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AN APPRAISAL: OVERLAPPING JURISDICTION BETWEEN MORALITY AND CRIMINALITY

1 INTRODUCTION

The aim of this paper is manifold. First, it intend to examine the Report of the English Wolfendon Report, on the relation between law and morals. Thereafter, commentaries which ensued after that report, particularly, the views of Lord Delvin agreeing and, disagreeing with some aspects of that report, will be highlighted. Secondly, the difficulty which is usually encountered in an attempt to use the provisions of criminal law to enforce morals, particularly in a country like ours, where there exist a hybrid of indigenous customs or values with other values rooted in alien cultures, will also be highlighted.

Furthermore, a synthetic appraisal of the views of some eminent jurists within the moralists and positivists school of thought on what ought to be the function of criminal law, will also be examined. The conclusion will attempt to depict the yardstick which is considered useful in determining the distinguishing features between morality and criminality.

2. WHAT IS MORALITY?

An act may be highly reprehensible, yet the doers are not criminally prosecuted, because the penal law did not prohibit such unwholesome act. However, a criminal justice policy that is insensitive to the morals, ethos, values and customs of the society, is an unjust policy.

To the adherents of some legal schools of thought, law is distinct from justice and morality. They however, admit, that justice and morality becomes relevant, when it comes to the critical evaluation of law. Hence, they argued, that unjust law, is no law.

To the proponents of the natural law school of thought, law consists of rules which are in accordance with reason and nature[1]. To this end, it is argued that "there exist objective moral principles which depend on the essential of the universe[2]. Such moral principles, they contend, can be discovered by natural reason[3]. In view of this theory, human law is said to be truly law in-so-far-as it conforms to these principles[4]

The distinguishing characteristic between human being and other living creatures is that human beings are endowed with high intellect not possessed by other creatures. Man knows what is good and what is bad. Thus the idea of what is bad and what is good fall within the purview of morality. If morality constitute the idea of what is good and what is bad, it then means that a law could only be said to be good if it is consistent with the values, ethos and customs of the society. The problem however, which morality, as a rule of conduct presents, is its binding effect. An individual has

an election to assert a moral duty[5]. Whereas, legal duty, is more in the nature of a comand[6]. A moral duty can only be realized by the application of reason, but law is based on athority[7]

The relation between law and morals has generated heated debates for centuries among legal jurists. Lord Delvin in his lecture in Jurisprudence delivered at the British Academy on 18th March 1959 and published under the title of the "Enforcement of Morals" proceeded by examining the Report of the Committee on Homosexual Offences and Prostitution, known as the Wolfendon Report[9]. In that report, the question for consideration is thus:

> "what is the connection between crime and sin and to what extent, if at all, should the criminal law of England concern itself with the enforcement of morals and punish sin, or immorality as such?".

If the objective of the Committee was to ascertain the extent to which criminal law should concern itself with the enforcement of morals, then the function of the Committee, as formulated by Delvin was to determine how to:

> "preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards, against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special, physical, official or economic dependence"[10].

What the above suggests, is that the Committee was mandated to find means of protecting public morality rather than private morality. This is so, because criminal law, is a public law, which exist to protect the society from acts considered to be injurious. In this end, it has been argued that:

> "It is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary..."[11]

In considering what acts could be said to be injurious, which would lead to the exploitation and corruption of others, the Committee viewed homosexual behaviour between consenting adults, as belonging to the realm of private morality[12] and hence not capable of resulting to the exploitation and corruption of others. In view of this reasoning, the Committee recommended that homosexual offences between consenting

adults in private should no longer be a criminal offence[13].The justification for such a recommendation was hinged on the fact that the society and the law ought to give to the individual freedom of choice and action in matters of private morality[14]. Lord Delvin in concurring with this recommendation felt that:

> "Unless a deliberate attempt is to be made by society, acting through the agent of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality"[15].

