



## TYPES OF LAW IN NIGERIA AND THEIR RELEVANCE TO NIGERIAN EDUCATION: REVIEW

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### **ABSTRACT**

*Laws are like pillars which hold every system from collapsing. Everything artificial and in nature is kept by operational laws which may be either noticeable or unnoticeable. Without governing laws in the human system, the society would have been uncondusive for our dwelling. Laws are rules and regulations guiding our activities which rewards or punishes the submissive or the offender respectively. Every nation in the world has its laws which are enshrined in the country's constitution. In Nigeria for example, many laws have been established since the history of the country. Theses among others include constitution law, administrative law, criminal law, labour law, health law, environmental law, media law and education law. Others are company and property law, revenue and land-use act/law. Each of these laws are directly or indirectly applicable in the educational system of Nigeria. In this paper, a review of how the laws are adopted in the educational sector of Nigeria was addressed. The types of laws, as being discussed, undoubtably have either direct or indirect relevance to the development of Nigerian educational system. The combination of all the types or classes of laws have been helping in the regulation and smooth running of all the educational institutions at all level. All stakeholders in education need to be aware of the legal issues facing them, because many of such issues that have been decided in an educational context have far reaching effects in the running of schools. The school administrators, teachers and learners as well as other inhabitants of the school community need good health, sanitized physical environment to operate, secured atmosphere to live, read, write, publish, and other benefits provided by these laws which geared towards sustainable educational development.*

**KEY-WORDS:** *Laws, education, organizational system, teacher-student, constitution, security, Nigeria*

## INTRODUCTION

The relevance of law in the effective management and operation of any organization or system cannot be overlooked. The guiding principles of any system, its organized procedures, the rights, duties and obligations of the stakeholders are the essential components of the law. And these will ensure the realization of the objectives of such system. Education as a system is not an exception because the dictating laws that will ensure the proper and effective management and operation of educational system is paramount to the realization of education objectives. The importance of education in the national and individual development cannot be over-emphasized. Education is a tool for political, social, economic and technological development of any known nation. Education is the blueprint or foundation upon which all other developmental facets are placed or sealed. This is the core reason, Nigeria adopted education as an instrument par excellence for the enhancement of national development (NPE, 2004). According to Wikipedia, education is “an act or process of developing and cultivating one’s physical, mental or moral activities or sense; the expansion, strengthening and discipline of one’s mind and faculty; the forming of principles and characteristics in order to prepare for any calling or business, by systematic instruction”.

Hence education has to do with a balance development of cognitive, affective and psychomotor domains to prepare an individual for the future challenges. And for these aspects of teaching and learning to be fully actualized, there must be law and order in place.

There are many types of law including **constitution law, administrative law, criminal law, labour law, health law, environmental law, media law and education law**. Others are **company and property law, revenue and land-use act/law**. These types of laws are classified under four classes of law namely; public and private, civil and criminal, substantive and procedural, and common and statutory laws. Prior to discussing the relevance of these laws to education, this paper will briefly treat these laws under their classified categories.

### PUBLIC AND PRIVATE LAW

**Public law** is an aspect of law that is primarily and directly concerned with government and citizens. It regulates the relationship between the organs of government, between one state and another, and governs the relations of citizens with the state. Public law embodies constitutional law, administrative law, health law, and so on. In fact, even the civil and criminal laws have been classified under public law in view of their operation and applicability.

**Private law** is that which deals primarily with the relationships between private persons, organizations or legal entities. It includes the law of property, the law of contract, the law of torts (civil wrongs) and family law, etc.

### CIVIL AND CRIMINAL LAW

**Civil law** is also a sub-division of constitutional law which spells out the rights and duties that exist between individuals, the violation of which constitutes a wrong against the injured person. It is of important to note here

that most of the education law cases fall within the civil law category. Contrary to civil law, **criminal law** is that body of state or federal laws that defines offences against the public and provides punishments for their commission. Civil law has been identified as part of private law, while criminal law as part of public law (Smith,1984). Criminal law is derived from crime which could be defined as an act of omission prescribed by the state and bears punishment for its occurrence in the interest and protection of the public and properties.

