in any case. However, in spite of all the elaborate provisions of various instruments towards promoting and protecting human rights for equality and dignity of all humans, and against any form of discrimination, it is evident that in Nigeria, a lot of instances of abuses still abound to which operators of human rights system seem helpless.72 Although these abuses are rooted in cultural, social, religious and official causes but for the purpose of clarity, it is instructive to undertake a general overview of factors that inhibit effective human rights regime in Nigeria before summing up specifically with moral and religious factors.

In this regard, some of the issues that appear to be over flogged by scholars and activists alike over the years include traditional, religious and cultural pattern of discrimination from place to place in form of under-age marriage of the girl-child; female genital mutilation, subjection of women to oppressive burial rites; women mourning observations on the death of their husbands; traditional receipt of bride price upon women; restriction of women to seclusion referred to in Muslim circle as *Puddah*; wearing of Hijab by Muslim women; betrothal of women without their consent; subjection of *almajiris* to improperly regulated Islamic teaching centres that turn them into beggars for the benefit of their Islamic instructors; and several others.73

69 The Rights contained in Chapter Two of the Nigerian Constitution are non-justiciable but serving only as policy directives to the States while those in Chapter Four are enforceable.

70 A.K. Mubak, 'The Sociological Theory as Enunciated by the Utilitarian School of Jurisprudence' <*mubaklegalconsult.blogspot.com…/…*> accessed on 08-03-2021;

71 Yerima, T., 'Human Rights Protection of Women in Africa: The Journey So Far' *op.cit.*

72 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. 10 LFN 1990 (Now Cap. AG, 2004).

73 M. Etudaiye, 'The Relevance of the Sociological School of Jurisprudence to Legal Studies in Nigeria' In *UNILORINReading in Jurisprudence and*

Beyond these are statutory and official instances of discrimination which include the permissive provision of the Penal Code allowing a man to spank his wife as a corrective measure without such correlative right to the woman;74 the distinction between a "felony" arising from indecent assault on a man and the "misdemeanor" arising from similar act against a woman;75 the restriction of the protective provisions of the criminal code on accessory after the facts and liability arising from acts done in the presence of the husband, only of Christian marriage;76 the relegation of consent of the mother of a girl under 21 years to the monogamous marriage of such a mother;77 discrimination of Police Regulation against recruitment of married women: pregnancy of an unmarried police women and the requirement of approval of a Police Commissioner before a single police woman could marry;78 the incapacitation of women's citizenship status being enjoyed by their foreign husbands as opposed to the right of foreign women to the citizenship of their Nigerian husbands79 and several others that may make this subtopic unwieldy to explore.

However, certain so called procedural matters that deserve mention here include attitude of the customary courts in ordering refund of bride price by a woman in divorce cases even after she had given birth to several children and the case of women being held liable for adultery under Islamic law without the necessity of summoning the male pear in the illicit act.80 Assessing the cause for these alleged abuses, Okome said the major hurdle to the effort to combat gender inequality lies more with the attitude of "Nigerian government and human rights activists…being more responsive to the international regime of human rights" without paying sufficient attention to indigenous philosophies and traditions about respecting human rights" and in the end, blaming "all contemporary human rights abuses on the persistence of traditional mores."81 This, the leaned author reasoned, can only be contained against the backdrop of the understanding that discrimination takes different forms in different societies and historical epochs, thus requiring differential strategies in each place and time because not even the court can do much to correct gender inequality,

International Law. <*unilorin.edu.ng /publications/edtudaiye/…*> accessed on 05-03-2021.

74 Yerima, T., 'Internationalization of Human Rights: A Critical Appraisal and Comparison of the Trilogy of Documents in the UN System'*Ikeja Bar Review*, [2006] Vol.1 parts 1&2 30-31. Each of the instruments particularly prohibit discrimination on the grounds of sex, race, religion, colour, language, political opinion, nationality or social origin, property, background of birth or other status

75 Akande, J., 'Laws and Customs Affecting Women's Status in Nigeria' being a lecture delivered at the International Federation of Women in Nigeria, in Lagos in 1979; See also Nigeria's first report to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)*op.cit*.,at 6; Okome, M.O., 'Domestic, Regional and International Protection of Nigerian Women Against Discrimination: Constraints and Possibilities'. *African Studies Quarterly*, [2002] vol.6, Issue 3.

76 Okome, *op.cit*. 45.

77 Penal Code Act, Section 55(1)(d) applicable to States of the Northern Nigeria; H.G. Aminu, 'How Nigeria Legalizes Discrimination Against Women' <*premiumtimesng.com/141798-/*>accessed on 23-04-2016.

