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The Law on Feticide in Nigeria: Interrogating the Need for A Shift From the Illicit to The Licit

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ABSTRACT
The précis of this paper is an examination of the need or needlessness of the expansion of the frontiers or liberalization of the circumstances under which abortion (which is presently illegal under the Nigerian law except to save the expectant mother's life) may be legalized. Calls have been made for the legalization of abortion in other circumstances other than the one stated above. It is the aim of this paper to interrogate the justification for the call to legitimize abortion. In pursuance of this, the paper examines some penal provisions on abortion in Nigeria, judicial decisions on these penal provisions, some of the views of those advocating for the expansion of the frontiers of legal abortion, the views of those opposed to same and thereafter opines that instead of liberalizing access to abortion in Nigeria, more should be done to inculcate in our youths the mores and values of chastity and abstinence from pre-marital sex and also beseech health care providers to enlighten the populace on other means of birth control other than feticide. The doctrinal research methodology was adopted in writing this paper.

Keywords: *Feticide, Abortion, Crime, Pregnancy, Licit, Illicit, Penal, Gestation, Kill, Mores, Values, Chastity, Abstinence, Pre-Marital Sex, Birth-Control.*

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INTRODUCTION

Feticide is the act of killing a fetus or causing a miscarriage otherwise known as abortion. Abortion is the miscarriage or expulsion of a human fetus before gestation is completed [1] and it is a crime under the penal laws of Nigeria except for the purpose of preserving the life and physical health of the expectant mother [2].

In recent years however, there has been strident calls by individuals and bodies like The Society of Gynecology and Obstetrics of Nigeria (SOGON) and others calling for more exceptions to the crime of Abortion. In other words, advocating for the legalization of same in appropriate circumstances to be provided for by law. These calls culminated in the directives issued by the Governor of Lagos State, Nigeria, Mr.Babajide Sanwoolu sometimes this year (2022) expanding the frontiers of legitimate abortions [3]. The said directives were however suspended after an outcry by religious bodies and several individuals.

The theme of this paper is to interrogate the justification for the call to legitimize abortion in other circumstances other than to save the pregnant mother's life which is the current position of the law in Nigeria. In pursuance of this, the paper examines some penal provisions on abortion in Nigeria, judicial decisions on these penal provisions, some of the views of those advocating for the expansion of the frontiers of legal abortion, the views of those opposed to same and thereafter express considered views on the discourse.

THE CALL FOR THE EXPANSION OF THE FRONTIERS OF LEGAL ABORTION

Many reasons have been advanced for the legalization of abortion in Nigeria, some of which would be examined in this paper. The Nation Newspaper reports that:

Professor Boniface Oye Adeniran of the Campaign Against Unwanted Pregnancies (CAUP), has done extensive work in this area. He notes that: "Each year in Nigeria, hundreds of thousands of women become pregnant without wanting to, and many women with unwanted pregnancies decide to end them by abortion. Because abortion is legal only to save a woman's life, most procedures are clandestine, and many are carried out in unsafe circumstances. Unsafe

[1]Leslie Rutherford and Sheila Bone (eds.) *Osborn's Concise Law Dictionary,* 8th Edition (1993) (Sweet & Maxwell 1996) 3
[2]Criminal Law of Lagos State 2011 s.203
[3]SonnieEkwowusi, 'Legalization of Abortion in Lagos State' <https:www:thisdaylive.com/index.php/2022/07/08> accessed 16th August 2022 at 6.68 am.

abortions can endanger women's reproductive health and lead to serious, often-times life threatening complications."…In a number of the research carried out, Adeniran and his team found out that: Unsafe abortions impose a heavy burden on women and society by virtue of the serious health consequences that often ensue: Treating these health problems is costly and consumes scarce resources at both public and private health institutions. Also because abortion is largely illegal, information on the procedure is difficult to obtain [4].

