



## **THE EFFICACY OF THE LAW AS AN INSTRUMENT OF SOCIAL CONTROL IN NIGERIA**

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### **ABSTRACT**

This paper discusses the concept of the Law as the paramount Instrument of Social Control in Nigeria. It enables us to know that there are *formal* and *informal* means of control. However, the informal means which is usually in form of *Ridicule, Gossip, Ostracism and Censure* is less emphasized because its impact in curbing deviant behaviour in any society is insignificant. The formal means is through the *Law*. In order to ensure that there is Social Order in any organised Society, a State must have the two features of *a definite population* and *a legal system*. No meaningful development can be achieved in an atmosphere devoid of orderliness. Law seeks to control not only human beings, but also Social Institutions, some of which are direct creatures of the Law itself. It is the duty of law to ensure that the integrity, security and well being of the State and citizens are not jeopardised. This paper also discusses in details and really enlightens us on the seven various methods/techniques of social control through Law which are as follows: The Penal Method, The Grievance-Remedial Method, The Private – Arranging Method, The Administrative – Regulatory Method, The Conferral of Social Benefits method, The Constitutive Method and The Fiscal Methods. There is no doubt that if the various Governments put my suggestions into practice, the commission of all forms of crimes, including Border - Crimes all over the world will be drastically reduced. The Federal Government of Nigeria should ensure that people of integrity are employed to work in all its Regulatory – Administrative Agencies and Organizations that are having the main responsibility of controlling or eliminating crimes. Those at the helm of Affairs should also have unquestionable integrity to ensure compliance of laid down Rules that are targeted against criminals to help ensure that Social Justice is achieved at the end of the day. The Judiciary and the Nigeria Police Force definitely have great roles to play apart from every member of the society in ensuring an effective Criminal Justice Administration. This will enable us to go a very long way in achieving social justice in Nigeria, which is the main aim of this paper.

**Keywords:** Law, Social Control, Method/Techniques, Nigeria Police Force, Penal Prosecution, crimes, social justice, Law Court, Remedies, Arbitration, Damages

### **INTRODUCTION**

#### **The Concept of Social Control**

Social Control in ordinary usage refers to control of peoples' behaviour as it affects others<sup>1</sup>. The term *social control* was first used by one of American Foremost Sociologists, *Edward Ross* to refer to certain

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<sup>1</sup> In its widest connotation, it is difficult to conceive of a behaviour that does not in one way or the other affect others since no man is an Island. For instance, if a person engages in private drunkenness, though no legal liability may be attached to his conduct in some places, it may ultimately impair the person's health as to constitute a drain on the country's human and material resources. Also, the time and attention that a Medical Doctor will spend to attend to the person as a Patient and assist him could have been devoted to a more productive activity. There are however some behaviour that do not directly affect others – a typical

Regulative Institutions which function to ensure that individual behaviour is in conformity with Group demands. Social Control according to leading Nigerian Sociologists<sup>2</sup> refers to the various means or mechanisms by which a Society exercises its authority over its members and enforces conformity to its norms. *Roscoe Pound*, a Sociological Jurist of the American Sociological School of Jurisprudence in his quest to adopt sociological approaches to the study of Law described social control as control through the systematic application of the forces<sup>3</sup> of a politically organized society. He also emphasized that Law should be studied as a Social Institution. *Pound* equally wrote that *in the modern world, law has become the paramount Agent of control*<sup>4</sup>.

One may initially be tempted to deny the status of Law as the paramount Instrument of Social Control due to the following few factors:

- a. Some laws are noticed in breach more than in enforcement
- b. Enforcement of the Law in some cases does not necessarily prevent the occurrence of some crimes or evils which the Law intends to prevent. This is especially as a result of the way some authorised Officials handle certain crimes.
- c. The discretion which some Staff of some Law Enforcement Agencies exercise under the guise of enforcing relevant laws also weakens the hold of the Law as a veritable instrument of social control<sup>5</sup>.

