

# **NIGERIA DANGEROUS DRUGS ACT: A GREAT POSITIVE DISABILITY – JURISPRUDENTIAL DICTATES OF INDIAN HEMP**

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## **ABSTRACT**

*Once a nation becomes independent, it takes responsibility for its affairs. From this point, it looks at its past, present and future. Nigeria became independent in 1960. Apart from its Criminal Law Code as old as age, Nigerian Dangerous Drugs Act was enacted in 1935. One of the drugs criminalized is Indian Hemp. This drug has many advantages. The mischief of the Act is political and not in the interest of the nation. World Health Organization research report shows the extent to which Indian Hemp is harmful in comparison with other drugs or products which are of immense economic value to developed world. By all intents and purposes, the harm of Indian Hemp is not comparable to those in the same family not criminalized even though it is more valuable. In spite of its sacramental and economic value it is criminalized notwithstanding non-discriminatory nature of Nigerian Constitution and its secular posture. Judicial decisions have indicated that the drug/substance should flow with the members of its family. The world, through CNN programme in August, 2013 shows that most families need the weed for the cure of epilepsy among other benefits.*

## **1. PREFATORY STATEMENT**

Nigeria is a common law country given our background. It is true also to say that the Corpus of common Law is Christianity – based as emphatically declared by an esteemed Judge and Law Lord, in a case before the House of Lords, England’s Highest Court<sup>1</sup>.

*“Ours is and always has been a Christian State. The English family is built on Christian ideas, and if the national religion is not Christian, there is none. English law may well be called a Christian Law<sup>2</sup>”.*

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<sup>1</sup> *Vice Admiral M. Nyako (rtd.), A paper on prevailing Sharia Controversy in The Sharia Issue: Working papers for a Dialogue”. A committee of Concerned Citizens, 44 at 68-69.*

<sup>2</sup> *Bowman v. Secular Society Ltd (1916 – 17) ALLE. R. (Reprint) 1 at 30 – 30 paras 1- A.*

The Muslims on their part have tried and continue to insist on their own rights<sup>3</sup>. As if might is right, minorities in whatever form or manner can get lost. There should be tolerance of all religions, which should be seen as cardinal rule in the interaction of all. Tolerance consists in the recognition of, and respect for such differences as exist between all religions no matter how minor. No one knows whose prayers are heard most by God Almighty. The direct implication is that the continued existence of our nation state is by providence. Religion unacceptable to an individual should not be forced down his unwilling throat either by way of public holiday, criminalization of vital tool for religious rites overtly or covertly.

Equity came to fulfill the law. This means that if the common law was sufficient, equity would not have come in the first place. Now, equity has fulfilled the common law and now it is part of the law – ‘Law’ in the wide-embracing sense. The Rastafarians should be allowed to enjoy the sacramental value of Indian Hemp. Economically about 50,000 products could be obtained from Indian Hemp so it can assist in revamping our economy. I hope I should not be seen as being rather hyperbolic in describing Indian Hemp as valuable economically as shall be revealed by this article. The aim is to retrieve the fact that law is made by man for man. Man is not made for the law. Law should, therefore, be at the service of man, as a means, not as an end, a means to ensuring his self-fulfillment, a means to ensure the attainment of justice.

## 2. INTRODUCTION

Beneath the outward patina of Independence of Nigeria as well as the other African countries are lugubrious lashes one of which is the Nigerian Dangerous Drugs Act. For most Nigerians and in fact English lawyers, 1<sup>st</sup> July, 1935<sup>4</sup> is a date still to be remembered if only because of the remarkable posture of a statute which was then brought to fruition due to politics of the moment but for the Constitutional implications of the Statute. The position, which a person, or a nation occupies, at any given time, relatively to the points, of

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<sup>3</sup> *This must have given rise to Section 10 of the Constitution of the Federal Republic of Nigeria, 1999. A clear manifestation of this Christian – Muslim domination of Nigeria, is the Public Holidays Act Cap., P40 LFN. 2004. By Section 315 (3) Court can “declare invalid any provision of an existing law like “Dangerous Drugs Act Cap D1 LFN, 2004” to be inconsistent with the provisions of any other law, that is to say section 315 (d) per sections 10 and 38 of the said Constitution. By section 315 (2) Dangerous Drugs Act can be modified to conform with the Constitutional provisions.*

<sup>4</sup> *This is the Commencement date of Dangerous Drugs Act Cap D1 Laws of the Federation of Nigeria, 1990. it is interesting to note that Nigerian Dangerous Drugs Regulation was in 1937 and that of America was also in 1937. This article will show the political motive resulting in the coincidence.*

compass needs not be static. In deed, the position may change and shift depending on prevailing circumstances. What must never change, save in exceptionally grave circumstances, are the objectives and destination which a nation sets out to achieve and the essential characteristics of the chosen means for the attainment of the ends in view<sup>5</sup>. As days roll by and things change, it will be proper to break with the past. Some will see it and continue to see it as a sop, a legitimate device or even an attempt at deflecting danger and other things even the unimaginable. This view could well prove mistaken. If it is, and if there is a genuine move towards the reexamination of the statute particularly in respect of *Indian Hemp*, then the opportunity should not be lost to ensure a rejuvenated and resuscitated economy and polity with clearly flagged and a Constitutional course charted. In contrast, *Dangerous Drugs Act* has today little resonance.

The mainly sartorial differences which separate alcohol, kolanut, tobacco, and Indian Hemp are really negligible – and here again it is because the colonialists enjoyed tobacco which they grow better<sup>6</sup> and alcohol which they produce that they take them but hated Indian Hemp which they do not grow favourably in comparison to Africans. This gave the colonialists the inkling for the criminalization of Indian Hemp leaving tobacco through which they beautifully look at the world more clearly through a puff of tobacco smoke.

Politically, the independence of a country can be viewed from two angles: The corporate and the individual angle. A country is said to be free only when it has unqualified control over its internal affairs. On the other hand, a citizen of an independent country enjoys individual freedom when he is free to say and do what he likes subject only to laws enacted by the freely elected parliament or the popular legislative assembly of the land. Generally, it is agreed that political freedom is meaningless unless it goes hand in hand with economic freedom, more still with religious freedom. Anyone who cares to read his history right will readily concur that the prime and sole motivations for imperialist predatory, conquest and rule are economic in character. If the imperialist powers can accomplish their economic exploitation of the weaker nations without political control, they will much prefer to do it that way<sup>7</sup>.

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<sup>5</sup> Tunji Lardner Jnr., *Awolowo: Homo Polticiaus.. This week, Vol. 4 No. 12 June 15, 1987, 8.*

<sup>6</sup> *Cocaine comes from South America, principally Bolivia, Peru and Colombia. Then Canna.*

<sup>7</sup> *Obafemi Awolowo, Philosophy for Independent Nigeria, being a speech delivered to Nigerian Students at Conway Hall, London, quoted in This Week Vol. 4 No. 12, June 15, 1987, 8.*

Today, Nigeria is an Independent sovereign nation with its Constitution. The concept of the supremacy of the Constitution confers the highest authority in a legal system on the Constitution. Stating this principle does not mean just giving a rank order of legal norms. The point is not solely a conflict of norms of differing dignity. The principle of the supremacy of the Constitution also concerns the institutional structure of the organs of state. The scope of the principle becomes clear if we reformulate it: the supremacy of the Constitution means the *lower ranking* of statute; and that at the same time implies the *lower ranking* of the legislature. Legislature is only a formative factor in law<sup>8</sup>.

