PROSPECTS AND CHALLENGES OF SOCIOLOGICAL CONCEPTION OF LAW: THE NIGERIAN EXPERIENCE

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Abstract: The evolution and application of Law to human activities dates back to time immemorial as revealed by one of man's earliest books and the various philosophical theories. The role and importance of law in regulating human activities is unquantifiable. Customarily laws are couched and or drafted in words, which ordinarily are not instruments of mathematical precision. Words by nature are evasive, and slippery consequently a particular word is capable of more than one interpretation. In view of the evasive and ambiguous nature of words which is the principal medium of expressing law, coupled with human dynamics, it is not possible to draft or have a law or statute which will be free or devoid of ambiguity and also cater for all situations or circumstances which may arise.

In order to ameliorate these inherent shortcomings of law and also ensure the attainment of justice, the legal system is endowed with various legal philosophies and judicial practices which are veritable tools adopted to meet the end of justice, particularly in the area of law making and judicial interpretations. Instances abound under common law where an existing principle of law is extended to meet the realities and justice of the case under consideration by the court.

It is in the light of the above that this paper seeks to examine the prospects and challenges of sociological conception of law in Nigeria. The paper will be divided into four segments. The first segment will briefly summarize some major concepts of law - Natural law, Positivism, American Realism, Historical and Sociological conception of law along with the role of law within the society.

The second segment will entail an assessment of the application of sociological conception of law to judicial administration and legislative processes in Nigeria, while areas of lapses will be identified along with an x- ray of the challenges confronting the courts.

The third segment will entail an examination of the practice in other jurisdictions, particularly (Britain, United States and South Africa) as regards the role played by Sociological concepts of law in promoting the end of justice, while the fourth segment will be the concluding part**).**

Keywords: (Jurisprudence, Law, Natural Law, Positivism, Sociological School.

INTRODUCTION

Summary of Concepts of Law

From time immemorial, there has been several efforts by legal philosophers, jurists, academics and the society at large to define law. This efforts had only resulted in bringing out as many definitions as the several attempts. Languages, culture, level of development and so on are some of the factors responsible for the inability to have a universally acceptable definition of law. The several attempts at definition were by jurists who had followers and their thoughts are referred to as the theories from their schools of thoughts till date there is no universally accepted definition of the concept. Prominent amongst these are the following theories

of law: Natural law, Positivism, Realism, Historical and Sociological theories of law. An attempt will be made to examine briefly these theories of law.

Natural Law

The evolution of Natural law dates back to time immemorial[1], and it has various constituents.[2] No wonder, it has been described as a harlot in that it served various purposes at different period in human history. It was employed by various rulers to further and promote their respective desires or aspirations.[3]

The emergence of Natural law as a universal concept dates back to the collapse of the ancient Greek states at the wake of the conquest of Alexander the Great when new empires and kingdoms rose in the then Greek world.[4] Various definitions have been ascribed to the concept of Natural law.[5] It is defined as ... *A philosophical system of legal and moral principles purportedly deriving from a universalised conception of human nature of divine justice rather than from legislative of judicial action ...*[6]

To Thomas Aquinas, natural law can be defined *as an ordinance of reason directed towards the common good and promulgated by one who has the care of the community*.[7] While in general terms, it is referred to as the law as it ought to be, as opposed to law as it is.[8]

Positivism

Positivism emerged in the 19th Century because of the in-adequacies of natural law theories to meet the challenges of the 19th Century. In terms of thinking, natural law was *a priori* in nature and it relied on un-verified principles for its validity. As encapsulated by Dias,[9] *unverified hypothesis of this sort failed to satisfy the intelligence of an age nurtured in the critical spirit of new scientific learning. Scrutiny of natural law postulates had damaging results, for they were shown to be without foundation or else the product of extrapolation.*

The term positivism has been given varying meanings by Professor Hart in his work;[10] and it is

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[1] The earliest account of this theory dates back to 5th Century.

[2] For instance there is the natural law of content and natural law of method.

[3] The importance of Natural has span through the various period of human history and it was a veritable tool in the hand of philosophers during the Greek period, the Roman period , the Medieval period, the Renaissance period, and even up till the 19th Century.

[4] See Adaramola ' Funso , *Jurisprudence,* 4th Ed. Lexis Nexis p.13. Chronologically, the development of Natural law theory date back to the Greek period, which was first dominated by the thinking and writings of Sophists and Stoic school of philosophy. Aristotle and Plato belonged to the Stoic school. This was followed by the Roman era which featured prominent writers like Marcus Tullius Cicero who identified Natural law as the true law. This period was followed by the medieval period when natural law theory was given a Christian slant to further the interest of the Church . Writers like Hugo Grotius, Thomas Hobbes, John Locke and Jean Jacques Rousseau featured and contributed prominently to natural law development during this period. While in the 18th Century it was dominated by writers like David Hume, Henry Maine amongst a host of others. This was the period of eclipse of natural law, which eventually resurrected in the 19th century.

[5] See Dias *Jurisprudence* 5th Ed. Butterworths, London 1985 p.471, where the author listed the following as various meanings ascribed to natural law ''(i) ideals which guide legal development and administration (ii)A basic moral quality in law which prevents a total separation of the is from the ought, (iii) The method of discovering perfect law , (iv) The content of perfect law deducible by reasoning, (v) The conditions *sine quibus non* for the existence of law"

[6] See Bryan A Garner, *Black's Law Dictionary* .7th Ed.(St Paul Minn.) p1049

[7] Aquinas *Summa Theological* 1, 2, Q 90 art 4. Roscoe Pound in an article *The Formative Era of American Law* 29 (1938) gave a contemporary definition of Natural law as follows:" Natural law, as it is revived today, seeks to organise the ideal element law, to furnish a critique of old received ideals and live basis for formulating new ones, and to yield a reasoned canon of values and a technique of applying it. I should prefer to call it philosophical jurisprudence. But one can well sympathize with those who would salvage the good will of the old name as an asset of the science of law''

[8] For a detailed reading on the evolution, meaning and contribution of natural law to contemporary legal jurisprudence, see Dias RMW ,*Juris prudence* 5TH Ed. (Butterworths London 1985) Chap.22 and Lord Lloyd of Hampstead *Introduction to Jurisprudence* 4th Ed. (London Stevens & Sons) p.79-164.

[9] Dias *op-cit* p.331

[10] '' Positivism and the Separation of Law and Morals'' (1957-58) 71 Havard Law Review Page 601 n 25, in this work the term positivism was accorded five meanings which comprise of the following: (i)

has been variously defined by members of this group, prominent among whom were Jeremy Bentham and John Austin.