Notwithstanding the few faults listed above, there seems to be no viable option to the Law as an instrument of social control which is used to reduce or completely eliminate deviant behaviour<sup>6</sup> because the Law has the advantages of wealth of detailed Rules. Secondly, there is explicitness of sanctions – punishments are listed and well defined. Thirdly, there is a regularised procedure. Again, we have organised Institutions and machinery for Enforcement which no other means of social control can boast of<sup>7</sup>. The Nigeria Police Force comes in readily here.

In view of the fact that society is organised and administered on the framework of Legal Rules, it becomes compelling that the instrumentality of law be called upon to determine not only the scope of permissible conduct which the society may tolerate, but also the forms of sanctions that can be imposed on persons found to have breached societal Rules. After all, the Law of a given community has been defined as a Body of Rules regulating human conduct, which is regarded as obligatory and binding on them<sup>8</sup>. Therefore, the primary function of Law as we already know is to regulate human conduct.

In addition to Law, other formal means of social control in the society are public opinion, religion, morality and custom<sup>9</sup>. Because each of these listed instruments adopts a set of particular methods or techniques to regulate human behaviour, I conveniently classified them to still be under the *one formal means* of social control known as **LAW**. The fact is that in terms of public opinion, we must guard our utterances, or else, we can be sued for defamation in form of libel (published words) or slander (spoken words). Every religion has got its Rules. Hence, we have the Bible and Quran. Morality issues may or may not be punishable in instances like fornication, rape, adultery, e.t.c. Yet, the likelihood is that there will often be sanction if the Parties are caught. Custom of a people are the laws binding on them, and if a member breaks the law, he/she will be sanctioned. The Law is very broad since it impliedly covers all the other formal means. Or do we call these semi-formal means<sup>10</sup>?

*Professor Nwabueze*, while explaining the Regulation of Private Enterprise through Law as an instrument of Social control said *it is indeed necessary for proper and balanced economic growth, the prevention of*

example is where B as an adult of full age decides not to exercise his right to work or get quality education. He cannot be forced by Law to do otherwise, because nobody, except he and members of his family will suffer for his indiscretion.

<sup>2</sup> *Onigu Otite & W. Ogiowo – Introduction to Sociological Studies* (1979) Heinemann Publishers, Ibadan @ p. 375

<sup>3</sup> In my view, *forces* here refers to *the Law* because there is no other tool or Instrument that I can imagine

<sup>4</sup> *Roscoe Pound: Social Control through Law* (1948) Yale University Press @ p. 20

<sup>5</sup> *In my candid view*

<sup>6</sup> *In my opinion*

<sup>7</sup> *Abiola Sanni* supra @ p. 82

<sup>8</sup> *Taslim Olawale Elias: The Nature of African Customary Law* (1956) Manchester University Press @ p. 55

<sup>9</sup> *Abiola Sanni* supra @ p. 83

<sup>10</sup> *I may ask*

*undue concentration of wealth in a few hands, the minimization of exploitation inherent in the Private Enterprise System, to ensure optimum social justice through the redistribution of the nation's wealth. It enables the State to direct the economy towards a particular pattern of behaviour and a social goal. An unregulated freedom of social enterprise is nothing but social anarchy. For it has been rightly said that Government cannot exist if the citizen may at Will use his property to the detriment of his fellows or exercise his freedom of contract to work them harm*<sup>11</sup>.

## METHODS/TECHNIQUES OF SOCIAL CONTROL THROUGH LAW

Method is a way of doing something, a style of doing something, a procedure, orderliness in doing a thing, planning etc. The expression *method* can be used interchangeably with the word *technique*.

Robert Summers, a leading American Jurist has identified the five basic techniques<sup>12</sup> used in modern law as methods of social control to consist of the following:

1. The Penal Method
2. The Grievance – Remedial Method
3. The Private – Arranging Method
4. The Administrative – Regulatory Method
5. The Public Benefit Conferral Method

Professors John Farrar and Anthony Dugdale added two more techniques/methods known as **The Constitutive Method** and **The Fiscal Method**. Explaining those Methods, I will start with the first which is the Penal Method.