It is many centuries since the judiciary were so involved in the legislative process that they could say “Do not gloss the statute; we know it better than you for we made it”<sup>9</sup>. Even if the legislature neglects to review *Dangerous Drugs Act*, courts when such matter gets to them should interpret the law through the eyes of the modern world. Courts are vested with powers of judicial review. No legislature can make any law ousting the courts jurisdiction to superintend the laws.

This article seeks to explore – with the aid of a law report on *Prince v. The President of the Law Society of the Cape of Good Hope & others*<sup>10</sup> and *Freedom of religion v. Drug traffic Control: The Rastafarian, the Law Society and the right to smoke the ‘holy weed’*<sup>11</sup> as well as some other materials – the background of the *1935/37 Dangerous Drugs Act and Regulation* and to explain the concerns of the promoters and their opponents. This discussion has some relevance to questions of how the courts should look at issues concerning Indian Hemp if there is no clear amendment or outright abrogation of the Act. It may also be germane to the debate about the relevance of law on such a substance – Indian Hemp, without prejudice. This article will show that the purported mischief, which the Act was aimed, was ill conceived and the ground upon which the legislation was put in place was purely political.

However, another message of this article is to know if Indian, Hemp could be the “messiah” that could take most African Countries out of their present economic

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<sup>8</sup> “Rainer Wahl. *Der Varrang der Verfassung*” *Der Staat* 4/81, 485. See also Jutta Limbach. *The Concept of the Supremacy of the Constitution*, *The Modern Law Review*, Vol. 64 No.1 January, 2001.

<sup>9</sup> *The Dangerous Drugs Act should provide a better example of judicial reliance on personal knowledge of Paliamentary history – per Lord Nottingham in Ash v. Adby (1678) 3 Swan 644 when introducing Statute of Fraud 1677.*

<sup>10</sup> (2002) 4 LRC 508.

<sup>11</sup> By Pierre De Vos in *Law, Democracy & Dev.* (2001) Vol. 5, 88 – 107.

Armageddon otherwise, they will continue to be buffeted by the developed countries. When legislative search light is focused on Indian Hemp more positively synchronize with the World Bank emphasis on the interdependence of all elements of development – social, structural, economic and financial as well as the importance of countries” directing and “owning” their development agendas and anti-poverty programs. Our Constitution is comprehensive enough. To enable the legislature charged with holding governments accountable for achieving the objectives; the legislature should be made to represent the wishes and concerns of their constituents to the government and mediate between them. We should no longer shy away from certain imperative steps in a democratic society, which we find ourselves. At the international level, a wave of democratization swept over the world. In 1974, there were only 39 democracies; by the mid – 1990’s there were 117. We are one of them. Let us take the plunge in charging our legislature to review the statue as elected legislatures are vital components of democracy.

### **3. DEFINITION OF TERMS**

**a. Drug** - Much cannot be achieved if the word DRUG is not properly understood. The way a lay person sees Drug could be likened to the way seven blind men ‘saw’ and described an elephant. To make the platform clear; drugs in themselves are neither good nor bad. In our society they feature commonly as physical medicine, psychological palliatives and social enablers amongst other uses. Because drugs are such a central feature of our society’s ways of coping with life, all kinds of people may use them and some may have problems with them.

Thus the label “drug user” covers a variety of people and their problems amongst whom may well be an executive using alcohol to cope with a stressful job, a woman holding off the anxiety of a house bound existence with tranquillizers as well as a homeless “street junkie”, a young glue sniffer or a Cannabis (Indian Hemp) user in trouble with the law<sup>12</sup>. It is apparent that drugs have recreational values also. Since Indian Hemp is classified as a drug, it will be proper to look at it more closely. So, a drug is any substance that may be absorbed into the body and then affects its functioning. This includes a wide range of substances which are taken without a legal prescription.

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<sup>12</sup> *Drug Resource pack, produced by City Road (crisis Intervention) Ltd, William Hart House, 358 City Road, London EC IV 2 Py, I. It is noteworthy that some countries now excuse certain quantity in possession of individuals.*

A psycho-active drug is one which at least in part, acts directly on the brain or Central nervous system to produce an alteration of brain functioning. Few drug users only use one type of drug. Most drug users are multiple (or poly) drug users. Often “illicit” drug use is supplemented or substituted with excessive alcohol use.

Many of the drugs commonly abused are addictive. This means that the body grows to increasingly depend upon their presence in order to function. The removal of the drug causes withdrawal symptoms which may vary from minor anxiety and feeling ‘unwell’ through to major psychotic states and ‘grand mal’ fits. Apart from the physical effects of addiction, the user also builds up an emotional and psychological dependence upon the use of drugs which complements the physical states. Withdrawal from most drugs habit should be medically supervised if at all possible. Apart from the physical effects caused by the drugs themselves, many drug users also suffer from a number of ailments and conditions caused by their administration or from physical debility, following prolonged use. Often, people have abscesses and ulcerated sites caused by injecting substances such as barbiturates or Diconal tablets which are themselves irritants. Although these abscesses are usually initially sterile they may become secondarily infected. Drug users are also prone to diseases such as hepatitis and septicemia and to a range of digestive and alimentary tract disturbances. Access to medical aid should be sought to deal with these problems. Abuse drugs may best be divided into the following categories.

**i. CENTRAL NERVOUS SYSTEM STIMULANTS (UPPER)**

- Drugs which have an overall stimulant effect. Examples are – Amphetamines, Cocaine, Caffeine, Ephedrine and pseudo – ephedrine, Nicotine (from tobacco etc).

**ii. CENTRAL NERVOUS SYSTEM DEPRESSANTS (DOWNERS)**

- Drugs, which have an overall depressant or sedative effect. Examples are: Barbiturates, other sedatives/Hypnotics (e.g. valium, Librium, Mogadon), Alcohol, Inhalants, Opioids (e.g. Morphine, Heroin, Codine), Cannabis (Indian Hemp).

**iii. PSYCHEDELICS – drugs which produce a profound alteration of consciousness, auditory and visual hallucinations. LSD, Mescaline, Peyote, STP, DMT, Psilocybin, PCD.**

These drugs produce profound alteration of consciousness, auditory and visual hallucinations, confusion and accentuation of sensory experience. Very few 'organic' hallucinogens (mescaline, Peyote) are available in black market, though there is a growing interest in some mushrooms which contain small amounts of hallucinogens. Caution must be used as some mushrooms are poisonous. These drugs are non-addictive, but may produce neurotic and possible psychotic states due to the severity of sensory disorientation<sup>13</sup>.

Controlled drugs are divided into classes according to their comparative harmfulness either to individuals or to society as a whole. Many of the drugs are not seen in this country but are controlled particularly by NAFDAC also because of International obligations<sup>14</sup>.

Other drugs in this class include (psychedelics):

- Cannabinol and Cannabinol derivatives (ie the Concentrated extract of the active constituents of Cannabis but not cannabis itself or cannabis resin).
- Coca leaf (from which Cocaine is extracted)
- Cocaine (except in preparations in which the concentration is not more than 0.1% etc.<sup>15</sup>

**b. Indian Hemp means -**

- i any plant or part of a plant of the genus Cannabis; or
- ii. the separate resin, whether crude or purified, obtained from any plant of the genus cannabis; or
- iii. any preparation containing any such resin, by whatever name that plant, part, resin, preparation may be called.<sup>16</sup>

Indian hemp has many names that include – *Dagga, ganja, guff, gayi genus cannabis, Hashish, holy herb, holy weed, marijuana, wee-wee etc.*

**c. Danger.** When we describe a substance as dangerous as seen in the statute, we have to know what it means. This being a noun and its adjective is dangerous. In the main, it means liability or exposure to harm, risk or peril.

