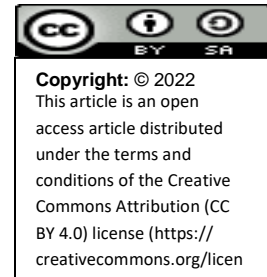


The Jurisprudential Significance of Natural Law, Morality and Religion in Legislations: The Nigerian Experience

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Abstract

Natural law, morality and religion play essential roles in human and societal relationships. Every human being is the product of his society and his environment. The environment produces human conduct via its values, norms and mores. The laws passed in society help to regulate the behaviours of the members of the given society. Law determines the dos and don'ts the given community members will embrace. The level of influence of natural law or the law of nature endowed on humans and knowable by reason and conscience determine the extent of moral value the society will pursue. Also, the religion and the faith followed by the vast majority of the populace determine the level of a good or bad relationship among the members of the society at large. This paper's primary objective is to point out the importance of natural law, morality and religion in passing legislation or Acts of parliament so that laws in Nigeria will reflect the moral and religious inclinations of Nigerians. The methodology adopted in this work was normative doctrinal analysis. The data was collected from statutes, and books. The article finds that natural law, morality and religion are not given an adequate place in legislation passed in Nigeria. There is the need to bring information regarding the importance of natural law, morality and religion to the knowledge of the lawmakers. The paper makes recommendations calling upon the parliament to infuse more ingredients of natural law, morality and religion in the laws and Acts in Nigeria.

Keywords: Natural Law, Morality And Religion, Justice, Legislation, Society

1. Introduction

The article is divided into several sections, from defining keywords/concepts to the legal framework and then, the importance of natural law, morality and religion, the impact of natural law, morality and religion in Nigeria, the modern proposition on natural law, morality and religion, solutions/recommendations. The debate over applying natural law, morality and religion is not new in Nigeria. Employing natural law, morality and religion in Nigerian laws has become a topical issue and perhaps more notorious depending on one's point of view. It has become a matter of concern for Elites, jurists, Lawyers, public and private administrators. They have all aired their varying opinions on the place of natural law, morality and religion in the Nigerian state. Judges alike have made judicial pronouncements touching on these three concepts in Nigeria. Notable writers in the past and present, such as J.N. Egwummuo¹, J.M. Elegido², Adewale Taiwo³, among others, have dwelt on this subject matter of natural law, morality and religion as elements of human survival and societal transformation. There is no doubt that for the Nigerian parliament to reflect the people's feelings, there is the need to maintain naturality, putting morality and religion as cardinal ingredients. It is a known fact that if a law reflects the natural feelings and spirit of society, it will promote and improve social cohesion. Suppose the legislature observes the natural law, morality and religion in legislation. In that case, Nigeria will align with the state of nature, and consequently, respect for the inalienable rights of citizens will be guaranteed. What is rather astonishing is that, in passing some legislations, the Nigerian legislators take cognisance of these natural laws, religion and morality. Still, in other situations, they throw blind eyes to these guiding concepts in passing laws, which the authors tried to espouse in the paper and made necessary recommendations. A discussion of this nature will provide impetus to Nigeria's much agitations for national cohesion, unity, peace and security.

2. The conceptual clarification of Natural law, Morality and Religion

Definition: Natural law is a philosophical system of legal and moral principle purportedly deriving from a universal conception of human nature or divine justice rather than from legislative or judicial action; moral law is embodied in principles of right and wrong. So many ethical teachings are based on natural

¹ J.N. Egwummuo, *Focus on law and Jurisprudence* (2nd Edn Aadmic Publication Enugu 2007) 35-17

² J.M. Elegido, *Jurisprudence* (1st Edn Spectrum Books Limited Abuja 2010) 19-28
Booka Limited 2015) 256-265

³ Adewale Taiwo, *Jurisprudence and legal theory in Nigeria* (1st CSA control & Surveillance Associates publication (2019) 145-152

law. It is also termed the law of nature; natural justice; *lexaeterna*; eternal law; *lexnaturalae*; divine, *jus divinum*, *jus naturale*; *jus naturae*." The medieval writers spoke of natural law as being discoverable by reason; they meant that the best human reasoning could discover it, and not, of course, that the result to which any and every individual's reasoning led him was natural law. Jeremy Bentham submitted that a great multitude was continually talking of the law of nature, and they went on giving you their sentiment about what was right and what was wrong. Those sentiments, we were to understand, were so many chapters and sections of the law of nature, merely showed contempt for a great conception which Bentham had not taken the trouble to understand⁴. "Morality is the conformity with the recognised rules of correct conduct⁵.

