

CUSTOMARY LAW FOR JUSTICE AND SOCIAL CONTROL IN IGBO SOCIETY

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ABSTRACT

*Any society that does not have laws or rules that guide the activities of its members will eventually turn to an anarchy society. Customary law is the rules and regulations approved and shared by a community. These rules are guide to peoples' conduct. Customary law existed before the introduction of modern law. Nowadays, it has continued to exist alongside modern law in most African societies, including the Igbo of Nigeria. Customary law, though unwritten, serves as a means of social control. For social control measures to be effective, they must be an embodiment of justice. Recently, customary rules are becoming non-functional in the Igbo society, leading to security problems and many other vices. The study investigates some Igbo customary rules and penalties for abominations *ìkpụ arụ*, oath taking *ịrụ iyi*, expressing innocence *isa aka*, and excommunication *mmapụ*; to ascertain their relevance in controlling vices in the Igbo society of old. The descriptive study used observation and oral interview for data collection. It was found that most of the customary rules were very effective for social control and justice in Igbo land, but they are no longer fashionable. Also, the study discovered that most people prefer modern laws which can somehow be influenced, and people now contravene customary law without any fear of justice. The study recommends that the Igbo people should value their customary rules and apply them in the right perspective for social control and justice to reign. This will go a long way in ensuring the security of lives and properties of the citizens, and fostering a closely knit Igbo society where people live together in peace.*

Keywords: Customary Law, Social Control, Justice, Igbo Society.

Introduction

Customary law is the unwritten rules and regulations of a society handed down from generation to generation. In the past, people revere these laws and abide by them. In those days, insecurity cases were rare, people went about their businesses without fear of being molested, kidnapped or killed. Any deviant behaviour was handled according to the dictates of customary law. Murder, kidnapping, arson among others were regarded as abomination. People avoided any act of abomination because of the penalties and consequences. Anyone suspected of having committed a serious crime or abomination was bound to take an oath in order to exonerate him or herself, and prove to the community that he/she was innocent of the allegation, otherwise the suspect would attract the wrath of the land. Through this means of oath taking as well as the application of customary law against offenders, Igbo people attained justice, security and peace.

Recently, the above scenario changed drastically. Some people do not care about the Igbo customary rules or the consequences of breaching them. They seem to live their lives without recourse to what the future holds. The social control measures are no longer seen to be viable, as dissidents take the laws into their hands without facing the consequences of their crimes. This has caused far reaching problems in the Igbo society, as there is insecurity cases almost on a daily basis and the culprits are either not apprehended or not brought to justice. It is on this premise that this study investigates the customary rules that helped in the past to control the excesses in the Igbo society; this is with a view to finding a lasting solution to the current security challenges and injustice bedevilling the Igbo society in particular and Nigeria at large.

Concept of Justice

Generally speaking, justice is the situation of fairness and equity in any occurrences or in sharing resources and in taking decisions. The words that can represent justice among the Igbo according to Nzomiwu (1999) are: *ikpenkwuṛọtọ* and *akankwuṛọtọ*. Nzomiwu was right except in the spelling which can be correctly written as: *ikpenkwumọtọ* and *akankwumọtọ*. Justice can also be referred to as *ikpeziriezi*. *Ikpenkwumọtọ* can be referred to as accurate judgement. *Akankwumọtọ* could mean honesty, openness, sincerity and truthfulness to the management of justice. It could also be referred to as straight-forwardness in establishing justice. *Ikpeziriezi* also refers to justice as a balanced and unbiased judgement. It was Oraegbunam (nd:56-57) who states that the idea of “straightness” in relation to justice can refer to an action or person. Certainly, when justice refers to action, it means that the action is not bent or misdirected. For example, in case of deprivation, one is assured of all legal rights, for instance, to life, liberty and pursuit of happiness. While justice referring to a person means that the one referred to is not biased, prejudiced, unfair, corrupt or unreliable rather he or she is of good morals, and steady and direct in character. For Nzomiwu (1999:35-37) *akankwuṛọtọ* refers to justice as a virtue of a particular action or person, while the latter *ikpenkwuṛọtọ* or *ikpeziriezi* refers to justice in judgment. Actually, Nzomiwu’s idea of *akankwuṛọtọ* is what he explains thus:

The notion of straightness which underlies the meaning of Igbo words for justice can refer to an action or person. When it refers to a person, it means that one’s life is straight that is, one is straight-forward, upright, honest, predictable and impartial. When it refers to an action, it means that the action is not crooked. It implies that the action is performed as it should be, that is in a disinterested manner and as such it followed a straight course.