Jeremy Bentham defined law as ...*An assemblage of signs, declarative of a volition, conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons who in the case in question are or are supposed to be subject to his* power.[11] While John Austin who propounded the command theory defined law *as law as ...a rule laid down for the guidance of an intelligent by an intelligent being having power over him...* .[12]

It is safe to conclude that positivism deals with the law as it is as opposed to what the law ought to be.[13]

Historical School

The historical school of thought emerged simultaneously with the Positivist school of thought. The focus of this school of thought was principally on the application and content of law but they did not proffer an express definition of law.

Its evolution was as a result of the manifestation of the short comings of the natural law theories. While existing literature revealed that Thibautt's proposal were the immediate stimulis for its rise[14], other factors also aided in its emergence.[15]

One of the greatest exponent of this group was Savigny who was born in Frankfurt in 1779; his interest in historical studies was unrivalled and he was a great advocate for law reform, though he also did not attempt a formal definition of law. To him historical research was an indispensable means to the understanding and reformation of German law. On this issue he stated as follows: *The existing matter will be injurious to us as long as we ignorantly submit to it; but beneficial if we oppose to it a vivid creative energy –obtain the mastery over it by a thorough grounding of history and thus appropriate to ourselves the whole intellectual wealth of preceding generations*'[16] .

The core of his thesis is to be found in his essay *On the Vocation* in which he espoused that the nature of any particular system of law was a reflection of the spirit of the people who evolved it. This was later characterised as the *volksgeist* by his disciple Punchta. To him,

Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation looses its nationality.[17]

Modern Realism

This group emerged from the United States of America, and can be divided into two groups, which comprised of the American and Scadinavian groups. Both share a common desire of introducing a common sense approach to law, and also acknowledged the role played by sociology and psychology in the interpretation of law.[18]

American realism is a blend of positivist and sociological approach to law in that they believed in law as it is, along with the fact law should comprise of other factors. In the words of Julius Stone the realist approach to law is a gloss on the sociological approach.[19] One principle that is common to the realist movement is that court's decisions are product of ascertainable factors, prominent amongst which are the personality of the judge, economic conditions of their environment, their educational background, trend and movement of thought amongst a host of other factors.

That laws are commands, (ii) That analysis of legal concepts is worth pursuing as distinct from sociological and historical inquiries , and also distinct from critical evaluation (iii) That decisions can be inferred from pre-determined rules without recourse to social policy or morality, (iv) *That moral judgement cannot be defended established or defended by rational argument* , (v) That law is laid down and must be separate from the ought law.

[11] J. Bentham, Of Laws in General (ed. Hart, 1970).

[12] J. Austin *The Province of Jurisprudence Determined* (Ed. Hart 1954).

[13] The positivist theory has also been subjected to series of criticisms, see Dias *op.cit* Chap.16.

[14] *Ibid.*

[15] Prominent among these factors are the following: protest against the unhistorical nature of natural law, Attempt to premise the foundation of legal system on reason without reference to the past , the history of the people or prevailing circumstances which was responsible for the French revolution; the French conquest aroused Nationalism in Europe and finally there was hatred for codification of law as being championed by the France. See Dias, *op-cit* p.377.

[16] Dias *op-cit* p.378.

[17] Puchta *Outlines of the science of Jurisprudence* (trans Hastie). The volksgeist thesis of Savigny has been subjected to series of criticism, though this was not meant to underscore his contribution to legal theory. For further readings on this issue, see Lloyd *op-cit* Chap.9.

[18] See generally Loyd *op-cit* pchap.7

[19] Stone , *Social Dimensions of Law and Justice*p.62.

Prominent among members of this school are Justice Holmes, Chipman Gray and Karl N Llewellyn, amongst a host of others.

To Justice Holmes, if we want to know what law is, we have to go to the court rooms to find out what the law is. He described law as rules from which deductions are made. In his treatise, [20] he defined law as follows ... *The prophecies of what the court will do in fact and nothing more pretentious are what I mean by law.* [21]

Chipman Gray drew a distinction between law and sources of law. To him law is what the judges decide, while statutes, expert's opinions and all others are regarded as sources of law. He defined law as follows *The law of the state or any organised body of men is composed of the rules which the courts, that is , the judicial organs of that body lay down for the determination of legal rights and duties.* [22]

The implication of this definition is that it failed to recognise judicial precedent as a source of law since decisions reached will only be regarded as law between the parties to the litigation and will thereafter be regarded as source of law.[23]

Sociological Theory

Sociological jurists view law as a social phenomenon, existing because of human beings , functioning as an organised but changing system and embodying within its substantive rules, fundamental values. Prominent members of this group were jurist like Eugene Ehrlich, Dugit, Auguste Comte . Roscoe Pound, an American jurist, Dean at Havard Law School who invented the metaphor *social engineering* is also a leading member of this group. To him the purpose of law is to fulfil human wants within the society. He defined law as ... *a social institution to satisfy wants, the claims and demands involved in the existence of civilised society by giving effects to as much as we may with the least sacrifice*. [24]

From the above summary of the various concept of law, it can be inferred that law are rules of conduct imposed by the state authority or other agencies empowered to do so; enforced usually by the court or other recognised law enforcement of the state agencies. It is dynamic in nature, possess some elements of sanction at times, having a territorial limit, and normative in character.

Roscoe Pound's Perspective of Sociological Jurisprudence

Sociological conception of law is a multi-facet approach to the study and application of law. It combines historical and anthropological studies amongst a host of other disciplines to the study and application of law. The importance and relevance of sociological conception of law was brought to fore by leading American sociological jurists like Roscoe Pound and Eugene Ehrlich, though the egg was laid by Auguste Comte who as earlier stated above first used the term sociology. The writings of Roscoe Pound who propounded the metaphor "social engineering'' will form the basis upon which sociological concept of law will be examined in this work. He defined sociology as the science of social order and progress.

To Roscoe Pound, the making, interpretation and application of laws must take account of social factors and to achieve this, the following exercise must be observed: (a) *Factual study of the social effects of legal administration*. (b) Social enquiries must be carried out before legislations are made. (c) A constant evaluation of the means of making laws effective. (d) Philosophical and psychological studies of judicial method. (e) Sociological study of legal history must be embarked upon. (f) Acknowledging the possibility of a just and reasonable resolution of individual cases. (g) Establishment of a Ministry of Justice in English speaking countries. (h) Accomplishing the end/purpose of various laws.[25]

He also propounded that in order to achieve the desired goal of the legal order, there is need to recognize certain interest. These interests he divided into three categories which are the following: individual, public and social interests [26] and when these interests are recognized, the limits of their enjoyment must be ascertained and secured.

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[20] Holmes, The Path of Law in collected Legal Papers p.173.

[21] The view has been expressed and rightly too in this writer's opinion that the above definition was not meant to be a final definition of law neither was he canvassing the view that ethics, ideals and even rules are not part of the law, See Dias *op-cit* p.449. Also the point must be noted that his definition of law has some shortcomings in that it failed to recognise statute as being law before they are interpreted . see generally Dias *op-cit* p.452-453.