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<sup>13</sup> See f.n. 12 at 46.

<sup>14</sup> Section 2 Dangerous Drugs Act Cap D1 Laws of the Federation of Nigeria, 2004.

<sup>15</sup> See f.n. 12 at 46

<sup>16</sup> Section 2 Dangerous Drugs act Cap D1 Laws of the federation of Nigeria, 2004.

#### 4. LEGISLATIVE HISTORY OF DANGEROUS DRUGS ACT

The first American anti-drug law was an 1875 San Francisco Ordinance, which out-lawed the smoking of opium<sup>17</sup> in opium dens. It was passed because of the fear that Chinese men were luring white women to their “ruin” in opium dens. “Ruins” was defined as associating with Chinese men. It was followed by other similar laws, including Federal laws in which trafficking in opium were forbidden to anyone of Chinese origin, and restrictions on the importation of smoking opium. The laws did not have anything really to do with the importation or opium as a drug, because the importation and use of opium in other forms such as in the common medication *laudanum*... were not affected. The laws were directed at smoking opium because it was perceived that the smoking of opium was a peculiarly Chinese custom. In short, it was a way of legally targeting the Chinese.

Cocaine<sup>18</sup> was outlawed because of fears that super human “Negro Cocaine Fiends” or Cocainized Niggers” (actual terms used by newspapers in the early 1900’s) take large amounts of cocaine, which would make them go on a violent sexual rampage and rape white women. There is little evidence that any black man actually did this, if only because it would have been certain death. The United States set a record in 1905 with 105 recorded lynching of black men. At the same time, police nationwide switched from. 32 Caliber pistols to 38 Caliber pistols because it was believed that the Superman “Negro Cocaine Fiend” could not be killed with the smaller gun.

Dr. Hamilton Wright is sometimes referred to as the “father of American Drug Laws”. Dr. Wright was the Opium Commissioner at the time and had previously become famous because he had “Scientifically proved” that beri-beri was a communicable disease. Beri-beri is caused by vitamin deficiency.

The Harrison Act which “outlawed” these drugs was on its face, a simple licensing law which simply required sellers to get a license if they were going to handle the opiates and cocaine. As the Consumers Union Report on Illicit and Illicit Drugs has said, it is doubtful that very many members of congress would have thought that they were passing what would later be regarded as a general drug prohibition. The law even contained a

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<sup>17</sup> See Sections 2,3,4,5 and 6 of *Dangerous Drugs Act Cap D1 LFN, 2004.*

<sup>18</sup> See Sections 2, 7 and 8 (c) and *Dangerous Drugs Act Cap D1 LFN, 2004.*

provision that nothing in the law would prohibit doctors from prescribing these drugs in the legitimate practice of medicine.

In fact, even the people who wrote the *Harrison Act* and the *Marijuana Tax Act* in 1937<sup>19</sup> agreed that a general prohibition on what people could put into their own bodies was plainly an unconstitutional infringement on personal liberties. For comparison, see the history of the Constitutional amendment, which was required to prohibit alcohol. There is no fundamental reason why a constitutional amendment should be required to prohibit alcohol. There is no fundamental reason why a Constitutional amendment should be required to prohibit one chemical and not another.

The trick was that the bureaucrats who were authorized to issue licenses never did so, and there was a heavy penalty for not having the license. This heavy penalty required that the enforcing bureaucrats needed more staff and, therefore, more power, which, in turn required tougher laws. Over the years, through a series of court rulings they gradually got the courts to change what had been a well-established Constitutional law provision. Specifically, they got the courts to accept the notion that it really was a tax violation when people got arrested for drugs, and that the fact that the government would not issue any licenses was not a defence. They also got the courts to by-pass the old issue of whether the Federal Government had the right to control what an individual puts into their own bodies by creating the fiction that whatever the person puts into their bodies must have come as a result of some form of interstate commerce, which is regulated by the Federal Government in the form of taxes and licenses and therefore, since the Federal Government is allowed to levy a tax it is... by rather indirect logic... allowed to regulate what anyone may put into their own bodies.

Marijuana<sup>20</sup> was outlawed in 1937 as a repressive measure against Mexican workers who crossed the border seeking jobs during the Depression. The specific reason given for the outlawing of the hemp plant was its supposed violent “effect on the degenerate race” (Testimony of Bureau of narcotics Commission Harry J. Anslinger, in testimony before

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<sup>19</sup> *Marijuana is the same thing as Indian Hemp in Nigeria Dangerous Drugs Act Cap D1 LFN, 2004. However, Nigeria has no Tax Act for Marijuana. The same thread of Colonialism runs across Nigeria. South Africa and USA and the story is the same with respect to Indian Hemp in all of them. See Chanock, The making of South African Legal Culture 1902 – 1936: Fear, Favour and Prejudice (2001), 69, 92-96 where it was stated that “until 1921 daga (Indian Hemp) was sold openly by nine storekeepers in the towns and grew wild in much of the country... interracial sex, the provision of alcohol by whites to blacks and the reverse flow of daga...”*

<sup>20</sup> *This is the same with Indian Hemp as in Cap D1 LFN. 2004. Notice that Dangerous Drugs Regulations was Promulgated per L.N. II of 1937 for Nigeria under sections 3 and 7 (1) of Dangerous Drugs Act.*

Congress in hearings on the Marijuana Tax Act of 1937). The American Medical Association (AMA) specifically testified that they were opposed to the law. When the supporters of the law were asked about the AMA's view on the law on the floor of congress, they lied and said that the AMA was in favour of the law because they knew the law would never pass without the AMA's endorsement. The law passed and the AMA later protested, but the law was never repealed.

In both cases, newspapers across the country carried lurid stories of the awful things that these drugs did to racial minorities, and of the horrors that people of racial minorities inflicted on innocent white people while they were under the influence of these drugs. *Later research has shown that not a single one of the stories used to promote these laws could be substantiated.*

In fact, there are about 50,000 products which can be made from the Marijuana (Indian Hemp) plant<sup>21</sup>. It has been used since the dawn of history for the widest variety of uses. These uses include fibers, fuels, materials, and medicine. The first American laws regarding marijuana (Indian Hemp) were passed in the 1700's and required farmers to grow hemp (marijuana) because of its tremendous commercial value for dozens of uses. It was grown throughout the United States as a Commercial product well into the 1940's. It was made illegal in 1937 largely as a result of pressure from oil and chemical companies who feared the competition from marijuana<sup>22</sup>. Despite the laws, during World War II marijuana was considered so vital to the national interest that the U.S. Government exempted farmers from military duty if they grew marijuana (Indian Hemp). Local 4-H clubs were encouraged to have their members grow marijuana and the US Government produced a film "Hemp for Victory".

## **5. CONSTITUTIONAL IMPLICATIONS OF DANGEROUS DRUGS ACT**

The word "Constitution" had several meanings in the 18<sup>th</sup> and 19<sup>th</sup> Century, some of which do not correspond to modern usages. According to one usage, for example, the "Constitution" was simply the arrangement of existing laws and practices that, literally,

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<sup>21</sup> See <http://www.druglibrary.org/schaffer/hemp/general/who-conclusion.htm>; Schaffer Library of Drug Policy at their web site at page 15 particularly at the answer to the question "Do the illegal drugs have any legitimate uses?"