Other classes of law are **Substantive** and **Procedural Law**. Substantive law means the real law or law in the strict sense. It is concerned with the recognition of the substance rights, duties, privileges and immunities under the various types of law. Procedural law, also referred to as adjectival law (i.e., subsidiary law), is law supporting the substantive law by specifying the formal steps or machinery to be followed in enforcing rights, duties or immunities in the settlement of disputes in such a way as to do justice to both parties. A concise illustration of the difference between substantive law and procedural law in the educational system could be given by me as followings:

*A student sat for a final year second semester examination and failed. In this case, it is a question of substantive law as to whether he/she will be asked to withdraw from the school without graduation (because he/she was healthy while writing the exam) or will be asked to repeat (because he/she was sick mentally, psychologically or physically while writing the exam). The law governing body of the school, Example the university senate decides:*

- (1) the method by which his/her case will be judged;
- (2) the evidence which should be admissible at this trial; and
- (3) the way such evidence should be presented before the school governing authority.

Unfortunately, the above illustration is mainly functional in the developed countries. However, this is one way in which Substantive and Procedural Laws could related to educational system. Another relationship between education and these very laws could be because they are concerned with either the recognition of the substance rights or specify the formal steps to be followed in enforcing the rights of people within any educational sectors (whether primary, secondary or tertiary).

Other classified laws are common and statutory law. These are not only used to maintain peace and order but also form the foundation for the development of other type of laws which in relation to their relevance in education will be discussed in the next paragraphs.

## **THE LAWS AND THEIR RELEVANCE TO EDUCATION**

### **Constitution law**

Constitutional law refers to the body of fundamental rules and regulations which prescribed the structure and functions of the organs of the federal, state and local governments. It is the legal document from which every institution in the country gets its validity. Everything is in one way or the other linked to the constitution. For

example, any organization such as educational institution whether public or private is linked to the constitution. For the company/institution to be valid, it must be covered by certificate of incorporation from the Corporate Affairs Commission (CAC). The CAC as a body was created via the Companies and Allied Matters Act (CAMA). The CAMA was a law created by the National Assembly, the National Assembly was given the power to create laws on companies and educational organizations by Item 62 of the Exclusive Legislative List the 1999 Constitution. So, the constitution is important because every activity, establishments, every law including the education law itself are linked to it. The constitutional law has enormous functions because:

*It contains and provides all the fundamental rights of every Nigerian citizens. These include: right to life, right to dignity, right to personal liberty, right to fair hearing, right to privacy, right to freedom of thought, conscience and religion, right to freedom of expression, right to freedom of assembly, right to freedom of movement within Nigeria, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria.*

Here, it could be deduced that constitutional law forms the basis for every other types of law. And its relevance in the Nigeria educational system has been defined. In addition, the establishment and operation of any school are hinged to constitutional law. Every university community (academic and non-academic staff, students, and other workers) might not function securely and effectively without the constitutional law dictating the activities of individuals. For instance, the Nigerian Education Law was derived from the constitution of Federal Republic of Nigeria especially the fundamental human rights as it is relevant to educational system (Oyedeji, 2012).

**Administrative law** is a branch of constitutional law primarily concerned with the reconciliation of efficient administration with individual's freedom, rights and interests. It determines the organization, powers and duties of administrative agencies and the limits of delegated legislations. Thus, administrative law involves principles that govern the procedures and activities of government, boards and commissions including the college/university senate. The administrative law enables the educational institutions at various levels to pilot effectively the affairs of the established schools based on the stipulated mandates. From the administrative law, the school senate formulates rules that are used to either reward good deeds or punish undesirable conducts.

### **Criminal Law**

Criminal law is derived from crime which could be defined as an act of omission prescribed by the state and bears punishment for its occurrence in the interest and protection of the public and properties. Criminal law is a type of that stipulates a set of rules, prescribes offences and provides the punishment thereof. This law can be defined as a codified set of rules that control and regulate certain acts which are criminal in the society. It is also defined as an aspect of law that classifies certain kinds of behaviors as offences to the state. Criminal law can also be termed as

the branch of law that concerns the citizenry more than any other branch of law. It controls the aspects of human behavior that concerns relation between the citizen, his neighbor and the state.

A crime can be defined as an anti-social behavior that falls within the general disapproval of the state or the society. It can also be understood as an act or omission which is considered grievous by the society to warrant being punishable by the laid down set of rules. A crime can also be understood as a breach of rules that leads to the accusatorial procedure controlled by the state and is liable to punishment.

The relevance of criminal law in Nigerian educational system can never be over-estimated. For example, it:

(i.) helps in the preservation of life within the educational community: The preservation of life is one of the foremost objectives of law in general and criminal law in particular. Life is preserved by criminal law through punishment for crimes like homicide; s.220 Penal Code (PC), assault; s.264 Penal Code, physical violence, manslaughter; s.317 Criminal Code (CC) and so on. This law has helped to fight many social vices which would have claimed many lives and led to the closure of activities in various schools. At the university campuses for instance, the cultists and their activities are often subjected or curtailed by the criminal law. Offenders are either dismissed or made to face corporal sanctions depending on the magnitude of the offence committed. By doing this security of lives are guaranteed in the Nigerian educational system.