This argument may seem to be cogent. Acts that are done behind public glare cannot negative public order and decency, exploit or corrupt others. Lord Delvin quickly drew attention that his emphasis on "private immorality" referred to immorality, which is not offensive or injurious to the public[16]. From the above, one could rightly say that morality refers to acts which are consistent with the practices that will engender the healthy growth, peace and order of a society. The provisions of criminal law must be in accord with such values if the law is to command the respect and obedience of the people. But until such morals are expressed in legal terms as a rule of conduct, they remain moral codes violation of which, could only attract public disapproval or censure. However, what Lord Delvin meant was that no act of immorality should attract repressive law, unless it is accompanied by some other features, such as indecency, corruption or exploitation.

Lord Delvin further observes that there are many schools of thought among those who may think that morals are not the law's business. He formulated t he following to buttress his assertion.[17]

> "(a) The agnostic or free-thinker who does not, of course disbelieve in morals, nor in sin if it be given the wider of the two meaning assigned to it in the Oxford English Dictionary, where it is defined as 'transgression against divine law or the principles of morality'.
>
> (b) The deeply religious 'who feels that the criminal law is sometimes more of a hindrance than help in the sphere o f morality...'
>
> (c) The man who without any strong feeling cannot see why, where there is freedom of religious belief, there should not logically be freedom in morality as well".

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The foregoing observations calls for our closer attention, in view of the fact that, the assumption is that morality is based on religion, not only in history, but also in logic. In Western civilization the moral accepted, is that founded on Christian religion. There are also, other moral codes outside Christendom. These moral codes have validity only with reference to the tenants of their religion on which it is based[18]. From this, Lord Delvin posited that:

> "It is open to someone who believes this to claim that if (the States) leaves matters of religion to private judgement, it should logically leave matters of morals also. A state which refuses to enforce Christian beliefs has lost the right to enforce morals"[19].
>
> "If this view is sound", states Lord Delvin, "the state cannot justify any of its provision by reference to the moral law and must find a function for the criminal law independent of morals".[20]

Lord Delvin, however, countered such reasoning by pointing out that:

> "A complete separation of crime from sin .... would not be good for the moral law and might be disastrous for the criminal"[21]

Referring back to the Committee's recommendation which sought to remove immoral acts done in private, from the ambit of public morality, Lord Delvin felt that such was inconsistent with English Criminal Law on one point of fundamental principle, arguing that the law will not permit consent of the victim to be used as a defence.[22] He stated:

> "It is not a defence to any form of assault that the victim thought his punishment well deserved and submitted to it, to move good defence the accused must prove that the law gave him the right to chastise and that he exercised it reasonably."[22a]

The exclusion of acts not capable of disturbing public order, decency nor result to the exploitation or corruption of others, from the ambit of public morality, have also been attacked in the following words:

> "Thus, if the law is to be reformed so as to eliminate from it everything that was not designed to preserve order and decency or to protect citizens (including the

> protection of youth from corruption) the effect would be to overturn a fundamental principle. It would also result in the abolition of a number of specific crimes – euthanasia, suicide, attempted suicide and suicide pacts, duewing, abortion, incest between brother and sister. These are all acts, which can be done in private and without offence to others and need not involve the corruption or exploitation of others. In some of these cases the law may need reform. But no one suggests that they should be left outside the scope of the law as matters of private morality. They can be brought within it only as a moral principles.[24]

A good law must have a moral content. To allow some immoral acts, simply because they are in their nature, acts that are done in utmost secrecy, is not a tenable argument. On this, Lord Denning does not believe in the rigid separation of law and morality. He said:

> "... as far as morals in the sense of right standards of behaviour are concerned, I would say most emphatically that standards and morals are the concern of the law, and that whether done in private or in public"[25]

3. WHAT IS CRIMINALITY?

In legal parlance, there are two branches of the law, viz: the substantive law and the adjectival law. Substantive law is that branch of the law, which prescribes the rights, duties and obligations of citizens. Criminal law fall within the purview of this definition. It is thus, an aspect of the law that protects public morals, preservation of order and decency. Law, in the context of criminal law, does not exist in vacuum. Criminal law exist in relation to certain human conducts adjudged as being harmful or injurious to the well-being of the society. Such acts seen as injurious to the society must be acts or conducts being at variance with the values or aspirations of the society. In this sense, criminal law can be said to be a collection of the values of a society put down in a written form, by the legislature. This simply means that criminal law has an ethical content. But the relation between criminal law and morality, is not so easy to ascertain.