From the preceding therefore, when justice is referred to a person it means that the person abides by the rules and regulations of the people. It means someone who lives according to the norms of the society, who actually keeps the custom and traditions of the people. Such a person can be justified in everything he does because he is reasonable, sensible, rational, realistic, a no-nonsense person, and such a person can be very useful to the society. When justice is referred to an action, it means that the action is in line with the traditional values of the people. It agrees and complies with the acceptable norms of the society. It is consistent with the custom and traditions of the people. Thus, any behaviour or action that does not conform to the custom and traditions of the people is not acceptable. If it is a verdict it will not be binding because it can create tension and bring problem upon the people who made it on one hand and on the entire system on the other hand. However, where it involves attitude, it

will violate the natural order and the culprit must face punishments and sanctions for social stability.

Actually, justice can be seen as the quality of one being honest and fair in everything he or she does. It is the tenets of moral uprightness, complying with moral uprightness in action and attitude, submitting to truth and sound reasoning. Mifflin (2011) notes, "Justice is the upholding of what is just, especially fair treatment and due reward". That is to say that justice is to support and sustain what is right and morally acceptable for the benefit of all. Collins (2014: 2) refers to justice as,

- a. the principle of fairness that like cases should be treated alike,
- b. a particular distribution of benefits and burdens fairly in accordance with a particular conception of what are to count as like cases,
- c. the principle that punishment should be proportionate to the offence.

Justice is that, people should be dealt with in the same manner. That is to say that when two or more persons commit the same offence, there should be no preferential treatment. Rather, equal treatment should be given to them; that is when one can say that justice has been administered. The terms of reference must be from the mutual agreement of everyone concerned and decision is based on consensus (Isidienu, 2020:61). What Isidienu (2020) meant by 'mutual agreement of everyone concerned' is that the entire community or group must agree on what is do's and don't's in the community or group, and the rewards and punishments attached to them.

Justice must as well reflect the social, economic, political, religious and moral values of the people. Justice also ensures that when certain things such as food, money, work, benefits, assistance, responsibility, and blame are to be shared among the Igbo, the sharing is done impartially according to the laid down rules. Okodo (2009:153) vividly captures this aspect of Igbo justice when he states:

The just behaviour of the Igbo [...] justly [takes] care of rights, privileges and obligations of all Igbo people in such a manner that nobody will step on another's toes. This situation will not provide any need for grudges, complains, or, at extreme, disputes for settlements at gatherings or courts of law.

For justice to be acceptable, therefore, treatment of every individual in the society must be reasonable and ethically correct. Each culture or society has principles of right and wrong behaviour guiding its members; and these principles are ethically correct, and therefore, bind the society on the path of justice. In view of this, Ogugua (2003:14) affirms, "Justice is a virtue, which is giving everyone his due. Justice is the ligament that holds the hob of the society; without it, society will decay and turn dead". It is justice that binds the society together. A society that lacks justice but takes decision based on who is involved is near anarchy and will eventually disintegrate. No wonder Wiley (2010: page) avers, "Justice is the proper ordering of people and things. All races and religions include justice in their law and codes of conduct. It is, in fact, the glue that holds societies together". Therefore, when there is justice, people get what is right, fair and appropriate and the society, in turn, gets stronger.

Collier (1972:299) cites Aristotle as stating that justice is treating equals equally and unequal unequally but in proportion to their relevant differences. He points out that this involves first, the idea of impartiality, the honest judge, since justice is no respecter of persons, wealth or states. To be impartial entails doing nothing to profit oneself at the expense of another. It means doing to others as you would like them do to you. Some philosophers also believe that a just man is one who possesses integrity, who lives according to the consistent principles, and is not to be diverted from them by consideration of gain, desire, or passion. Oraegbunam (n.d:56) elaborates on the concept of justice when he avers that justice means many things and sometimes different things to many scholars, leading to a -myriad of theories of justice:

For the positivists, justice is seen as conformity to the law. For the social right theorists, justice is seen as doing what promotes the social good. But for the natural law theorists, justice is tied to the idea of natural rights where rights are regarded as the ultimate basis of justice.