78 The Nigerian Police Regulation, Cap. 359 LFN, 1990, Sections 118, 124 and 127.

79 The Constitution of the Federal Republic of Nigeria, 1999, section 26.

80 J. Akande, 'Law and Customs Affecting Women's Status in Nigeria' *op.cit*; Nigeria's First Report to CEDAW, op.cit.

81 Okome, *op.cit* at 45

"without far-reaching social and structural changes."82

Blaming what he described as amorphously defined "traditions understood as rigid artifacts of a distant and brutal past", Okome strongly canvassed that abuses continue in practice.83 It is on this same basis he arrived at unsubstantiated conclusion that Islam and Christianity contribute to the continuation of discrimination against women.84 What is obvious here is that apart from instances of statutory lapses, the people's values speak volumes in their response to human rights regime in Nigeria, as is the case all over the world. That is suggestive of why successive governments seem to adopt a docile posture in combating some of the ills. No wonder, even *Women in News (WIN)* reportedly acknowledged that the tradition of female circumcision is so entrenched that government and WIN have resolved to combat it through education rather than by confrontational option.85 This is because better researched findings point elsewhere. For instance, by the joint report of various human rights organizations in 2010, inhibition to human rights in Nigeria arising from aversion to lesbianism, gay, bisexual and transgender practices was linked mainly to moral values of Nigerians generally.86 The report documented how "human rights defenders working in certain regions of the country or on certain human rights issues continue to face serious challenges"; how "working on gender and women's rights is particularly challenging in the Northern part of the country, in the States where Sharia Law is enforced"; how the Nigerian ambassador to the United Nations before the Human Rights Council in Geneva defended the Sharia provision on death penalty by stoning the culprits of homosexuality which he described as "unnatural sexual acts"; how threats against human rights activists came from "religious authorities…religious groups and traditional communities"; all on the grounds that some of the human rights claims are opposed to the people's moral, social and religious values.87

Indeed, the sum total of the said report eloquently portray the level of animousity of men and women of all walks of life, including legislators, religious groups, the media, several government departments and in some cases, human rights organizations, against extension of human rights to issues like lesbianism, homosexuality, same-sex marriage, gender transplant, to certain extent, gender equality and such other permissive practices on moral, social and religious grounds. As the report stated:

> *While violation against other groups of defenders often come from authorities, LGBT (meaning Lesbian, Gay, Bi-sexual and Transgender) defenders are often targeted by the community and the public at large due to widespread societal hostility against homosexuality. In particular, the media all over the country display the same*

82 *Ibid.*
83 *Ibid.*
84 *Ibid*
85 Women in News (WIN) A Women's Right Organization Community Report on Human Rights Practices for 1991:Report submitted to the Committee on Foreign Affairs, House of Representatives Committee on Foreign Relations and the US Senate by the Department of States; Okome, *op.cit at 38*
86 Observatory for the Protection of Human Rights Defenders; 'Nigeria: Defending Human Rights not Everywhere, not Every Right' <www.omct.org/.../nigeria-mission.report...pdf> accessed on 08-03-2021.
87 *Ibid.*

> *homophobic attitudes towards LGBT people and activists.88*

Looking at the issue dispassionately, it appears that there is nothing wrong in the moral, religious or social values of the people influencing their appreciation of a particular law. Law, it must be stressed is about the people and not the other way round. No wonder, the French Declaration of 1789 defined law as "an expression of the will of the community".89 and sociological philosophers like Jhring prefer to see law only as a type of social control; while Ehrlich would rather categorize law into living and formal law, seeing the living law as the reflection of the conduct of the society at a particular time.

That also accounts for why Spencer and Duguit maintain that legitimacy of any law is determined by its affinity with social ideals of the people; as an instrument for checking or balancing conflicting interest;90 Thus, when successive Nigerian governments ratify and endorse international human rights treaties whose values are totally opposed to the Peoples' values, it would amount to whipping a dead horse. This is the only perspective Okome can be understood when he said, contrary to the dominant bias that international human rights have their origins in Western liberal thought, "all human societies have a conception of human rights, even though there are cultural differences"91 As he concluded,

> *The existence and defense of National, Regional and International Rights of Nigerian women against discrimination then must necessarily be located within Nigeria's particular historical experience, from the pre-colonial era to contemporary times. The promotion and defense of such rights would be meaningless otherwise".92*