Sharing the same sentiments as those expressed above, the Society of Gynecology and Obstetrics of Nigeria (SOGON) also lent its voice to this call thus:

The Society of Gynecology and Obstetrics of Nigeria (SOGON) has called for the liberalization of restrictive abortion laws to enable women access appropriate health care. SOGON's President Prof. Oluwarotimi Akinola, who addressed reporters in Calabar, Cross River State, after the society's 52nd Annual General Meeting and Scientific Conference, said evidence had shown that the number of abortions do not increase due to liberalization of the law…The Abortion Law in Nigeria simply says that it is illegal to procure abortion except in very strict condition to save maternal life, and that law forces our women because what they say is that when a woman is convinced that the pregnancy she is carrying cannot continue, there is almost nothing you can do. She would do that and procure abortion whether you offer it safely or not. All we are saying is that when there is a need to procure abortion, please let it be done safely [5].

DISSENTING VIEWS ON THE EXPANSION OF THE FRONTIERS OF LEGAL ABORTION

That eminent jurist, Justice Chukwudifu Oputa, JSC who bestrode the Supreme Court Bench of Nigeria with his sagacious but sober exposition of Nigerian jurisprudence, articulated his choler (albeit in censored language) to the call for the expansion of the frontiers of legal abortion thus:

Few words today are abused and misunderstood and therefore misapplied as the word "freedom". "The body is mine and I am free to do what I like with it". This is the popular saying by women who advocate abortion. Is the body really hers? Did she create the body? Has the Creator any purpose for that body? Has that body a soul? Is she really and truly free to do what she likes with her body?' [6] What sort of authority can a nation claim, when it declares abortion legal but tries to declare euthanasia, theft, armed robbery, unlawful wounding, murder, and even failure to provide for those under one's charge and care, with the necessaries of their earthly existence, illegal?...Humane Vitae is that authoritative teaching – the moral view of conjugal love, responsible parenthood, respect for the purpose of the marriage act, God's purpose and design in elevating marriage to a sacrament and the licit ways of regulating birth…The problems with abortion are mainly two, firstly, the refusal to accept that life starts from the moment of conception and secondly the false notion that 'the body is mine, I can do what I like with it' [7].

The learned jurist summed up his treatise on this subject this way:

Abortion therefore is indefensible. His Holiness Pope Paul VI's Message for *The Celebration of The Day of Peace* in January 1977 was titled 'If you want peace defend life'. There the Supreme Pontiff said inter-alia:… Every crime against life is a blow to peace, especially if it strikes at the moral conduct of the people, as often happens today, with horrible and often legal ease, as in the case of the suppression of incipient life, by abortion. Reasons such as the following are brought forward to justify abortion: abortion seeks to slow down the troublesome increase of the population, to eliminate being condemned to malformation, social dishonor, proletarian misery and so on; it seems rather to favour peace than harm it. But it is not so. The suppression of incipient life, or one that is already born violates all the above sacrosanct moral principle to which the concept of human existence must always have reference. Human life is sacred from the first moment of conception and until the last moment of its natural survival in time. It is sacred; what does this mean? It means that life must be exempt from any arbitrary power to suppress it; it must be touched; it is worthy of all respect, all care, all dutiful sacrifice. For those who believe in God, it is spontaneous and instinctive and indeed a duty through the law of religion [8].

Sonnie Ekwowusi on his own part did not mince words in his vehement opposition to the calls for the legalization of abortion. He says:

All abortions have serious negative impacts on women. 17% of women undergoing the so-called 'safe-abortion' or legal abortion procedure experience physical complications (such as abdominal bleedings or pelvic infections) after the

[4]YetundeOladeinde, 'Abandon a pregnant lover and be damned'*The Nation* (Lagos, 8 July, 2012) 51
[5]Bassey Anthony, 'Doctors seek liberal abortion law' *The Nation* (Lagos, 27 November, 2018) 43.
[6]Oputa, 'Towards Functional Justice' in Chris Okeke (ed), *Seminar Papers of Justice Chukwudifu A. Oputa* (Gold Press Limited2007)385.
[7]*Ibid*.388-389.
[8]*Ibid*.390