[22] Gray, *The Nature and Sources of the Law p* 84.

[23] For further readings and criticisms of his theory, see Dias *op-cit* Chap.....and Lloyd *op-cit* Chap.

[24] Curzon LB, *Jurisprudence,* Pitman Publications 1979 p.138.

[25] Dias *op-cit* p. 430.

[26] For a detailed classification and analysis of these interests, see Dias *op-cit* p.430-433.

Finally he perceived the task of a lawyer to engineering, the focus of which is to establish an enduring and effective society which will guarantee the satisfaction of maximum of wants with less friction and waste.[27] This entail the balancing of competing interests amongst the various units within the society.

The need to adopt sociological concept of law as an instrument of social engineering meant to further the interest of justice becomes more compelling for the following reasons: (i) Laws are couched in words which ordinarily have varying meanings, (ii) The English language is not an instrument of mathematical precision, (iii) coupled with the problems of semantics and ambiguity in law, (iv) it is not possible for the law to envisage or envision all the circumstances which may arise in future so as to provide for laws that will anticipate these and proffer solution for such circumstances.

The above is a brief summary of sociological concept of law, particularly from Roscoe Pound's point of view.

Application and Assessment Of Sociological Conception of Law on Some Aspects of Law in Nigeria

The issue to be addressed in this segment is to what extent has the Nigerian legislatures and judicial administrators adopt the principles of sociological concept of law either as a guide in the promulgation and interpretation of our laws or as an instrument of social engineering. Do they take into consideration the peculiar realities of our environment before laws are made, does judicial interpretation meet the realities of justice, are they prepared to expand the principles of law when the realities of a case at hand so demands or do they just apply these principles as originally formulated or are they prepared to expand principles of law when circumstances so demand, do they undertake social investigation before laws are promulgated, and what prospects lies in the nearest future if these principles are adopted as a guide in judicial and legislative administration, and finally what are the challenges militating against its application if indeed the principles of sociological concept of law are not adopted or put into practice within the scheme of legislative and judicial administration in Nigeria.

Nigerian laws in terms of its sources, consists of the following: (a) The Constitution (b) Case law (c) Statutes (d) Judicial Precedent (e) English law, comprising Acts or Orders-in-Council applying directly to Nigeria, pre 1900 Statutes of General application , the common law and doctrines of equity (f) Customary law (g) Text books and opinion of text writers[28].

The adoption and application of sociological concept of law to judicial and legislative practice in terms of legislative making and judicial interpretation is not novel in Nigeria. It cuts across all aspects Nigerian law. However for the purpose of our discourse, the practice in the following areas or aspects of Nigerian law will be examined in view of time and space: (a) Promulgation of and Interpretation of Statutes. (b) Product Liability (c) Discriminatory (d) Policies (e) Corruption (f) Kidnaping.

Promulgation of and Interpretation of Statutes

Promulgation of Statutes

Statute as source of law in Nigeria can be divided into two segments. It comprised of received statutes which was bestowed on the country as a result of our colonial relationship/ heritage with Britain. This set of statutes form part of what was received through the reception clause, by virtue of which The Received English Law, Statutes of General Application and the principles of Equity became applicable in Nigeria. There also exist local legislations made by the National Assembly and the various States' Houses of Assemblies and Bye Laws made by Local Governments. It must be observed that while some of these statutes are appropriate in certain areas in that they regulate transactions which are alien to our culture, some are not in tune with the social reality and the cultural beliefs of our environment, social habits and values.

The fact must however be noted that the desire to use law as a medium to change the social habits and values of the people with the ultimate goal of promoting justice, this may not succeed unless the citizenry are made to see the justification for such law. The adoption of sociological concept of law as tool to effect changes in the area of promulgation and interpretation of statutes can be accomplished in the following manner.

Firstly in the area of legislative making, it is one of the core thesis of this group that as a prelude to legislative making there is need to embark on social enquiry / investigation of some essential factors concerning the legislative proposal at hand. The question is how often do we adopt or make resort to this practice, bearing in mind that some of our laws were bestowed on us, while others were imported; these laws were all founded on values foreign to our culture. The question for instance is how effective is

[27] Pound , *Interpretation of Legal History* p.156, Pound ,*Social Control Through Law* p.65.

[28] For further readings , see Asien JO, *Introduction to Nigerian Legal System* 2nd ed. (Ababa Press Ltd)

the legislation on rent control in this country and the law on bigamy, amongst a host of others. Some of these laws are rarely obeyed, since they were found on values foreign to our culture, coupled with the fact that preliminary enquiry as prelude to their promulgation or reception were not undertaken. The continued retention of such laws or provisions in our statute books serves no useful purpose. While one is not unmindful of the fact that our laws are constantly been revised there are some area of obvious lapses which ought to have been fine tuned or abrogated in line with the sociological reality of our environment. In view of this the continued retention for instance of the criminal provision on bigamy in our statute book remained useless. Hardly do you see anyone been prosecuted for this offence in Nigeria. The reason might not be unconnected with the fact that as a result of our culture, it anomalous for a wife to proceed against her husband in the event of an infraction of the law on bigamy. The lesson to be learnt from the above is that there is an inherent danger in adopting hook line and sinker foreign legislative enactment without a proper evaluation of the surrounding circumstances which led to its promulgation, coupled with the a fact that preliminary enquiry as a prelude to the promulgation and reception of law or statute if undertaken will impact on the efficacy or otherwise of such statute or law.

Interpretation os Statutes

Another area where the adoption of sociological principles of law can be adopted as an instrument of change is in the area with statutory interpretation. How far has sociological principles influenced statutory interpretation or put in another other way, how far has the Nigerian courts adopted its interpretative jurisdiction as an instrument of change to further the end of justice.

The question of statutory interpretation is a revolving one within the legal profession, it is of paramount importance to legal practitioners and judges, whom by the nature of their calling, are constantly requested to prepare or requested to prepare and interpret laws or statutes which customarily are drafted in words.

Words ordinarily are the lawyer's tool[29] and they are the raw materials of his craft.[30]

Thus in the area of statutory interpretation, instances abound when sociological principles may become helpful, but our courts rarely resort to these principles, rather they hold religiously to the canons of interpretation which at times provide inconsistent results and does not promote the end of justice.[31] The three principal canons of interpretation are applicable in this country, and resorts are made to the aids and auxiliary rules of interpretation when situation or circumstances so demands.

