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Curriculum Adjustment: A Case for Family Law

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ABSTRACT The whole idea of formal education has at its foundation on a functional timetable, target or blueprint which is generally known as curriculum. Academic programmes have set targets, courses have targets as well as topics. In a law faculty or college, there are certain courses which have been considered to be compulsory courses and must be offered at each level as laid down by the regulators of legal education in Nigeria being the Council of Legal Education (CLE) and the Nigerian Universities Commission (NUC). They have referred to most of these guidelines as BMAS-Benchmark for Minimum Academic Standard. Rather unfortunately, family law is not part of the compulsory courses but an elective one leaving institutions to decide whether or not to offer it and for those who elect to offer it, at any level they deem fit. For instance, many schools offer family law at the third year, whilst others at the fourth year. This paper emphasizes that for the general well-being of society, family law should be made a compulsory course of study not only for law students, but for the entire university as a foundational or general study by whatever name called. This is so because, the society is made up of tiny family units and every mortal being is from a family whether or not that family has lived up to its expectation, hence arming the individual with his rights, duties and obligations as a member of a family. If civic education, philosophy and basic sciences can be taught mandatorily, why not family law?

Keywords: Family, Law, Curriculum, Education

Introduction

In a formal school system, learners are by way of syllabus, course outline or scheme of work aware of the grounds they ought to cover. This blueprint by whatever name called is followed to the latter if learning objectives must be achieved. Law colleges and faculties are not exempted from these strict rules and regulators of legal education have considered certain courses as compulsory courses. It is expected that wherever one is studying as a law student, it does not matter as much as what the candidate should have learnt compared to his/her counterpart in another institution.

Compulsory courses as listed in NUC's BMAS 2007 particularly at Section 2.1.6.1 for Law Faculties are thirteen in number and are: Legal Methods, Constitutional Law, Law of Contract, Criminal Law, Company Law, Commercial Law, Law of Equity and Trusts, Law of Evidence, Jurisprudence, Property Law, Nigerian Legal System, Law of Torts, Compulsory Essay in the final year.

These compulsory courses are traditionally offered at different levels as set out in NUC BMAS 2.1.6.4 amongst Law Faculties and Colleges. In the first year, there is usually only one law course which is Legal Method offered together with other foundational courses or general courses (called IFS- Foundational Studies or GES/ GST- General Studies). In the second year, there are three compulsory courses- Nigerian Legal System, Law of Contract and Constitutional Law. In the third year, the compulsory courses are Criminal Law, Law of Torts and Commercial law. In the fourth year, the compulsory courses are Land law (Property Law), Law of Evidence and Equity and Trusts. In the fifth and final year, students are to offer three compulso-

ry courses also which are- Jurisprudence and legal theory, Company law and the Long Essay.

The NUC BMAS also provided in 2.1.6.2 that in addition to the 13 compulsory courses listed above, each Faculty should have a set of optional or elective courses made up of law courses and non-law courses. It is by virtue of this provision that Family Law was brought in as an elective to be taught as an elective law course. The NUC BMAS listed a pool of 25 courses of elective courses viz: Administrative Law, Revenue/Taxation Law, Industrial Law or Labour Law, Oil and Gas Law, Public International Law, Conflict of Law, Family Law/The Family and the Law, Conveyancing, Criminology, Introduction to Islamic Law, Law of Banking, Law of Insurance, Law of Intellectual Property, Maritime Law, Human Rights and Nigerian Law, Customary Law, Environmental Law, African Comparative Law, Information and Communication Technology Law, Health Law or Law and Medicine, Islamic Law of Crimes and Torts, Islamic Law of Transactions, Islamic Law of Procedure and Evidence, Islamic Family Law and Succession, Islamic Jurisprudence

It is a fact that the law is pervasive and touches every area of life, hence the continuous need for elective courses to always be options, yet it is the contention in this paper that family law should have never been in the realm of elective courses, it should and ought to be a compulsory course, not just for the law student but for every single individual just as much as knowing what his/her fundamental rights are. This argument is hinged on the fact that every individual is born and belongs to a family, howsoever the family structure is-nuclear or extended, warm or cold, receptive or harsh, bearing in mind that the background of a person is irrelevant and does not affect his/her rights and entitlements in society (1999 Constitution of the Federal Republic of Nigeria, Section 42) In fact this is further strengthened by the fairly recent Child Rights Act 2003.