In and attempt to examine the relation between law and morals in order to ascertain the layers of moral content in law, it will be appropriate to analyse these terms. Here, analytic and functional definitions of what is meant by law and morality may be useful.

Few examples may suffice.

> By 'law' we thus mean a system or forms, by their origin and functioning, related to the activity of the state apparatus of coercion, a system where functions and contents are determined by the pattern of class forces and the level of development of the civilization[26].

> Law is an aggregate of general social forms of conduct, differing from other such aggregates in the following ways the legal forms express the interest and strivings of the class which controls the society i.e. the ruling class in all the state with class exploitation, and the working class and its allies in socialist states, in the first place of their development. In a socialist nation state, law expresses equally the strivings and interests of the whole society. The interests and striving expressed by law are ultimately objectively determined by the materials conditions of the society, and of its ruling class in particular[27].

> Law is a definite aggregate of norms of conduct. Its distinguishing features are said to be the following: (1) these norms are either established or recognized in a proper manner by the "state", i.e. by the appropriate agencies of the state administration. (2) the realization of these norms is warranted by the state by the threat of coercion, (3) these norms express the pursuits of the ruling class to establish and maintain advantageous, to that class[28].

' relying on typical dictionary definition defines crime as follows: "A
ess or sin." He further argued that:

> "In everyday use, the word often carries overtones of immorality and wrong-doing. This links between morality and the criminal law have been very strong, common lawyers accept that a crime was in essence, an offence against morality."

Chukkol's approach, in an attempt to define the term "crime" is u

> "A narrower – and strictly legal approach can be adopted

> and in this regard the word 'crime' is treated as essentially a legal concept and therefore best understood by reference to law."[30]

This approach seems to draw a line between crime and morality. While immorality, may include all anti-social behaviours, or acts falling short of the right standards of conducts, a crime when understood by reference to law, may include all acts or omissions which are liable to punishment. The Criminal Code[31] is in accord with this proposition, as it defines crime as "acts or omissions which renders the person doing the act or making the omission liable to punishment under this Code". However, the thread that appears to be common from the definitions of law, as quoted by Prodgreacki Adam, is that law has an element of coercion. This appears to be the unanimity of opinion from the synthetic opinion of the definition of law as a social phenomenon. However, there appears to be divergent opinions as to how criminal law should be used to enforce morals. The Wolfenden Committee on Homosexual Offences and Prostitution, as noted earlier, argued that the enforcement of morality is not a proper object of the criminal law.

Lord Delving disagreeing with this proposition believed that there exist a public morality which should form part of the social continuum, and that society may use the criminal law to preserve morality in the same way it use it to preserve anything else that is essential to its existence[32]. Lord Delvin further argued:

> Real crimes are sins with legal definitions. The criminal law is at its best when it sticks closely to the content of the sin... The basis for the distinction between mala in se and mala prohibita, between what one might call a crime and an offences is that crime means to the ordinary man something that is sinful or immoral and an offence at worst a piece of misbehaviour... Immorality then, for the purpose of the law, is what every right minded person is presumed to consider to be immoral. Any immorality is capable of affecting society injuriously and in effect to a greater or lesser extent it usually does, this is what gives the law its locus standi.[33]

Immorality from the viewpoint of Lord Delving is said to be centered around sexual related offences, like abortion, homosexuality and fornication.[34]