### (a) The Penal Method

The Penal Method involves the setting out of acts and omissions which are regarded as violation of the Criminal Law. The efficacy of the Penal method is noticeable mainly in terms of enforcement. According to R.M Jackson, *it is in relation to criminal offences that we speak of enforcing the Law. The general pattern is clear enough: observance of some Rules of conduct is regarded as so necessary for society that a breach of such Rules is a matter for intervention by the State*<sup>13</sup>.

The Penal method also involves the establishment and maintenance of the Police Force and other Enforcement Agencies to prevent and detect violations of the criminal law and maintenance of prisons and other approved detention centres. These legal Rules and Institutions make up the Criminal Justice System which is created for the specific purpose of applying the Penal Technique.

### How does the Penal Technique bring about Social Control?

When a person is alleged to have committed a crime, the Matter is reported to the Police by the victim instead of him/her resorting to vengeance or self-help. The Matter will then be investigated by the Police, and the State either through Police Authority or the Chief Law Officer<sup>14</sup> will decide whether or not to prosecute depending on the evidence available before them. Should in case the Police decides to prosecute, the suspect will be arraigned in the Law Court where he will be given the opportunity to defend himself (fair hearing). If the Prosecution succeeds in proving the guilt of the suspect beyond reasonable doubt, the offence depending on its nature and seriousness, may attract the punishment of Fine or imprisonment, or even a death sentence which amounts to a complete form of elimination from the Society<sup>15</sup>.

The basic aim of the Penal method is to curb deviant behaviours in the face of the increasing wave of different crimes in the country such as stealing, robbery, assassination, rape, advance fee fraud (419), bribery, electoral offences, drug pushing, human trafficking, e.t.c. This method has been useful to a large

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<sup>11</sup> Ben Nwabueze: *Military Rule & Social Justice in Nigeria* (1993) Spectrum Publishers, Ibadan @ p. 94; quote taken from *Abiola Sanni* supra @ pp 83-84

<sup>12</sup> *Abiola Sanni: An Introduction to Nigerian Legal Method* (2006) OAU, Ile-Ife Press @pp 84-85

<sup>13</sup> *Enforcing the Law* (1972) Penguin Books, Middlesex @ p.6; *Abiola Sanni* supra @ p.86

<sup>14</sup> See sections 174 and 211 of the 1999 Constitution of the Federal Republic of Nigeria (on the powers of the Attorney – General of the Federation and Attorney – General of a State respectively).

<sup>15</sup> *Abiola Sanni* supra @ pp 86-87

extent, but the society today has shown that it cannot totally eliminate crimes because of some hardened criminals. As a result of this, alternatives to the Penal Method have been provided as listed below:

- i. **Non Intervention** – because it is not possible for the society to criminalise every socially reprehensible conduct, this alternative of non-intervention has become useful. For instance, the decision whether or not to apply the Penal technique to immoral sexual relationships between two consenting adults as in instances of homosexuality, lesbianism or prostitution depends on the philosophy underlying each society’s criminal law<sup>16</sup>. Also, when members of the same household or other social group get involved in conducts which are regarded as lesser criminal offences/minor crimes, there may be justifiable reasons not to intervene.
- ii. **Warning or Caution** – there are categories of offenders who can be better dealt with by a simple warning instead of imposing the full punishment stipulated by Law on them. This is applicable to minors (in terms of age) or petty offenders – such as members of the Public who commit nuisance by making noise in a Court Room, thereby disturbing the Court Proceedings, instead of charging the person for the offence of contempt of Court. In this case, it is proper for the Sitting Judge to warn the person.
- iii. **Reciprocity and Self Help** – this is a situation of allowing any person offended to revenge on the basis of the mosaic law of *an eye for an eye, and a tooth for a tooth*. This approach is definitely not a healthy one and can cause a total breakdown of law and Order in a sane Society. At times, people suspected of stealing or robbing, killing are molested, lynched and burnt to death without due recourse to the Law. That is very wrong. Nobody is above the Law. Fair hearing must be given to any person suspected of committing any offence as provided by the 1999 Constitution of the Federal Republic of Nigeria<sup>17</sup>. Every effort must be made not to punish people until they are proved to be guilty under the Law.
- iv. **Compounding** – compounding an offence or crime simply means accepting or agreeing to accept consideration for not disclosing information that might assist in convicting or prosecuting someone who has committed an indictable offence<sup>18</sup>. Therefore, it is an arrangement whereby the victim of a crime undertakes or agrees not to press criminal charges against the wrongdoer upon satisfaction of certain conditions<sup>19</sup>.