Religion is the system of faith and worship involving belief in Supreme Being and usually containing a moral and ethical code, especially a system recognised and practised by a particular church, sect or denomination. Courts have given broader interpretation to religion, including different belief systems, both theistic and nontheistic beliefs.⁶

Correlating the meaning of the three concepts of Natural law, Morality and Religion as defined by the Black's law dictionary, there is the recognisance of a natural as well as of legal justice. Natural law and morality are discoverable by reason, while religion involves a code and system designed by men to relate and reach the supreme being. The supreme being handed codes of conduct that are discoverable by reason because they are natural codes akin to morality.

3. The Law of Nature

Holland quoting the stoics, identified nature with the law in the higher sense and opposed the positive law, which is such by mere appointment. Justice, they say, is by nature and not by appointment, the stoics narrated⁷. The Absolutists added that people have different conceptions of what counts as right and wrong; they need a supreme power to define justice forcibly. The positivist only acknowledged the ruler as the source of law, and by implication, a source of justice in the society as the ruler determined what constituted right or wrong. There is a conflict between the positivists and the naturalists. It logically follows from this that since people tend to create and impose a concept of justice by interacting with each other and by forming the associations that constitute civil society, and then all of civil society must be subordinated to the

⁴*Black's Law dictionary*(supra). P.1100

⁵ *ibid*

⁶ *Ibid*

⁷ Thomas Erskine Holland (1880) *Holland on Jurisprudence* (13th edn universal law publishing co. India) 32 - 33

ruler so that his arbitrary and absolute definition of justice shall suppress all others.⁸

Roman lawyers expressed natural law as the highest reason implanted in nature, which commanded those things which ought to be done and prohibited the reverse actions not approved by nature. The highest law was born in all the ages before any law was written or state was formed. Love is the foundation of humankind, and every society shows love one way or the other, for love was not imposed by man-made law, but it developed by nature or at the instance of the mind of God.⁹

The law of nature, also known as the *iusnaturale*, regardless of the plausible argument put forward in support or against natural law, a few observations or conclusions had been made by the positivists. These observations include:

- i. Acts prohibited by positive law, but not by the so-called natural law, are said to be '*mala prohibita*', not *mala in se*; thus, a government may find it expedient to forbid certain acts, such as the cultivation of Indian hemp or marijuana¹⁰, which are not odious by public sentiment. We could understand that positive laws of the state may not accord with natural law principle in some situation depending on the prevailing circumstance in the history of the society.
- ii. Positive law of the state that is laws passed by constituted authority, for example, Nigeria National Assembly, are invalid if they run contrary to natural law. Human laws are measured in respect of men whose motions they must direct. However it may be, such measures as they also have the higher rules to be measured by the law of God and the law of nature; so that legislations must be passed in line with the general law of nature as it were, without contradicting any known law of the scriptures, otherwise they will all be termed ill-made legislation¹¹. This law of nature, being connected to humanity and dictated by God himself, is, of course, superior in obligation to any other legislation. It is binding all over the universe, in all countries and at all times. No human laws are of any validity where ever and whenever they run contrary to the laws of nature. Such valid laws derive all their force and authority from no other source than from their origin, which is the law of nature or *iusnaturale*¹².
- iii. The rules of equity have often been employed to justify a departure from a strict principle of positive law. With the changing ideas of society, cases, of course, often occurred when the state's law was

⁸Brierly J.L, (1955)*Law of Nations* (5th Ed Clarendon Press, oxford)20-21

⁹ Thomas Erskine Holland (n8) 33

¹⁰Hollman v Johnson (1775) 1 Cowp. 341

¹¹ Thomas Erskine Holland (n8) 37

¹² ibid

found to be in opposition to the views of equity entertained by the people or by leading minds among them. The resistance can be said in modern language to be between law and morality. But law and morality in early times were not conceived of as distinct. Therefore, the contrast was treated as existing between a higher and a lower kind of law, the written law which may easily be superseded, and the unwritten and immutable law which is in accordance with nature¹³

- iv. In cases for which the law makes no provision, the courts are sometimes expressly authorised to decide in accordance with the principle of natural law. This is so, and that was how equity came into being, equity being a decision based on the good conscience of the king and the Lord Chancellor

3.1 Hobbes criticisms of natural law, religion and morality, but in support of totalitarianism

The supremacy of the natural law has continuously been contradicted by those who perceive the state as totalitarian, a state having limitless power over individuals or citizens.