Therefore, when Lord Delvin talked about the law basing itself on Christian morals, he should be understood as referring mainly to the social conditions in the United Kingdom of his time. This is because in Nigeria, for instance, abortion and, homosexuality,[35] is

an offence and, under our Penal Code jurisdiction, fornication has always been a criminal offence[36]. Beside these, sex is not the only force in social life nor is the manifestation of sexual conduct in social life, the only human conduct which should pre-occupy the attention of the society. Immorality though may be measured in terms of sexual conduct, but the term is wider than this. It is in view of these observations that Green[37] argued that in defining morality a functional approach should be adopted. Based on this view, he further agreed that "morality is to be equated with the ethic or mores of society, which for the sake of convenience, may be described as society's idea of what is right and wrong[38]

It had been noted earlier that morality means the idea of what is good and what is bad. This acceptance o the 'right-bad' view of morality highlights the relation between it and law, particularly within the context of the definition of law, based on its function to preserve peace and good order in society. Therefore, from the functional point of view, law may be regarded as the means by which society ensures that its mores are protected by its institution. In our ancient societies, before the advent of colonialism and, monotheism, the norms of our ancient societies were unwritten[39] and, they were capricious in nature, deferring from one community to another[40]. This was so, even among a heterogeneous people. This contention may not be correct in respect of our modern societies with the desire of dethroning ancient values in preference to religious precepts as a way of life. The integrative force of religion is seen from the argument of Dambazau[42] to the effect that:

> The argument that religion is an important tool for the moral well-being o the community has been advanced in many forms. It has been argued that religion is useful as a cohesive factor, holding society and its morality together in such a way that whoever attacks the society's religion is deemed to have attacked the society... the more important argument is that religion is useful and essential for moral education, moral endeavour, and moral achievement....

There are different kinds of religion in the world that possesses these attributes but Dambazau must be referring mainly to the precepts of Christianity and Islam. In a purely religious society, the distinction between legal norms and morality is tenuous. In such societies, the basic tenets of the dominant religion represent the law. The current situation in those states that have introduced Shariah Penal Codes is the quintessence of this assertion. By virtue of s. 94 of the Sokoto State Shariah Penal Code, an act or omission which is not specifically mentioned in the Code but is otherwise declared to be an offence under the Quran, Sunnah and Ijtihad of the Maliki School of Islamic Thought shall be deemed an offence under the Code and such acts or omissions shall be punishable. This means that in such states, law and morality are inexorably intertwined. The question, how criminal law should be used to enforce morals is irrelevant in those states.

In other parts of the country, there still exists a dichotomy between law and morality. In these areas, the prevalent norms may be said to be a hybrid of indigenous norms and, alien cultures (perhaps founded on Christianity), but the pervasive norm or morals is indigenous. This accounts for the divergent or lack of uniformity in the operating norms or morals in such areas. This reveals that enforcing morals in such areas through the intervention of criminal law requires opinion polling in order to determine what acts or conducts are considered to be at variance with the mores in those areas.

The reason being that while a segment of such society may tend to abhor or shun any practice considered to be inconsistent or contrary to the basic tenets or Christianity, another group may, consider any attempt to disperse the practices of their forebears as an affront to tradition and custom and, unacceptable. In those communities, unless one is ethnocentric, the assumption that crime means to the ordinary man, what is sinful or immoral or what a right-minded person is presumed to be immoral, becomes somewhat a difficult task to judge. An example here, is marriage. Most Christians regard polygamy as unchristian act[43]. But tradition being the mores of the people permits it. Thus a right-minded person, in this context, an ardent Christian, perhaps, would consider a person who took a second wife as having committed a sin, but a traditionalist moralist (or is he not a right-minded person?) would rather applaud such an act[44]