<sup>22</sup> It has to be noted that as at the time in question one can count the number of cars in a country by the fingers so the Indian Hemp oil/fuel was enough.

constituted the government<sup>23</sup>; it was neither anterior nor superior to government or ordinary law, making it possible to speak of a law being unconstitutional without it also being illegal. Do I tremble at the decision of my mind that a law against the constitution may be declared void? Or Do I dread the resentment of court, when I bear testimony against their competency to pronounce the invalidity of the law? No! The revolution has given me a coat of mail for my defence, while I adhere to its principles. That bench too is reared on the revolution and will arrogate no undue power. I hold then that every law against the constitution may be declared void<sup>24</sup>.

The right to freedom of religion<sup>25</sup> was probably one of the most important of all human rights. Religious issues are matters of the heart and faith particularly in a secular state<sup>26</sup>. By *Article 3 of the African Charter on Human Rights* every one is equal before the law and entitled to equal protection of the law. Apart from the fact that the Rastafarians attach sacramental value to Indian Hemp a lot stand to be benefited from the plant by the entire nation<sup>27</sup>. The said right to freedom of religion at least comprehend

- a. The right to entertain the religious beliefs that one chooses;
- b. The right to announce one's religious beliefs publicly and without fear of reprisal and
- c. The right to manifest such beliefs by worship and practice, teaching and dissemination.

The Constitutional provision regarding religion emphasized the protection to be given to members of communities united by religion to practice their religion. It would not be impossible to address any anticipated problem, imaginary and otherwise by appropriate legislation and administrative infrastructure. The criminalization of Indian Hemp is

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<sup>23</sup> *This is the gist of Bolling Broke's Well-known assertion that "[b]y Constitution we mean, whether we speak with propriety and exactness, that assemblage of laws, institutions and customs... that compose the general system, according to which the community hath agreed to be governed". Letter X, in Z. The Works of Lord Bolling Broke 88, (Philadelphia, Carey & Hart, 1841), 88.*

<sup>24</sup> *Quoting Edmund Rondolph, rough Draft of Argument in Respondent v. Lamb (the case of the Prisoner).*

<sup>25</sup> *Section 38 of the 1999 Constitution of Nigeria and Art 8 of African Charter on Human Rights.*

<sup>26</sup> *See Section 10 of the 1999 Constitution of Nigeria.*

<sup>27</sup> *It will be seen in later part of this work that an economy can be sustained by Indian Hemp if properly researched into and utilized. Decriminalization of the plant will make people feel there is nothing in it, after all, when people were going about in nudity there were no cases of rape and promiscuity as we have now.*

constitutionally bad because it proscribed the religious use of Indian Hemp even when such use did not threaten the government interest<sup>28</sup>.

Government should not allow a section of the citizenry to a choice between their faith and respect for the law. Exemptions from general laws always imposed some cost on the state; practical inconvenience and disturbance of established majoritarian mind-sets were the price that constitutionalism exacted from government. There should be consideration for the fundamental rights of the people and their religious community and there should be the basic notion of tolerance and respect for diversity that the Constitution demanded for and from all in society. A Constitution is “a document of profound importance touching upon the entire polity, and it may be undesirable to interpret it strictly if the effect of that would be to impair stable and orderly administration<sup>29</sup>”.

It will be proper for all competing interests to be considered, on a principled yet nuanced and flexible case-by-case basis engendered by criminalization of Indian Hemp yet guided by international experience articulated with appropriate candour and accomplished without losing sight of the ultimate values highlighted by the Constitution.

Taking into consideration the vulnerability and powerlessness of the Rastafarian and the degree of prejudice to which they were subject, coupled with the extreme impact the general prohibition had on their religious rights and freedoms, linked to the marginal effect a carefully managed exemption would have on the war on drugs, and taking cognizance of the place that Indian Hemp had in the panoply of drugs designated as “dangerous”<sup>30</sup>. There is a clear duty on the courts and the legislature to intervene so as to guarantee the Rastafarian reasonable and manageable measure of space within which to exercise their individual and associational rights<sup>31</sup>.

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<sup>28</sup> *It will be shown that the criminalisation of Indian Hemp by the Colonialists who also signed the Geneva Conventions Nos 1 and 2 on our behalf had ulterior motive and at best did so on political grounds to serve their selfish interests. See also Christian Education South Africa v. Min. of Education (2001) 1 LRC 441; Dawood v. Min. of Home Affairs; Shalabi v. Min of Home Affairs; Thomas v. Min of Home Affairs (2000) 5LRC 147; State v. Lawrence; State v. Negal; State v. Solbera (1998)1 LRC 390.*

<sup>29</sup> *Nwabueze B.O. Constitutional Law of the Nigerian Republic, Butterwoths, 1964, 305.*

<sup>30</sup> *See Dangerous Drugs Act and Dangerous Drugs Regulations Cap D1 LFN, 2004.*

<sup>31</sup> *See Section 40 of the 1999 Constitution. Also see Musa v INEC (2002) II NWLR (pt. 778) 223 on the effect of provision of any law/statute which adds to, alters, enlarges or curtails the provisions of the Constitution as well as the nature of the relationship between Constitutional provisions with other statutes. Again See CCB (Nig.) Ltd. V. Mbakwe (2002) 7 NWLR (pt. 765) 158 on whether Fundamental rights can be waived. Exception is only for political party association which we are not concerned with.*

We have to recall that we agreed as provided in our Constitution that no one should be discriminated against. This led to the provision of Section 42 of the Constitution of Nigeria, 1999 wherein every citizen was assured of freedom from discrimination based on religion and others due to *disabilities or retractions to which citizens of Nigeria of other... religions or political opinions are made subject*<sup>32</sup>. For this Justice Jackson affirmed in *Brown v. Board of Education of Topeka*<sup>33</sup>.

*... the sublime and majestic generalities in the Constitution has a concept and a content which vary from age to age.*

If history is anything to go by, our hindsight will reveal that Sir Henry Willink a British, in 1958 was appointed to deal with one of the nagging problems impeding the acceptance of independence for Nigeria – the problem of fears of Minorities<sup>34</sup>.

Sir Henry, in his Report, saw the new World-wide movement on human rights as an answer and a panacea against ethnocentric injustices against Minorities<sup>35</sup>. In his Report<sup>36</sup>, he recommended containment of fears of Minorities by entrenchment of human rights provisions in Independence Constitution of 1960<sup>37</sup> for the purpose of preventing a steady deterioration in standards of freedom and the unobtrusive encroachment of governments on individual rights. However, as *chief Awolowo* observed<sup>38</sup>, even though the initial intention for the inclusion of these rights was the protection of minorities, when they found their way into one Constitution after another... their more general and current role is to protect all citizens of Nigeria against legislative excesses<sup>39</sup> and executive abuses<sup>40</sup>. When matters on

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<sup>32</sup> Section 42 of the 1999 Constitution.

<sup>33</sup> 347 US 483 (1954).