abortion. The percentage is likely higher with long-term physical and psychological effects of abortion such as heavy bleeding (requiring blood transfusion), nausea, abdominal cramping, heart attack, perforation of the uterus, miscarriage of future pregnancies, death (it is estimated that 20% of maternal deaths result from abortion), guilt, anger, depression, suicidal thoughts, memory repression, eating disorders and sleep disorders are considered. The truth of the matter is that abortion is a medical procedure, and, as with any medical procedure, abortion is fraught with health risks, even if it is carried out by the most competent medical practitioner and under the best medical conditions especially in Nigeria and other developing countries. Therefore prefixing or modifying abortion with "safe" is not only misleading but medically inaccurate. "Safe-abortion" is not only an oxymoron; it is a medical impossibility since every abortion is always unsafe for the unborn baby because it kills the unborn baby. The notion "unsafe-abortion" is also misleading because it implies that some abortions done by competent medical doctors are "safe" or without risks. This is a big lie. All abortions carry serious risks for the aborted woman regardless of the quality of medical care employed. The abortion kills the child. How can you say that abortion is "safe" when it claims the life of an unborn child? More importantly, abortion is a crime in Nigeria. Therefore you cannot modify abortion with the prefix "safe" in the same way you cannot modify stealing with the prefix "safe". You cannot say "safe-stealing" [9].

At this juncture, it will be pertinent to examine the provisions of penal statutes on abortion in Nigeria which the legal abortion exponents considering restrictive, seek to expand.

THE LEGAL POSITION ON ABORTION IN NIGERIA

As a background, a child under the Nigerian law becomes a person when it has been born alive whether it has breathed or not, and whether the umbilical cord is severed or not [10]. Hence, whoever voluntarily causes a woman with child to miscarry would, if such miscarriage if not caused in good faith for the purpose of saving the life of the woman would be punished with imprisonment for a term which may extend to fourteen years or with fine or with both [11]. Also, whoever uses force to any woman and thereby unintentionally causes her to miscarry, would be punished with imprisonment for a term which may extend to three years or with fine or with both; and if the offender knew that the woman was with child, he would be punished with imprisonment for a term which may extend to five years or with fine or with both [12]. Likewise, anyone who does any act in such circumstances that, if he thereby caused death he would be guilty of culpable homicide, and does by such act caused death of a quick unborn child would be punished with imprisonment for life or for a less term and would also be liable to fine [13]. In the same vein, anyone who by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during birth, intentionally conceals or endeavours to conceal the birth of such child, would be punished with imprisonment for a term which may extend to two years or with fine or with both [14]. It is also an offence for any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that if the child had been born alive and had then died, would be deemed to have unlawfully killed the child is guilty of a felony, and is liable to imprisonment for life [15]. The law also punishes any person who, when a woman is delivered of a child, endeavours by any secret disposition of the dead body of the child to conceal the birth, whether the child died before, at or after its birth as he would be guilty of a misdemeanor, and is liable to imprisonment for two(2) years [16].

A child may bring an action for damages against a person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect before, during or after the birth of that child [17]. Though the Act appears to be silent on when an action such as this may be brought, it is our opinion that subject to the law on limitation of actions, an action may be brought on behalf of the child by the his *guardianad litem* or upon the child attaining majority.

As an exception to the foregoing, a medical doctor is not criminally responsible for performing in good faith, with reasonable care and skill a surgical operation on any person for his benefit, or on an unborn child for the preservation of the mother's life and physical health, if the performance of the operation is reasonable, having regard to circumstances of the case [18]. This appears to be the only legally allowed instance under which an unborn child may be aborted and if the abortion becomes a subject of criminal prosecution, the Constitutional provision on presumption of innocence, would place the burden of proof on the prosecution to prove bad faith and lack of reasonable care and skill on the part of the medical doctor.

[9] SonnieEkwowusi, 'Legalization of Abortion in Lagos State' *op.cit*.
[10] Penal Code s.5(2)
[11] Penal Code s.232
[12] Penal Code s.234 (a) and (b)
[13] Penal Code s.236
[14] Penal Code s.239
[15] Criminal Law of Lagos State 2011 s.234
[16] Criminal Law of Lagos State 2011 s.235
[17] Child Rights Act s. 17
[18] Criminal Law of Lagos State 2011 s.201

JUDICIAL APPROACH TO ABORTION CASES IN NIGERIA

Judicial decisions are replete on the interpretation of these anti-abortion legislative provisions stated above. Some of these and their ratios are reviewed hereunder for the purpose of examining whether the current state of the law needs an amendment to pave way for other instances where abortion could be legal aside from saving the life of the mother of the aborted child. These decisions form the focus of the next stage of our discourse.