Another example is adultery. Adultery is figuratively a sin in the Bible[45]. Applying the precepts of the Holy Bible strictly adultery and, the resultant child should be declared sinful. But tradition, as represented, for instance, by the mores of the Igalas, perceives adultery in two ways. First, is that adultery, without more, is an offence. Secondly, where such adultery resulted to the birth of a child, such act is removed from the ambit of criminal law, and treated as a civil matter. For instance, under the Igala norms, intercourse with a married woman, gives the male paramour right of lien on the resultant children, in the same way as marriage[46].In Umoru Muhammed[47] the respondent pregnanted appellant's wife and the Grade I Area Court, Ankpa, ordered that the respondent should claim the child born out of this sordid union by paying reclamation fee to the appellant. The High Court confirmed the order on the grounds that it was in tune with the Igala customary law which accords with the principle of natural justice, equity and good conscience "such a child after being redeemed becomes a member of the family of the natural father"[48]

In Joshua Chawere[49], Grahan Paul J., held that such custom in no way implied that adultery per se creates rights to marriage. He said:

> If the suggestion is that there is a native custom by which a wife who commits adultery, ipso facto of the adultery become, automatically the wife of the adultery, I have two comments to make. First that there is no evidence of such a custom, and second that I am clear that such a custom is one to which this court would not be prepared to give judicial sanction under section 20 of the Supreme Court Ordinance[50].

All these are clear indications of the gap between crime and morality and, reveals further the problem to be encountered in an attempt to use criminal law to enforce morals. In the dictum above, his lordship, if faced with similar facts as that of Umoru Mohammed, would no doubt, declare such a custom as contrary to natural justice, equity and good conscience and, possibly treat the woman and, her paramour as criminals, but the natives attitudes, is to treat intercourse with a married woman without more, as a criminal act and, to down-play it, where such sordid union resulted to the birth of a child. The rationale for such "tolerance" seems to have been explained in the case of Igabaddo Hunde[54], where the trial Area Court justified adultery by the wife of a deceased because the kin of the deceased who had inherited her had gone away from her and joined the arm. The child resulting from her illicit intercourse was subsequently given in custody of her new found love "because the Tiv do not claim children got from adultery?[51] (Underlining supplied).

4. CRIMINALITY AND MORALITY: THE MORALISTS VIEW

In appraising the views of the moralists, Professor Chukkol and, Professor Amankwah adopted comparative approach. They proceeded by examining the views of the some jurists of the moralists school of thought. Lord Denning as quoted by Professor Chukkol seems to belong to this school of thought. He said:

> "In order that an act should be punishable (as a crime) it must be morally blameworthy. It must be a sin"[51].

From this, it is submitted, that Lord Denning being a disciple of the moralists school of thought, believes in the evolutionary nature of the law, since law being organic, is not rigid nor static. A good law, therefore, is the one that bows to the winds of fundamental social change and, in doing so, must reflect the essence of the ethics, ethos and aspiration of the society. Since every society abhors acts that are essentially sins or immoral, the moralists, further argued that criminal law: "Could be seen at its best when it sticks closely to the notion of sin"[54]. Lord Denning is said to be a great advocate of this proposition. He said, as quoted by Professor Chukkol that: "The suppression of vice is as much the law's business as the suppression of subversison"[55]. Professor Chukkol, is in total agreement with these views. He argued that

> "This point of view is valid to a certain extent. It is no gainsaying that most of the heinous crimes are also sins. Thus, murder, rape and theft have been regarded as grave offences from earliest times and their categorization as such by modern criminal law is quite appropriate.
> It will also be readily accepted that even if one were to try to separate what is criminal from what is immoral, such a separation cannot be water-tight as both law and morality fashion a society toward greater security and contentment"[56].

Professor Chukkol, however, picked some bones with the moralists view. In this regard, he postulated that morals are mostly subjective value judgement and not only vary from place to place but also change from time to time[57]. He further asked, that talking about morality, whose morality[58].Lord Denning in this connection, used the yardstick of the man on the Calpham omnibus, whereas Professor Chukkol, within our social milieu, used the criteria of the passenger on the Lagos Molue or Danfo.