<sup>34</sup> *The Rastafarians are in the Minority in Nigeria and the Constitution accommodated them by its Secular posture.*  
See

*Section 10 of the 1999 Constitution.*

<sup>35</sup> *Apart from ethnocentric injustices there are religious injustices which should be properly addressed or they will continue to rear ugly head, after all, small faeces on an apparel soils it much more than big one.*

<sup>36</sup> *The Report of Sir Henry Willink's Commission, 1958.*

<sup>37</sup> *We still have the provisions in our 1999 Constitution per Chapter 4, Nigeria signed many International treaties in that regard. See Akinola v. Babangida & 3 Ors Vol. 4 Nos. 1, 2,3, Dec. 1994, 250.*

<sup>38</sup> *See the Autobiography of Chief Awolowo (1960) 201 – 202.*

<sup>39</sup> *The Dangerous Drugs Act Cap D1 2004 per Indian Hemp inclusion appears to be one of the excesses though politically motivated. It must have been due to clerical inadvertence that Indian Hemp was not excluded at and after our Independence. Perhaps now is the time. Local gin was outlawed before now nobody takes notice of it so will be Indian Hemp.*

<sup>40</sup> *Hon. Justice Nnaemeka – Agu JSC (rtd.), Constitutional and Human Rights Proceedings at the Nigerian Institute of International Affairs on 7/3/91, 4.*

the use of Indian Hemp gets to our courts, it is hoped that the Courts would be faithful to the letters of the Constitution due to the jurisprudence of the Constitution.

The guarantee of freedom of religion requires the state to allow individuals to entertain<sup>41</sup>, declare<sup>42</sup> and manifest their religion without bias or discrimination<sup>43</sup> against one religious group **vis-à-vis** another. The state should not take sides on question of religion and should not impose belief, grant privileges or impose disadvantages on adherents of any particular belief or marginalize people who have different beliefs. No one can concretely or surely say from which religion human favour come from. It may come from Christianity, Islamism or Rastafarianism. Different rights have different implications for democracy, and in the case of our constitution, for ‘an open and democratic society based on freedom and equality (and human dignity)’, means that there is no absolute standard which can be laid down for the reasonableness<sup>44</sup>.

## **6. THE ORIGIN OF RASTAFARIAN RELIGION**

Religion is the best way a man thinks he can draw from God the life which will give him maximum happiness and services to humanity<sup>45</sup>. The word Rastafarian is derived from “Ras” meaning “duke” and “Tafari”, the late Emperor Haile Selassie’s family name<sup>46</sup>. The only son Ras Makonnen cousin and principal adviser to Emperor Menlik (1889 – 1913), Tafari Makonnen was born near Harar in 1892. His father died when he was only 13 years old. Three years later, young Tafari was sent to Sidamo as governor, where he quickly acquired a reputation for progressive administration and sound judgment.

In 1916, Menelik’s successor, his grandson Lij yasu, was deposed: the old Emperor’s daughter, Zauditu was declared Empress and *Tafari Makonnen* were appointed Regent with the rank of Ras.

During the 14 years of the regency, *Ras Tafari* pressed the conservative Empress to allow him to develop links with the outside world and to introduce changes to suit modern

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<sup>41</sup> That would imply the right of believe whatever one wants to believe.

<sup>42</sup> That would imply the right to propagate one’s religion publicly.

<sup>43</sup> That would imply the right to practice one’s religion through religious gatherings and ceremonies like crusades and Holy Communion respectively.

<sup>44</sup> See Section 42 of 1999 Constitution of Nigeria.

<sup>45</sup> Pierre De Vos, *Freedom of Religion v. drug traffic Control: The Rastafarian, the Law, Society and the right to smoke the ‘holy weed’*, law, *Democracy and development*, 2002, 85 at 88.

<sup>46</sup> Mazi B.A. Oji, *The First Book of ‘Nkomi (Deep Theology) Culled from Fear to Confidence. The Research Institute of African Religion*, 219 Cameron Road, Box 109 Aba, 12 para 22.

times. Through his initiative, Ethiopia joined the *League of Nations in 1923*, a move which involved him in several clashes with the old nobility because of his under taking to end slavery in Ethiopia. He founded the *Betesaida Hospital, the Tafari Makonnen School and the Berhanena Salem Press*.

It was during that period, too that he took steps to establish a national army, together with an officer training school at Holeta. When, the empress died in April, 1930, *Tafari Makonnen* became Emperor, taking the name *Haile Selassie*<sup>47</sup>.

Rastafarianism is a millenarian movement which has its origins among the people of Jamaica. Members of the movement worship *Haile Selassie*, the late Emperor of Ethiopia, as traced above, and make extensive sacramental use of (dagga) Indian Hemp<sup>48</sup>. The Rastafarian movement has its roots in the rebellious communities of former black slaves in Caribbean Island nation of Jamaica<sup>49</sup>. Rastafarianism has strong political roots. It appears to be a synergetic product of numerous groups, all alienated by the inequities of white – dominated Jamaica<sup>50</sup>. The prominent but reluctant father of the movement is Jamaican Pan – Africanist Marcus Garvey, who predicted the coming of a black Messiah<sup>51</sup>.

The movement was born when, through some unique Interpretations of both the Old and New Testaments of the Christian Bible, followers identified *Haile Selassie* as the black Messiah predicted by Garvey. This followed after Selassia assumed the title of king of kings, Lord of Lords, Lion of the Tribe of Juda<sup>52</sup>.

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<sup>47</sup> See *African Magazine* No. 38, October 1974, 27.

<sup>48</sup> Taylor T. *Soul rebels: The Rastafarians and the Free*.

<sup>49</sup> Barret L, *Rastafarians: The dread locks of Jamaica Kingston: Sangster's Book Stores, 1977, 21 – 69*.

<sup>50</sup> This has the semblance with South African Rastafarian Movement which gave rise to Prince v. The President of the Law Society for the Cape of Good Hope & Ors (op cit).

<sup>51</sup> Garvey Wrote: *Whilst our God has no Colour, yet it is human to see everything through ones own spectacles. And since the white people have seen their God through white spectacles, we have only now started out (late though it may be) to see our God through our own spectacles... We Negroes believe in the God of Ethiopia, the everlasting God. God the son, God the Holy Ghost, the One God of all Ages. That is the God in Whom we believe, but we shall worship him through the spectacles of Ethiopia. See Garvey, A.J., 1967, Philosophy and Opinions of Marcus Garvey; 2<sup>nd</sup> ed., 34 as quoted in Barrett, 1977, 77. Ironically Garvey disputed Haile Selassie's divinity and denied that his own statement regarding a black king supported the Rastafarian beliefs. See White T. Catch a fire: The life of Bob Marley, London Elm Tree, 1983, 89 as quoted in Taylor, 1984, 1605.*

<sup>52</sup> This title corresponds with two passages from the Book of Revelation including Revelation 5:25 (“and I saw a strong angel proclaiming with a loud voice: who is worthy to open the book, and loose the seals thereof? And no man in heaven, nor in earth... was able to open the book... and one of the elders saith unto me, weep not: behold the lion of the tribe of Judah... hath prevailed to open the book”), and Revelation 19:16 (“and he hath on his vesture... a name written; King of kings, Lord of Lords”). For account of the rise and fall of Emperor Selassie, See Kapuchinsky 18, *The last emperor* 1986.

## 7. A COMPARATIVE ANALYSIS OF INDIAN HEMP as a “Dangerous Drug”

The benign nature of Indian Hemp is prejudicially forgotten and having in mind or concluding like a judge at a trial for witches during the Middle Ages asserting certain “facts” about the nature of witches and witchcraft that were assumed to be so self evident that they need not even be questioned. Most of the time people conclude that Indian Hemp is a stepping stone to the use and abuse of and dependence on other more harmful drugs, that unbanning it would lead to an influx of neophytes to certain religions and that there are other socially harmful consequences, so notorious, that we need not dwell on them. In fact, there are overwhelming available evidence that points to the relative benign effects of Indian Hemp use vis-à-vis the use of alcohol or tobacco. The former cause gaunt and latter causes cancer while Indian Hemp cause none. Indian hemp’s effects are currently unknown and its use may have no negative effect at all on job performance<sup>53</sup>.