Literal Rule

Historically this approach emerged almost the same time as parliament itself was established as the supreme law making body.[32] One of the most frequently quoted of the numerous statement of the literal rule is that of Tindal C.J in *Sussex Peerage case*[33] which goes thus:

The only rule for the construction of Acts of parliament is that they should be construed according to the intent of parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves alone do in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe of collecting the intention to call in aid the ground and cause of making the statute and to have recourse to the preamble which according to Chief Justice Dyer in Stowell v Lord Zouch(1569) 1 Plowd 369 is a key to open the minds of the makers of the Act, and the mischief which they intend to redress.

This rule was acknowledged in the case of *Muhammed Mubarak Ali v C.B.N.*[34] when the court observed follows: *...Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an exercise to give effect to its plain meaning, because they consider the consequences of doing so would be inexpedient or even unjust or immoral.*

This rule was applied in the case of *G.G.G v (Nig) Ltd v Asagbara* ;[35] the court in interpreting the provisions of section 7 of Decree No 60 of 1991 and section 230 of Decree No 107 of 1993, the expressions "arising from'' and "relating to'' was construed in a way that brought out the understanding of the purport of the provisions.[36]

[29] Lord Denning: *The Discipline of Law* (London ,Butterworths, 1979), p. 5

[30] Lord Macmillian, *Law and Order Things p. 31*. See also the case of *Towne v Eisner* 245 U.S. 418, 425 (1918)

[31] Section 6 (6) of the 1999 Constitution vests judicial powers in the courts.

[32] Blackstone's C.omm. 87 Cf.J. Bentham's Critique in " A comment on the Commentaries'' section X111.

[33] (1844) 11cl & Fin.85 at 43.

[34] (1991) 4 N.W.L.R PT 498 192.

[35] [2000] F.W.L.R.Pt 17 pg 110.

[36] See also the cases of *Niger Progress Ltd v North East Line Corporation* [1989] 3 N.W.L.R68

Golden Rule

In the event that the adoption of the literal meaning of the words used in a statute will produce an inconsistent result, the courts are empowered or allowed to apply a secondary meaning to that word which they are capable of bearing. This rule was formulated in the case of *Becke v Smith*,[37] wherein Parke, B commented as follows

It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the word used, and to the grammatical construction unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience but no further.

This rule was adopted in the case of R v Eze,[38] where the court construed the word "or'' which is disjunctive to mean ''and" so that the provision of clause (c) in section 2 of the Criminal Code may make sense as regards the meaning of an indictable offence. [39]

The Mischief Rule

This rule is otherwise known as the rule in *Heydon's Case*. [40] The rule is to explain the intention of the legislatures, and not to alter the expression used by the legislatures. Tindal C.J. in the Sussex Peerage Case, when he stated as follows:

If in any doubt arises from the terms employed by the legislatures, it has always been held a safe means of collecting the intention , to call in aid the ground and cause of making the statute and to have recourse to the preamble which, according to Chief Justice Dyer is a key to open the minds of the maker of the Act and the mischiefs which they intend to redress.

When the mischief rule is to be applied, the court should be guided by the following factors: (a) Position of the law before the statute was passed. (b) What was the mischief for which the law did not provide (c) What remedy did the legislature resolve to cure the defect (d) What was the reason for the remedy and why did parliament provide for this remedy.

The court is expected to interpret the statute in such a way that it will suppress the mischief and advance the remedy.

This rule was adopted in the case of *Smith v Hughes*.[41] In this case, prostitutes who solicit for customers on the streets, devise a new method to circumvent the provisions of section 1(1) of the Streets Offences Act which prohibited such practice, by soliciting for clients through the balconies or windows of their homes. Lord Parker, C.J, in arriving at the court's decision considered the mischief sought to be cured and the social implication of the practice to be outlawed, he held that despite the new method devised they were still on the streets.

This rule was applied in the Nigerian case of *Akerele v Inspector General of Police*.[42] In this case; the court interpreted the word *accused* as provided in section *120 (b) of the Criminal Code*, to advance the appropriate remedy when it held that the section could not have contemplated a formal accusation on oath, having taken into consideration the reasons for the promulgation of the section which was to prohibit unnecessary accusation of witch craft and also put a stop to the practice of trial by ordeal.

It is however important to observe that a common feature of most, if not all of the canons of interpretation is that they are of little practical assistance in settling doubts about interpretation in particular cases, which at times was due to vagueness of statutes and ambiguities of words. For instance, where one canon appears to support a particular interpretation, there is another of equal status, which can be invoked in favour of an interpretation which could lead to a different result. If the words used are capable of more than one meaning, then the person interpreting the statute can choose between these meanings, but beyond that he must not go.[43] Thus, in *Nokes v Doncaster Amalgamated Collieries Ltd*[44] Viscount Simon L.C. observed observed as follows:

"Judges are not called upon to apply their opinion of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words, the meaning of which is not entirely plain, there are adequate reasons for doubting whether the legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction". Lord Simonds contributing to this issue also stated as follows in *Magor and St Mellons Rural District Council v Newport Corporation:*[45]

and *Uhunmwangbo v Okojie* [1989] 5 N.W.L.R 471

[37] (1836) 150 E.R 724 at 736.

[38] (1950) 19 N.L.R.110

[39] See also the case of *Adamolekun v Council of the University of Ibadan* [1967] 1 All N.L.R. 213.

[40] (1584) 96 E.R. 638

[41] [1960] 1W.L.R.830.

[42] (1955) 21 N.L.R.37.

[43] See James v Director of Public Prosecutions (1962) A.C.635 at p.662.

[44] (1940) A.C. 1014 at p. 1022.

[45] (1952)A.C. 189 at 191.

Thus duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited.

Professor Ben Nwabueze a leading Constitutional lawyer in Nigeria had this to say on this issue: *Interpretation of Statutes is not an exercise in semantics, the ascertainment of the literal meaning of words, nor is it an exercise in mind reading. It would be guided and informed by purpose of the provision being interpreted.* [46]

As a result of the inconsistency surrounding the application of the various canons of interpretation, it will be helpful if courts draw inspiration from sociological concept of law in doubtful cases when the principal rules of interpretation and its auxiliary rules offers little or no assistance and where the interpretation will occasion hardship to adopt an approach which will further the end of justice, particularly if the statute or law concern issues that will ensure that government is alive to its responsibilities and obligations.

For instance, where government is under an obligation to perform a duty, access to court ought not to be impeded based on the technical application of the principle of *locus standi*, same should be relaxed or else this will amount to relieving government from performing its legitimate obligation or duty.

In the case of *Senator Abraham Adesanya v The President of the Federal Republic of Nigeria,*[47] which dealt with the interpretation of section 26 (6) (b) of the 1979 Constitution on the issue of *locus standi*, the court held that the appellant lacked the capacity to institute the action. The judges who heard the matter gave varying reasons for their decisions. Fatayi Williams C. J. N. whose reasoning and exposition of the guiding principles of access to court was in line with sociological concept of law denied access, [48]

[46] Kayode Eso *Furthe Thoughts on Law and Jurisprudence* Spectrum Law Publishing Ibadan p.343

[47] (1981) S.C. 112 at 129.

