



## LEGAL ANALYSIS OF THE RELATIONSHIP OF LAW, MORALITY AND RELIGION IN NIGERIA

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### Abstract

*Nigeria's relationship between law, morality and religion is indeed complex. There is a long trajectory of controversy between law, religion, and morality. It is understood that living in a democratic country like Nigeria, both law and morality play a pivotal role in the day-to-day affairs of the citizenry. It is well understood that morality and law are key regulators of human activities; however, they differ in various ways. The threat of sanctions enforces the law, morality is enforced through a feeling of virtue of guilt, and religion is by accepting what one believes in and worships. Accordingly, for a moral duty, one looked at the rationale; however, a legal duty solely depends on the authority other than the reason; one could say it has a commanding feature. Morality is the embodiment of normative proposition in forms of rules, values, mores, tenets which guide human behaviour. It is subjective. The law embodied rules and precepts handed down by the state to guide the relationships between individuals amongst themselves and between individual and the government. This article aimed at legally examining the relationship between law, morality and religion in Nigeria. However, the specific objectives were as follows: the writer critically analysed the concepts of laws, morality, and religion, considered the views of various philosophers and various schools of thought on the similarities and disparities between law, morality and religion, assessed the possibility of accommodation afforded by law for moral and religious values, analysed the impacts of law, morality on law making and adjudication. The research method adopted in this dissertation is the doctrinal analysis. The legal researcher gathered his materials from the library where all the cases and statutes were stationed or stored. The legal researcher also consulted primary sources such as case laws, legislation, and secondary sources such as textbooks, legal commentaries, legal journals, periodicals, encyclopaedia, and other legal sources to discover what scholars have said on the legal doctrine or rule which is the subject matter of investigation, he then applied his reasoning and idiosyncrasy assiduously towards analysing the legal propositions contained in the doctrines and formulates his conclusion and findings. This research considered access and critically analysed the relationship between law and morality and the effects thereof in both Nigeria and international jurisprudence. The research question answered the following questions: why law, morality, and religion, to what extent are morality and religion part of the law, how can the law accommodate moral values and religious values where conflict arises are there impacts inherent in the separation of law from morality and religion? A complete divorce of morality from the law is not feasible. The legislatures saddled with the responsibility of enacting laws and the draftsman in the business of inscribing the legislator's intention, should harmonise both law and morality on the scale*

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of justice to promulgate good laws, laws with moral under tone will be easily obeyed. The article concluded recommendations therein as seen in the dissertation.

**Keywords:** Law, Morality, Relationship and Nigeria

## 1.0 Introduction

Nigeria's relationship between law, morality and religion is indeed complex. There is a long trajectory of controversy between morality, religion, and law. This was the issue in the case of *Onuoha v The State*,<sup>3</sup> the issue raised therein is the validity and constitutionality of death penalty as a form of punishment in relation to the capital punishment prescribed for the offence of murder<sup>4</sup> It is understood that living in a democratic society like Nigeria, both law and morality play a pivotal role in the day-to-day affairs of the citizenry. It is well understood that morality and law are key regulators of human activities; however, they differ in various ways. The threat of sanctions enforces the law, morality is enforced through a feeling of virtue or guilt, and religion is by accepting what one believes in and worships. Accordingly, for a moral duty, one looks for a rationale; however, a legal duty solely depends on the authority other than the reason; one could say it has a commanding feature.<sup>5</sup> This was the issue in the case of *Onuoha v The State*<sup>6</sup> the issue raised therein is the validity and constitutionality of death penalty as a form of punishment in relation to the capital punishment prescribed for the offence of murder<sup>7</sup> which prescribed the death penalty in relation to section 31(10). Morality is the embodiment of normative propositions in the form of rules, values, mores, and tenets which guide behaviour, it is subjective. The law embodies rules and precepts handed down by the state to guide the relationships between individuals amongst themselves and between the individual and the State.<sup>8</sup> In *Adeyemi v Adeyemi*<sup>9</sup> a doctor treating a woman's child had carnal knowledge of the woman, the court frowned at the conduct of the Doctor and considers it as unethical. Similarly, in *Abuah v Queen*<sup>10</sup> when a legal practitioner utters or obtains by false pretence behalf of a client is not Bonafede. In this case the appellant was convicted for uttering and obtaining by false pretence on behalf of his client. As a general norm, every society has its unique pattern of behaviour, attitudes, orientation, ways of reasoning and cultural disparities. Despite these apparent differences, Nigeria is not an exception. Over many years, from the colonial days of the various parts of Nigeria, moral and ethical values have shaped laws which guided the conduct of people.<sup>11</sup>

Going down memory lane, during the colonial days, most laws accepted in various parts of Nigeria were common law. Common law meant laws that originated from the United Kingdom and were common and unique to British societies.<sup>12</sup> It means the law developed by the old Common Law Courts

<sup>3</sup> (1998) SC PELR 163 (SC).

<sup>4</sup> Cap C17 Laws of Lagos State 2015.

<sup>5</sup> S I Eretoru, 'An Appraisal of the Overlapping Jurisdiction Between Morality and Criminality' [2021] (8) (2) *Port Harcourt Journal of Business Law*; 305-306.

<sup>6</sup> (1998) SC PELR 165 (SC).

<sup>7</sup> Cap C17 Laws of Lagos state 2015

<sup>8</sup> (n2) 305.