The above assertion is a clear indication that different scholars have varied opinions as regard the meaning of justice, depending on their conviction or school of thought. For Guanah (2008:7), "Justice is the accurate justification of a matter; rightly to declare one free from penalty or otherwise. It is fairness, just conduct, exercise of authority in the maintenance of what is right". Rawls (1981) supports this view, and simply states that justice is "Fairness". When people are not fair in their dealings with one another, it amounts to injustice. Injustice can create a very serious imbalance in the society. Corroborating this view with reference to the Igbo society, Okodo (2009:164) claims that it is because of the "refusal of people to enthrone traditional justice within the Igbo land [that] various problems arise. These problems include vices of different kinds like stealing, murder, telling lies, slavery, segregation, destruction of crops, refusal to pay debts etc." When unjust behaviour thrives in the society, the onus lies on the justice system to bridge the gap for the interest of peace. This is what we advocate for the Igbo society.

Concept of Social Control

Social control is very important in the society. Justice cannot be observed in a vacuum, it is carried out among people that live in a particular community. Every community has its own culture from where the traditions, custom, rules, regulations, norms, ethics, among others, manifest for a peaceful co-existence of the members of the community. The custom and traditions of the people spell out how the people of a particular community should behave. When such behaviours become a pattern of life and is acceptable by members of the community, it becomes their way of life. The way of life of a people generates into rules and regulations and anybody that contravenes any of the rules and regulations receives adequate punishment. This applies in a society with social control. In view of this, Taboola (nd) states that social control is a "Means by which individuals are induced or compelled to conform to the usages and life values of the group." Social control is, therefore, a method through which a society sustains communal order and unity, to make for a harmonious living (Isidienu, 2021). Obviously, societal rules reflect the values and the aspirations of the people. Therefore, these rules become binding on all; no matter the status, age or any other achievement attained in the society.

From the forgoing, we infer that justice is obtained and observed within a community that has the same cultural background. Culture is the fundamental element or the basis for justice. When justice is neglected or denied, the society will lack peace. Every decent society in the world makes effort to protect her citizenry from harm. They do this through the establishment of social control measures, by creating and enforcing laws, regulations, and norms. This is true of the traditional African society where, according to Obiefuna and Izuegbu (2016:151), "prior to the coming of the white man, the people had good sense of peaceful co-existence which could only be possible through the principles and practices of justice. The society [had] men of integrity [who] were ready to condemn evil to see that good was done and evil avoided." Each society starts from home to get their children to keep to the norms of the society. Kumar (n.d.:1) asserts that the family is

The first place where an individual is socialized. He learns various methods of living, behaviour patterns, convention etc, from the family. He is taught to behave and respect social laws and obey social control. He learns customs, folkways, traditions and modes from the family. Family influences the individual directly through suggestions, persuasions, praise, blame, ridicule, criticism etc. Through these mechanisms the family forces the individual to conform to the custom, folkways and modes of the group.

When an individual fails to conform to the family norms, he or she faces the consequences. The family norms reflect the societal ones and must be followed judiciously. Conformity to these norms approves one's actions. Non conformity attracts punishment which is justified by the people. In the society generally, one must abide by the social control measures, otherwise, one suffers the outcome. Justice demands that when an individual fails to conform to the acceptable modes of behaviour, he will be tried according to the customs, rules and regulations guiding the members of the society. The Igbo society was very good at appropriate use of Igbo customary rule.

Customary Law

Generally speaking, customary law is as ancient as man. Before the introduction of the modern law court, people have a way of ruling themselves. Customary law has been in place before disputes are recorded, and settlement done in the court of law. The rules in each community control the behaviours of its members. The duty to act in a positive way in a particular society became a customary law. Deviation from these laws results to sanctions. While explaining customary law and its preservation, Kottak (2008:209) avers, "States have laws, enforced legal codes based on precedent and legislative proclamations. Without writing, laws may be preserved in oral tradition, with justice, with elders and other specialists responsible for remembering them". Among the Igbo, oral tradition is a powerful tool for the preservation and transmission of Igbo customary law, and it has stored words of wisdom and justice and has continued to regulate the conduct of individuals and groups in relation with each other.