In *Rex V Ananti Ejikeme* [19], as a result of abortion, Defendant Ananti Ejikeme's daughter died. A.E and X (there was another Defendant but his case is not relevant to this case) were charged with manslaughter, it being alleged that A.E incited X to cause the abortion, and that X caused the same. X was acquitted, but A.E. was convicted of attempted manslaughter on a finding that he had incited X to cause the abortion and that death ensued from abortion. On a case stated on whether such conviction was right having regard to X's acquittal: It was held that as X has been found not to have committed the offence, the incitement of X by A.E was not the cause of death, and therefore A.E's conviction was wrong.

The West African Court of Appeal in this case enthused:

Upon these finding he convicted the 1st accused of the offence of attempted manslaughter, provisionally and subject to the opinion of this court upon the following question which was submitted on the stated case, viz:-Whether, on the facts stated above, following the acquittal of the 3rd accused on the charge of manslaughter, it was open to this court to convict the 1st accused of attempted manslaughter under the provisions of section 513(1) of the Criminal Code and section 57 of the Criminal Procedure Ordinance.' We answer that question in the negative for the reason that the 1st accused was not proved to have incited the 3rd accused to kill the girl – that would have been inciting to murder -, but, on the finding, was proved to have incited the 3rd accused to attempt to procure her abortion – an incitement which, on the accepted basis that the 3rd accused did not commit the offence, was not the cause of the girl's death. Clearly there was no inciting to commit manslaughter or attempt to commit manslaughter; indeed it is difficult to conceive circumstances which would amount to an attempt to commit manslaughter. Question answered. Conviction disallowed.

In the *State V Johnson Oke&Anor* [20], it was held that the woman who aborted her pregnancy by taking tablets which she knew would procure abortion was a willing partner to the crime (an accomplice) and her prevarication on the issue weakens her credibility. The court also posited that 'it is not sufficient to prove merely that the Accused imagined that the substance administered would have the effect intended but it must be shown that it was in fact either a poison or a noxious thing.'

To secure a conviction in cases of abortion, the prosecution must rule out other causes and establish that the abortion was caused by the wilful act of the accused person. In *The State V Jones Sehindemi & Anor* [21], the court opined that:

The second fact which the prosecution must establish in this case is that the instrument or other unknown means was unlawfully used with the intention of procuring abortion…In the present case, Dr Akinlade has testified that a foetus could be spontaneously expelled from the uterus i.e in a natural manner. Malaria, virus disease, an abnormality of the foetus and other factors could have led to the expulsion of the foetus from the uterus of Mrs Davies. She incidentally had malaria in September, 1972. Dilatation and curettage commonly called D & C. could have expelled the foetus. An abortion could be self-induced. Certain drugs could have been used; so the doctor said. In the face of this expert evidence would it be safe to say categorically that Dr. Sehindemi and Daniel Davies as laid in the information attempted to procure the abortion? Was Mrs Davies willing to have the foetus removed?...Another possibility is that Mrs Davies might have had her abortion before 20th October in which case having examined her Dr. Sehindemi would not have considered it necessary to procure any abortion.

The proof of *mensrea* on the part of the accused is essential to a conviction in cases of abortion. In *Obumselu v C.O.P* [22], the appellant and his girlfriend, Bisi Fagbenle, the deceased, were both students of University College,

[19] 10. W.A.C.A 252.

[20] (1975) 9 CCHCJ 1305 at 1311. A woman attempted to get rid of a pregnancy on the insistence of the 1st accused who was her friend. It is agreed that they had sexual intercourse together during the early part of the year 1973 and this resulted in the pregnancy of the woman. The 1st accused with a view to terminate the pregnancy, gave the woman some drugs to procure abortion. The pregnancy was finally terminated by a medical practitioner who was charged along with the 1st accused. He was however discharged on a no case submission made by learned defence counsel after the close of the case for the prosecution.