What is Curriculum?

The eccentric nature of the field of curriculum makes it a difficult phenomenon to define. The word curriculum is derived from the Latin word *currere* meaning “to run” - to run a course (Achuonye and Ajoku, 2013). So the school curriculum refers to the ground covered by the students in their race towards the finishing line-a certificate or a degree (Agina-Obu, 2016). It implies the course or race which both teachers and learners take to reach educational goals in terms of certification or diplomas earned.

The definitions of curriculum generally include education and the activities that are planned to occur in school for which the school has the social responsibility. (Achuonye and Ajoku, 2013). The term seems to be the most ambiguous and most difficult to define, this is so because the curriculum is a reflection of societal characteristics and trends. People therefore tend to look at curriculum based on their educational aims and objectives and how these are executed. The objectives of curriculum vary from society to society based on their problems and needs, so also does curriculum change in consonance with the dynamism of society. (Achuonye and Ajoku, 2013).

Out of the various definitions, three views have become prominent which would be considered here:

a. *Curriculum as a Syllabus:* The first and most widely expressed view of the school curriculum is that which sees it as a group of subjects meant to be taught the learner. In keeping with this view, people talk of the list of subjects on the curriculum of a particular school or school system. When people complain about a school system (or about the academic work done in a particular school) they tend to argue for or against the inclusion of certain subjects in the school programme of studies. Thus the Nigerian curriculum is often criticized for being limited to traditional literary and scientific grammar school

subjects, hence people advocate for the broadening of curriculum. This perception tends to equate the school curriculum with the syllabus or even scheme of work. Hence people talk about primary school curriculum, junior secondary school curriculum, senior secondary school curriculum and so on.

b. *Curriculum as a list of Subjects:* The second perception about the school curriculum sees the individual school or school system as having several curricular; that is, each subject taught in the school is seen as having its own curriculum. (Agina-Obu, 2013). In keeping with this view, people tend to talk about Mathematics curriculum, English language curriculum, History curriculum etc. Experts in curriculum studies however consider this view to be limited.

c. *Curriculum as a Teaching Scheme:* The third view of the school curriculum embraces elements of the first two views. It recognises the role of subject disciplines in the education of any group of learners. It attempts to form a link between the subject disciplines and related educational and school activities. The curriculum according to this view point, serves as a combination of objectives, instruction, the strategies or methods, the various learning activities offered to the learner and the evaluation of everything involved in the planning and execution of a school programme.

Many experts in curriculum studies have advocated for a fourth dimension in the perception of curriculum which considers curriculum as broad-based experiences as the earlier three dimensions are either too narrow to exclude certain important ingredients of curriculum planning or too broad so as to create problems of identifying what elements should come within the scope of the curriculum. An apt definition that fits into this is considering curriculum as the formal and informal content and process by which learners gain knowledge and understanding, develop skills, alter attitudes, appreciations and values that under the auspices of the school (Doll, 1978). This definition includes both formal and informal aspects of schooling, what one learns (content) and how one learns (process) and products and outcomes in the forms of knowledge, understanding skills, attitudes, appreciations and values under the auspices of that school.

Change must take place and educational system must reflect this change through the curriculum of schools. A societal change may be desirable or undesirable, in either case, the curriculum content can be adequately employed to cope with the demands of the change. Thus, while in the case of desirable changes, the content of school curriculum may be selected for the purpose of consolidating the said changes, on the other hand, the content may be geared towards correcting the ills of society. The school curriculum by nature needs continuous revision (Achuonye and Ajoku, 2013). It is against this backdrop of what curriculum is gleaned from the above definition of curriculum by Doll as being capable of altering attitudes, appreciations and values that this work is embarked on being that the family is one that individuals cannot do without. The recent happenings of family disharmony where persons with consanguinity ties are at daggers drawn is appalling, not forgetting the global change of what marriage is as being lawful between persons of same sex and the likes necessitates family law being most desired. Whether family members live up to expectation in the lives of individuals is another issue altogether, hence the need to properly educate individuals on what the law requires to obtain in a family.