<sup>9</sup> (1969) PELR 12 (SC)

<sup>10</sup> (1961) JELR 58884 (SC)

<sup>11</sup> C Wigwe, 'The Sharia and the 1999 Federal Republic of Nigeria Constitution' [2009] (5) *Journal of Jurisprudence and Contemporary Issues*; 20-25

<sup>12</sup> C C Wigwe, *Jurisprudence and Legal Theory* (Accra: Read wide Publishers 2011) 85-86.



of England, namely the King's Bench, the Court of Common Pleas and the<sup>13</sup> Courts of Exchequer.<sup>14</sup> Significantly, what was familiar to the British societies was transplanted into Nigeria, and since Nigerian norms and beliefs system were diametrical to the British, there was a conflict between Nigerian local customs and traditions with the British common law. As an illustration, the law of Bigamy, which is alien to Nigerian customs, has never been accepted by the average Nigerian traditional system even though it is a law per se.<sup>15</sup> The average Nigerian cultural belief allows a man to marry more than one wife; that is to say, our marital system gladly appreciates polygamy as a type of marriage. The preceding is why most of our Obas, Igwes, Obongs, Ezes and Emirs always have more than one wife. Hence, the law of Bigamy has never been accepted by the average Nigerian ethnic tradition.

Flowing from the above, the British knew that they could not just import an alien tradition into Nigeria without recourse to the local customs and beliefs of the Nigerian people, which they trusted and loved. It was only in 1973 that this perspective was put into actual practical use. Section 26(1) of the High Court Laws of Lagos State<sup>16</sup> provides that the High Court shall observe and enforce the observance of every customary law which is applicable and is not repugnant to natural justice, equity, and good conscience nor compatible either directly or by implication with any law for the time being in force.<sup>17</sup>

Lately, the Nigerian Courts have expressed their views about law and morality. Their views have negated the positivist point of view. They say the law should be interpreted and enforced as it "is" and not as it "ought" to be. The case of *Nigerian Bank for Commerce and Industry v Standard (Nig.) Engineering Co. Ltd*<sup>18</sup> the court held that "the order he made became a moral issue in the light of his findings that the contract was frustrated by the suppliers who were the respondents' agents. Courts of law do not pursue moral issues outside the precinct of the law."

Further, this view was also expressed in the case of *Maida v Modu*<sup>19</sup>, wherein the Court stated that "Ours is to interpret and apply the law as it is and not as it ought to be until such a time when a situation emerges where the latter application will be the order of the day".

From these settled diverse views, it is noted that Nigerian Judges interpret the law as it is and do not take any moral consideration into place. In the Nigerian legal system, not every moral issue is legislated upon, mainly because Nigeria has more than 250 ethnic groups with different views on what is morally right. However, the best solution to this problem is to find moral values that are mostly common to this divergent tribal group and legislate on them. This practice was adopted in the United Kingdom as the Common law. For instance, The global Criminal System, some crimes are said to be morally unacceptable and have been codified in *Roe v Wade*<sup>20</sup> this case is founded more on morality, where a woman was pregnant but did not want to bear the child she only have the option of the option to abort but the law did not permit abortion however the Us supreme court, interpreted the right to privacy to

<sup>13</sup> Lord Chief Justice of England and Wales - Wikipedia.  
[https://en.wikipedia.org/wiki/Lord\\_Chief\\_Justice\\_of\\_England\\_and\\_Wales](https://en.wikipedia.org/wiki/Lord_Chief_Justice_of_England_and_Wales)

<sup>14</sup> (n 5) 89

<sup>15</sup> (n 5) 90

<sup>16</sup> Lagos State of Nigeria Law (1973) Cap. 52.

<sup>17</sup> Nigerian High Court laws: (NN Laws 1963, Cap, 40), S. 34(1) High Court Law (E. N Laws 1963, Cap 61).

<sup>18</sup> (2002) 8 NWLR (Pt. 768) 132.

<sup>19</sup> *Maida v Modu* (2000) 4 NWLR (Pt. 651) 99

<sup>20</sup> (n 19) 113



include the right to abort this case gave birth to the right of women to carryout abortion of unwanted pregnancy. Typical illustrations are rape,<sup>21</sup> incest,<sup>22</sup> and homosexuality.<sup>23</sup> Also, the Penal Code punishes a person who practices sodomy for livelihood.<sup>24</sup> The Nigerian Code also punishes people who solicit prostitution and those who make profits from setting up brothels. Today acts such as fornication and adultery are punishable under the Penal Code of Northern Nigeria.<sup>25</sup> All these criminal acts have some moral connotation in virtually every society. This is also unique to Nigeria as a secular country. Recent happenings in the past five decades have witnessed a fundamental shift away, from criminality to decriminalisation, to acceptance of the attitude as a way of life.<sup>26</sup> It is submitted that every law has a touch of morality.

This article will critically examine the relationship between law, morality, and religion in Nigeria. The factors that influence all these concepts shall be considered with a view to observing and assessing where they interact with one another.

## 2.0 Conceptual Framework

### a. Law

Law is a notoriously slippery and elusive concept that has defied a comprehensive, all-embracing, and universally acceptable definition. Lawyers, philosophers, and other social scientists have frantically tried to generate an acceptable definition of law.<sup>27</sup>

To Wigwe,<sup>28</sup> Law is a regime that regulates human activities and relations through the systematic application of the force of a politically organised society or through social pressure backed by force in such a society. It proposes a combination of social pressure and force in a particular society. However, under these circumstances, a combination of force and morality of society will be necessary. All these qualities will only be practical in a politically organised society. Further, Law can be said to be the aggregation of legislation, judicial precedent and accepted legal principles, the body of authoritative grounds of judicial and administrative action.<sup>29</sup> The law can also be a judicial and administrative process, legal action and proceedings.<sup>30</sup> By this definition, the people submitted their dispute to the law when settlement negotiation failed. Under this meaning of the law, laws were limited to what the realist school of law terms what the judge says. The law can also be statutes and legislation. The Constitution of Nigeria, 1999, as amended, is the supreme law of Nigeria. However, there are other legislations which follow this constitution<sup>31</sup>. These legislations must not contradict the Constitution; otherwise, they would be declared null and void by their inconsistency<sup>32</sup>. Law is a body of rules enacted or formulated by

<sup>21</sup> Section 282-283 Penal Code, S. 357 Criminal Code.