There are some categories of offences whereby the offender and the victim may reach an agreement on how to amicably resolve the problem upon satisfaction of the agreed payment or appropriate remedies. For instance, the Relatives of a victim of a minor accident may not insist on the prosecution of the negligent driver upon the promise that he will pay adequate compensation to the victim(s) of the accident. Also, an employee who defrauds his employer may be summarily dismissed instead of being prosecuted. In this case, the dismissal of the employee is enough punishment, while the stoppage of his salary means additional saving money for his employer, and which the employer may in this case regard as adequate or enough compensation.

The basic Enactments are the Criminal Procedure Code (CPC) which is applicable in the Northern Nigeria, and the Criminal Procedure Act (CPA) for the Southern parts of Nigeria. Apart from these, we generally have the Nigeria Criminal Law. On the same footing, the Penal Code is applicable in the North. The North not being satisfied with the CPC also brought into existence the Sharia Law which specifies crimes and punishments as well.

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<sup>16</sup> *DPP v. Shaw* (1962) AC 220

<sup>17</sup> Section 36 (5)

<sup>18</sup> See *Oxford Dictionary of Law* (2006) 6<sup>th</sup> Edition, Oxford University Press @ p.111 – 112. Here, consideration does not include reasonable compensation for loss or injury caused by the offence.

<sup>19</sup> *Abiola Sanni* supra @ p. 90

**(b) The Grievance – Remedial Method**

Unlike the Penal method which involves Matters relating to Public Order or Criminal Law, this method/technique is mainly applicable to *Civil Matters*.

According to *Professor Summers*, this method defines remediable grievances, specifies remedies and provides for enforcement of Remedial Awards<sup>20</sup> in form of *damages* especially. It is applicable to law of Contract, Family Law, Commercial Law, Law of Torts, Property Law, Labour Law, Equity and Law of Trusts. The logic here is that if adequate Remedy is awarded to the aggrieved person/party, he/she is likely to be pacified and injustice would by implication have been discouraged. However, these involve going to the Law Court which is in position to award the proper and adequate Remedy.

**Alternatives to the Grievance – Remedial Method**

- i. **Penal Method** – it is definitely clear that some conducts can be both a crime and civil wrong e.g assault, false imprisonment, defamation. This means that an offender can be prosecuted and at the same time sued for damages. This is tantamount to one being sent to serve a jail term, and at the same time, paying compensation to the injured party<sup>21</sup>, especially in monetary terms. It therefore constitutes double punishment. However, the Rule in *Smith v. Selwyn*<sup>22</sup> says that if the wrongful act is a felony, no action in Tort can be brought against the defendant until he has been prosecuted for the felony, or a reasonable excuse has been shown for his not having been prosecuted<sup>23</sup>.
- ii. **Private Settlement** – the Law allows parties to a dispute to make private arrangement for settlement of such without necessarily having recourse to litigation in the Court or to Police Intervention. It is just for the parties to meet and agree on certain terms and ensure that the agreed terms and conditions are fulfilled at the appropriate time.
- iii. **Insurance** – Parties to a dispute can resort to handling their Matters with their respective Insurance companies under the cloak of an Insurance Cover, depending on the particular type taken by the parties.
- iv. **Arbitration** – this is known as an Alternative Dispute Resolution (ADR) method. It provides for a private scheme of settling disputes by Arbitrators who make Awards based on the submissions of the parties. Where there is an Arbitration Clause in any contract or Agreement, it is wrong for a party to go to Court first without first presenting the dispute for Arbitration. Where a party is dissatisfied with the Arbitration Award, he can then go to Court to have the Award set aside.

**Advantages of Arbitration over the Grievance – Remedial Technique<sup>24</sup>**

1. Disposition of disputes is usually faster using Arbitration. It takes days, instead of months or years as compared with going through the entire Court process to get remedies.
2. An Arbitrator who has considerable familiarity with the technical background of the dispute may be chosen. This will ensure the dispute is resolved on its merits to a large extent<sup>25</sup>.

