

# METHODS OF SOCIAL CONTROL THROUGH LAW

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Before a society can be said to be sane, there have to be means by which that society regulates the conducts of its members. If everyone in a society is left to do as he wills, there might end up being no society. This is due to the fact that the absence of regulation would breed anarchy, making life 'œnasty, brutish and short'. It is due to this that every society has means by which it regulates the conduct of its members. This regulation of conduct is known as social control.

Methods of social control could either be formal or informal. Law is a formal method of social control while informal methods include ostracism, ridicule, gossip and censure.

What is going to be discussed is the formal method of social control. Thus, the methods of social control through law would be the focal point of this write-up.

According to **Farrar and Dugdale**, the following are the methods of social control through law:

1. The Penal technique
2. The grievance remedial technique
3. The private arranging technique
4. The constitutive technique
5. The administrative regulatory technique.
6. Fiscal technique.
7. The conferral of social benefit technique

The above would be substantiated below:

## **The Penal Technique**

The word 'œpenal' has been defined by the **Black's Law Dictionary 9th Edition** as

'œOf, or relating to, or being a penalty or punishment, especially for a crime'.

From the meaning of the word 'œpenal' we can deduce that the penal technique is the one which involves the regulation of crime in the society. The penal technique is one in which the law pronounces some actions as prohibited and it provides punishment for engaging in such actions.

Thus, examples of laws in relation to the penal technique include the Criminal Code, Penal Code, Economic and Financial Crime Commission Act and so on. For instance, the **Criminal Code** in **S.315** pronounces that murder and manslaughter are offences. It further provides in **S.319** that the punishment for the crime of murder is death, while in **S.325** it provides that the punishment for manslaughter is life imprisonment.

There are some alternatives to the penal technique which are: non-intervention, warning or caution, reciprocity and self-help, compounding.

Non-intervention occurs in a situation in which the act, although frowned upon, is not punished by the state. For example, in some societies, adultery is not a crime. In others, it is regarded as a crime. In the case of ***Aoko vs Fagbemi (1961) 1 ANLR 400***, the court, while trying a case in southern Nigeria, held that adultery was not a crime since it wasn't prescribed as such by a written law. Adultery is only a crime in the North due to the provision of **S.387 of the Criminal Code**.

Warning or caution occurs in a situation in which it is more expedient to warn the offender instead of punishing him. This occurs in the instance of juveniles and first offenders.

Reciprocity and self-help is a situation in which, instead of reporting a matter to the police, the aggrieved parties decide to mete out justice on their own. This could lead to jungle justice and could result in the punishment of innocent persons. This step is frowned upon by the law and thus, anyone who engages in this act, would be liable.

Compounding occurs in a situation in which, instead of prosecuting the crime, the aggrieved parties decide to settle it out of court upon the fulfilment of some conditions by the offender.

## **The Grievance Remedial Technique**

The grievance remedial technique, unlike the penal technique, is not related to criminal law. It deals with civil matters. It has been defined by Professor Summers as a technique which

'œdefines remediable grievances, specifies remedies' and provides for enforcement of remedial awards.

What this means is that this technique provides for instances in which a person would be held to have breached another's right, it provides compensation and it also accounts for means for enforcing these compensations. The grievance remedial technique is used in areas of law like Law of Contract, Commercial Law, Law of Torts, Law of Property and so on.

Some of the remedies under this technique include: damages, specific performance, injunction, *restitutio in integrum* etc.

Alternatives to this technique include: the penal technique, private settlement, insurance and arbitration.

The penal technique could be regarded as an alternative to the grievance remedial technique due to the fact that a number of grievances are also regarded as crime. Examples include assault, battery, false imprisonment etc. Thus, when any of these grievances occur, the aggrieved party can choose to either pursue the case criminally or take a civil action.

Private settlement occurs in a situation in which the parties, at the time of the contract, have already spelt out means by which an aggrieved party should be compensated.

Insurance is relevant especially in developed economies. In these countries, when there is an injury suffered, like motor accidents, instead of suing, the aggrieved party(s) can decide to refer the matter to their insurance companies.

Arbitration occurs in a situation in which, instead of going to court, the parties decide to refer the matter to an arbitrator. The arbitrator is usually skilled in the area of business under issue. Arbitration is a more effective and less time consuming alternative. Arbitration processes could take days, compared to litigation which could take months or years before conclusion.

## The Private Arranging Technique

This occurs in a situation in which the law doesn't bind every member of the society. This particular law only binds those who choose to be bound by its provisions. An example of this is the Marriage Act which regulates legal marriages. A person has a right to either marry under the act, customarily or islamically. If he however chooses to marry under the Marriage Act, he has to abide by its provisions.

For example, the **Marriage Act** provides in **S.47** that whoever contracts a customary marriage after contracting a marriage under the Act, such person would be liable for five years imprisonment. Thus, anyone who doesn't subject himself to the provisions of this act, can decide to act contrary to it without any repercussions. But, for a person who decides to be governed by the Act, such person must abide by its provisions or face the music.

## The Constitutive Technique

The constitutive technique is the one that concerns itself with the formation of legal personalities. It encompasses all laws that deal with the registration of companies and organisations. An example of this law is the **Company and Allied Matters Act** which deals with the incorporation of companies in Nigeria. According to the provision of **S.37** of the **Company and Allied Matters Act**, when a company is incorporated, it becomes a legal personality.

The concept of legal personality was established in the case of ***Salomon vs Salomon (1897) AC 22***. In this case, Salmon incorporated Salomon & Co Ltd and he sold his leather making business to this company. The only shareholders were members of his family. Salomon borrowed the company he incorporated some amounts of money.

Subsequently, the company went into financial crises and it was to be determined who was to be paid first, Salomon, who was a secured creditor, or an outside creditor. If Salomon was paid first, there would be nothing to pay the outside creditors. The solicitors for the outside creditors argued that Salomon & Co ltd was a sham and was the same with Salomon. Salomon lost at the trial court and the court of appeal.

However, on appeal to the House of Lords, the decisions of the lower courts were reversed. The House of Lords held that Salomon co Ltd was a different person from Mr Salomon. Thus, since under normal circumstances, Mr Salomon was to be paid first, he should be paid first.

## Administrative Regulatory Technique

This method of social control is one in which the government, in order to protect the citizens, regulates the activities of private businesses. If there is no regulation, there is every likelihood that the capitalists would exploit the citizenry.

The government does this through the establishment of some regulatory agencies like the National Agency for Food and Drug Administration and Control (NAFDAC), the Nigerian Communications Commission (NCC), Standard Organisation of Nigeria (SON) and so on. For example, NAFDAC is established by the provision of **S.1** of the **National Agency for Food and Drug Administration and Control Act**.

## The Fiscal Technique

This method of social control involves the government using taxation to control the behaviour of citizens. For goods that the government wants to discourage, it imposes higher tax rates on them. It also involves the use of fines in order to discourage some actions. For example, in 1998, in order to reduce the rate of gas flaring the fine for gas flaring was increased by 1900 percent.

The government uses the fiscal method through the enactment of statutes like the **Personal Income Tax Act** and the **Custom and Excise Management Act**.

# The Conferral of Social Benefit Technique

This occurs in a situation in which the government, through the instrumentality of the law, strives to provide basic amenities for the populace. It does this by establishing schools, hospitals, building roads and so on.

For example, the University of Ilorin was established by the provision of **S.1** of the **University of Ilorin Act**. This Act provides the basis on which the administration of the university is operated. It can be seen as a way in which the government tries to make education available for the populace.

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