Thomas Hobbes postulated that man, by his characteristics, cannot be said to possess the attribute of natural law. Natural cannot easily be deduced from the nature of man. He also argued that natural law has no limitation on the ruler's power to rule the ways and manners he so wishes, adding that the social order of any society is purely the wish of the state and its actors. He argued that in the state of nature, life is the survival of the fittest, which makes life brutish, nasty and short¹⁴. This position of Thomas Hobbes runs contrary to the popular belief that man in a state of nature will live in peace and harmony with his fellow men, relating comfortably and affectionately with other human beings.

Therefore, Hobbes argued, the state is entitled to unlimited power. The state passes a law and, through the laws, determines who is right or wrong, which the subjects must obey or follow. The state which made the laws is answerable to no one except to God and no one else. The state, through its rules and policies, determines the standard of justice all must pursue in society.¹⁵ Hobbes believes that the state should possess absolute powers to make laws and policies, which the people must follow in their relationship with one another in their relationship with the state. The state determines the line of justice that would exist in the society and defines what constitutes right or wrong

¹³ Ibid 3

¹⁴ Ellickson, Robert C., (1991). *Order without Law, How Neighbors Settle Disputes* (Harvard University Press) 89

¹⁵ Ibid 95

behaviours. The state is answerable only to God and no one else; hence the state should be totalitarian, having a contract on every facet of the society. Hobbes argued further even if men know what is right and wrong, they will still not pursue what is right. Men will want to carry on their ownwishes against their fellow humans. This, according to Hobbes, necessitated that the state should possess absolute power to control human conduct¹⁶. Hobbes posits that the state which determines human behaviour through its law is regarded as the God of the citizens and the citizens have no other God than the state whom they must obey its command and laws¹⁷. If we are to go by the views of Hobbes, then religion will have no meaning since the state is the God of the citizens and determines the line of worship as in every other aspect of life. In the Hobbesian state, religion is downplayed because the state has assumed absolute or total powers and control and, through its policies, creates a belief system for the people.

Hobbes believes that there will be wars as men will rise against each other using force which they cannot know whether it is good or not; hence the state has to resolve conflict through the instrument of legislation. The state is above the legislations it makes. The state's laws are the wheel of cohesion, helping men know good or bad. In summary, the will of the state's ruler determines the pattern of social cohesion. Still, under a Leviathan colony, using force is normal, and the state uses power to achieve cohesion. Social cohesion derives from arrangements to ensure that people apply retributive pressure justly. The use of such force can be seen as just what nineteenth-century people called "due process and the rule of law &". Social cohesion does not derive from a single central will, contrary to Hobbes arguments and assumptions¹⁸.

4. Legal positivism

Law is the command

Law in the sense of legal positivism refers to the one made and enforced by a sovereign political authority. According to John Austin, laws in the strict sense of the term are authoritatively imposed, and that is why they are described as positive laws¹⁹. Austin defined law as a rule laid down for the guidance of an intelligent being by an intelligent being having power over him²⁰. To emphasise the fact that laws, in the strict sense of the term, are thus

¹⁶ Ibid 97

¹⁷ Ibid 98

¹⁸ Benson, B.L, (1990) "The enterprise of law, justice without the state" Pacific Research Institute, ISBN 0-936488-29-8

¹⁹ John Austin, *The Province of Jurisprudence Determined* (University of London, 1832) 12

²⁰ Curzon, L.B., *Jurisprudence* (Psychology Press, 2002) 102

authoritatively imposed, they are described as positive laws. They have not been from eternity but have been made laws by the will of those with the sovereign power over others. According to Austin, the law may be properly called or improperly so-called. He divided the improperly so-called into two: (i) Laws by analogy: These comprise of rules set out and enforced by mere opinions, such as the law of honour, the law set by fashion, (ii) Law by metaphor: this describes natural laws, for example rules relating to happenings or events, the results which can be deduced from the known observation of causes and effects²¹. An illustration of law by metaphor is the law of gravity which says whatever goes up must come down. Another is the law of demand and supply, which states that the higher the price, the lower the quantity demanded and vice versa.