<sup>20</sup> *Abiola Sanni* supra @ p. 92. Some of the Remedies available are General Damages, Special Damages, Exemplary Damages - these are defined in *NWAGBARA: Law of Torts in Nigeria* (2001) Tait Publishers, Lagos @ pp 184 – 187. Other Remedies are Restitution, Specific performance and Injunction. See *NWAGBARA : Determination of Contract of Employment & Remedies For Wrongful Dismissal* (2000) Tait Publishers, Lagos @ pp 101 - 102 for definition of specific performance and Injunction as remedies & the entire chapter 4 from p.95-103 on *Damages*.

<sup>21</sup> In my own view. Some people commit more serious crimes, but they only go to jail to serve out their terms of punishment or are surprisingly given an option of Fine. This is not fair.

<sup>22</sup> (1914) 3 KB 98; *Abiola Sanni* supra @ p. 93

<sup>23</sup> To an extent, I agree with this Rule because it is only when a crime has been established to have been committed by a suspect that we can begin to now ask him to pay damages to the injured or dead in his capacity as an offender. Felony can be murder, treason, e.t.c. which are serious offences. Whatever be the case, once a serious offence has been established, it does not matter if the offender is then asked to pay damages to the injured or dead party and also serve out a jail term or even end up in prison for life. Therefore, in my own view, whoever is guilty of felony can serve double punishment because serious offenders must be deterred by all means. To me, this Rule is not totally archaic as *Abiola Sanni* says in his book @ p. 94.

<sup>24</sup> *Abiola Sanni* supra @ p. 95

<sup>25</sup> In my view

3. The Procedure does not necessarily require the parties to bring Lawyers to represent them. This is also a cheaper alternative for the parties<sup>26</sup>.
4. There is secrecy and informality as compared to Court Trials which are often made public.
5. It brings about an amicable resolution of disputes, giving room for the parties to have a good and mutual relationship thereafter. This is definitely needed for a sane society.
6. Arbitrators are usually appointed by the parties<sup>27</sup> in accordance with the terms of the Arbitration Agreement or in default by a Court of Law.
7. Arbitrators are bound to apply the Law accurately, but may in general adopt whatever procedures they choose. They are not bound by the Exclusionary Rules<sup>28</sup> of Law of Evidence, but must conform to the Rules of Natural Justice<sup>29</sup>.

#### **(c) The Private Arranging Method**

This is a system whereby the Law provides a Framework of Rules which will determine the validity of private transactions, leaving it to the Individual to make an option of arranging his private affairs within that framework<sup>30</sup>. This is especially in the area of Civil Law such as marriage, Settlement of a Trust and making of a Will. In the case of a marriage, the decision to go through it with another person is entirely a personal one<sup>31</sup>. No one should be compelled to marry<sup>32</sup>. However, where one decides to marry, he or she must do so within the framework of Rules stipulated by Law. In Nigeria, a man and woman may decide to contract their marriage under the Marriage Act<sup>33</sup>, Customary Law or Islamic Law.

The following areas of Law which fall under the Private – Arranging Method/Technique<sup>34</sup>: Law of Contract, Family Law, Commercial Law, Property Law, Partnership Law, Company Law, Law of Trusts, e.t.c.

#### **(d) The Administrative – Regulatory Method**

Under this method, Government Agencies adopt Regulatory Standards, communicate them to Private Operators and then take steps to ensure compliance. The steps are usually in form of systems of licensing (the Private Operators must be licensed), Inspection, writing Warning letters, Revocation of licence before the initiation of Administrative Proceedings, Civil litigation or criminal prosecution when necessary as a last resort<sup>35</sup>. For example, a Manufacturer of any consumable item who is ready for business is expected to obtain the approval of the National Agency for Foods and Drug Administration<sup>36</sup> (NAFDAC) after meeting certain Standards before commencing commercial production. NAFDAC has become more determined in recent years in the performance of its statutory functions of safeguarding the health of Nigerians<sup>37</sup> by ensuring adequate inspection of manufactured goods and compliance thereof. Their activities have spurred other Regulatory Agencies like the Standards Organisation of Nigeria

<sup>26</sup> In my opinion. However, some parties do bring their Lawyers to represent them.