However, the suppression of vice is as much the law’s business as the suppression of subversive activities. I am against “addiction” to any substance even food or water but concerned with how to prevent it. It is because medical records have shown that (1) “Marijuana (Indian Hemp) kills 0 or none. There has never been a recorded death to marijuana at any time in US history.<sup>54</sup> (2) There are about 50,000 products which can be made from the marijuana (Indian Hemp) plant. It has been used since the dawn of history for the widest variety of uses<sup>55</sup> and (3) “Holy-weed” (Indian Hemp) has sacramental value<sup>56</sup>. These led me to this article. This is one important thing to remember. The absence of evidence is not evidence of absence. Religious belief has the capacity to awake concepts of self-worth and human dignity which form the cornerstone of human rights. It affects the believer’s view of society and founds the distinction between right and wrong. It expresses itself in the affirmation and continuity of powerful tradition that frequently have an ancient character transcending historical epochs and national boundaries<sup>57</sup>.

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<sup>53</sup> Charles R. Schwenk, *Marijuana and Job Performance: Comparing the Major Streams of Research*, *Journal of Drug Issues*, 28 (4), 1998, 941.

<sup>54</sup> See Schaffer Library of Drug Policy, 7, <http://www.druglibrary.org.schaffer/hemp/general/who-conclusion.htm>.

<sup>55</sup> *Ibid*, 15.

<sup>56</sup> *Prince v. Law Society supra* 508 at 534 and 564. *The use is isolated and confined to specific ceremonial occasions where it is eaten in a ‘carefully circumscribed ritual context’ closely analogous to the sacramental use of wine by the Anglicans and the Roman Catholics.*

<sup>57</sup> *Christian Education South Africa v Minister of Education (2001) 1 LRC 441.*

Deviants from a conventional use of narcotics are not necessarily antagonistic. In other words to society as a whole and its demands; there is always the danger of entrenching irrational and harmful prejudices in the guise of a legal stance designed to safeguard “basic patterns” of morality. Morality is very much more than mere integument, it expresses essential aspects of the bonds which serve to unify society; the law has an important inescapable role to fulfill in safeguarding, society from attention to shatter its shared morality.

There are many recreational drugs but it is only Indian Hemp that is criminalized. The use of Indian Hemp is dose-related, the same as the use of tobacco and alcohol and the use of Indian Hemp apparently does not lead to cognitive impairment and does not cause violence rather it is the hard conditions which the government made available to the citizens that cause same. Where there is genuine and sincere poverty alleviation no one would be used for “odd jobs” or election rigging, “Akpu Obi” ie “strong heart” – miscreants. Hemp should be decriminalized and it will be seen that there will be less attention and need for it by the unwanted users. Let us recall that there was a time in this country when local gin was criminalized and people found business in it’s smuggle. Today no one knows that it exists. As I have said elsewhere, there is no record of promiscuity, rape and AIDS pandemic when people were going about nude. Until people started hiding their nakedness the curiosity to know what is hidden under the apparel brought about promiscuity resulting in rape and AIDS pandemic.

Based on the recreational value of Indian Hemp and others like tobacco and alcohol will it be proper to protect individual members of society from the ravages of such things tagged drugs by Dangerous Drugs Act. Also to protect society as a whole from the consequences of the abuse of recreational drugs. The implication is that individuals in society itself are seen as weak and powerless to resist the temptations inherent in such substance<sup>58</sup>.

Perhaps it is because recreational drugs like Hemp are harmful or even dangerous to individuals that people are to be protected from such substances by the *nanny* state. The public policy on Hemp revolves around the actual or purported harmful effects of the

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<sup>58</sup> *Leuw and Marshall, 1994: (XIV), See Lotter S, The decriminalization of Cannabis: Hallucination or reality? SAC J, Vol. 12, 1999, 185..*

purported drug. However, it is difficult to make an accurate determination of the extent to which recreational drugs pose a threat to individuals and to society as a whole. There are two reasons for this. (A) It is almost impossible to avoid the double standards that operate in the appraisal of the health effects of using Indian Hemp<sup>59</sup>. This is “pharmaceutical Calvinism” within the paradigm it is assumed that the use of drugs for recreational purposes-as opposed to medical ones is morally tainted; much like watching movies of dancing was seen as morally tainted in places like Potchefstroom during South African apartheid era. As they have now celebrated some years of post-apartheid they may have forgotten all that took place. From this paradigm it is assumed that individuals who use drugs recreationally are somehow morally weak and thus pose an inherent threat to the so-called “moral fabric” of society. Within this paradigm, exceptions are made for recreational substances with a long history of acceptance within Western culture, recreational drugs such as alcohol and tobacco<sup>60</sup>.

It is possible that both weather and soil of the Western World do not favour the growth of Indian hemp. If they were able to grow same, it would have been the original sacramental communion of the Europeans (white man) perhaps; it may not have been criminalized<sup>61</sup>. (B) There are methodological problems with making an accurate appraisal of the dangers associated with the use of Indian hemp (a) it is necessary, but difficult, to make causal inferences about the connection between Indian Hemp use and the adverse health and psychological consequences (b) Any appraisal can only have value if it is made with the frame work of a comparative analysis with other recreational drugs in Western Society such as alcohol and tobacco, but making such an appraisal is not without difficulty<sup>62</sup>.

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<sup>59</sup> Hall W. Room R and Bondy S.A. *Comparative appraisal of the health and psychological consequences of alcohol, Cannabis, nicotine and opiate use. Report compiled for the WHO's Project on Health implications of Cannabis Use – Chapter v. Conclusion.htm.*

<sup>60</sup> *There are other reasons why tobacco, Kola and alcohol largely escaped legal censure. Most notably, it is the Product of Colonial history. These substances were instrumental in the gradual colonization of Africa as they assisted the Colonisers in linking local populations to the Colonial – Capitalist system. Because tobacco and alcohol are so addictive, they often created dependence in newly-colonised subjects that could only be satisfied by selling one's labour in the colonial economy. Although by far not the only way in which local populations were enslaved to the capitalist machine, substances like tobacco and alcohol played at least some role in wearing some locals away from their substance existence and recruiting them as cheap labour for the colonial economy.*

<sup>61</sup> Pierre De Vos. *Freedom of religion V drug traffic Control: The Rastafarian, the law, society and the right to smoke the “holy weed”*, *Law Democracy & Dev. Vol. 5, 2001 (1), 85 at 97 – 98.*

<sup>62</sup> Hall W, Room r & Bondy S.A., *Comaprative appraisal op cit,*  
<http://www.druglibrary.org/schaffer/hemp/general/who-approch.htm>.

They are in these 3 categories (1) Harmful for medical reasons (2) Socially harmful (3) harmful for political reasons<sup>63</sup>.

1. Medical harm: There is no evidence to suggest that the moderate use of dagga is harmful to the individual or that it leads to physical or mental dependency<sup>64</sup>. Even regarding heavy users, there is no scientifically verifiable data to prove that dagga (hemp) leads to physical or mental dependency<sup>65</sup>.

The number of drug deaths in the US in a typical year is as follows<sup>66</sup>: Tobacco kills about 390,000<sup>67</sup>.