[48] Fatayi-Williams C.J.N. stated as follows: "If in a developing country like Nigeria with a written Constitution,

a legislative enactment appears to be ultra vires the Constitution or an act infringes any of its provisions dealing with Fundamental Rights, who has locus standi to challenge its constitutionality? Does (or should) any member of the public have the right to sue? Or should locus standi be confined to persons whose vested legal rights are directly interfered with by the measure, or to persons who interests are liable to be specially affected by its operation, or to an Attorney-General who is a functionary of the Executive Branch? Experience has shown that different legal systems have offered diverse answers, sometimes experimental answers to these questions.

With these observations in mind, I take significant cognizance of the fact that Nigeria is a developing country with a multi-ethnic society and a written Federal Constitution, where rumour-mongering is the pastime of the market places and the construction sites. To deny any member of such a society who is aware or believes, or is led to believe, that there has been an infraction of any of the provisions of our Constitution, or that any law passed by any of our Legislative Houses, whether Federal or State, is unconstitutional, access to a court of law to air his grievance on the flimsy excuse of lack of sufficient interest is to provide a ready recipe for organized

disenchantment with the judicial process....

I am also strongly of the view that when interpreting the provisions of our 1979 Constitution, not only should the courts look at the Constitution as a whole, they should also construe its provisions in such a way as to justify the hopes and aspirations of those who have made the strenuous effort to provide us with a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the unity of our people. In my view, any person, whether he is a citizen of Nigeria or not, who is resident in Nigeria or who is subject to the laws in force in Nigeria, has an obligation to see to it that he is governed by a law which is consistent with the provisions of the Nigerian Constitution. It is his civil right to see that this is so. This is because any law that is inconsistent with the provisions of that Constitution is, to the extent of that inconsistency, null and void by virtue of the provisions of sections 1 and 4 to which I have referred earlier.

However, except in the extreme or obvious case of abuse of process, how

while Bello J.S.C. relied on principles and precedents which were not reflective of the peculiar problems of our environment to deny access. [49]

The question which deserved to be answered in this case is that looking at the various reasons advanced by the courts in denying access to the appellant , the question is, was the court in any way guided by sociological concept of law, if not would the decision have been otherwise if it had been so guided. What are the rights or complain which Appellant approached the court for. What gains or benefit was to be derived if the rights sought to be enforced were granted. Was the court right to have denied him access on the ground he had not shown that he was affected over and above an average Nigerian. How many Nigerians have the means of prosecuting a claim up to the Supreme Court which is the apex court of the land? These are serious issues which deserve consideration when courts are considering sensitive issues like access to court.

To assist in resolving issues like this when the principal rules of construction and its aids offer little assistance, guidance should be drawn from sociological concept to assist in deciding such issues, since laws are made for man and not vice versa.

It is however gratifying to observe that quite recently our courts have changed their rigid posture concerning the issue of access to court particularly in constitutional matters by adopting a broad interpretation.[50]

This new posture of our courts is demonstrated by the decision of the Supreme Court in the case of *Fawehinmi v Akilu*,[51] which was also on the issue of *locus standi*.....

Also recourse is now made to sociological principles to ensure that justice is done, especially when the rules of statutory interpretation and other aids offers little or no assistance. This view is supported by the decision in the case of *Ohuka v State* [52]. In this case, the provisions of section 31 (2) (b) of the Supreme Court Act came up for interpretation. The section in question provided as follows:

31-(2) The periods prescribed for the giving of notice of application for leave to appeal are- (a) In an appeal in a criminal case, thirty days from the date of the decision appealed against.

(4) The Supreme Court may extend the periods prescribed in sub-section (2) except in the case of a conviction involving death sentence.

Prior to this decision the court has always held that thirty days is thirty days. However Oputa J.S.C. adopted an activist approach and in order to circumvent the provisions of the above section by extending the period, he held as follows: "*This Court [the Supreme Court] is not a mechanical and automatic calculator. No. It is a court of law dealing with varying situations in order to do justice in each and every situation according to its peculiar circumstances...It is a recognised rule or canon of interpretation of statutes that they be interpreted so as to respect the vested and or constitutional rights of the subject. It is the Constitution that preserves rather than destroys the constitutional and vested rights to appeal to the Supreme Court.*''

He went on further to hold that the duty in computing the 30days period prescribed in the above section meant from the date which the Appellant were notified of the dismissal of their appeals by the court of Appeal. This approach definitely is activist but it was adopted in order to serve the end of justice.

Discriminatory Policies in the Educational Sector

There is an existing policy known as quota system in this country. The rationale for its introduction is to ensure that an equal percentage of Nigerian from

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then can one conceive of a judicial process where access to the courts, by persons with grievances, is based solely on the courts' own value judgment in a multi-ethnic country where more than two hundred languages are spoken? I would rather err on the side of access than on that of restriction''.

[49] Bello J.S.C., said:

"For guidance as has always been the practice of this Court to the rules of Constitutional law formulated by the Courts of those countries with whom we share the heritage of the Common law of England and particularly, the Courts of those countries who gave to themselves, as the people of Nigeria have done, Federal System of government under written constitutions''.

And he concluded as follows:

"...In view of the complexity of the provisions of our Constitution, its peculiarities of details, its subjection of the provisions of some of its sections to the provisions of other sections and the necessity for cross-reference to discover the scope of some of the sections, I prefer to be on the side of caution and consequently, in my view the question of standing ought to be decided on the very narrow compass it has been canvassed before us ''.

[50] See the case *Ariori v Elemo* 1983 All NLR 1

[51] (1987) 4NWLR (pt. 67) 797

[52] [1988] 1NWLR 539.

each state of the federation have the same opportunity to benefits derivable from the federal government in terms of education, employment in federal government agencies and other related matter, however, this policy is not applicable to local governments constituting a state.

The introduction of such policy into the educational sector which has the negative effect of slowing down a section of the country all in the guise of providing equal access to the same number of candidates from each state of the federation is untenable and run foul of the provision of the Constitution.[53] While the legislators may feign ignorance of the danger posed by the introduction of this policy in the educational sector, the judiciary cannot be excused from such.

The importance of education to the development of any country is unquantifiable. That is why a country must be willing to allocate enough resources to its educational sector and void policies which inhibit access to education. The birth of a child to any part of the world or region of a country is not his own making, but the will of the creator.

Recently the country witnessed the introduction of discriminatory policies in the educational sector whilst some states even went to the extent of promulgating discriminatory laws to regulate activities in the educational sector in their states.[54]

When the opportunity came to adopt the provisions of law to forestall the continued application of this policy in the educational sector, the apex court relied on legal technicality and this occasioned injustice to the applicant in the case.