Customary law carries a moral force behind it and becomes an obligation for every member of the community to abide by it. Customary law is not static. It changes with the society. The changes go along with the needs and aspirations of the people, although such changes must take cognisance of the previous rules. In the olden days, Igbo people were much more inclined

to conformity to customary laws because of their higher emotional and psychological attachments to these customary laws. Certainly, Igbo customary laws at the present time are more acknowledged in the rural areas than in the cities. In the ancient Igbo, anyone that commits a grievous offence such as murder is seriously dealt with; recently, a murderer can be set free in a modern law court depending on the strength and knowledge of the lawyer that is handling the case. Oraegbunam (2010: 22) decries this ugly scenario that undermines the Igbo customary law and justice system when he says :

One of the greatest challenges to traditional Igbo criminal justice administration is constituted by some principles of Nigeria legal system. This is expected as much of Nigerian legal and judicial structures today are a British legacy as a result of the colonial enterprise. The result is that most of the values of the traditional systems received a knock on the head and in some cases outright abolition by a setup that failed to undertake a disinterested cultural study of the traditional practices including the legal and judicial systems. No doubt, this colonial antipathy to traditional patterns spelt doom for the development of the justice system.

Obviously, the introduction of modern laws has relegated to the background the customary law; which is an unwritten law that is approved by the people. Okodo (2009: 151), speaking about the Igbo people of Nigeria, avers that "Their culture is their unwritten laws which are called *omenala* in Igbo. There are various dos and don'ts which guide the people in leading their lives." He notes that dos are virtues which are approved by everybody in the community while the don'ts are vices that earn punishment of different sorts. Apart from the fact that customary rules among the Igbo ensure justice for all and sundry and serve as a means of social control, they stipulate ways of finding out whether one is guilty or not, and specify punishments for the guilty. Some of the customary rules' penalties found among the Igbo are discussed in the following section.

Customary Rules' Penalties for Abomination (*áru*) among the Igbo

Abomination is a disgusting vice, which has social, economic, political and religious implications. Amadi (2005:15) asserts that "an abomination is an offence against a deity, who is expected to deal with the offender unless certain rites are performed and fines paid". When a person fails to perform such rites or pay the stipulated fines, the person will attract additional punishment to himself or herself. Life is better when we live together and interact with each other amicably, for this reason; people try their best to avoid any abominable act. Amadi (2005:109) emphasizes on this idea when he declares,

Man, being a social animal, thrives best in the type of social setting that exists. Extreme individualism only generates despair and antisocial behaviour instanced by the senseless murders we read of in Western countries, where a man may shoot people for fun or publicity. Such a psychopath represents man at the lowest possible level of existence, no matter the material comforts he may surround himself with.

God created man to live together in his environment. He is expected to exhibit a kind of behaviour that will enable others to live harmoniously with him. For this reason, certain

attitudes and behaviours are not acceptable in the society. If such attitudes, which constitute crimes, are left unchecked, social relations would be jeopardized. Elaborating on societal crimes, Amadi (2005:15) says,

Improper behaviour is said to constitute a crime when the acts of one man infringe the rights of another and cause him serious inconvenience, injury or death. Example of such acts is murder, theft and arson. Since crimes of this kind cannot be tolerated by any society, laws are framed to proscribe them, and offenders are punished appropriately.

When someone violates laws, one has to endure before the society the pains or dishonour in the punishments associated to the offence. Chidili (2012:108) claims that in an Igbo community where everybody knows everybody else and where everybody must cooperate with everybody else at certain activities, people obviously depend on one another's approval or disapproval in any definite project. Thus, a collective pressure of approval or disapproval of people can enforce a positive character. Such collective pressure which may be expressed through ridicule, ban on speaking in a gathering, ostracism, or intimidation is very hard to bear. Mbiti (1981:180) aligns with this view when he says, "In some cases they [offenders] are ostracized or kept out of the social circles of their friends and relatives" The effect is shame and as Kottak (2009:213) clearly states, "Shame can be a powerful social sanction." In that case then, people do whatever it takes to comply with the laws of the land. Life is usually very difficult for an ostracized member of the Igbo community. The person can change his attitude and reconcile with the members of the community when life turns out to be hard, shameful and isolated due to the punishment.

Igbo people naturally perform a lot of good and profitable work to sustain themselves and their economy. It is expected that one should be satisfied with whatever one has. Even if the person is experiencing a rise and fall in his economic activities, Igbo people believe that *ebe onye dara ka chi ya kwaturu ya*. Meaning literally that, where somebody falls is where his/her *Chi* (god) pushed him/her down. For this reason, one should not steal or destroy other people's riches or constitute any form of nuisance to be self fulfilled. In order to put in check the state of discontentment, there are rules against stealing, theft, suicide and many other vices.