<sup>22</sup> S. 90 Penal Code Act Cap 53 LFN 2004

<sup>23</sup> S. 217 Criminal Code and S. 285 Penal Code.

<sup>24</sup> S. 405 (2) (e) Penal Code.

<sup>25</sup> S. 387-388 Penal Code Act Cap 53 LFN 2004

<sup>26</sup> Morality and Criminal Law <<http://lawlessons.ca>>accessed 21 April 2019.

<sup>27</sup> Y B Hassan, 'Law and Morality: The Shariah Perspective' [2007] (1)(1) *Kogi State University Law Journal*; 110.

<sup>28</sup> C C Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers 2011); 71.

<sup>29</sup> (n 32) 72.

<sup>30</sup> (n 27) 72.

<sup>31</sup> (n 27) 72.

<sup>32</sup> (n 27) 72.



members of a given society, community, or state to guide their conduct or actions, and breach of law is usually backed by sanctions, though with some exceptions.<sup>33</sup>

Another definition of law is given as follows: ‘...The regime that orders human activities and relations systematically and applies the force of a politically organised society or through social pressure.’<sup>34</sup> However, for our present purpose, I shall define law as the total of the social norms sanctioned by the state and enforced with the assistance of the State’s apparatus of coercion. It may be a body of rules designed to guide human actions imposed upon and enforced among society members.

### **b. Religion**

Religion is a system of faith and worship usually involving belief in a supreme being and usually containing a moral or ethical code, especially such a system recognised and practised by a particular church, sect, or denomination<sup>35</sup>. Religion can also be viewed as a belief in or worship of a supernatural power or powers considered to be divine or to have control of human destiny. Religion is a belief in God, who could be called differently. The Ibos call him Chineke, the Yorubas call him Eledumare, and the Hausas call him Allah. However, what is important is that this spirit is seen as a supreme God, which everybody must recognise.<sup>36</sup>

### **c. Morality**

Morality means ‘Conformity with recognised rules of correct conduct<sup>37</sup> or the character of virtue, especially in sexual matters or a system of duties; ethics.’<sup>38</sup> According to the Oxford Learner’s Dictionary, morality simply means principles concerning right and wrong with certain distinctive psychological and social attributes.<sup>39</sup> Morality is a body of rules or precepts which community members generally accept without being officially enforced, although it may attract ostracism.<sup>40</sup> The major attributes of law are that it regulates human behaviour, corrects adverse situations, and is determined and enforced by the state through its relevant institutions. Morally generally means ‘rules governing human behaviour’ or sometimes one’s personal view about a thing or activity, which should not be imposed upon others as these are not enforceable. Morality, in a literal sense, connotes ‘what is right or that which is wrong. What is right and accepted human behaviour, as opposed to what is ‘immoral’, is wrong human behaviour, contrary to a good way of life.’<sup>41</sup> Measuring what moral, good or public moral is is an objective test. It is the test of a reasonable person in each society and not that of a particular section of society.

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<sup>33</sup> M Zechariah, ‘Law and Morality: Trade-off Partners or Strange Bed Fellows?’ [2016] (8)(1) *The Journal of Jurisprudence and Contemporary Issues*; 88.

<sup>34</sup> (n 32) 88.

<sup>35</sup> (n 27) 109.

<sup>36</sup> (n 27) 109.

<sup>37</sup> *Black’s Law Dictionary* (11<sup>th</sup> edn, B.A Garner Thomson ed.) USA, Thomson Reuters, 2019, 1209.

<sup>38</sup> (n 36)

<sup>39</sup> A S Homby, *Oxford Advanced Learner’s Dictionary of Current English* (7<sup>th</sup> edn) Oxford University Press, 2006, 953

<sup>40</sup> (n 38) 953.

<sup>41</sup> E Malemi, *The Nigerian Legal Method* (2<sup>nd</sup> edn) Princeton university press, 2012, 200.



### 3.0 Legal and Institutional Frameworks

#### 3.1 National Legal Frameworks

##### a. African Charter on Human and Peoples Rights, 1986

This charter has been domesticated into national law; hence it becomes part of the national legal frameworks. Nigeria ratified the<sup>42</sup> charter in 1986 and was domesticated into Nigerian law in 1999 through the constitution<sup>43</sup>. It provides that no treaty between the federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into the National Assembly.

##### b. Constitution of the Federal Republic of Nigeria, 1999 (as amended)

A constitution is the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it. The Nigerian legal system is aimed at promoting morality among the people. This is echoed in the 1999 Constitution as it makes many of the above provisions.

A voracious study of the 1999 Constitution of Nigeria would reveal that the constitution embodies moral codes and values, as the constitution prescribes national ethics for the nation. Under Section 23<sup>44</sup>, national ethics include Discipline, Integrity, Dignity of Labor, Social Justice, Religious Tolerance, Self-Reliance, and Patriotism. Also, the inclusion of Fundamental Rights, as contained in Chapter IV (sections 33- 44) of the constitution, is an attestation of the constitution to preserve our universal moral values. Of relevance is the right to a fair hearing which is encapsulated in Section 36 of the Nigerian 1999 Constitution.

##### c. Criminal Code Act, 1956

Regarding this research, the relevant provision of the Criminal Code Act is Chapter 21, which provides for Offences against Morality. Note that the Criminal Act only applies in the Southern parts of Nigeria (South-South, South-East and South-West). The moral contents of the Nigerian Criminal Code Act<sup>45</sup> are not farfetched as a close study of the Act would reveal the prohibition of offences against moral it) such as indecent treatment of boys under fourteen, indecent practices between males, rape, sodomy, bestiality, and many more. Some other conduct under the moral codes is contemplated under the Act as offences, including defilement of girls under thirteen<sup>46</sup>, unnatural offences<sup>47</sup>, prostitution, and homosexuality<sup>48</sup>. Other morally reprehensible and punishable offences under the Act include perjury<sup>49</sup>, fabricating evidence, perverting justice, murder<sup>50</sup>, stealing,<sup>51</sup> etcetera.