This was in the case of *Badejo v Fed. Minister for Education*, [55] The applicant through her father as next friend, pursuant to section 39 (1) of the country's Constitution commenced an action against the Respondent's refusal to call her for interview for admission to junior Secondary 1 of Federal Government Colleges on the ground that she failed to meet the cut-off mark required for her state of origin. However, children from other States with lesser marks were called for interview. The court granted her leave to commence her action, but the order of Injunction sought was refused, while, the interview for other eligible candidates was conducted on 8th October 1988. Her application/action was dismissed in 4th November 1988 on the ground that she was not able to establish that she suffered greater injury than that suffered by other candidates even from her state who were not called for the same interview, consequently she lacked standing to commence the action. She appealed to the Court of Appeal on the issue of *locus standi* and the court held that she had the right to institute the action. The Appeal court however struck out the entire suit on the ground that the matter complained off had been completed and there was nothing left to be remitted to the High Court for determination. Her subsequent appeal to the Supreme Court did not succeed based on the ground of effluxion of time, since remittal to the High Court will amount to an academic exercise because the action complained against had been completed. The most important issue for consideration in this case was whether such policy is proper in a country where majority cannot afford the cost of private education because of abject poverty in the midst of plenty. Furthermore, the issue of enforcement of the right sought to be protected is one thing while enforcement in another[56].

[53] See section 42 of the 1999 Constitution of the Federal Republic of Nigeria.

[54] For instance, Yobe State Government promulgated a law prohibiting non – indigenes from establishing private school, unless an indigene is made a principal partner in the venture. This provision clearly offends against the provisions of section 42 of the 1979 Constitution. This law attracted a lot of criticisms. For instance the Guardian of May 16, 2006,p. 16 reported as follows " Education is a universal industry. It transcends ethnic and religious borders, and thrives on knowledge. The right to establish and manage schools should not be subject to a person's place of birth..." See also the case of *Anzaku v Governor, Nazarawa State* (2006) All FWLR (PT3O3) 308. In this case, the court of Appeal held that the state policy directing local government staff of the state serving in local government council other than their Council of origin to relocate to their local government of origin as runs "counter to the provisions and spirit of the democratic Constitution unconstitutional."

[55] (1996) 8 NWLR(pt 464) 15

[56] . This position is in line with the views expressed by Ogundare J.S.C. and Ogwuegbu J.S.C, respectly in the case under consideration. Ogundare J.S.C, stated as follows: " Having regard to the nature of the reliefs sought in the High Court by the applicant, (they are all declaratory reliefs), it is indeed arguable whether the completion of the 1988 interview had put an end to her action. If she had been allowed to present and had succeeded, declarations of her fundamental rights would have been decreed. It would be for the respondent to decide what remedial measures to take." Ogwuegbu in similar vein stated as follows " If the court had not confined itself to the interview as the only relief, it would not have struck out the action irrespective of what

The view of this writer is that if the court had adverted its mind to the principles and utility of sociological concept of law, the decision would have been otherwise.

Product Liability

Product Liability Law has been defined described as the responsibility which the law places on those concerned with the supply of products for losses caused by the condition of the product.[57]

Nigeria is a consuming nation with a porous border; the influx of fake and substandard goods into the country remained un-abated despite government's efforts to stem this tide.

Existing laws on this issue are very weak and the effort to use law as an instrument to remedy the situation has not been taken with all the seriousness it deserved. The expectation is that our laws on this subject would be interpreted adopting a judicial activist approach because of its present in-adequacies and where this is easily not practicable the legislatures should take appropriate steps to revise our law on this. For instance the development of negligence principle under English law of tort was not spontaneous, the principle evolved gradually and till date it is still been extended as the categories of negligence are not closed.[58]

The desire and expectation of every consumer is to consume a safe product which will not put life and limb in danger. In the unfortunate incident that such product is consumed and it results into an injury, the reasonable expectation is such that the loss occasioned would be compensated.

Presently, Nigerian law is founded and also anchored on the principle of negligence. The term negligence has been defined in varying terms. One of which is as follows:

The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of other' right. The term denotes culpable carelessness. The Roman-law equivalent are culpa and negligentia, as contrasted with dolus (wrongful intention). – Also termed actionable negligence; ordinary negligence; similar negligence. A tort grounded in this failure, usually expressed in terms of the following elements: duty, breach of duty, causation, and damages. [59]

Lord Atkin enunciated the neighborhood principle in the case of *Donoghue v Stevenson*,[60] which till date remained a guiding parameter use by the courts to ascertain the existence of a duty relation under the negligence regime, The rule goes thus: *The rule that you are to love your neighbor becomes in law: You must not injure your neighbour, and the lawyers' question: Who is my neighbor? 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 acts that I ought reasonably to have them in contemplations as being so affected when I am directing my mind to the acts or omissions which are called in question.*[61]

Unfortunately, our courts when dealing with product liability claims rely on the *Donoghue v Stevenson* precedent, as if it is fore ever the law refusing to take into consideration the peculiar circumstances of our environment, whereas the principle in its country of origin has since being extended and additional theory of liability adopted as a result of emerging circumstance and challenges posed by the negligence theory in this area.

In the Nigerian case of *Boardman v Guinness*,[62] the claimant consumed part of the contents of a bottle of stout beer manufactured by the defendant, after which he observed that it tasted sour and he became ill shortly thereafter. In the ensuing action against the manufacturers for negligence; the manufacturers denied liability on the following grounds: that the beer in question could not have been manufactured by them and they adduced evidence before the court that their system of production was reasonably safe and as near perfect as possible.

decision would be in the High Court for hearing on the merits is not an order which would be ineffective, unenforceable, important or abortive...''

[57] Jane Stapleton, *Product Liability* (Butterworth) 1994 p. 9.

[58] The journey towards the adoption of negligence principle as one of the theoretical basis for the resolution of product liability claim started with liability being imposed where the property was inherently dangerous, see the case of Dixon v Bell (1816) 5 M.& S. 198., followed by the case of *Winterbottom v Wright* (1842) 10 M.& W 109, which See also the case of Longmeid v Holliday (1851) 6 Ex.761, this case outlined the circumstances when a non- privy could claim, and finally see *Donoghue v Stevenson* (*supra*)

[59] Bryan A. Garner *op- cit* p. 1056.

[60] 1932 A.C. p.532.

[61] *Ibid* at 597.

[62] (1980) NCLR p.109.

The court held that the plaintiff had not shown that the manufacturer was careless or responsible for the manufacture of the offending product. Further that it was up to the plaintiff to show that the people engaged in the manufacturing process were not competent.