(ii.) Preservation of Property: The property of an individual is undoubtedly protected by criminal law from unwanted destruction, interference, dishonest dealing by unauthorized persons etc. Criminal law achieves this through the punishment of crimes like theft; s.286 PC, embezzlement, criminal trespass; s.342 PC etc. This has enabled the safety of the properties established in our schools.

(iii.) The Exigencies of Good Governance: To ensure good governance, certain acts are punishable by the criminal law. Examples of these kinds of acts include acceptance of bribe by public officials; s.98 CC, resisting lawful arrest, misappropriation of public funds and so on. This law has helped to check the excesses of corruption in the educational system.

(iv.) Protection of Public Tranquility: The preservation of the sanity of the society is also under the purview of criminal law. For example, public nuisance is a crime according to the provisions of s.234 of the Criminal Code. This has helped in preserving public tranquility and peace in various educational institutions.

(v.) Protection of Morality: Criminal law also helps to ensure that the values of the society are not eroded over the passage of time. This is accomplished by the prohibition of some acts that are considered immoral. Some of them are adultery; s.387 PC and prostitution; S.405(1)(d) PC or rape within and outside our educational establishments.

### **Labour Law**

The Nigerian labour Act (law) is the primary legislation which deals with the relationship between an employer and its employees. It contains quite several provisions which govern this relationship dynamic, and all the

regulatory processes applicable for employers. The Labour Act only covers employees engaged under a contract of manual labour or clerical work in private and public sector which the staff of our educational institutions are included (<https://lawpadi.com/9-things-every-nigerian-know-labour-act/>). Forced Labour is illegal. It is every Nigerian's right to be free from forced labour, and this right is guaranteed under the 1999 constitution. Apart from existing in the constitution, it is also restated in the Labour Act. All employees must have a written contract. The Labour Act states that an employer must give an employee a written contract within 3 months of the commencement of the employment. The contract must have the certain key terms which promotes cordial relationships between employer and employee, and healthy working conditions. The relevance of labour law can never be ignored in the educational sector. Without this law, the workers would have been abused by the government or proprietors of various schools. It has helped the workers to have their demands addressed amicably. Other relevance of the labour law in our education include restriction of unnecessary salary deductions, payment of workers entitlements, rest hours and holidays for employees. Other relevance of labour law in education are grant of leaves (sick, maternity, sabbatical, etc) and the possibilities of transferring of employment from one level of education to another, or from one faculty/department to another.

### **Health law**

Nigeria has been without well documented health law. The first national health bill was proposed in 2004 (Obi, 2014). The development and enactment of a legal framework for health in Nigeria and was finally signed on October 31, 2014 (Obi 2014; NHA, 2014). Following this development, Nigeria after over 50 years as an independent country, presently has a National Health Act 2014 (NHA, 2014). And this provides a legal framework for the regulation, development, and management of a National Health System and set standards for rendering health services in Nigeria (Enabulele, 2016). The NHA is made up of seven parts divided into various sections.<sup>3</sup> Each part contains fundamental provisions which if effectively and efficiently implemented will have significant impact on health-care access and universal health coverage, health-care cost, quality and standards, practice by health-care providers, as well as patient care and health outcomes (Enabulele, 2016).

In comparison with other laws, the relevance of health law in the Nigerian educational system can never be overstressed. "Health is wealth, they say". No individual can work successfully to achieve any set goals if health is not secured. Teaching-learning processes can only be realistic with sound health. Therefore, maintain and protecting the health of teachers, students, educational administrators in the school system is pertinent for educational development. That is why health centers and teaching hospital are essential disciplines in the university communities for example. Good health promotes full utilization of human resources in the intellectual environment. Thus, laws safeguarding good health in the school institutions are highly relevant.