##### d. Penal Code, 1960

The Penal Code applies to the Federal Capital Territory, Abuja, and the Penal Code laws of northern Nigeria apply to the states in the northern part of Nigeria. The code declares some morally bereft acts

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<sup>42</sup> Section 12 of the Constitution of the Federal Republic of Nigeria 1999

<sup>43</sup> <https://www.refword.org/docid/54F966c34.html> (Assessed 27 June, 2023)

<sup>44</sup> (n1) 26

<sup>45</sup> Cap C38, LFN 2004

<sup>46</sup> Ibid Section 218

<sup>47</sup> Ibid Section 214

<sup>48</sup> Ibid section 217

<sup>49</sup> Section 117 and 117 Criminal Code Act

<sup>50</sup> Section 316 Criminal Code Act

<sup>51</sup> Section 217 Criminal Code Act



as offences and prescribes punishment for committing them. Some of these offences, with an undertone of morality, as provided under the Penal Code, include culpable homicide, causing a woman with a child to miscarry, maltreating a child under one's guidance, unlawful carnal knowledge of a girl under thirteen, etcetera.

#### 4.0 International Legal Frameworks

##### a. Chinese Criminal Code, 1997

China has released new "morality" guidelines for its citizens, from civic education and how parents should teach their children to rubbish sorting and the appropriate etiquette for raising the national flag. The "Outline for the Implementation of the Moral Construction of Citizens in the New Era" calls on Chinese citizens to be honest and polite, to be civilised when dining, travelling, or watching a sports competition, and "defend China's honour."<sup>52</sup>

##### b. American Bill of Rights, 1791

The American Bill of Rights is rooted in the primacy of egalitarian, autonomous, individual natural rights (plural) to life, liberty, and the pursuit of happiness, especially through limitless, competitive acquisitiveness<sup>53</sup>. From these self-regarding rights and their mortally competitive spontaneous expression (the state or nature), reason deduces prudential, artificial rules, honorifically if misleadingly given the hallowed term 'natural laws.' By following these rules centred on the idea of morality, and contract, the natural rights are tamed to foster peacefully competitive commercial societies that shrewdly maximise collective and individual self-interest, above all, through de-legitimizing the political cultivation of spiritual fulfilment<sup>54</sup>.

##### c. European Convention for the Protection of Human Rights and Fundamental Freedoms, 1948

The European Convention for the Protection of Human Rights and Fundamental Freedoms is another important legal framework on law and morality. In the text, the 'morals' are indeed mentioned as a legitimate aim that justifies the restriction of some rights granted by the Convention<sup>55</sup>. More precisely, the clause is referred to in articles 6.1, 8.2, 9.2, 10.2, 11.2, concerning respectively the right to a fair trial, the right to respect for private and family life, the freedom of thought, conscience and religion, the freedom of expression, and the freedom of assembly and association.

##### d. Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights articulates fundamental rights and freedom for all. The General Assembly of the United Nations adopted the Declaration on 0 December 1948. Motivated by the experiences of the preceding world wars, The Universal Declaration was the first-time countries agreed on a comprehensive statement of inalienable human rights.

<sup>52</sup> <https://www.theguardian.com/international>

<sup>53</sup> *Baron v Baltimore* 32 US (7 Pet) 243 (7 pet) 243 (1833)

<sup>54</sup> *Natural Law Theory and the Bill of Rights*

Thomas L. Pangle, University of Texas at Austin from <http://www.nlnrac.org/american/bill-of-rights>

<sup>55</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms Articles 6.1, 8.2,10.2,11.2



The Universal Declaration was adopted by the General Assembly of the United Nations on 10 December 1948. Motivated by the experiences of the preceding world wars, the Universal Declaration was the first-time countries agreed on a comprehensive statement of inalienable human rights. The Universal Declaration includes civil and political rights, like life, liberty, free speech and privacy. It also includes economic, social and cultural rights, like the right to social security, health and education.

## 5.0 Institutional Frameworks

### a. The Church

The church is a body or organisation of religious believers. The Holy Bible is the holy book of believers. God assists us in living a moral life through the Church, our mother, and our teacher. The faith of the Church is found in its Creed and its ordinary teaching, as articulated by its shepherds, the Pope, and the bishops in communion with him. Accordingly, in Luke 10:16, Jesus said to the Apostles, “Whoever listens to you listens to me”. In the Church, when dealing with matters of faith and morals, the authoritative voice of Jesus Christ is exercised by the pope and bishops, successors of Peter and the Apostles who form the Magisterium. They are guided by the Holy Spirit, who abides with the Church to lead all into all truth.<sup>56</sup>

### b. The Mosque

The Mosque is the prescribed place of worship for Muslims. Morality in Islam encompasses the concept of righteousness, good character, and the body of moral qualities and virtues prescribed in Islamic religious texts. The Qur’an, which Muslims believe to be the verbatim word of God, serves as the primary source of moral teachings in Islam.<sup>28</sup> Islamic morality's principle and fundamental purpose is love: love for God and love for God’s creatures. The religious conception is that mankind will behave morally to please God.<sup>29</sup> Collective morality

### c. The Judiciary

It is worthy of note that the Nigerian legal system is predicated on the received English laws, which contain the common law of England, the doctrine of equity and the statute of general applications. The chancery court developed the doctrines of equity through the Lord Chancellor, an ecclesiastic and the keeper of the King’s conscience. The fact that the conflict between common law and equity was resolved at the instance of the doctrine of equity attests to the fact that our legal system is predicated on the concept of morality. in *Moeller v Monier Construction Company*<sup>57</sup>. The cases are predicated on morality emphasis on professional ethics especially the case of *Moeller v Monier Construction Company*<sup>58</sup> the court frowned at the attitude of the worker in bringing prostitutes into his room, the court further stated that it is true that bringing in women into his room is his private affairs however its bound to affect the company adversely, The public will conclude that the company condones sexual immorality. These doctrines of equity were developed through judicial decisions. These equitable maxims are an expression of moral codes and values and same been imported into the Nigerian legal system. the Supreme Court held that “the court will do justice even where the law or statute as to provide for such a situation specifically.