5. Law, morality and religion

According to Henry Maine,²² at the beginning of society, the law entangled with religion and morality but became separated as the community developed. For instance, the early man believed that the king's judgments were inspired by the gods, perhaps because kings were usually simultaneously priests and kings or were closely involved with the shrines or because a sort of myth was woven around them in this regard. But Diamond disagrees²³, contending that law and religion were always separated in early society. He studied ancient codes, including the Babylonian, Hebrew, Roman and Anglo X custody, where they were deposited.

5.1 Morality came into the law in certain ways

(i) Through legislation and legislative reforms

It is true to say that legislative reformers often advance moral reason in support of their advocacy for particular reform. For instance, in Nigeria, there are many reformist legislation¹¹, such as the law on the rights of child¹² and Same-sex prohibition laws. In Nigeria, the refusal to pass gay marriage law is anchored on morals. For example, the Osu caste law²⁴ applicable in the Eastern states of Nigeria and the Child Rights Act²⁵ belong to this type. The Child Rights Act forbids sexual intercourse with a girl under 18 years of age, which was purely a moral factor²⁶.

²¹ Ibid 471

²² Maine S.H Ancient law: its connection with early History of society and its relation to modern idea, (London Pub. Press 1861). P.895

²³ Diamond A. S *Primitive law* (The university of Chicago publishers press 1936) 199

²⁴ 1956, laws of the Eastern states of Nigeria

²⁵ 2003 of Nigeria

²⁶ Ibid S. 31

Section 31²⁷ (1) No person shall have sexual intercourse with a child

(2) Any person who contravenes the provision of subsection (1) of

this section commits an offence of rape and is liable on conviction to imprisonment for life.

(3) Where a person is charged with an offence under this section, it is immaterial that

(a) the offender believed the person to be of or above the age of eighteen

years; or

(b) The sexual intercourse was with the consent of the child.

Looking at the above provisions of the Child Rights Act, nothing is inhibiting a girl of 16 or 17 years from getting married or having sexual intercourse of her free volition; but the lawmakers choose to place the bar at 18 years. It is purely on moral ground. With these instances, the law created a new awareness and new morality among the people concerned. The former eastern Nigeria law on marriage put the minimum age for marriage at 16²⁸. At the moment, the minimum age of marriage in Nigeria is 18²⁹. This minimum age factor is based on pure morality because under the Islamic laws minimum age for marriage is the attainment of puberty, and the age of puberty varies from one girl to another; it could be as low as age 9. Also, the law prohibiting male to male marriage and female to female marriage, popularly called same-sex prohibition marriage, was borne out purely of morality³⁰.

(ii) Through judicial decision

Morality can be injected into the corpus of law in the form of principles of equity which had existed since the 17th century, and also through the personal view of the Judex. Again, where Jurors are used, morality may enter their verdicts or decisions. Although they are always directed and expected to concern themselves with fact findings only, they sometimes express an opinion about the morality of a piece of legislation by way of perverse findings of fact, as was the case in the notorious Thalidomide Trial in Belgium in 1962³¹. In some jurisdictions, same-sex marriage or gay marriages have been allowed by judicial case law³². The American Supreme Court not only recognised the

²⁷ Child Right Act 2003

²⁸ Section 3(1) Cap 6 marriage laws of Eastern Nigeria law 1963

²⁹ S.31 of the Child Right Act 2003

³⁰ Same sex marriage (prohibition) Act, 2013

³¹ 10th August 1962: life magazine Thalidomide

³² Obergefell v. Hodges 576 U. S. (2015)

right of gay couples but also mandated all the 50 states of America to recognise gay marriages³³.