<sup>27</sup> *Oxford Dictionary of Law, 6<sup>th</sup> Edition* (2006) Oxford University Press @ p. 36

<sup>28</sup> *Oxford Dictionary of Law* supra @ p. 36. Exclusionary Rules of Evidence are Rules prohibiting the proof of certain Facts in particular ways.

<sup>29</sup> The truth is that evidentiary requirements may set an offender free at times. Natural justice is highly desirable because it more often than not ensures that justice is done.

<sup>30</sup> *Abiola Sanni* supra @ p. 96

<sup>31</sup> Though it is funny that till today, some Parents, Relatives and even Close Associates due to flimsy reasons still influence some adults over their choice of a marriage partner.

<sup>32</sup> Many adults are still being compelled to marry till date for the African culture and belief that if you do not marry in your life time, you are of no use to the society and will not be remembered for good. That, in my candid opinion is erroneous. Some people get married and live in sorrow, ending their marriages in divorce. Some give birth to children who turn out to be armed robbers, terrorists, kidnappers, assassins. Can parents of such people be proud? Rather, they have come to soil their images and those of their parents. For me, as already stated in this paper, marriage is a personal/choice thing.

<sup>33</sup> Cap M6 Laws of the Federation of Nigeria 2004

<sup>34</sup> *Abiola Sanni* supra @ p. 102

<sup>35</sup> *Abiola Sanni* @ p. 101

<sup>36</sup> NAFDAC Act No. 15 of 1993, Cap N1 Laws of The Federation of Nigeria 2004

<sup>37</sup> *Abiola Sanni* supra @ p. 102

(S.O.N), Department of Petroleum Resources (D.P.R), Nigerian Communications Commission (N.C.C) to be more hardworking and focused thereby ensuring quality delivery and customer satisfaction.

*The Administrative – Regulatory Method* is designed to regulate activities. *The Penal Method* is to prohibit and sanction anti-social/deviant forms of behaviour, while *the Grievance – Remedial Method* seeks to ensure that any consumer who suffers a health problem due to negligence of the Manufacturer obtains adequate compensation.

**NOTE** – The Administrative – Regulatory Method tries to ensure that consumable goods are manufactured under hygienic and safe conditions in the interest of public health, thus helping to prevent a breach of the Manufacturer’s duty of care to the final consumer<sup>38</sup>. This is how to apply the Administrative – Regulatory Technique by using NAFDAC as an example. This good result is obtained when a Company gets *licensed*, its activities are *inspected*, and *compliance* with the laid down Rules is ensured. Therefore, these three functions of *licensing*, *inspection* and *compliance* are key factors that must be carried out by any Administrative – Regulatory Agency that wants us to believe that they know what they are doing<sup>39</sup>.

**(e) The Conferral of Social Benefits Method**

The functions of Government have gone beyond just maintaining Law and Order and now extend in recent times to provision of social amenities. Such amenities include good roads, education, electricity, housing, quality healthcare services and of course, social security. Lack of these may lead to anarchy or social strife by citizens of the society.

In Nigeria, many programmes have been introduced with the aim of alleviating the sufferings of the average and less privileged Nigerians. Some of these programmes are as follows:

- i. The National Mass Literacy Programme
- ii. The National Primary Healthcare
- iii. The Urban Mass Transport System
- iv. The Nomadic Education Programme
- v. The Medium and Low Cost Housing Schemes
- vi. The National Directorate of Employment (conducts vocational trainings)
- vii. The Family Economic Advancement programme (FEAP)
- viii. Family Support Programmes – in different forms at the Ward, Community, Local Government, States and National levels
- ix. The Niger Delta Development Commission (in charge of constructing Roads, water boreholes, building schools and provision of other important amenities, especially in the Niger – Delta States
- x. The National Poverty Eradication Programme (NAPEP)- this accounts for the provision of the Keke Napep as a cheap means of transport in many States of Nigeria today
- xi. The Oil Minerals Producing Area Development Commission (OMPADEK)
- xii. The National Economic Empowerment Development Strategies (NEEDS), e.t.c.