Prominent Jurists of this School of thought include Bentham, Mill and Hart. Professor Amankwah is of the opinion that the assumption from the time of Bentham, is that law must be utilitarian in its nature and function, in accordance with the theory of pain and pleasure (or hedonistic calculus[59]). John Saurt Mill, in his essay on Liberty[60] posited that the only legitimate purpose for which the criminal law ought to be invoked is to prevent harm to others.[61] Professor H. L. A. Hart a disciple of the utilitarian school is of the view that no penal sanction can be justified when meted out to someone whose conduct was not directed and injurious to a particular victim[62].

5. THE POSITIVISTS

The positivists view crime as a public wrong and, therefore man made. This theory is traceable to Austin[63], a prominent jurist of the positivist school, was the chief proponent of the idea that law is a command of the sovereign. An act going by the positivist conception of law as a command, is a crime only if the sovereign so declared. Positive law, in its modern conception, as a rule of conduct enacted by an appropriate governmental organ, is knowable, predictable and does not suffer all the disabilities of being vague, uncertain and, the undue subjectivity associated with natural law. Another virtue of positivist law is that it is in the nature of express declaration before the commission of an act to which the law is applied. That is, a law is laid down in the process of an application but applied to the facts that have already taken place or accomplished. Positive law consists of acts that are prohibited by the criminal law, under threat of punishment. An American writer, Dean Roscue Pound defines rules (which is consistent with positivist conception of law), as a precept attaching a definite detailed consequences to a definite detailed state of facts. He gave as an example a provision in the ancient code of Hammurabi "if a free man strike a free man, he shall pay ten shekels of silver"[63].

Positive law has a negative virtue. Being man-made law, it is vulnerable to corruption and capable of being unjust. Such unjust laws, being a command of the sovereign, who may turn out, to be corrupt and inhuman, must be obeyed. Positive law is also known as imperative law. Commenting on imperative law within the context of an enactment or rules formulated by an appropriate authority, Salmond[65] argued:

> Every organized community or society of man tends to develop imperative laws formulated by governing authority of that community or society for the control of its members with the intent to secure the purposes. The state makes law of this kind for its citizens, for the purpose of assuring peace, order and good government within its territories. In the same way other forms of imperative law are developed within a church, an army, a school, a family, a ship's company, a social club and other institutions so organized as to possess a governing body capable of imposing its will upon the member.

This conception of positive law is more succinctly stated, by Lord Atkin, in the case of Articles Trade Association v. Att. Gen. For Canada[66] thus:

> The criminal quality of an act cannot be discerned by intuition, nor can it be discerned by reference to any standard but one; is the act prohibited with penal consequences? Morality and criminality are far from co-existence, nor is the sphere of criminality necessarily part of a more extensive field covered by morality – unless the moral code necessarily disapproves of all acts prohibited by the state, in which case the argument moves in circles.

This was the direct consequence of Austinian positivism which dominated legal thought in the 18th centuries. John Austin, like Maine and Savigny, of the "Historical School" developed the positive law theory in response to the theory of the Natural Law School, which emphasized Supreme Universal Reason – which relegated tradition. The positivists contend that law is given by a Supreme Being in a political society and, that whatever that law-giver enacts as law is law and must be obeyed. To them morality with regard to such law is irrelevant. Dr. Aguda[67] threw light on positivists conception of criminality vis-à-vis morality, thus:

> ... The positivists are not interested in the 'rightness', 'justness' or 'unjustness' of law. Nor are they interested in the moral or amoral content of law. Whether law is morally right or wrong is of no great importance to them when what is in issue is its application. The positivists however, acknowledge that ethical, like religious consideration might have played some importance in the

process leading to the enacting of the law; besides that, however, it is a matter which does not come into consideration whenever its application is in question.