It must be stated that while the correctness or otherwise of this decision is not the issue sought to be addressed directly in this paper; the point should be stated that product liability claims are complex and intricate. For instance to establish a manufacturing defect relating to the adulteration of a consumable product, such product must be subjected to laboratory analysis within the shortest possible time, following the period when the defect was detected. Factors militating against taking such steps in Nigeria are many. Quite a sizeable number of the people live in an area where easy access to laboratory facilities are not easily available. Failure to subject the alleged defective product to laboratory examination within a reasonable period of time may equally change the taste and condition of the product, thereby making it difficult if not impossible to establish important element like causation, which is a condition precedent to liability under the negligence rule.

Also an average Nigerian whose monthly income is less than one hundred and fifty dollars a month might find it difficult if not impossible to impugn the sophisticated evidence to be adduced by manufacturers of defective product like beer.

Finally intending plaintiffs do not have insight into the intricacies and complexities of manufacturing processes which may assist in giving them an insight into whether the manufacturer was negligent or not.

It is in the light of the above that the challenges and frustration cause by the existing negligence principle as basis for resolving product liability cases in Nigeria ought to be addressed by relying on sociological concept law and adopt law as an instrument of social change, while the judiciary should be willing to extend existing principles of liability when occasion demands or additional theory of liability like strict liability be adopted. One would have expected the court to use the opportunity presented by *Boardman's* case or other related cases to mark the beginning of a turning point on this issue.

Corruption

The word corruption has been defined in varying terms both locally and internationally. While the Nigerian Criminal Code which operates in Southern Nigeria and its counterpart in the Penal Code which operate in the Northern part of the country does not define corruption. The Criminal Code only provides that *the offence of corruption is committed where any public officer corruptly asks, receives or obtains any property or benefit.* [63]

This vice manifest itself in varying forms and permeates every strata of human endeavour in every country. The significant difference is that the degree or extent of its manifestation differs. The devastating effects of this cankerworm on the nation's economy are not only monumental, but quite disturbing and it impact negatively on the country's image both locally and internationally.[64]

Government appreciating the effect of this vice on every segment of the nation's economy, established between 2000- 2004 two major bodies in addition to the existing ones to combat corruption in the country.[65]

The judiciary also appreciating the negative effect of this vice on the nation's economy and the country's image; was influenced by sociological concept of law to arrive at some of its recent decisions concerning this area of the law. In the case of *Attorney General of Ondo v Attorney General of the Federation*, [66] the plaintiff commenced an action against the defendant claiming the following reliefs amongst a host of others: whether or not the Corrupt Practices and Other Related Offences Act , 2002 was valid and in force in every state of the Federal Republic of Nigeria including Ondo State. The Act in question was promulgated by the National Assembly to investigate and also prosecute those who engaged in corrupt practices. In the determination of this case the court considered the provisions of section 15 (5) of Chapter 2 of the Constitution which provides *inter alia* "*The state shall abolish all corrupt practices*''.

It must be stated that the provisions of this Chapter not justiciable. However in order to circumvent its non- justiciability, the court considered Items 60(A), 67 and 68 in the Exclusive Legislative list of the 1999 constitution, particularly Item 60 (A) which provides *inter alia*

[63] See section 98 Criminal Code, Cap 77 Laws of the Federation.

[64] See Gbade Akinrinmade *et al* : " An Assessment of The Role of The National Assembly In The Fight Against Corruption In Nigeria' ' Being the text of a paper delivered at the 46th Nigerian Law Teachers Conference held at University of llorin , Kwara State between 22nd-26th Of April 2013.

[65] The Independent Corrupt Practices Commission was established in 2000, While The Economic and Financial Crime Commission was established in 2004.

[66] (2002) FWLR (Pt.111) 1972

The establishment and regulation of authorities for the Federation or any part thereof to promote and enforce the observance of the Fundamental Objectives and Directive Principles (of State Policy) contained in this Constitution.

The Supreme Court held that the purpose of the Act was to make justiciable by legislation declared State policy which aimed at eradicating corrupt practices and abuse of power. This decision is a clear demonstration of another instance where the provisions of law was used as an instrument of change.

Kidnapping

This is the practice of taking people unlawfully and held as hostage until an agreed amount is paid to the captors as ransom. When the practice first began, it was prevalent in the oil rich region of Nigeria; where oil workers were kidnap and held as hostage with the sole aim of extorting monetary reward from the oil companies operating in those communities. However this practice has taken a new dimension. It is now a common phenomenon in every part of the country, and hardly will a day pass without it been reported either in the news media or print that someone; in most cases an important figure in the country or a close relation of such person had been kidnapped. Of recent the wife and daughter of a Supreme Court Judge was kidnapped while travelling from Lagos to Benin in Edo State [67].

Prior to the recent upsurge in the spate of this criminal practice, the punishment stipulated by the Criminal Code Act for the offence is 10 years imprisonment. [68]

However now, the general feeling in the country is that stiffer punishment be imposed while some people have clamoured for life sentence for perpetrators of this act.

Drawing Inspirations from Other Jurisdictions

The adoption of sociological concept of law as an instrument improve, and update law in order to ensure its efficacy is a practice acceptable worldwide. In some countries it is referred to as judicial activism. The term activisim with reference to judicial decision was first used by Justice Warren in the United States in the case of *Brown v Board of Education*. [69]

Adopting an activist approach in interpreting laws / statutes and adopting sociological guidelines in the promulgation and re-shaping of legislation is not an exercise peculiar to Nigeria.

In view of this, the practice in other jurisdiction on some aspects of law discussed above will be examined briefly in this segment.

Statutory Interpretation

In order to avoid repetition, the three principal rules of interpretation discussed above are applicable in Britain as principal rules of statutory interpretation. In terms of application and result they produce the same result as posited above in respect of the Nigerian situation. However following the complexities and inconsistency surrounding the application of these rules, this has led to the emergence of the Purposive approach, is a hybrid between the the golden and mischief rules of interpretation with the sole aim of achieving justice.[70]

While in the United States of America judicial activist stance is employed to achieve the end of justice. This approach is termed activist because it was not based exclusively on deciding cases on the basis of precedent alone, but taking into consideration sociological principles and also the desire to correct lapses in the provisions of the law and ensure that the end of justice is served. For instance in the case of *Brown v Board of Education* [71] the court decided the issue of equal educational opportunities to Negroes , when it declared that in the field of public education the doctrine of separate but equal has no place.

Product liability

Taking a cue or drawing inspiration from other jurisdictions, for instance Britain, the development of the negligence principle as the basis of resolving product liability claims was not spontaneous; it was gradual as earlier stated above. However when it became obvious that the negligence principle was in-adequate to meet the desired end justice, following the Thalidomide episode which resulted in birth deformities, the adoption of the Consumer Protection Act of 1987 became necessary. This was however after series of deliberations which culminated to European Economic Council Directive which led to the promulgation of the Consumer Protection Act of 1987 through which strict liability principle was

[67] Recently, some Italians and a British man kidnapped by a terrorist group known as Boko Haram were killed when the required ransom were not paid while armed personnel tried to rescue them.