This method therefore aims at ensuring improvement of the welfare of members of the society with the expectation that this will finally bring about Peace and Order.

**(f) The Constitutive Method**

This is an offshoot of the *Private – Arranging Method* in the sense that individuals do not necessarily have to form a Company. If they desire to do so, they must meet the legal requirements<sup>40</sup>. Through this method, the Law fosters social order by facilitating co-operative actions like the *pooling of efforts and resources* by a group of people or Entities to achieve certain desirable social ends such as promotion of commerce, charitable, social and cultural objectives. This is usually achieved by vesting such a group of people with a legal personality status distinct and separate from that of individual members. This principle of legal personality was laid down in the case of *Salomon v. Salomon*<sup>41</sup> where Salomon was a Leather Merchant and a Boot Manufacturer, and had carried on the business as a Sole Proprietor profitably for

<sup>38</sup> See *NWAGBARA : Law of Torts in Nigeria* (2001) Tait Publishers, Lagos – chapter 3 on Negligence, especially pp 53 - 54

<sup>39</sup> In my view, *control* as a factor can be added because on Inspection, if anything is done in excess that may lead to harm of consumers by the manufacturing company, the Regulatory Agency will put them in check, thereby controlling their activities

<sup>40</sup> *Abiola Sanni* supra @ p. 98

<sup>41</sup> (1897) AC 22

many years. In 1892, he formed a Public Company to take over the business. At that time, a minimum of seven persons were required to form a Public Company. Salomon, his wife and five children formed *Salomon & Co. Ltd*. Salomon then sold his old business to the new Company for £39,000. The purchase money was paid to Salomon as follows: £10,000 in form of secured debentures, £20,000 shares of £1 each while £9,000 was paid to him in cash. All the transactions were placed before the Board and approved by all Members. The only Shareholders were Salomon and members of his Family. Out of 2,007 shares issued, Salomon held 2,001 and was appointed the Managing Director of the Company. The Company soon ran into crisis and went into liquidation. The assets remaining amounted to £10,000 while the total liability was £17,000, (£10,000 of which was owed to Salomon). The question was – who should be paid first? Salomon, a secured creditor (in the sense that he was the Managing Director), or the unsecured creditors (i.e his family members)? If Salomon was paid first, there will be nothing left to satisfy the other Creditors. The liquidator representing the unsecured creditors (his family members) claimed that *Salomon & Co Ltd* was a *sham* or an *Agent* of Salomon; and that Salomon was the Company and could not owe himself. The Trial Judge upheld this argument which was also upheld at the Court of Appeal. On getting to the House of Lords, the HL unanimously reversed the two earlier decisions and held that *Salomon & Co. Ltd* was a different person, distinct and separate from Salomon. Salomon being a secured creditor, was therefore entitled to be paid first. *Lord Halsbury, L.C* stated emphatically that either the Company was a legal entity or it was not. If it was, the business belonged to it, and not to Mr. Salomon. If it was not, there was no person and nothing to be an Agent at all; and it is impossible to say at the same time that there is a Company, and there is not<sup>42</sup>. However, I disagree with this view because Mr. Salomon by accepting to become the Managing Director of the Company had by implication represented to Members of the Company that he had the necessary skills to perform the task of carrying on the business without it failing. Members of the Company ought to have been paid first<sup>43</sup>.

This principle of legal personality forms the bedrock of Company Law. Without this principle, it would have been difficult to have Multi-National Companies and even more private Companies springing up, as Investors will be unwilling to bear the risk of failure which such ventures might bring about.

This Constitutive Technique is also utilised for the formal Establishment of Bodies like religious, educational, socio – cultural and other Organisations that are constituted into Incorporated Trustees<sup>44</sup>. The Method is not only available to private individuals, but is also employed in the establishment of Corporate Bodies like Statutory Corporations, Universities and other Administrative – Regulatory Agencies (which all definitely get set up with the aim of achieving some specific benefits for the upliftment of Individuals and the Society).