<sup>56</sup> <https://www.thegospelcoalition.org/essay/origin-nature-church/>

<sup>57</sup> (1961) 1 All NLR 167

<sup>58</sup> (ibid)





## 6.0 Regional Institutional Frameworks

### a. African Union (A.U.)

Customary law largely reflects communities' notion of morality. An issue that has given into major controversy in recent times is the issue of sexual orientation homosexuality and its compatibility with custom, morality and law in the continent. The status of sexual orientation under the African Charter itself appears unsettled. The right to sexual orientation is not explicitly and directly protected under the African Charter. Homosexuality is outlawed in many socially conservative African societies where some religious groups brand it a corrupting Western import. Some men were arrested in a police raid on a hotel in the Egbeda district of Lagos in 2018<sup>59</sup>. Police said they were being "initiated" into a gay club, but the accused said they were attending a birthday party. The trial is seen as a test case for a Nigerian law banning gay marriage, punishable by a 14-years jail term, and same-sex "amorous relationships". It caused an international outcry when it came into force in 2014. Nobody has yet been convicted under the law.

### b. Civil Society Organization

Civil society is often used as a point of reference in public and welfare policy. However, there are various notions of civil society. The most popular concept broadly equates it with the 'third sector'. A second concept sees the key to a more civil society mainly in the public domain with its ability for intermediation. Finally, there is a third notion, arguing that a more civil society takes shape through a struggle to strengthen civility and togetherness throughout society.

Globally, civil society organisations (CSOs) are recognised as important non-state agents of development. They are saddled with multi-faceted responsibilities of providing social welfare, economic empowerment, humanitarian services, political participation, enabling effective democratic governance, and the rule of law. In Nigeria, CSOs operate under weak and complex regulations and this has hindered their effectiveness and limited their potential.

To increase the understanding of the context in which civil society organisations operate and to better understand the challenges, the Agents for Citizen-driven Transformation (ACT) Programme conducted a political economy analysis (PEA) with selected CSOs, community-based organisations, and faith-based organisations.

Broadly, the PEA is commissioned to increase the understanding of the civil society environment, to support ACT to strengthen the capacity of CSOs to operate in an enabling environment, to be accountable to their constituents and to respect citizens' rights and freedoms, gender and social inclusion, and improve their transparency and legitimacy.

The research approach included desk research, key informant interviews and focus group discussions. Findings from the PEA are expected to inform the design and implementation of the programme support for CSOs over the next four years.

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<sup>59</sup> <https://www.reuters.com/article/nigeria-lgbt-idUSL8N2A45L5>



## 7.0 A Critical Analysis of the Relationship Between Law and Morality

### a. The Relationship between Law and Morality

Most specialists agree that there is a close connection between law and morals because the moral principles of good, justice and truth are appliances and promoted by the rule of law, even if the right and the moral retain their identity. However, over time, their views on the problem of knowing what the relationship between law and morals is where contradictory. Between law and morals, it could be considered that there is only an apparent contradiction because the two concepts are complementary. The right would seem a trap for lawyers that could make them resist the temptation to not see beyond the letter of the law, given the need for law enforcement and understanding of its spirit. A true man of the law must not only know the law but also look beyond it and realise the moral law's main attraction. Law and morality, which can be said to serve as the norms of human behaviour, are closely related yet distinct. It is important to remember this relationship between law and morality to understand the social nature of law.

Law has been defined as a command made by the sovereign to the subjects and backed up by sanction for non-adherence. On the other hand, morality is a conduct backed up by conscience and belief systems. According to Paton, morals or ethics is a study of the supreme good. In general, morality has been deemed to include: all manner of rules, standards, principles or norms by which men regulate, guide and control their relationships with themselves and others<sup>60</sup>. In *Udemah v Nigerian Railway Corporation*<sup>106</sup>, Uwaifo, JCA noted:

*'The right to suspend an employer to effect proper investigation or during the process of a disciplinary Action and suspension in the meantime, they should be complied with. Even if there are no regulations for suspension, that cannot affect the discretion of the employer to suspend a particular employee on a particular occasion. This is so even though the suspension of a from duty may invariably reflect adversely on him the assessment of the public or may appear to amount to pointing an accusing finger. But this is one of the known incidents of employment. The discretion to suspend should be exercised with a good sense of duty'.*

Morality, according to doctrine, represents a set of concepts and rules about good or bad, right or wrong, allowed or not allowed. The norms of morality are the creation of society or social groups. Also, moral norms indicate to people, like norms of law<sup>61</sup>. The court of appeal held that misconduct in the private life of a judge may warrant summary dismissal. the necessary conduct and show the consequences of non-observance of this behaviour, namely moral sanctions that are different from legal ones.

In the essence of morality and law, humans are obligated to take care of their neighbours from both attacks and protect them from the eradicating deeds that affect others. Morality prohibits the indecent act of misbehaving with others, and by Law, it amounts to punishment. Lord Atkin, in *Donoghue v Stephenson*<sup>62</sup> Mrs Donoghue went to a cafe with a friend. The friend bought her a bottle of ginger beer and an ice cream. The ginger beer came in an opaque bottle so that the contents could not be seen. Mrs

<sup>60</sup> (1991) 6 NWLR (Pt. 180) P. 477

<sup>61</sup> Attorney General of Cross Rivers State v Esin (1991) 6 NWLR (Pt. 197) 365

<sup>62</sup> (1932) All ER Rep 1



Donoghue poured half the contents of the bottle over her ice cream and drank some from the bottle. After eating part of the ice cream, she then poured the remaining contents of the bottle over the ice cream and a decomposed snail emerged from the bottle. Mrs Donoghue suffered personal injury as a result. She commenced a claim against the manufacturer of the ginger beer.