6. CONCLUSION

The only distinguishing feature between criminality and morality, seems to be sanction. But sanction or punishment appears to be inadequate criteria to distinguish the two concepts. This is so, because public censure, can also be used to enforce rules of conduct not enacted by valid governmental organ. The valid yardstick to distinguish the two concepts, can be best understood with reference to these factors.

a) Punishment
b) Legislation.

a) **Punishment as a criteria**

Here, an English jurist, Glanville Williams, define crime as "a legal wrong that can be followed by criminal proceedings which may result in punishment[68]. Allen Glandhill defines crime as follows: "(a crime is) a human conduct which the state decides to prevent by threat of punishment liability of which is determined by legal proceedings of a special kind"[69].

b) **Legislation as a criteria**

Moral principles, according to the natural law school of thought are discoverable by the application of reason. First, the principles are not available in a written form. Second, where they are available, they are not enacted by a valid government organ. In Nigeria, it is unconstitutional and, a rule of arbitrariness, to punish a person for an offence which is not a written one at the time of the alleged violation[70]. From the above, it means that a crime is any conduct or act prohibited by an appropriate governmental organ, with legal consequences, in case of violation.

Another factor to distinguish crime from morality, is the fact that the person who breaches a legal rule, is criminally prosecuted in a court of law, whereas, in the case of morality, there is no procedure to bring the offender to book. Criminal offence is also regarded as a breach of public morality and, technically speaking, it is an offence against the state. It is the state that prosecutes the offender. The victim is only a nominal complainant. In Nigeria, an individual has the right which has been upheld by judicial pronouncement to prosecute an alleged breach of public morality[70]. But the powers of the state is overriding[71].

FOOTNOTES AND REFERENCES

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35.See ss. 309-317 of the Criminal Code and, ss. 232 and 24 of the Peanl Code, s. 309 of the Criminal Code which deals with an act done or omitted to be done by any person before or during the birth of a child, such a person is deemed to have killed the child. See also s. 232 of the Penal Code, which deals with a voluntary act by any person. which cause a woman to miscarry and. except if such act is done in good faith to save the life of the woman. Such a person may be imprisoned up to 14 years.
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37.Green, L.C. op cit, p. 6
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43Our Law-Givers recognize the divergent norms on this point and, tried to accommodate both values by recognizing monogamous and polygamous marriages.

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45.Matthew, Chapter 5 verse 22

46.See the proposed Igala Declaration, which defines adultery as a voluntary sexual intercourse of a married woman with a man other than her husband.

47.MC/463 A/1977 – Umoru Mohammed v. Umoru Omale Unreported)

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49.Joshua Chawere v. Hamah Aihehu and Johnson, 12 NLR 4 at 5.

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51.(Supra) MD/70A/73 (unreported).

52.Chukkol, K. S. op. cit. p. 90.

53.Chukkol, K. S. op. cit., p. 3.

54.Ibid

55.Ibid

56.Ibid

57.Ibid

58.Ibid

59.Ofori-Amankwah, E.H.: Criminal Law in Northern States of Nigeria (Gaskiya Corporation Ltd., Zaria-Nigeria, 1986), p. 5.

60.Ibid

61.Ibid

62.Fitzerald, P. J.: Salmond on Jurisprudence (Sweet & Maxwell: London) (7th edition), p. 26.

63.Farr, John Hand Dyndale, Anthony M: Introduction to Legal Method (London: Sweet & Maxwell, 1990) Third edition) (p. 9.)

64Fitzerald, P. J., op. cit., p. 22.

65(1931) A.C. 324

66Aguda, T. Akinola: The Crisis of Justice (1986)

67.Chukkol, K. S. op. cit, p. 1.

68.Ibid, p. 2.

69.See s. 33 (12) of the 1999 Constitution.

70.See the case of Fawehinmi v. Akilu (1987) 4 NWR (pt. 67) 797.

71.Section 160(1) and 191(k) of the 1999 Constitution. The Attorney-General of the Federation and the Attorney-General of the State under these sections can overtake, discontinue any criminal proceedings initiated by a private person.