<b>Drug</b>	<b>Death rate (in persons)</b>
• Tobacco	390,000.00
• Alcohol	80,000.00
• Side stream smoke from tobacco	50,000.00
• Cocaine	2,200.00
• Heroine	2,000.00
• Asprine	2,000.00
• Marijuana +	0

There has never been a recorded death due to marijuana at any time in US history. Likely the same B applicable to most countries of the world.

- All illegal drugs combined kill about 4,500 people per year, or about one percent of the number killed by alcohol and tobacco. Tobacco kills more people each year than all of the people killed by all of the illegal drugs in the last century.

To show the extent to which tobacco is bad, the Time Magazine described it as an “evil weed”<sup>68</sup>. It also said “They forced the tobacco industry to concede, in so many grudging

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<sup>63</sup> Boister N. Decriminalising dagga in the new South Africa: rekindling the debate: SAC J No. 8, 1995, 26 -30.  
<sup>64</sup> Plant M. *Drugs in Perspicive*, London: Hodder and Stoughton, 1987, 19 – 20. Plant States: “It is clear that large number of (dagga) [Hemp] smokers use the drug only intermittently and that they do so without apparent harm”. See also Paschke R. *Personal use and possession of dagga (Hemp): A matter of privacy or Prohibiton?* SACJ Vol. 8, 1995, 110.  
<sup>65</sup> Grinspoon L & Bakalarn B, *Decriminalisation of marijuana*, Prepared Statement of Lester Grinspoon M D, Assi Prof. Of Psycheatry and James Bakalar Lecturer in Law Haward Medical School. Boston Mass. Hearing before the select committee on narcotics abuse and Control House of Reps. Fifty ninth Congress (First Session) 1977.  
<sup>66</sup> See the Website <http://www.druglibrary.org/schaffer/hemp/general/who.htm>:Schaffer Library of Drug policy. 7.  
<sup>67</sup> Tobacco Company has shifted to Nigeria and built the biggest complex because they find Nigeria as a save haven.  
<sup>68</sup> Time Magazine Vol. 149 No. 26 June 30, 1997, 23.

words and so many, many more dollars, those cigarettes are a deadly regimen”<sup>69</sup>. Continuing the magazine reported; “According to the Center for Disease Control, each day in America 6,000 teenagers light up their first cigarette; 3000 teens enter the ranks of ‘regular smokers’, meaning they’ve smoked at least one cigarette a day for a month; and 1,000 adults die prematurely as a direct result of a decision made in adolescence to take up smoking. All told, 400,000 Americans die each year from smoking-related illness”<sup>70</sup>. The same Time Magazine has this to say; according to the World Health Organisation, China collected \$4.9 billion in cigarette taxes in 1993, but bled (expended) \$7.8 billion in lost productivity and additional health care costs. Researchers from the Chinese Academy of preventive Medicine predict that those direct costs will rise to nearly \$8.6 billion by the turn of the century. Other forecast are even more alarming: Smoking, which is already the No. 1 cause of death in China, could kill 2 million people nationwide by the year 2025. In Japan, the proportion of male deaths due to lung cancer is expected to exceed that of Britain and US as soon as in the year 2000. “I see this as a form of economic imperialism by multinationals”, says Daniel Tan a Filipino Physician who is the incoming president of the Asia and Pacific Association for Control of Tobacco<sup>71</sup>

While one study has linked Indian Hemp to brain damage; the validity of this study has been questioned<sup>72</sup>, and since then, a number of other studies using more modern and sophisticated methods of investigation have consistently failed to demonstrate evidence of structural change in the brains of heavy, long term Indian hemp users<sup>73</sup>. In other words some evidence exists that the long term heavy use of Indian Hemp may be harmful to individuals<sup>74</sup>, but the extent of such harm is not clear. The absence of conclusive scientific proof of the seriously harmful consequences of the prolonged use of Indian hemp seems to make it difficult, if not impossible to take a dogmatic view of the subject<sup>75</sup>.

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<sup>69</sup> *Ibid*, 23.

<sup>70</sup> *Ibid* 25.

<sup>71</sup> *Time Magazine* Vol. 150 No. 10 Sept. 8, 1997, 57.

<sup>72</sup> *Paschke R. Personal use and possession of dagga: A matter of privacy or prohibition? SAC J 8 1995, 113; Boister op cit. 27. Schankula H, Dagga: Facts and fictions in South Africa Conference on Dagga held on 14 & 15 Sept., 1993 at the University of Natal – Durban, Durban: University of natal, 1993, 2.*

<sup>73</sup> *Hall op cit*, 6.

<sup>74</sup> *Even water or air could be dangerous if taken disproportionately or too heavily.*

<sup>75</sup> *Rycroft A. The Drugs Act Provisions and problems, Unpublished research project, University of natal – Durban, 1975 page 69 as quoted in Boister, op cit; 27.*

Perhaps the more useful way of evaluating the health risks posed by hemp use is by comparing it to the risks of other legal recreational drugs such as alcohol and tobacco. This is exactly what a report prepared for the WHO by *Wayne Hall et al*<sup>76</sup> set out to do. It concluded that major health risk of Indian Hemp users are most likely to be experienced by those who smoke Indian Hemp daily over a period of years<sup>77</sup>. But overall, most of these risks are small to moderate in size. “In aggregate they are unlikely to produce public health problems comparable in scale to those currently produced by alcohol and tobacco<sup>78</sup>. The report concludes:

*On existing patterns of use, cannabis poses a much less serious public health problem than is currently posed by alcohol and tobacco in Western societies. This is no cause for complacency, however, as the public health significance of alcohol and tobacco are major...*<sup>79</sup>

From the available evidence, there thus seems no logical reason why the purported harm of Indian Hemp use to the individual could justify the criminalization of its use. *The use of alcohol, tobacco, kolanut, red meat and soft drinks, amongst others also cause harm to its users, but their use is not criminalized*<sup>80</sup>. *This seems to suggest that the medical harm of Indian Hemp to individual users is not the main reason for its prohibition.* If it had been the case, the use of alcohol, tobacco and kolanut amongst other products, would also have been prohibited by the state. It thus appears that the dispute about the harmful potential of Indian Hemp is really about its capacity to cause social harm<sup>81</sup>.

2. **Social harm-** Unimaginable number of very highly placed people in this country take hemp. Some of them are people of such eminence that I should certainly be suspected of mercantile or political name dropping if not defamation. However, it is generally accepted that the use of Indian Hemp causes social damage<sup>82</sup>, but it seems impossible to

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<sup>76</sup> See f.n.s 58, 62, 72 and 76.

<sup>77</sup> Hall W, Room R & Bondy S.A Comparative appraisal of the health and psychological consequences of alcohol, Cannabis, nicotine and opiate use. Report compiled for the World Health Organisation's Project on Health Implications of Cannabis Use Chapter IV – comparing the magnitude of risk. 1995. <http://www.druglibrary.org/schaffer/hemp/general/who.Magnitude.htm>.

<sup>78</sup> Op cit. 4.

<sup>79</sup> Op cit chapter V – Conclusion, 1995, 1.

<sup>80</sup> Pashke op cit 112.

<sup>81</sup> Pierre De Vos, *Freedom of Religion v Drug Traffic Control: The Rastafarian, the Law Society and the right to smoke the “holy weed”*, Law, Democracy & Dev. 99-100.

<sup>82</sup> Boister op cit. 27, Paschke op cit 113.

quantify this harm. Several possible harmful consequences of the use of Indian Hemp have been identified.