Apart from creation of legal personality, the law now provides a legal framework for recognising certain collective interests or Groups which are not vested with the legal personality status – such as Partnerships, Labour Unions, Political Parties, Professional Bodies, e.t.c.

In this method, joint efforts of people coming together as a group to work and achieve a particular aim is emphasized. This definitely differs from one or two people trying to achieve an aim. That is why it is *constitutive* by nature.

#### **(g) The Fiscal Method**

The Fiscal Method/Technique, through *taxation* has been used to achieve economic goals such as redistribution of income and stimulation of economic growth. It is also being used in recent times to discourage certain anti – social behaviour like tax evasion, thereby helping to bring about some measure of Social Order. The Personal Income Tax for example, is a type of tax that has been used ostensibly to re-distribute income and reduce the widening gap between the rich and the less privileged in Nigeria. We also have the Company Income Tax that ensures that companies doing business in Nigeria and posting profits also pay their taxes promptly. We have the Federal Inland Revenue Service (F.I.R.S) as the Regulatory and Authorised Body in charge of collecting taxes at the Federal Level, and the State Inland

<sup>42</sup> (1897) AC 22 @ p. 31; Facts of the Case taken from *Abiola Sanni* supra @ pp 98 - 99

<sup>43</sup> *In my opinion*

<sup>44</sup> *Abiola Sanni* supra @ p. 100

Revenue Service/Commission charged with the same responsibility at the State level in all the States of Nigeria. The Customs and Excise Management Act<sup>45</sup> and other relevant Enactments also serve to further the philosophy underlying the Fiscal Method/Technique.

## **CONCLUSION**

The Law is unique both in Substance and Procedure. Its prescriptions are usually backed with sanction. It regulates most, if not all aspects of a society. The Law as an instrument of social control helps to maintain acceptable Standards, ensures peace and public order, suppresses (if not completely eliminate) deviant behaviour. It facilitates co-operative action, constitutes and regulates the principal organs of power (Government). It communicates and reinforces social values. An Administrative Regulatory Agency in Nigeria like the NAFDAC, have done a great job by putting a lot of counterfeit drug producers under check. The Nigerian Customs Service also ensures that fake products are not imported into the country by seizing fake goods on arrival at the Sea Ports. This is done in conjunction with the Nigeria Ports Authority. The Standards Organization of Nigeria and the Consumer Protection Council of Nigeria have tried in ensuring that standards of goods produced are of good quality, merchantable and safe for human use. The National Electricity Regulatory Commission also ensures that there is improvement in electricity supply now than in the past few years. The Central Bank of Nigeria is there to monitor and control the activities of banks, giving them guidelines for making loans available, The Corporate Affairs Commission ensures that every legitimate business being carried out must be registered with a known address. The Nigerian Communications Commission ensures that the various telephone service providers make their calling rates affordable with a reduction in call drops and network problems. These are just a few of the Regulatory Agencies that have helped shape the country by providing laid down Rules and Regulations for various activities being carried out by citizens and foreigners in Nigeria. Though, people breach those Rules at times to commit some crimes to make money quickly, these Regulatory Agencies have got machinery for Enforcement which have helped to reduce the breach of laid down rules and the crime rate drastically. They often monitor activities under their control and ensure compliance from time to time. The Nigeria Police Force has also been of great assistance to them in this regard. Due to the fact that there are many other Administrative – Regulatory Agencies carrying out other useful functions, one must acknowledge the fact that the Federal Government has done a great job in this regard. Every Nigerian State has also tried to achieve meaningful progress and move forward by having some States' Regulatory Agencies which ensure that the Law is effectively used as the best instrument of social control. The Nigerian Judiciary has done fairly well in terms of its contribution/improvements to the criminal justice system.

On the various methods of control, one may in extremely rare cases use only one method/technique to solve a problem or achieve a certain positive objective. Otherwise, a combination of two or more methods/techniques is best recommended to achieve desired objectives<sup>46</sup>, which in this case is *social justice!*.

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<sup>45</sup> Cap 45 Laws of the Federation of Nigeria 2004

<sup>46</sup> In my candid view.