[21] (1975) 9 CCHCJ 45 at 51 and 53. The two accused persons on a two-count information stand charged with an attempt to procure abortion contrary to section 228 of the Criminal Code.

[22] (1958) NSCC 105 at 107.

Ibadan. The deceased was pregnant and she persuaded the appellant to allow her the use of his room and himself to stay away, so that someone might procure her an abortion.

She died and the appellant was charged thus:"That you Benedict Obumselu (m) on the 28th August, 1957 at the University College, Ibadan, knowing that Bisi Fagbenle, a female student of the University College Ibadan designed to commit a felony, to wit: with intent to procure her own miscarriage to permit the use of force or other means to be administered or used to her contrary to section 229 of the Criminal Code failed to use all reasonable means to prevent the commission thereof, and thereby committed an offence punishable under section 515 of the Criminal Code."

The appellant was convicted by the Chief Magistrate and his appeal to the High Court was dismissed. He subsequently appealed to the Supreme Court.

The Supreme Court held that all that is necessary in a charge under section 515 of the Code is that the accused person knew that someone designed to commit a felony and failed to use all reasonable means to prevent the commission thereof. It is not essential that such a charge should specify with the same precision as a substantive charge, the felony which the accused neglected to prevent. Though the charge may have been defective in that it failed to allege that the force or other means referred to in the charge was unlawful, such defect as there might have been in the charge as framed was cured by the verdict. The evidence clearly established that the appellant knew that Bisi Fagbenle designed (i.e had a settled intention) to commit a felony.

The *State v Linus Akpan & Anor* [23] illustrates an instance of abortion by omission rather than by commission (i.e. omission to administer medication). This is in contradistinction to the theme of this paper which is whether abortion by commission should be made legal in other instances aside for the purpose of saving the life of the aborted baby's mother or (putting it other words), some other exceptions should be allowed by law in which abortion by commission may be made legal.

The facts of this case were that the accused persons were members of a religious sect called the True Church of God. They did not believe in medical therapeutics. They were charged with killing a child in consequence of act omitted to be done during child-birth. In other words, they were accused of failing to take a pregnant woman (the 1st accused's wife) to the hospital on religious grounds. Counsel to the accused made a no-case submission that the accused had no statutory or legal duty to give the woman medical attention and that it was an essential ingredient of the offence to prove that the child was born alive but that this had not been proved.

Begho C.J., was of the opinion that:

There was no suggestion that the 2nd accused, a preacher in the True Church of God, was in "charge" of Lucy Akpan as envisaged in s.237 and neither was it suggested that he was head of the family as envisaged in s.238. Needless to say that Lucy was not a child as envisaged in s.238. She was an expectant mother. Although the 1st accused is Lucy's husband there was no evidence that she was "unable by reason of age, sickness, and unsoundness of mind, detention or any other cause", "unable to provide "for herself as envisaged under s.237. Lucy, of her own free will, refused medical aid. There is nothing in either s.237 or s.238 for a husband (who does not believe in medical therapeutics) to compel his pregnant wife (who for religious reason is a conscientious objector to medical treatment) to have medical aid at time of labour. Neither is such duty imposed under section 247 of the Criminal Code…

The learned Chief Judge further opined that:

The accused persons in this case before me are said in the Particulars of Offence in the information to have refused Lucy Akpan medical attention but Lucy Akpan herself, a prosecution witness, said in evidence that the accused persons did not refuse her medical attention but that owing to her religious belief she refused to take medicine. This knocks out the bottom from the case for prosecution. It was also alleged in the Particulars of Offence that the child of Lucy Akpan died shortly after delivery because the accused persons (who are not doctors, by the way) refused to allow Lucy Akpan medical attention. No eye-witness of the delivery told this court that the child was born alive. Lucy herself said the child did not cry when it was born and she did not know whether or not it was alive before it died. No medical evidence as to the cause of death of the child. The court cannot presume that death of a child during labour of its mother where no qualified midwife or doctor was called in, must be due to want of medical attention. There is no evidence before me that the child died as a result of want of medical attention as alleged in the particulars of the offence. The ingredients of the offence alleged are not proved. As a result I find no case made out against both accused. If this case was tried with a jury

[23] 2 U.I.L.R (pt.IV) 457 at 460.