In the end, it may be proper to also look elsewhere because it appears that the major point of conflict between morality, religion and the law on human rights is particularly linked to the unwieldy attempt to implement the spirit of the Wolfenden report.93 This is especially so because before the said report, law, morality and religion were intertwined operationally in Britain but by the tenets of the said report, it was recommended that a private immoral act between two consenting adults should not be the business of the law. From that point, Britain from where Nigeria inherited her formal legal system began to de-emphasize moral values for what they regard as secular values, until some of their laws have adopted totally different values from those of Nigeria.94 Unfortunately, some Scholars and Jurists in Nigeria today are following suit to call for the decriminalization of some

88 *Ibid*

89 Declaration of the Rights of Man and Citizens, 26 August 1789 <*chnm.gmu.edu/revolution/295*> accessed on 04-04-2016; Pain, T., *The Rights of Man* (J.M. Deut& Sons Ltd, 1981) 95; Weston B.H; 'Human Rights-Questions for Reflections and Discussion' In: R.P. Claude, (ed) *Human Rights in the World Community: Issues and Action* (Philadelphia: Pennsylvania Press, 1989) 13; N.O. Ogbu, *Human Rights Law and Practice in Nigeria*. *Op.cit.*

90 R. Spencer, 'The Revival of Natural Law Concepts' *Michigan Law Review*, [1931] vol 29. 964 <*digital.commonlaw.yale.edu/viewcontent/*> accessed on 04-04-2016; L. Duguit, 'The Relevance of Sociological School of Jurisprudence' <*unilorin.edu.ng/Publications*>. Osita, *op.cit.* 6-7

91 M.O. Okome, *op.cit.*,34.

92 *Ibid.*

93 J. Munby, 'Law, Morality and Religion in the Family Courts' being an address at the Law Society's Family Conference, London, on 29th October, 2013 <*www.judiciary.gov.uk.../law-morality*> accessed on 18/11/2014; N.N.S Iwe, 'The Inseperable Social Trinity: Religion, Morality and Law' *op.cit*

94 Okome, *op.cit*

immoral practices, in the name of human rights, which they know Nigerians of all religious colorations abhor; a call that has the tendency to drive human rights laws farther away from the people's time-cherished values, thus demobilizing practical application of such laws.95 It is on this basis it is reasoned that where Nigeria is only attracted by the profile of what transpires in the American and the Western World, without taking into consideration the moral and religious perception of the people, human rights regime in Nigeria may be driven farther away from the people's values, thus hampering its effective application in Nigeria. This re-enacts the suggestion that where human rights law, with its claim to universal standard, recognizes centrality of morality and religion in its quest for effective application, such understanding will much more enhance acceptance by each society thus ensuring a better human rights regime.

Conclusion and Recommendation

Interrogating inhibitions to human rights in Nigeria, this paper employs cultural, moral and religious core-values in African jurisprudence to investigate the proposition that legal thought, including human rights, must reflect each people's trend of sociological thinking for each dispensation because, society and law ought to interrelate in their functions to ensure effect. The paper thus found that dichotomy created by evolution of human rights to personal issues, including right of women and children, homosexuality, same-sex marriage, gender transplant and abortion have contributed in no small measure, to apathy towards ambitious quest of human right tenets in Nigeria over the years. The paper thus recommends as follows:-

a. That human rights apparatus must not be over stretched from the immediate text of the concept to issues considered as antithetical to each people's social values in contemporary times.
b. That Nigeria being a value-centred society, foisting an alien-value concept like human rights without caution could be counter-productive.
c. That the Nigerian society having absorbed the trend of flexibility as tenets of customary law for so long, an attempt to integrate the people to rigid principles of human rights without a measure of relativism could defeat the lofty dreams of the founding fathers of human right ideals.
d. That a more cautious interpretation and enforcement of human rights to reflect core values of African jurisprudence is the only way human right can make meaning to the value-centred society in Nigeria.

95 Scholars like Kharibi – Whyte, Aguda and Okagbue have in recent times made such calls with obvious reactions from equally formidable voices like Ladan, Wigwe and several others; A.G. Kharibi – Whyte *Ground Work of Nigerian Criminal Law* (Nigerian Law Publications Ltd)32; A. Aguda, *Selected Law Lectures* and Papers (Covenant Printers, 1991)203 and Okagbue, I., 'Unification and Reform of Sexual and Other Allied Offences in Nigerian Criminal Law' in *The Unification and Reform of Criminal law and Procedure Codes* (Federal Ministry of Justice, 1990) 48-72; Ladan, *op.cit.*30; and Wigwe, *op.cit*. 88-89.

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