Family and Family Law

The family is described as the fundamental unit of society (Enemo, 2014). Definitions of family have varied from country to country and within country (Sharma, 2013) The UNESCO Report has it that a family is a kinship unit and that even when its members do not share a common household (UNESCO 1992). It is generally accepted that the

family is the basis of every human community and the family may be regarded as the nucleus of society. Families transmit culture, beliefs and assets between generations and carry out essential tasks of nurturing and caring for young and old. (Enemo, 2014).

Family law on the other hand is a legal practice area that focuses on issues involving family relationships such as adoption, divorce and child custody among others. It is the law about the rights and responsibilities within the family.

New Vistas in Family Law

Same Sex Marriage

Same sex marriage could be described as the legalized union of a same sex couple (either two males or two females) for the purpose of cohabiting as husband and wife. (Oludairo and Imam-Tamin, 2018) The concept of same sex marriage is not a recent development as it has been in existence since ancient times even though it did not receive recognition and legal backing in the early days (The Holy Bible, Genesis 18 and 19).

Law being dynamic however, many countries have now legalised same sex marriage although this is not the case in Nigeria (Same Sex Marriage Prohibition Act, 2015). For a holistic and comparative analysis of legal issues however, it would be relevant to consider the concept as practiced in other countries as there are perspectives of human rights considerations on the subject matter.

Domestic Violence

Domestic violence is defined as a pattern of abusive behaviours by one partner against another in an intimate relationship such as marriage, dating, family or cohabitation (Izuora, 2012). It is violence within the home and is usually carried out by male members of the family i.e. the husband and his relatives against women and children (Waziri, 2012).

Violence in the home is the most endemic and dangerous form of violence against women and children in Nigeria (Mbajiorgu, 2012). Often invisible, shrouded in a lot of silence and secrecy until perhaps permanent disability and psychological trauma are inflicted on the victim or death even occurs.

The Nigerian media have been replete with reported cases of domestic violence of both men and women brutalized and even murdered. Domestic violence in Nigeria is on the up and up to 50% of women have been battered by their husbands and 65% of educated women are in this terrible situation compared to their low income counterparts of 55%. Worse is that a staggering 97% are not prepared to report to the Nigerian Police which leaves the records at an alarming figure (Tasha, 2012).

As a result of cultural and religious beliefs in parts of Nigeria that has made the trend of domestic violence a norm and an enduring menace, it is through knowledge of the law that victims and potential victims would resist the trend through teaching of family law, not just as an elective course, but as a core course that is of necessity to be learnt not just by lawyers, but as part of tertiary education generally to make society more accommodating which begins from the family being its smallest unit.

Marital/Spousal Rape

Spousal rape has been described as one of the most serious violations of a woman's bodily integrity. It is further described as a husband's sexual intercourse with his wife by force without her consent. It is depicted as any unwanted sexual act committed by a spouse without the consent or express permission of the other spouse. The sexual act could be forced, induced by threat or intimidation and they include anal or oral sex or

any other sexual activity that could be degrading, unwanted and painful (Kolade-Fasyi, 2018).

Customary criminal law does not proscribe marital rape as all sexual intercourse within the marriage is considered consensual. The offence of rape is contained in the two main statutes regulating criminal offences in Nigeria- (Criminal Code-Sections 357-358 and Penal Code- Sections 282-283) despite these provisions however, there is exclusion of rape in marital context by the provisions of Section 6 of the Criminal Code which considers "unlawful carnal knowledge" as carnal connection which takes place otherwise than between husband and wife, meaning that marital or spousal rape is not an offence in Nigeria.