In Africa, Nigeria inclusive, as in ancient and medieval times, customary laws were formulated and developed principally through the instrumentality of, and were sustained by the priests and princesses of the various shrines, in conjunction with the societal cults and age groups, who were invariably the members of the cults were intensely used for the policing of the people and enforcement of the laws. In Nigeria, these shrines were variously referred to as *Ifa, Sango, Olodumare, Amadioha, Ezeala* and so on. Virtues of thrift, mutual assistance and honesty, adultery, cooperation, fornication, divorce, murder etc., were effectively suppressed, tabooed and punished. Banishment, ostracism, corporal punishment, e.g., whipping, fines in cash and kind, and the despicable trial by ordeal or by witchcraft, under the superintendent of the priest and or the sanction of the priest-kings were the means usually employed to compel obedience and punish disobedience or non-conformity. However, it appears that by about the 11th century, king quaking and other powerful chiefs had emerged and assumed purely monarchical cum judicial authority, thereby virtually separating law from religion. Still, even the influence of morality on civil and criminal procedures remained till the present time, for instance as punishment, a thief who steals a sheep, tubers of yams or cassava tubers been prepared to make flour or yam seedlings etc, and escapes uncaught, is still cursed today as in ancient times, that he be exposed or struck by a thunderbolt or by gods of the community in question. This is the limit of customary "penology". Positive customary law in Nigeria is still entangled with religion, as we shall see in our subsequent discussion below. It is not easy to completely detach positive law from religion. Religion is the primary reason legislation was passed against Gay Marriage in Nigeria.

5.2 Influence of Morality and religion in Nigeria legislation

In Nigeria, Morality and religion are twin concepts as they operate in the company of the other. The duo plays a prominent role in the passage of certain legislative instruments. None of the dominant religions: Christianity and Islam, permitted the Gay marriage. It was on the strength of morality and religion that the Nigeria Parliament passed the law prohibiting same-sex marriage³⁴.

The *Osu* caste law of 1956, in parts of the Eastern states of Nigeria, was passed both on moral and Christian ethics. In this regard, the *Osu* caste law passed in 1956 was in tune with the present constitution of Nigeria, which prohibits discrimination against a citizen of Nigeria based on the circumstance

³³ *ibid*

³⁴ Same sex marriage (prohibition) Act, 2013

of their birth³⁵. In pursuance of this constitutional provision, the Supreme Court of Nigeria, in the case of *Ukeje v Ukeje*,³⁶ held that an Igbo female child is entitled to inherit her late father's estate. The Igbo custom that seeks to deny the female child the right to inheritance was declared null and void for being inconsistent with section 42 (2)³⁷. This decision was delivered in pursuance of morality and respect for religious belief. Also, the Child Right law³⁸ of Nigeria was also passed to protect the child against neglect, abuse and forced labour by adult members of the society, the parents and guardians alike. It was further, on moral and religious grounds to protect the girl child against infant marriage which is rampant, especially in the Northern part of Nigeria.

5.3 The Nigeria Criminal Code (Cc)³⁹ Also Deliberately Created Offences Against Morality.

Religious faith also abhors these immoral practices prohibited by the code. Sections 214 criminal code through to 233 of Nigeria covers offences against morality. The code⁴⁰ prohibits carnal knowledge of a person against the order of nature or having carnal knowledge of the animal. The offence is a felony and, upon conviction, attracts fourteen (14) years imprisonment. The code⁴¹ prohibits unlawful and indecent dealing with a boy of fourteen years of age. The offence is a felony and, upon conviction, attracts seven (7) years imprisonment. The code⁴² prohibits the practice of homosexuality. The offence is a felony and, upon conviction, attracts three (3) years imprisonment.

The code⁴³ also prohibits carnal knowledge of a girl under thirteen (13). The offence is a felony and, upon conviction, attracts life imprisonment. An attempt to have carnal knowledge of a girl under thirteen (13) attracts fourteen years imprisonment upon conviction.

The code Act⁴⁴ prohibits a householder or owner from permitting the place to be used for the purpose of defiling girls under the age of 13 and, upon conviction, liable to imprisonment for life. However, where the girl so defiled is 13 years, but under 16 years, the offence is a misdemeanour and attracts two (2) years imprisonment. The code Act⁴⁵ prohibits an attempt to have unlawful carnal knowledge of a girl of thirteen (13) but under 16 years. Section 221 (1) prohibits unlawful carnal knowledge of a girl or woman known to be an idiot or

³⁵section 42 (1) & (2)16 of the constitution.

³⁶ 2015 EJSC vol.3 SC 70

³⁷ Ibid (n35)

³⁸ *Child Right law* 2003

³⁹ CAP C 38 LFN 2004

⁴⁰ *Ibid* Section 214

⁴¹ *Ibid* Section 216

⁴² *ibid* Section 217

⁴³ *ibid* Section 218

⁴⁴ *ibid* Section 219 cc

⁴⁵ *ibid* Section 221 (1)

imbecile. The offence is a misdemeanour and attracts two (2) years imprisonment upon conviction, with or without canning.