[68] See S..364 (2) of the Criminal Code Act, Vol. 4, Cap. C 38, Laws of the Federation 2004.

[69] 347 U.S 483 (1954)

[70] See Denning L.J. in Seaford Court Estates v Asher [1949] 2K.B 481.

[71] *Supra*.

introduced as another theory of liability in respect of product liability claims.

Also in the United States the operating legal regime regulating product liability are the principles of warranty, negligence and strict liability. The adoption of these principles was equally to meet social realities and serve the end of justice in this jurisdiction.

Also in South Africa, strict liability was introduced as a new theory of liability following the in-adequacies of the negligence regime which occasioned injustice in the case of *Anna Elizabeth Jacomina Wagener) v Pharmacare Ltd.* [72] In that case, the principal issue for consideration before the Supreme Court of Appeal was whether a manufacturer is strictly liable in *delict* for harm caused by defective product,having established that he was negligent.

From the facts of both parties the following issues were not disputed: - (a) That the Regibloc in question was manufactured by the respondent and same was defective when it left the respondent's control. (b) That it was administered in accordance with the respondent's accompanying instructions. (c) That it was its defective condition which caused the alleged harm and that such harm was reasonably foreseeable. (d) It was also not in dispute that the respondent as manufacturer although under no contractual obligation to the appellant, was under a legal duty in *delictual* law to avoid reasonably foreseeable harm resulting from defectively manufactured Regibloc being administered to the first appellant and, secondly, that that duty was breached.

The court in its judgement held that it was satisfied that the right to bodily integrity as contained in the Constitution provided enough *delictual* protection, and that the evidential difficulties raised by the appellants is not different from those faced by other plaintiffs in other *delictual* actions. However, the issue of law reform is the exclusive preserve of the legislatures being a socio-economic question which requires substantial investigation and consideration by the legislatures, consequently the appeal was disallowed.

This decision attracted a lot of comments, which eventually led to the promulgation of the Consumer Protection Act 2008 which introduced strict liability principle into product liability arena.

While a judicial activist posture was not adopted in this case, the legislatures took steps to correct the injustice timeously as a result of the negative comments the decision attracted.

[72] 2003 4SA 285 (SCA) 300.

Discriminatory Practices

Drawing inspiration from the United States of America, the view expressed in the case of *Wood v Duff Gordon*[73] is instructive concerning the role of sociological concept of law when it comes to issues which borders on discrimination. The court stated as follows ...*The law has outgrown its primitive stage of formalisation when the precise word was the sovereign talisman and every slip was fatal*[74]. Relevant to this point was the resolution passed at a Conference held in California in the United States in 1958, which acknowledged the importance of sociological concept of law when it comes to interpretation of statutes. The resolution was to the effect that: *The Constitution does not offer a literal definitive answer to the awesome problems which confront the Court. One may read the Commerce clause, the equal protection clause a thousand times and still not detect the slightest clue to the proper decision. The answer must be found elsewhere. The Constitutional framework is a mere skeletal expression of governmental power and individual rights. The actual contour of those powers and rights must be determined in the context of changing conditions by a process which is more than a mere technical application of constitutional phrase to a set of facts*.

The stance and attitude of our Supreme court can be contrasted with that of the United States Supreme Court in the case of *Brown v Board of Education.* [75] The court relying on judicial activism refused to follow time –honoured precedents so as to enable it protect rights of individuals. Thus the court did not limit itself to literal construction of the Constitution which was scantily worded. This enabled the court to conclude that in the field of public education the doctrine of "separate but equal'' has no place.

Prospects and Challenges

Looking at the various theories of law briefly summarised in this work, the prospects to be derived from sociological concept of law are quite enormous. Reasons being that in terms of scope and constituents, sociological thinking as a philosophical approach to law, lay emphasis on the social effects of legal institutions, doctrines and practices.

It offers unprecedented contribution to legislative making and judicial development by recommending that social enquiry be carried out as a prelude to the promulgation of legislation, which definitely impact on the efficacy of such statutes; while it equally

[73] 22 N.Y. 88. AND

[74] *ibid*

[75] See also the case of Brown v Board of Education (*supra*), which is also instructive on this issue.

provide avenue to resolve complex cases through its core thesis of using law as an instrument of social engineering. In addition it provides acceptable criteria for carrying out legal research.

Its approach to resolving legal and legislative issues are fluid, because its primary focus is on the relationship between law and man which keep on changing.

The challenges militating against the application of sociological principles of law in Nigeria are equally numerous.

Our courts at times are weary of expanding applicable common law principles by placing too much reliance on precedent, while some judges believed that it is the exclusive preserve of the legislature to effect a change in the provision of the law where there is defect. While this view to some extent may be correct, it is not valid for all situations. This is because as earlier stated above laws and statutes are couched in words which ordinarily are not instruments of mathematical precision, coupled with the fact that laws or statutes cannot envisage all the circumstances which may arise in future, so as to cater for and provide remedies for such circumstances. Furthermore the facts and particular circumstances surrounding the application of a statute or case may change, in the event of such happening, judges are empowered to fill in the gaps and also extend the frontiers of the law or statute adopting appropriate sociological principles of law in resolving the case before them.

Another major challenge against sociological concept of law is that courts deal with live issues, and most Nigerians find it difficult if not impossible to ventilate their claims in the law court, consequently courts are at times are not cease of such cases to afford them the opportunity of espousing and extending the law if situation so demands.

CONCLUSION

From the above, in terms of reality, functionality and practicability sociological concept of law remained an enduring tool for legal development in any environment governed by law. It is a mixed blend of positivism, historical and sociological concepts of law which acknowledge the fundamental role of sociology in legislative and judicial administration. Its thesis on the importance of social and historical enquiry as prelude to the promulgation of law and legislation impact on the efficacy of law.

It is a truism that laws are made for man and not the other way round, consequently its essence must further and protect the interest of men. In achieving this end the history and socio- economic factors of the environment in question are important guiding factors when it comes to legislative making and judicial interpretations.

In terms of assessment the Nigerian judiciary and legislature have done pretty well in the last couple of years[76] regarding the adoption of sociological concept as guideline towards legislative making and judicial interpretation, however there is still room for improvement particularly in the area of private law and public law amongst a host of other areas which time and space have not permitted to be discussed in this paper.

[76] See the following cases:*Re Olafisoye* (2004) All FWLR (Pt 198) 1106, *Societe Bancaire (Nigeria) Ltd v Margarida Salvado De Lluch* (2005) All FWLR) (Pt 242) p.419. and *N.D.I.C. v Okem Enterprises Limited* (2004) All FWLR (Pt 210) 1176 amongst a host of other decisions.