The rationale for this position is that by the act of marriage, the wife had given her consent to the husband to exercise the marital right during such time as the ordinary relations created by the marriage contract subsisted between them, this means that at the point of marriage, the wife impliedly consented to the notion of sexual relations with her husband and can never be deemed to take such consent away since it is given once and for all times.

This current position under Nigerian law is being threatened in the light of universality of human rights that is being practiced as well as clamours for criminalization of spousal rape by feminist movements and scholars. Evidence to prove that there is most likely in the near future going to be a shift on this issue is the fact that the offence of rape has now been legislatively reported in a gender neutral manner meaning that a man can be raped as against the old order (Violence against Person Prohibition Act, Section 1). Again, some countries even if have not expressly prohibited marital rape have by their judicial pronouncements "seemed" criminalised same just like in Malawi by virtue of the case in *Rogger Moffat v Grace Moffat* (Civil Case No 10 of 2007) where the complainant told the court that she had deserted her husband partly due to sexual abuse for having sexual intercourse with her whilst menstruating and asleep. The court inter alia held that the conduct of the defendant amounted to sexual abuse although it did not expressly mention it as being spousal rape. South Africa on its part has recognized and criminalized marital or spousal rape by virtue of the Criminal Law (Sexual Offences and Related Matters) Amendment Act N0 32, 2007, Sections 59 and 60. By its Prevention of Family Violence Act 1993, S.5 it provides that a husband can be convicted of rape of his wife. Another instructive provision is the Criminal Law (Sentencing) Amendment Act 2007, S. 3(A).

Artificial Reproductive Technology

There has been an alarming rate of infertility globally. Advancements in technology have sought to remedy this unfortunate situation by providing aids to reproduction. Artificial reproduction is the creation of new life by other means than the natural means available. It is also known as artificial reproduction and can be understood to be the use of medical techniques to bring about the conception and birth of a child, including artificial insemination, in vitro fertilization, egg and embryo donation and drug therapy (Gabriel-Whyte and Davies, 2017).

This relatively recent development comes with legal issues and conflict of laws such as adoption, surrogacy, commodification of the female sex and the likes. For instance, surrogacy could create a relationship where a third party carries the child for its biological parents by implanting their sperm and egg into the third party for incubation. The third party is engaged for the service either at a fee or not depending on jurisdiction and raises legal issues. If it is for a fee, it could be presumed that the third party has been used as a commodity, and may or may not have a claim on the child. Other trendy issues apart from surrogacy would include adoption, fostering and the likes with their consequential legal implications. It is through the instrumentality of family law that these issues would be critically considered.

Gender Perspectives on Law

Customary law in most parts of Nigeria have hitherto discriminated against the female sex, considering them to be second class citizens, being lower than their male counterparts. The trend however is changing in the spirit of landmark Supreme Court decisions considered below:

Mojekwu v Moekwu (1997) 7 NWLR (Pt. 512)

Justice Niki Tobi, JCA (as he then was) launched out to disregard the archaic and anachronistic customary law known as *Oli-Ekpe* amongst the Igbos which dispossessed daughters from inheriting their father's property and permitting uncles and nephews to so inherit where their fathers had no male heir. He had this to say:

> Nigeria is an egalitarian society where the civilized sociology does not discriminate against women. However, there are customs all over which discriminate against the women folk which regard them as inferior to the men folk. That should not be so as all human beings, male and female are born into a free world and are expected to participate freely without inhibition on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy. The *Oli-Ekpe* custom which permits the brother of a deceased person to inherit his property to the exclusion of his female child is discriminatory and therefore inconsistent with the doctrine of equity.

Justice Niki Tobi further submitted:

> We need not travel to Beijing to know that some of our customs including the Nnewi *Oli-Ekpe* custom relied upon by the appellant are not consistent with our civilised world in which we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the creator of human beings is also the final authourity of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affidavit on the Almighty God Himslef. Let nobody do such a thing...