It is still based on moral grounds that the Nigerian legislature made it an offence for anybody to permit a girl under 16 years to reside in or frequent a brothel. It is a misdemeanour and attracts a fine of one hundred naira or six months imprisonment upon conviction or both fine and imprisonment.⁴⁶ In the spirit of Nigerian moral and religious values, the Nigeria National Assembly passed a law against same-sex marriage.⁴⁷It attracts 14 years imprisonment on conviction for any person who enters into a same-sex marriage.⁴⁸ It further attracts 10years imprisonment to any person who administers, witnesses, aid, or abet the solemnisation of same-sex marriage or civil union.⁴⁹All these laws so made were all in line with the common good of natural law and morality. The laws that are based on morality and religion, to say the least, these laws are indeed to be encouraged for justice to be attained in our society and to make Nigerian community a better place for us all.

As logical and moralistic as the above laws are, it is worth stating that some of our traffic laws in Lagos State, Nigeria, are devoid of a moral tone. For example, to drive a vehicle without a driver's license on hand (probably forgotten at home when leaving home or office) makes a culprit liable to offence, or merely that the said licence had expired by just a day, such a vehicle will be impounded until the victim pays for renewal of licence, pays fines for the days the vehicle is the custody of the Lagos State Traffic Management Agency (LASTMA) and evidence of payment of licence shown, the vehicle will not be released to the owner.⁵⁰We submit that there is nothing morally wrong in someone driving a vehicle without a driver's licence, provided the person is skilled to drive a car. There is still nothing ethically wrong with someone driving a car ifthe driver's licence had just expired within a month. This is where morality and law are at variance. Our legislatures must place morality at a high premium. Every law must not necessarily be a strict common law standard.

Under the Traffic law³², driving without a valid Ministry of Transport (MOT) test certificate, driving without a valid roadworthiness certificate, driving without a valid vehicle licence attract a penalty of impounding the vehicle by the traffic control officers of the Lagos State. The penalty further includes that the driver or owner of the impounded vehicle will pay for the cost of removal and custody of the impounded vehicle and show evidence of payment of the vehicle particulars in question before thevehicle will be released.

⁴⁶ *ibid* Section 222B (1)

⁴⁷ Same sex marriage (prohibition) Act, 2013

⁴⁸*ibid* Section 5(2)

⁴⁹ *ibid* Section 5(3)

⁵⁰ Lagos State Road Traffic law 2012, schedule 111 No 1

The Child rights law⁵¹ was also passed on the moral ground of protecting the child against mishandling, abuse and early marriage. It was made a punishable offence to marry or even have sexual intercourse with a girl under eighteen (18 years).⁵²Regrettably, adultery which is morally wrong and religiously condemned, was never made a crime under the Nigeria criminal code. The lawmakers had, by their failure to criminalise adultery, encouraged immorality in the country. This is why married men and women engage in sex with persons who are not their spouses. Adultery was only made a condition for obtaining a judicial dissolution of marriages celebrated under the Marriage Act⁵³. This is why a married person rushes to court to quickly get a dissolution of marriage when offended by their partner's adulterous act since there are no other ways to punish their partner's adulterous behaviours.

a. Act of incest and morality

The Black's Law Dictionary⁵⁴ defines 'Incest' thus: Sexual relations between family members or close relatives, including children related by adoption.

The Black Law Dictionary defines 'defilement' thus: 'A condition of being defiled;' 'to make dirty; to physically soil, to dishonour; to make ceremonially unclean; to desecrate; to morally corrupt someone.'

In most cultural environments, incest is not seen as rape but regarded as a taboo in many Nigerian communities regardless of the age of the parties involved, whether or not consent was given in incestuous sexual intercourse. Under most cultural communities in Nigeria, culprits of incest are penalised by the appeasement of the gods or deities of the land, in which casethe oracle or the priest will officiate in the appeasement exercise. After the sacrifices and libations are observed, the culprits of incest are cautioned against having sexual intercourse because they were related by blood, and it ends that way without penal punishment of any sort. In some communities, the penalty may be banishment, fines, deportation of the culprits from the community.⁵⁵

The Islam did not completely forbid incest. Generally cousin marriage is accepted throught out all Islamic recorded history⁵⁶. The Quaran made a long list of the prohibited degree of consanguinity and affinity for marriage. The Quran reported as follows:

⁵¹ Child right Act LFN 2003

⁵² ibid

⁵³ Section 15 (2) (b) *matrimonial cause Act* LFN 2004

⁵⁴Bryan A Garner, *Black's Law Dictionary* (9th edn USA Thomson Reuters 2004) 1374

⁵⁵BalogunOladeleAbiodun "A Philosophical Defence of Punishment in Traditional African Legal Culture: The Yoruba Example" [2009] vol. 3. No. 3 September *The Journal of Pan African Studies*, 42.