Her claim was successful. This case established the modern law of negligence and established the neighbour test.

"The rule that you are to love your neighbour becomes in law you must not injure your neighbour; and the lawyer's question " Who is my neighbour?" receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question. "Stated a legal principle from the moral principle, deliberately modifying the latter to the requirements of the former. "If morality pronounces that I should love my neighbour, the Law requires that I must not injure my neighbour." Most specialists agree that between law and morals there is a close connection, because the moral principles of good, justice and truth are appliances and promoted by the rule of law, even if the right and the moral retain its identity. However, over time, their views on the problem of knowing what the relationship between law and morals is were contradictory. Between law and morals, I consider that there is only an apparent contradiction, because the two concepts are complementary. The right would seem a trap for lawyers in that could make them to resist the temptation to not see beyond the letter of the law, given that the need for law enforcement and understanding of its spirit. A true man of law must not only know the law but also to look beyond it and realize that the main attraction of the moral law<sup>63</sup>

#### **b. Differences and Similarities between Law and Morality**

In the words of H.L.A. Hart, the law of every modern State shows at a thousand points the influence of both the accepted social morality and wider moral ideal. Both law and morality have a common object or end in so far as both of them direct the actions of men in such a way as to produce maximum social and individual good. Social or external sanctions back both law and morality.

Jeremy Bentham has argued that legislation has the same centre as morals but has a new circumference. Morality is generally the basis of law, i.e. illegal (murder, theft etc.) is also immoral. However, there are many immoral acts, such as the sexual relationship between two unmarried adults, hardheartedness, ingratitude, etc., which are immoral but are not illegal. Similarly, there may be laws not based on morals, and some may even be opposed to morals, for instance, laws on technical matters, traffic laws, etc.

In the early stages of society, there was no distinction between law and morals. In Hindu law, the prime sources of the Vedas and the Smritis did not contain or infer such distinction in the beginning. However, later, Mimamsa laid down certain principles to distinguish obligatory from recommendatory injunctions. In the West also, the position was similar. In the name of the doctrine of natural rights, the Greeks formulated a theoretical moral foundation of law.

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<sup>63</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3388103](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3388103)



In post-Reformation Europe (when the yoke of the Church was thrown off), it was asserted that law and morals are distinct and separate, and law derives its authority from the state, not morals. Morals have their source in religion or conscience. However, in the 17th and 18th centuries, natural law theories became very popular and, more or less, they had a moral foundation. Law again came to be linked with morals.

In the 19th century, John Austin propounded his theory that the law has nothing to do with morals. He defined law as the command of the sovereign. He further said that it was Law 4 command) alone which is the subject matter of jurisprudence. Morals are not a subject matter of study for jurisprudence.

Many later jurists supported the view of Austin in the 20th century; Kelsen believed that only the legal norms were the subject matter of jurisprudence. He excluded all other extraneous things, including morals, from the study of law. There is a change in the trend of thought in modern times. The sociological approach to law indirectly studies morals also. Though they always distinguish between law and morals and consider the former the proper subject matter of study, in tracing the law's origin, development, function and ends, they study the forces influencing it. Thus, their field of study extends to the various social sciences, including morals.

In India, as observed earlier, the ancient Hindu jurists did not distinguish between law and morals. Later, in actual practice, some distinctions started to be observed. The Mimansa made a distinction between obligatory and recommendatory rules. By the time the commentaries were written, the distinction was abolished in theory also.

However, the rule does not apply to legal injunctions. In modern times, the Privy Council, in its decision, always made a distinction between legal and moral injunctions. There is no longer any confusion between law and morals, and when the law is gradually being codified, there are few chances of such confusion. In the preceding paragraphs, it is perceived that in modern times there is a clear distinction between law and morals in every developed and civilised society.

The points of differences between Law and morality are thus discussed:

- a. The morals are concerned with the individual and lay down rules for moulding his character. Law concentrates mainly on society and lays down rules concerning the relationships of individuals with each other and the state.
- b. Morals look to the intrinsic value of conduct; in other words, they investigate motive. The law concerns the individual's conduct for which it lays down standards.
- c. The morals are an end in themselves. They should be followed because they are good at themselves. Law is for convenience and expediency, and its chief aim is to help the smooth running of society.
- d. The observance of morals is a matter of individual conscience. The law brings into the picture the complete machinery of the state where the individual submits himself to the will of the organised society and is bound to follow its rules.
- e. The morals are of universal value. Law is relative related to the time and place, and, therefore, it varies from society to society.
- f. Law and morals, again, differ in their application. The morals are applied to consider individual cases, whereas the application of the law is uniform.



- g. Law concerns a person's liberty, whereas morality deals with collective good and bad ideas.
- h. Law regulates the conduct of a man if he is a member of a specific community, whereas morals guide the conduct of man even when he is all alone.
- i. Laws consider the external acts of a man, whereas morals look towards factors such as inner determination and direction of the will.
- j. Law is enforced through "external coercion", whereas morals appeal to an individual's free will.
- k. Laws are studied under Jurisprudence, but morality is studied under ethics.
- b. On this issue, Dean Roscoe Pound, therefore, says that: "as to the application of moral principles and legal precepts, respectively, it is said that moral principles are of individual and relative application; they must be applied concerning circumstances and individuals, whereas legal rules are of general and absolute application."

In sum, this researcher conjectures that legal rules enjoy an advantage over moral rules with respect to the lower cost of establishing the former; however, it is with respect to central tendencies.