## **Environmental law**

Environmental law is a body of law that seeks to protect or enhance the environment and its resources (Gray, 2011). There has been a growing global concern for the preservation and conservation of the environment. This is because of the realization that every human being has the right to environmental protection. The quality and standard of human life and healthcare to a large extent depends on how healthy the environment is to provide the needed resources for man's existence and livelihood (Abegunde et al., 2007). For instance, University of Ibadan is fully aware of the strong relationship between a healthy academic environment and a healthy mind. For this reason, projects such as afforestation and regulation of wastes which are geared towards ensuring environmental sanity have been long adopted in the university system. The environmental law covers indiscriminate dumping of wastes of any type in the university premises. The food courts are regularly inspected by the university authorized health officials. Attempts are made to prevent disease epidemics by educating the school communities, while swift control measures are employed to eradicate any prevalence, if any.

**Media, property, and land use acts/laws** are other vital laws which have directly or indirectly contributed to the development of our educational system. For example, acquisition of land for school development, infrastructural expansions, ownership and possession of land resources, and copy-rights of publications or other documents are enshrined in these laws (Osunde, 2016; Adekola and Eze, 2015; Iredia, 2015). Plagiarism is a highly offensive crime in the Nigerian educational system. This law has prevented miscreants from reaping from the sweat of another by pirating a work. Therefore, scholars get motivated to produce more written materials (Adebayo et al. 2015).

## **Education law**

There have been many works on the education law and its relevance to education (Ukpai and Mkpandiok, 2016; Oyedeji 2012; Barrel, 1975; Nakpodia, 2010; UNESCO 2007; Peretomode 1992; Nexis, 2007). However, education law, like other types of law is a subset of the constitution law that focuses on fundamental human rights, but primarily as it concerns the educational system.

## **EDUCATION LAW AND RELEVANCE IN EDUCATIONAL DEVELOPMENT: THE OVERVIEW**

Education law can be defined as areas of jurisprudence which focus on educational activities, the operation of school and learning activities at primary, secondary, or tertiary level under public or private ownership (Peretomode, 1992). The provision of education to every citizenry is one of the key responsibilities of every government. The right to education is a universal entitlement, a right that is recognized as a human right. Section 15(1) of Child's Right Act of 2003 stated that "every child has right to free, compulsory and universal basic education and shall be the duty of the Government in Nigeria to provide such education". According to UNESCO-UNECEF (2007), "Education has been formally recognized as a human right since the adoption of the

Universal Declaration of Human Right in 1948". This has since been affirmed in numerous human right treaties including United Nations Educational Scientific and Cultural Organization (UNESCO), Convention against Discrimination in Education (1960), the International Covenant on Economic Social and Cultural Rights (1966) and the Convention on the Elimination of all forms of Discrimination against Women (1981). These treaties, according to UNECEF, establish an entitlement to free, compulsory and basic education for all children, an obligation to develop secondary education, supported by measure to render it accessible to all children as well as equitable access to higher education. Every country or state is governed by a constitution or law. Other laws within the country or state are derived from the country's or state's constitution law. As earlier mentioned, education law is therefore the portion of the country or state law or constitution that specifically governs educational bodies such as public and private schools, colleges and universities. Relevance of this law to educational development is enormous. It covers every aspect of education and school system. It deals with source of fund that school organization use to acquire resources as well as the bodies to manage both human and material resources to ensure that educational objectives are realized. According to Peretomode (1992), education law covers the laws and regulations that govern federal, state and local education including the administration and operation of educational institutions, school programmes, instructional methods, discipline, instructional materials and discrimination based on gender or disability. In a similar view, Nexis (2007) described education law as the branch of civil law that covers the laws and regulations that govern federal and state education including operation of educational institutions, school athletics, instructional methods, programmes and materials. This area of law encompasses issues relating to school faculty, staff, students including school discipline and discrimination based on colour, nationality, sex or disability in violation of the equal educational opportunities Act (Nexis 2007; Oyedeji, 2012). Conclusively, the education law and its features are very relevant to the sustainable growth of our educational system of which their absence would have caused chaos in the system (Nwagwu, 2004).

## CONCLUSION

The types of laws, as being discussed, undoubtedly have either direct or indirect relevance to the development of Nigerian educational system. It could be from the constitution law (i.e., the basis of most laws) to administrative law, criminal law, health law, labour law, environmental law, media, property and others. The combination of all the types or classes of laws have been helping in the regulation and smooth running of all the educational institutions at all level. According to Shaffer (1984), law relates significantly to many facets of education including teachers, learners, parents, education officials and infrastructures; thus, all stakeholders in education need to be aware of the legal issues facing them, because many of such issues that have been decided in an educational context have far reaching effects in the running of schools. Both teachers and learners as well as other inhabitants of the school community need good health, sanitized physical environment to operate, secured



atmosphere to live, read, write, publish, and other benefits provided by these laws which geared towards sustainable educational development.

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