⁵⁶ Wikiislam:// Wikiislam.net/cousin_marriage_in_Islam>accessed 1 November 2021

Prohibited to you are: your mother, daughters sisters, father's sister, mother's sister, brother's sisters, sister's daughter, foster mothers (who gave you suck), foster-sisters, your wife's mothers; your stepdaughters under your guardianship, born of our wives to whom ye have gone in,- no prohibition if ye have not gone in; (those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at the same time, except for what is past; for Allah is Oft-forgiven, Most merciful⁵⁷

It is a severe sin in Islam to engage in *zina*⁵⁸ because it destroys the ties of kinship as it amounts to an act of aggression against those with whom believers are urged to uphold ties of kinship. The bible initially approved of incest when Abraham married Sarah, who was the daughter of Abraham's father, but she was not born by Abraham's mother. Abraham told King Abimelech that Sarah was his sister, and he married her⁵⁹. Later on, incest became outlawed in the bible when the bible, in clear terms, stated that a person is forbidden from having sexual intercourse with his mother or her father. A person is prohibited from having sexual intercourse with his sister or half-sister or foster sister, or foster daughter.⁶⁰ A person is forbidden from having sexual intercourse with a woman and marrying a sister while the sister is alive.⁶¹ A person is prohibited from having sexual intercourse with a woman and her daughter or her daughter's daughter. Such sexual acts amounted to depravity, according to the bible.⁶²

The point here is that if Nigerian communities condemn incestuous relationships, the Quran also condemns incestuous relationships, and the bible also condemns incest; why then did the Nigerian parliament not pass legislation making incest a crime since incest is against the moral value of the society and moral value of the two main religions embraced in Nigeria? It is suggested that the Legislature pass legislation prohibiting sexual intercourse between persons of the same blood with a minimum of two years imprisonment and option of fine.

Conclusion and suggestions.

The Bible and the Quran also condemned all the highlighted sexual behaviours as sinful liable to eternal destruction. All these sections of the laws cited above were all anchored on morality. We, therefore, recommend that all other laws of Nigeria that are not in conformity with the canon law or the provisions of the

⁵⁷Quran 4 v 23

⁵⁸*Zina* is a term in Islam condemning sexual intercourse within a prohibited degree of consanguinity and affinity in Islam

⁵⁹ Gen 10: 12

⁶⁰ Leviticus 18: 6-18

⁶¹ ibid

⁶² Leviticus 18:17

scriptures and Quoran be abrogated. We recommend that all statutes of Nigeria must have a moral undertone because morality is the conscience and eye of the natural laws. Morality guides the law to achieve justice. Morality is the seed of justice. Morality and religion say: do not tell a lie, do not give or accept a bribe, do not kill, and do not commit adultery or fornication, for it is ungodly. Without morality and religious consideration, laws will offend nature. This is why incest must be made aenol offence. We should remember that the religious tenets are the collection of all rules of God or nature made to guide humanity in their relationships with one another so that that man can live in peace and harmony. Every law must not necessarily be a strict common law standard. The morality and religious inclinations of the Nigerian people must be taken into consideration when passing legislation.

For instance, before victims who possess expired motor vehicle particulars and drivers licences are to be punished, we recommend that at least six months ought to have elapsed from the date of expiration. By so doing, morality, natural way of human feeling coupled with our religious belief in human mercy and forgiveness would have been put into operations in Nigeria legislations. We urge the Nigerian Legislators and indeed Legislators all over the world to emphasise morality natural law guidelines, and in passing legislation for the citizens, and by so doing, the world at large would be a better place for all mankind.

The collection of morality is embodied in the bible and the Quoran. Man being a product of divine or supernatural being, any law passed by any parliament devoid of morality and canon law is designed to mislead the people from their source, which is referred to as nature.