I would be bound to direct the jury to return a verdict of "not guilty". The accused persons are, therefore, discharged on the merits.

In contrast to the decision in the *State v Linus Akpan* [24] on the issue of freedom of religion vis-à-vis refusing medication which resulted in the abortion of a child, the Court of Appeal of Nigeria has held in *Esabunor&Anor. V Dr. Tunde Faweya& 4 Ors* [25] that Doctors can take steps to transfuse blood to a child or administer any medication to save the child's life despite the religious beliefs of the parents, who may oppose same.

Because of the gravity of the offence of illegal abortions, the court would not ordinarily grant the accused person bail except it is in the interest of justice to do so. This point is illustrated by the case of *C.O.P v Dr. Michael Iruoma&Anor* [26] which was a hearing of an application to the Okigwe High Court made by the first accused for bail pending his arraignment before the said Court and the determination of the case. The two accused were charged with murder of a girl during the process of an illegal abortion. The Court presided over by Ikwechegh, J. held that where the crime is a capital offence, such as murder (as in this case), the offence is not ordinarily bailable and if the State Counsel opposes bail, the traditional stance of the courts is to refuse bail, except there is a "compelling and constraining circumstance" – as where the police investigated and accepted facts of alibi set up by the accused and yet allied themselves to one party to a dispute and indiscriminately arrested the other party. And where the prosecutor asked for a short adjournment because "facts available are not sufficient to proceed against the accused person" the State virtually was saying that it had no case to make against the applicant and it would be injustice to deny him his personal freedom and liberty and bail was rightly granted *ex debitojustitiae*.

The law on *particepscriminis* or accessory to a crime is applicable to the crime of abortion as it does to other crimes. In *R v Yaro Paki &Anor* [27], Bairamian J., held that 'An operation on the tonsils is not illegal *per se* like an operation to bring about an abortion. Anyone who helps in any way at the latter would be guilty of an offence; but a person who helps at an operation on the tonsils would not be guilty of any offence unless he himself did something which was criminal or criminally negligent.'

It would appear that insanity could be a defence to a charge of abortion. The case of *Ode v State* [28] seems to exemplify this even though the death of the child occurred a few hours after its birth. It was held in that case that–'It is common knowledge that a woman, during and around the period of labour, normally loses all her self-control sometimes to the extent that she does not know what she is doing. Even if she were to be assumed to have killed the child within a few hours of birth, she would nevertheless have been entitled to plead the defence.

Abortion like most other crimes is usually done in a clandestine and surreptitious manner. Getting eye witnesses to testify to the crime most often than not is an uphill task for the prosecution. Hence, the court may convict on circumstantial evidence like the common principle of 'last seen' which was what the court hinged the conviction of the accused on in *Madu v State* [29]. Therein, the appellant and another were alleged to have committed abortion for one NnennaNwosu, who died in the process. Her body was found subsequently in the septic tank of their premises. The Supreme Court held in this case on what constitutes the doctrine of last seen that:

The doctrine of last seen postulates that if a person who was last seen alive in the company of another is found dead, that other in whose company the deceased was last seen alive in law is presumed to bear full responsibility of the death of the deceased. The last seen theory comes into play when the gap between the point of time when the accused and the deceased is found is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. Where there is a long time gap between last seen together and the crime and there is possibility of other persons intervening, it is hazardous to rely on the theory of last seen together. Even if the time gap is less and there is no possibility of others intervening, it is safer to look for corroboration. In the instant case, where there was sufficient

[24] *Supra.*
[25] (2019) 7 NWLR (pt. 1671) 316 at 340, 344 and 347
[26] (1977) IMSLR 80 at 87.
[27] 21 N.L.R. 63. The defendants are accused of manslaughter. It is alleged against them that they unlawfully killed one Christopher Badger on the 29th October, 1954. Defendant No. 1 performed an operation on the tonsils of the deceased on the Sunday; he died on the Friday following. All that defendant No. 2 did was to hold the head of the deceased.
[28] (1974) S.C
[29] (2012) All FWLR (pt.641) 1416 at 1444. The accused were arraigned in the High Court of Abia State on a two-count charge of conspiracy to commit murder and murder, punishable under sections 324 and 319(1) of the Criminal Procedure Code respectively. The trial court convicted them and sentenced them to death. The 2nd accused person died shortly after conviction and the 1st accused person being aggrieved, appealed to the Court of Appeal where the appeal was dismissed. Yet aggrieved, the 1st accused person appealed to the Supreme Court.

evidence establishing that the accused persons committed the offences which they were charged with and were last seen with the deceased, they were appropriately convicted therefore.