The Igbo society established certain taboos to control the social, political and economic life of people. In view of this, Ilogu (1985:27) affirms that "Most taboos are means of social control." For instance, a crime of betraying one's own land will normally attract a heinous punishment and such other crime as murder is punishable by death.

Oath Taking (*ĩm̀́íyĩ*)

Oath is a pledge, a vow and an affirmation of the truth of a statement. Shorter (1978:117), referring to African societies, points out: "They usually called God or the spirits to witness a declaration or promise, and the oath was taken in the presence of symbols related to the supreme values of the society". When a crime is committed in the society and the culprit is not known; the people being suspected in the society will be summoned to take an oath. The application of oath serves as a means of check in the society; when one is aware that one will be caught through oath for actions committed in secret, one will refrain from crime and other

evil practices. In other instances, if there is a dispute between two people over a property, one of them may be required to take an oath affirming with confidence that the property belongs to one. According to Nzomiwu (1999:102), "Igbo take an oath to testify to the truth of their action. An oath for the Igbo calls upon the ancestors to witness and confirm the truth of their words or deeds". Among the Igbo, oath taking is the last resort used in the enforcement of justice, as it often leads to the death of the liar or offender.

Warning (Ógù)

Generally, among the Igbo *ìmanyè ugu* is another means of social control. In the past there were no law courts or police stations where people could report their cases. Therefore, when two people are having issues or if one feels that the other is disturbing him, he can send a warning to the person. Ogbalu (1981:104) states that "*isi ugu bụ ka onye ahụ mara onwe ya, sepụ onye wetaara ya ugu aka n'ahụ*" meaning that, ugu symbolises a call for harmony from the person who sent it. However, the person might send his own *ugu* in response. The *ugu* is sent through the person's closest friend or through the head of their family. The mediator can as well interpret the *ugu*, and then make arrangement for reconciliation.

As a matter of fact, it is assumed that the sender of *ugu* is innocent, that his hands are clean. It is in this way that *ugu* perfects the effect of *ọfọ*. It means that one cannot hold *ugu* without *ọfọ*. Igbo people say *ome ihe jide ọfọ*- if one is sending *ugu*, one will make sure that one is innocent and that he is on the path of justice. Ogugua and Ogugua (2013:203) in line with this thought state that "*Ogu is the complement of ọfọ*." Also stating on what ugu is recognised with, they cite Nzeako (1975) that "*ọmụ nkwu ka e ji ama ugu*," meaning that "*ugu is made with knotted palm frond*." A person who wants to send a warning to another person will get a tender palm frond; knot it at the tip or at the middle. In some places too, *ogilisi* is used to send *ugu*. The bottom line here is that the aggrieved person is sending a warning to his opponent through a middle person to desist from his evil acts against him. In the event of a dispute, *ugu's* business is to accuse the culprit and charge him for falling short of the expectations of *ọfọ* (Uwalaka, 1996:5).

It is not a pleasant thing for one to receive an *ugu*, because the entire community will see the one as an enemy of progress. As a social control measure, it is assumed that people will try as much as possible to avoid anything that will lead to *ìmanyè ha ugu* by any member of the community. The situation is a shameful one; everybody will watch to know how the offender will react to the issue; either he changes his attitude or sends his own *ugu* in return. On this note, Ogugua and Ogugua (2013:204) state that "*ugu is a body of social principles and rules for co-existence and harmonious relationship in the society based on the basis of righteousness. It is a moral power base, a bulwark of strength*." The warning creates an avenue for a harmonious living. If, however, the person whom the *ugu* was sent to sends back his own *ugu* in reply, he is proving to the people that he is innocent. Igbo people say *onye elu ji ọfọ, onye ala ji ọfọ, sọ ọfọ ma onye ji ya*, meaning literally that everyone claims to hold *ọfọ*, but only *ọfọ* knows who is holding it. In a case where the parties involved are claiming to be innocent, the only way of establishing the truth is reconciliation by fair hearing.