Mojekwu v Ejikeme (2000) 5 NWLR (Pt. 657)

Fabiyi JCA having to declare on the validity of the *Nrachi* ceremony which seeks to make a daughter whose father has no son to remain unmarried in her father's house and raise heir for him and in his name and by "customary fiction" she is considered a male or son in that family.

> I must express the point here by which I will continue to stand that human nature, in its most exuberant prime and infinite telepathy cannot support the idea that a woman can take the place of a man and be procreating for her father via a mundane custom. She stays in the father's house and cannot marry for the rest of her life even if she sees a honest man who loves her. I cannot and do not believe that the society as it is presently constituted will for long acquiesce in a conclusion so

> ludicrous, ridiculous, unrealistic and merciless more especially as we march into the next millennium. I strongly feel that *Nrachi* custom is no longer worthy of application with modern day trends. No elite will agree that it be performed on his daughter as at now when making a Will can readily take care of situations calling for care. *Nrachi* custom is rendered otiose, as it is absurd and fantastic. In the main, it is a farce, a sort of window dressing designed to oppress and cheat the women folk...In the result, a female child does not need the performance of *Nrachi* ceremony on her to be entitled to inherit her deceased father's estate.

Ukeje v Ukeje (2014) All FWLR (Pt. 730)
The Supreme Court gave its own consideration of recognising gender parity and discrimination of a child born out of wedlock in the dictum of Rhodes-Vivour JSC:

> No matter the circumstances of birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking from sharing in her deceased father's estate in breach of Section 42 (1) & (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian.

Ogunbiyi JSC in the same breath on the issue submits:

> The trial court I hold did rightly declare as unconstitutional the law that dis-inherits children from deceased father's estate. It follows therefore that the Igbo Native law and custom which deprives children born out of wedlock from sharing the benefit of their father's estate is conflicting with Section 42 (2) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

Anekwe v Nweke (2014) 9 NWLR (Pt. 1412) 393
The Supreme Court in this case gave authourity to women not as daughters, but as wives to be able to inherit their late husband's property. The court was emphatic in its denunciation of the native law and custom that forbade wives from inheriting. Ogunbiyi JSC emphasized:

> I hasten to add at this point that the custom and practices of Awka people...is outrightly condemned in very strong terms. In other words, a custom of this nature in the 21st Century societal setting will only tend to depict the absence of realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of womenfolk in the given society. Any culture that disinherits a daughter from her father's estate or wife from her husband's property should be punitively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For the widow of a man to be thrown out of her matrimoni-

> al home, where she had lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning.

Muhammad JSC in the same case lent his voice thus:

> It baffles one to still find in a civilised society which cherishes equality between the sexes, a practice that disentitles a woman (a wife in that matter) to inherit from her late husband's estate simply because she had no male from the husband. This practice I dare say, is a direct challenge to God the Creator who bestows male children only; female children only (as in this matter), or an amalgam of both males and females to whom He likes...To perpetuate such a practice as is claimed in this matter will appear anachronistic, discriminatory and unprogressive.

The implication of this is that traditional family law on intestate succession as it is taught of necessity has to change to accommodate this new law. The non-lawyer may not be aware of this and still suffer discrimination on the basis of sex. There would be a definite change if the law is made known to all and sundry by way of making family law a compulsory course at foundation level in tertiary institutions.

Conclusion

This paper considered the nature of family and family law. Family law is an elective course taught in Nigerian Universities at either the third or fourth years as adopted by offering institutions. This paper showed how dynamic and relevant family law issues are and recommends that the course be made a compulsory one in Nigerian universities and not merely for law students.

Recommendation

This paper proffers a lone recommendation is proffered that Family Law should me made a compulsory course of study for law students and all other students at the university level as a foundation or general studies course by whatever semantic is nominated by the institution. This submission is hinged on the fact that the matters covered by family law are far above trifles or triviality to be ignored as everyone married or not, raised by a family or neglected, is no doubt part of a family which comes with rights and obligations.

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