### **c. Influence of Morality on Law**

Morality is a value-impregnated concept relating to certain normative patterns that aim to augur good and reduce evil in individual and social life.

Most writers use the terms 'ethical' and 'moral' interchangeably. Values are the lifeblood of the law. The legislators, when they formulate the laws, and the Judges, when they make their decisions, are not working in a vacuum. They are guided by the values recognised in society. Values are the social ideals which form the matrix from which judges or legislators evolve legal principles. Values are more than potential materials for the legislative lawmaker. They serve as critiques of proposed measures of law-making. Values guide the very nature of the judicial process importing choice and discretion. These values may themselves change with the progress of society. When values change, the law tends to change. Then the attitude of the legislators and judges will also undergo a metamorphosis.

Law and morals act and react upon and mould each other. In the name of 'justice', 'equity', 'good faith', and 'conscience', morals have filtered into the fabrics of law. Moral considerations play a very important role in judicial law making, in interpreting legal precepts, and in exercising judicial discretion (as in awarding or punishing). Morals work as a restraint upon the legislature's power because the legislature cannot venture to make a law that is completely against society's morals. Secondly, all human conduct and social relations cannot be governed by law alone. Morals regulate a considerable number of them. Several actions and relations in the community's life go on very smoothly without any intervention by law. Morals secure their observance. So far as the legal rules are concerned, it is not the legal sanction that ensures their obedience; morals also help in it. Thus, morals perfect the law. In marriage, so long as love persists, there is little need for the law to rule the relations of the husband and wife, but the solicitor comes in through the door as love flies out of the window.

On the influence of morality on law, H.L.A. Harts believes that the law of every modern state shows at a thousand points the influence of both the accepted social morality and wider moral ideals. These influences enter law either abruptly and avowedly through legislation or silently and piecemeal through the judicial process.



In some systems, as in Nigeria and the United States, the ultimate criteria of legal validity explicitly incorporate principles of justice or substantive moral values; in other systems, as in England, where there are no formal restrictions on the competency of the supreme legislature, its legislation may yet no less scrupulously conform to justice or morality.

The different ways in which law mirrors morality which is myriad and still insufficiently studied: statutes may be a mere legal shell and demand by their express terms to be filled out with the aid of moral principles; the range of enforceable contracts may be limited by reference to conceptions of morality and fairness; liability for both civil and criminal wrongs may be adjusted to prevailing views of moral responsibility.

#### **d. The Relationship between Law and Morality in the Nigerian Legal System**

Every society in the world has its pattern of behaviour, Nigeria inclusive. From the colonial period till date, moral values have shaped laws which guide our conduct. The colonists came with their common law and imported the same into Nigeria during the subsistence of the colonisation period. Since the norms of Nigeria were quite dissimilar to those of Britain, there was a serious conflict between the indigenous Nigerian customs and the British common law; a quintessential example is the imported law of Bigamy which was greatly opposed because it was alien to indigenous Nigerian customs. However, as time passed, some of these Nigerian customs were subjected to repugnancy and incompatibility tests to remain valid. The reason for bringing morals and customs into our legal system is that moral condemnation alone does not constitute a crime.

The Nigerian courts have already expressed their views on law and morality and have held in a plethora of cases that courts of law do not pursue moral issues outside the precinct of the law; and that they only have to interpret and apply the law as it is and not as it ought to be, see the case of *Nigerian Bank for Commerce and Industry v. Standard (Wig.) Engineering Co.*<sup>64</sup> Ltd. and *Maida v. Modu*.<sup>65</sup>

Howbeit, many offences in Nigeria are seen as not only socially reprehensible but also morally wrong. These offences have a trace of moral connotation and have been promptly legislated upon in the Criminal Code Act under the Nigerian Criminal law system. Some of these offences include murder, stealing, obtaining by false pretence, stealing, etcetera.

It is important to state that in Nigeria, not every moral issue is legislated upon because of the vast number of ethnic groups, each having its version of what is morally right. However, moral values common to these different ethnic groups have been codified. Typical examples are sodomy, homosexuality, incest, rape etc.

#### **8.0 Comparative Analysis of law, morality and religion in other Jurisdictions**

In the United States of America, the legislations clearly make provisions for incorporation of morality in the law of the country. Although, clearly, there are no conflict between law and morality. These appears to be the basis of law making in the United States of America and in republic China. there are non-legal systems of the world that is devoid of moral and religious value this is because before the evolution laws i.e., the codification of laws, there existed morals, ethical values, and religious values

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<sup>64</sup> (n 114).

<sup>65</sup> (n 114).



which helped to shape and keep the society in a state of peace. China and America had some ethical values and religious tenets which is peculiar to them while America due to their colonial history inherited the Christian religion, specifically catholic while China practices Buddhism, Buddhism is institutionalised in China.

### **i. American**

It cannot be controverted that religion plays a central role in American society. Perhaps the greatest genius of American society has been that by incorporating a promise of maximum freedom of conscience into the United States Constitution, we have guaranteed everyone the to follow their conscience while assuring them that they will never suffer from official discrimination because their beliefs are inconsistent with those of most of the population. Although freedom of religion is not absolute,' there has been a continual progression toward maximizing religious liberty in 1952 Justice Douglas wrote these immortal words:

'We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deems necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma Notwithstanding the American tradition of separation of church and state, there is a constant interaction between our religious and political institutions. As Justice Douglas himself wrote, the Constitution "does not say that in every and all respects there shall be a separation of church and state." Indeed, each has greatly influenced the other. Our founding fathers were guided by their religious convictions in forum lasting our constitutional system and its attendant guarantees of liberty. Similarly, religious liberty and the guarantee of full political rights for all regardless of faith were won not through violence through the political and legal system. The United States Supreme Court recognized long ago that although freedom to believe is absolute, the state may prohibit activities undertaken in the name of religion which are injurious to *Reynolds v. United States*<sup>66</sup> Supreme Court of the United States held that religious duty was not a defence to a criminal indictment.