Carrying emblems of idol (*ĩtũ-ĩyi*)

In some Igbo communities, there are people that are perpetuating evil activities so hidden that, in most cases, the community will be in a state of confusion. When evil thrives, the community, group or individual who is the victim of the evil activity might bring a shrine or oracle against the unidentified culprit. According to Ogbalu (2006: 73),

It is the custom of dragging along or carrying emblems of idols about the town in public against people who secretly committed public offences (mostly stealing, kidnapping or ruining crops) and asking the gods and idols to deal with them. (*ĩtũ iyi ka o gbuo ndi mere ihe ojoo na nzuzo*). It is believed that the idols may kill or punish them in any way they like.

As a social control measure, when people are aware that secret evils could be detected by any means, most people will try to live in a more acceptable manner in the society.

Expressing innocence (*ĩsa aka*)

Generally, *ĩsa aka* is a means by which one states that one is innocent of an accusation. In most cases, because of hatred or envy, some people conspire against others in order to intimidate, punish or disgrace them. The accused would normally put his/her hands together, show them to the people and also to the sky, shouting *aka m di kwaa ocha*- my hands are clean, *a na-akpoko kwa m na nkiti*- they are accusing me in vain, *o di ghikwa ihe m mere*- I did not do anything. In some cases the accused might be asked to take an oath, especially when all other means of finding out the truth failed. According to Ekwealor (1989:97),

O buru na e zuuru ihe mmadu n'ohi, o buru na o nwee ndi o na- enyo enyo, ha nwere ike nuoro ya iyi iji zoro onwe ha. Onye a na- enyo enyo di ka onye na-enye nsi nwere ike nuoro iyi iji kowaa n'aka ya di ocha.

The above means that when someone's items are stolen, he may decide to administer oath to the suspects for them to prove their innocence. One accused of poisoning people can also take an oath in order to tell the community that he or she is innocent.

Isa aka could be seen as a means of social control. If the accused is found not to be guilty, people will learn to be careful in laying accusations. On the other hand the accuser will be punished according to the customary law of the people. For instance if a person accused someone in a village meeting, he or she must come before the village meeting with kola nut, palm wine, etc, to say that he or she has retreated from what he or she said earlier; an apology will be tendered to the accused. People will always use the case as a reference point; and because of the shame involved, everyone will try to avoid false accusations. This portrays Igbo expression referring to such person as "*nkiti*; *o gbuputa o rachaa*, meaning literally a dog who licks its vomit.

Classification of Offences in Igbo land

Data from the field work indicate that offences in Igbo community can be grouped into abominable behaviours, behaviours that lead to oath taking and behaviours that lead to

excommunication. Each of the offences can also lead to *isa aka* and *itu iyi*. These offences are discussed below.

Offences regarded as abomination

Below are the behaviours that are regarded as an abomination in the Igbo society. Suicide (taking one's life, especially by hanging), abortion, murder, stealing, kidnapping, yam theft, selling of another person's land or moving boundary stones, arson, exposing the community secret, unmasking or desecration of masquerade, destroying of a deity, poisoning people, secret planting of charm in people's home, rape, incest, paedophilic tendencies, beating one's parents, and human trafficking.

Problems that can lead to Oath taking

False accusation, allegations and suspicion, when the accused or suspected person denies an accusation levelled against him or her, making agreement, covenant *igba ndu*, family conflict, land dispute, unresolved dispute, denial of rightful ownership of properties, enmity in leadership, fear and distrust in the community, secret alliance with another community to undo one's community, claiming of items, threat to life, inquiry on causes of death, incessant deaths of influential members of the community under mysterious circumstances, unsatisfied judgement delivered in a resolution of conflict (unfair judgement), lack of trust, false witness and missing items

Offences that can lead to Excommunication

Manslaughter, kidnapping, rape, theft/robbery, witchcraft, exposing community secret to neighbouring communities, genocide, disagreeing with community laws and regulations (opposition), sabotage, refusal to participate in development project or refusal to accept or implement judgement by duly constituted authority, setting someone's house ablaze (arson), incest, insubordination, failing to abide by community by-laws, refusal to pay penalty if found guilty of an offence, violating certain sacred rules, committing a particular crime and being punished at least three times for that crime.