It is our opinion as deduced from the facts and law in the above reviewed cases, that there is no germane reason to warrant the expansion of the frontiers of legal abortion. Most of the cases are clear cases of pre-mediated abortion. None of the cases illustrates a situation where there was a dire need to abort for altruistic reasons but were mostly committed as a way of saving the culprits faces from the wages of promiscuity.

Power by an arm of government be it the Executive, Legislature or Judiciary cannot be exercised without constitutional or legislative backing. The directives of the Lagos State Governor which is essentially to expand the frontiers of legal abortions in Lagos State, if viewed from the prism of delegated legislation appears to be *ultra vires* his powers. This is because it is trite that one of the condition precedent to the legality of delegated legislation is that there must be a provision in a parent or enabling legislation that delegates such power because power to enact legislation is principally that of the legislative arm of government except so delegated by a law made by it. What then is the enabling legislation that empowers the Lagos State Governor to issue those directives? Section 201 of the Criminal Law of Lagos State? [30].

CONCLUSION

It is generally accepted we believe, that the African culture, norms and values do not support abortion. From the aggregate of the arguments on the pros and cons for and against the expansion of the frontiers of licit abortions in Nigeria enunciated in this paper, it is the writer's view that Nigeria is not yet ripe for a regime of legalized abortion and would not be ripe for such for yet a very long time to come unless our values and customs are completely westernized. Sonnie Ekwowusi captures the essence of our dis-concurrence with the agitation or call for the legalization of abortion thus:

The killing of an unborn baby, whether euphemistically self-styled "safe-abortion" or "post-abortion care" or "termination of pregnancy" or "interruption of pregnancy" or "women's reproductive right" or "women's health" is a crime punishable under our laws. We must stick to our own cultural and religious values in Nigeria. It is suicidal to import foreign practices and lifestyles which are alien to Nigeria and seek to impose them as directives simply because money has exchanged hands. The consensus reached at the various United Nations Conferences, is that the law passed in every developing country including Nigeria must reflect the diverse social, economic and environmental conditions of that country, with full respect for their religious, cultural backgrounds and philosophical convictions. Abortion is antithetical to the religious, cultural and philosophical convictions of the Nigerian people and therefore cannot be imported into Nigeria. There is no Nigerian culture that endorses the killing of an unborn baby. Termination of pregnancy is murder simpliciter. The Bible condemns abortion or termination of pregnancy. In Islam, Quran 17:31 stipulates: "slay not your children fearing a fall of poverty; we shall provide for them and for you, lo the slaying of them is greater sin". Every country is interested in protecting what it holds dear or its cherished values. The West can continue killing their children. But we love children in Nigeria. Abortion is a complete break with the Nigerian cultural heritage [31].

Aside from unfortunate cases of pregnancies resulting from rape, our opinion is that instead of liberalizing access to abortion in Nigeria, more should be done to inculcate in our youths the mores and values of chastity and abstinence from pre-marital sex and also beseech health care providers to enlighten the populace on other means of birth control other than feticide.

[30] The Section provides that: 'A medical doctor is not criminally responsible for performing in good faith, with reasonable care and skill a surgical operation on any person for his benefit, or on an unborn child for the preservation of the mother's life and physical health, if the performance of the operation is reasonable, having regard to circumstances of the case.' It is our opinion that there is nothing in the above provisions of the Statute that delegate power to the Governor of Lagos State or any other person for that matter to issue directives expanding the frontiers of legal abortion in the State.

[31] SonnieEkwowusi, 'Legalization of Abortion in Lagos State' *op.cit.*