### **ii. China**

Observance of Religious norms in China is at Apex. considering China's economic boom and modernization. While China's constitution allows religious belief, adherents across all religious organizations, from state-sanctioned to underground and banned groups, face intensifying persecution, repression, and pressure to adhere to Chinese Communist Party (CCP) ideology Freedom and Regulation.

The Chinese constitution<sup>67</sup> says that citizens "enjoy freedom of religious belief." It bans discrimination based on religion and forbids state organs, public organizations, or individuals from compelling citizens to believe in—or not believe in—any particular faith. The State Council, the government's administrative authority, passed regulations on religious affairs, which took effect in February 2018, to allow state-registered religious organizations to possess property, publish literature, train and approve clergy, and collect donations. Yet alongside these rights come heightened government controls. The

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<sup>66</sup> 98 U.S. 145 (1879)

<sup>67</sup> Article 36 of Chinese Code, 1977.



revised rules include restrictions on religious schooling and the times and locations of religious celebrations, as well as monitoring of online religious activity and reporting donations that exceed 100,000 yuan (around \$15,900).

Human Rights Watch’s China director, Sophie Richardson, says that while religious belief in China is protected by the constitution, the measures “do not guarantee the right to practice or worship.” Religious practices are limited to “normal religious activities,” though “normal” is left undefined and can be broadly interpreted. The state recognizes five religions: Buddhism, Catholicism, Daoism, Islam, and Protestantism. The practice of any other faith is formally prohibited, although often tolerated, especially in the case of traditional Chinese beliefs. Religious organizations must register with one of five state-sanctioned patriotic religious associations, which are supervised by the State Administration for Religious Affairs (SARA).

The government’s tally of registered religious believers is around two hundred million, or less than 10 percent of the population, according to several sources, including the UN Human Rights Council’s 2018 Universal Periodic Review. Yet some independent reports suggest the number of religious adherents in China is far larger and is steadily increasing. The research and advocacy group Freedom House estimated in 2017 that there are more than 350 million religious’ believers in China, primarily made up of Chinese Buddhists, followed by Protestants, Muslims, Falun Gong practitioners, Catholics, and Tibetan Buddhists. Many believers do not follow organized religion and are said to practice traditional folk religion. These practitioners, along with members of underground house churches and banned religious groups, account for many of the country’s unregistered believers.

Chinese public security officials monitor both registered and unregistered religious groups to prevent activities that “disrupt public order, impair the health of citizens or interfere with the educational system of the State,” as stipulated by the Chinese constitution. In practice, however, monitoring and crackdowns often target peaceful activities that are protected under international law, say human rights watchdogs. Overall, “religious groups have been swept up in a broader tightening of CCP control over civil society and an increasingly anti-Western ideological bent under Chinese President Xi Jinping,” writes Freedom House.

“Religious groups have been swept up in a broader tightening of CCP control over civil society.”

## **9.0 Conclusion**

This research has successfully analysed the age-long concepts of law and morality and their relationship in Nigeria and other jurisdictions. It also, amongst other things, meticulously highlighted the influence of morality on the law. This research also exposes the sad reality that irrespective of the vast number of laws, rules, and regulations with an undertone of morality, the rate of moral depreciation in society is still high, as seen in the increasing level of stealing, rape, ritual killings, cybercrime, prostitution, abortion and many others. It then seems the lawmakers are mute and doing the citizens a great disservice. This is, however, not the case, as the Legislators in the National Assembly are working assiduously in a bid to save the moral fabric of the society by the enactment of laws to that effect. There is a National Call to obey, and all Parents, Guardians, Religious heads, public officers, Teachers, Lecturers, Clergymen, Imams, Traditionalists and every single person must adhere to that clarion call — a call to respect and obey all laws flowing from those with authority to make same in a bid to ensure





the peace and good governance, and protection of the moral fabric of the society. Individual rights, according to Kelsen, do not exist in law. The 'essence of law' is legal obligations. Law is always a necessary system in a state. He believes that the notion of right is not fundamental to a legal system. A legal right is just a responsibility as regarded by the person who has the authority to demand that it should be fulfilled. The quest to understand the possibility of incorporating moral and religious norms into our legal system is puzzle, this is because it is not every moral or religious norms should be permitted into the legal system however so many moral norms are traceable in the legal system of Nigeria and other legal system of the world. If u take a cursory look in Nigerian criminal code, you will attract so many, the principle of equity the religious norms is recognized in the bible and coram.

### **10.0 Recommendations**

The findings of this research run through the relationship between law and morality as well as its similarities, differences, moral relativism and divergence with instances of homosexuality, abortion, adultery, murder etc. It is now obvious that the basis of most legal rules has its foundation in morality.

The following are possible recommendations:

- a. A complete divorce of morality from the law is not possible. Both concepts should be viewed as mutually enhancing the efficiency of our corpus juris.
- b. Law enforcement agencies should note that morality is an aspect of the law and, as such, in the discharge of their statutory obligation and moral values should not be neglected.
- c. The legislature, saddled with the responsibility of enacting laws and the draftsman in the business of inscribing the Legislators' intention, should harmonise both law and morality on the scale of justice to promulgate good laws. Laws with a moral undertone would be easily obeyed.
- d. The Nigerian legal system should mirror other good legal system, such as the Chinese confusion theory, Indian legal system and the penal code of the Northern Nigeria whose legal system is a reflection of their social cultural, religious and moral believes in enacting laws. This will compel obedience and adherence to the law so made for instance Nigeria obey religious precepts, tradition more than the law of the land
- e. Laws should be made in accordance to the believe of the people law should be home grown it should reflect the will of the people. It should be what people can relate with for exam the northern Nigeria can relate and obey the sharia law because its emanates from their religious believe. Humans have the innate ability to reason they also can tell what is good or wrong.