Findings on Customary Law and its Application

Customary law is administered through fair hearing and consensus. Cases are directed to the family members, elders, age grades or Igwe's cabinet, to judge and determine the appropriate punishment. For instance, if a family member sues his or her fellow family member to a shrine, their family members will ask the aggrieved person to withdraw the case; if he refuses he will be excommunicated, that is none of the family members will associate with him or her in joy or in pain. In some cases the person may be approached and made to pay certain fine which may include other punishments, but if the person proves tough, he or she will be excommunicated. When any or combination of the offences listed above is committed especially those that lead to excommunication, once a person is excommunicated, everyone in the community complies. Any person that flouts the law by communicating with the offender takes the risk of being excommunicated. In some cases, the charges are taken up by the elders, imposing and serving notice of penalties on the offender as agreed by the community. It is also to be noted that the above offences can also lead to *itu iyi*, *iru iyi*, *imanye ugu* and *isa aka* as the case may be.

In the olden days any person that commits murder must pay with his head, referring to Igbo expression which says that *isi na isi so ala*. In case of manslaughter, the person must run away from the community. The community can excommunicate such person for about seven years after which they will ask him or her to perform certain rites before he or she will be allowed to return and reunite with the members of the community. In case of a very serious violation such as arson, witchcraft and sabotaging the community, the offender is publicly humiliated by making him or her dance naked at the market place. After that, the person can also be excommunicated. Once an offence is termed abomination, every Igbo tries to avoid it. This, therefore, helps in reducing the incidence of serious crimes in the Igbo society. People cannot proceed on any act that will not benefit them, and so disapprove any offence that can lead to excommunication. There is no hidden place for evil people in the Igbo society of old ; social control measures were an advantage to the people. Recently, cases of murder and other serious crimes are sent to the law court or other government agencies for prosecution, which sometimes lead to imprisonment, or the accuser walks away free.

Oath is administered to clear doubtful minds, in order to prove that one is innocent. Once oath is taken everyone concerned goes with satisfaction. Among the Igbo oath administration proves that justice has taken place. A time limit will be given to the person who took an oath. If the person dies or develops strange illness during the period, it shows that the person is guilty. However, if nothing happens to the person who took an oath, it means that the person is innocent. Oath taking as one of the customary rules ensures justice and mutual relationship. It was observed that, oath taking is now being relegated to the background; many people prefer to prove their innocence in the law court. People were of the opinion that refusal to take oath could be part of the reason why ills are trending much in the society.

Oath taking can also be used when it becomes difficult to find out the truth. In such case, the traditional institutions such as the family, kindred, and heads of villages and elders of the town will intervene by administering oath; if someone fails to comply, he or she will be ostracised. Most acts are discovered through oath; the outcome of oath can discourage people from misbehaving. It is obvious that most people would avoid any offence that can be exposed through oath administration. The justified punishment placed on the offender can discourage people from deviant behaviour. When there is justice in the way issues are handled, people become law abiding.

It was observed that some people regard the customary rules as obsolete; they rather prefer modern laws where they can have influence over others. People felt that modern law has taken over most of the cases handled by the traditional institution thereby relegating the customary laws of the people to the background. For instance, penalties for abominable acts, oath taking *ịrụ iyi*, excommunication *mmapu* among others are declining in recent times and because of it some people act with impunity, despite the laws of the land. Generally speaking, the rate of insecurity in the society can be traced to the neglect of the customary laws.

Suggestions

Since customary laws include justice, equality, and offer the basis for dialogue between people, African societies especially Igbo people should uphold the rich virtues found in their customary laws.

Customary laws resolve differences to re-establish mutual understanding, government should therefore, incorporate the peoples' customary laws in the constitution bearing in mind, as Igbo people will rightly say, that *nkụ dị na mba na-eghere mba nri*, meaning that, people use what is in their locality to provide for their needs. Modern law is alien to Africans, especially to the Igbo. When customary laws are part of what guide peoples' activities, peace and tranquillity will surely take place.

A total and direct use of customary laws to all issues relating to safeguarding and preserving human rights will ensure security of lives and property. Customary laws should be recognized within the traditional Igbo society and other African societies where they are perceived as binding on all the members of the community.

Communities should promote understanding and reverence for customary rules and practices and conform to such rules and practices as far as the rules are reasonable.

Conclusion

The ills found in the Igbo society in recent times are alarming. Igbo customary laws have all it takes to control bad behaviours in the society; through the penalties for abominable acts, oath taking, and excommunication, among others. Customary laws are very important in controlling behaviours in the society; as they are a sure way of ensuring that justice prevails among people that live together. However, the influence of modern law and foreign culture has relegated the peoples' customary laws to the background. Preservation of life and property in the Igbo society can be assured if the rules guiding the activities of the citizenry would be allowed to thrive.

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