- a. It is argued that individuals who use Indian Hemp may be dangerous and may cause harm to others<sup>83</sup>. For example, individuals who drive a car or operate machinery under the influence of Indian Hemp may expose themselves and others to danger<sup>84</sup>. This is, of course, true, but cannot be sustained as a reason for the prohibition of its use, as alcohol causes carnage on the roads and yet it is not prohibited<sup>85</sup>. Apart from these examples there is no evidence of other threats to the safety of individuals caused by Indian Hemp. Although it has been asserted that Indian Hemp causes violence<sup>86</sup>. South African Courts have rejected this assertion<sup>87</sup> and have reiterated that recreation drugs are seldom, if ever, referred to in criminal courts as the cause of assault or murder. As *Van den Heever J. stated in South Africa v Seru mala*<sup>88</sup>:

*Experience teaches us that alcohol addicts are usually more harmful to society than those addicted to the relevant listed drugs. In the criminal courts, the evidence shows more often than not that alcohol was the cause for one person assaulting or even killing another person. Other drugs are seldom mentioned as the cause of many divorces while the use of other drugs are seldom mentioned in this regard.*

This view was endorsed by the study conducted for the WHO. This study claims that while the use of alcohol is strongly associated with aggressive and violent behaviour, there is little to suggest that there is a causal relationship of cannabis (Indian Hemp) use to aggression or violence<sup>89</sup>.

- b. It is often asserted that the use of Indian Hemp encourages crime, but no reliable evidence exists of a link between Indian Hemp use and crime.

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<sup>83</sup> *Op cit* 113.

<sup>84</sup> *Hall et al op cit Chapter III – A qualitative comparison of the health risks of alcohol Cannabis, nicotine and opiate use, 1995, 1..*

<sup>85</sup> *Boister op. cit, 27.*

<sup>86</sup> *Inciardi & Mc Bride D, Debating the legalization of drugs, In Handbook of drug control in the United States edited by J. Inciardi New York: Greenwood Press 1990, 71.*

<sup>87</sup> *S.V. Philips (1985) 2 SA 727 (N). The fact of the case are that the famous Charmaine Philips who had gone on a murder spree with her boyfriend Johan Grundling, had pleaded not guilty to murder and had based her plea at least to partly on the fact that she and Cgrundling had been smoking Indian Hemp. The State then led evidence to prove that Indian Hemp did not make the accused violent. This is enough to make the court take judicial notice of the fact that based on proven evidence Indian hemp does not cause violence.*

<sup>88</sup> *(1978) 4 S.A. 811 (NC) at 815 paras C-F.*

<sup>89</sup> *Hall et al .op cit, 2.*

A survey will find that hemp users had a higher incidence of criminal conviction than non-users- prejudice. *Le Roux* discounted this by arguing that rather than the cause, the smoking of Indian Hemp may be but the symptom of the adoption of a different system of values<sup>90</sup>. It is of course ironic, that the fact that the possession, use and distribution of Indian Hemp is illegal<sup>91</sup>, may itself contribute to a rise in crime as it creates a criminal underworld to satisfy the needs of Indian Hemp smokers. This underworld often becomes well organized and move on to other forms of crime from the power base established by their profits gained from the illegal dealing in Indian Hemp and other drugs.

3. It is often argued that Indian Hemp serves as a gateway to a new and devastating lifestyle and thus users soon find themselves the “slippery slope” to the use of more dangerous drugs<sup>92</sup>. However as<sup>93</sup> pointed out, there is no evidence that any property of Indian Hemp produces a peculiar susceptibility to harder drugs. If there is any link between the use of Indian Hemp and the use of harder drugs, it might well be related to the fact that because of the prohibition of the use of Indian Hemp, Indian Hemp users are forced to buy Indian Hemp from criminals who might well introduce them to harder drugs. As *Boister* points out, if users could buy Indian Hemp lawfully, they would not have contact with criminals trying to get them to buy more dangerous drugs<sup>94</sup>. Our experience with local gin “ogogoro” when it was criminalized in Nigeria is a reliable index.

If it is agreed that the use of Indian Hemp does cause some social harm then it might be argued that the state has a legitimate interest in controlling the use of this substance. However, this does not mean that the state should prohibit its use. As South Africa Courts have pointed out, the use of alcohol seems to be socially far more harmful than the use of Indian hemp, yet the use of alcohol is not prohibited. Even those alcohols that are out rightly not liver-friendly are unprohibited. There seems no logical reason why the use of alcohol is regulated but not prohibited, while the use of Indian Hemp is completely outlawed unless other factors play a role in the criminalization of Indian Hemp use<sup>95</sup>.

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<sup>90</sup> *Le Roux and Botha E. Dagga use in the Cape Peninsula, in South African Conference on Dagga held on 14-15. Sep., 1993 at the University of natal-Durban: University of Natal, 1993, 22.*

<sup>91</sup> *Section 6 Dangerous Drugs Act Cap D1 LFN, 2004.*

<sup>92</sup> *Schankula H, Dagga: factors and fiction in South African Conference on Dagga incl on 14 & 15 Sept., 1993 at the University of Natal – Durban, Durban: University of natal, 1993, 4*

<sup>93</sup> *Grinspoon and Bakalar op cit, 372.*

<sup>94</sup> *Boister op cit, 28.*

<sup>95</sup> *Picture De Vos cit. 101 – 102.*

The drug that is most addictive is a difficult thing to say. However, it depends upon a lot of factors in both the drug and the person who uses it. In an attempt to define clearly what is meant by addiction, and which drugs are the most addictive, Dr. Jack E. Henningfield of the National Institute on Drug Abuse and Dr. Neal L. Benowitz of the University of California at San Francisco ranked six psychoactive substances on five criteria.

- **Withdrawal.** The severity of withdrawal symptoms produced by stopping the use of the drug.
- **Reinforcement.** The drug's tendency to induce users to take it again and again.
- **Tolerance** - The user's need to have ever-increasing doses to get the same effect.
- **Dependence** – The difficulty in quitting, or staying off the drug, the number of users who eventually become dependent.
- **Intoxication** – The degree of intoxication produced by the drug in typical use.

The tables listed below show the ranking given for each of the drugs. Overall, their evaluations for the drugs are very consistent. It is notable that marijuana ranks below caffeine in most addictive criteria, while alcohol and tobacco are near the top of the scale in many areas.

**Key:** The rating scale is from 1 to 6. 1 denotes the drug with the strongest addictive tendencies while 6 denotes the drug with the least addictive tendencies ie 1 +↑; 6 +↓.

### HENNINGFIELD RATINGS

Substance	Withdrawal	Reinforcement	Tolerance	Dependence	Intoxication
Nicotine	3	4	2	1	5
Heroin <sup>96</sup>	2	2	1	2	2
Cocaine <sup>97</sup>	4	1	4	3	3
Alcohol	1	3	3	4	1

<sup>96</sup> Heroin is a powerful pain-killer and could be used to control extreme chronic pain of severe diseases, such as cancer. The medical literature shows that heroin is significantly less hazardous than most of the drugs which are given in its place.

<sup>97</sup> Cocaine is used as a topical anesthetic in medicine.

Caffeine	5	6	5	5	6
Marijuana	6	5	6	6	4
					(Indian Hemp)

In the rapidly developing nation of Southeast Asia, cigarettes often carry connotations of wealth and sophistication, especially the more expensive foreign brands. Asians in particular have bought into the myth. In Vietnam, nearly three out of four men smoke, while in China – the world’s largest cigarette market – the vast majority of its 320 million smokers are male. Increasingly, large numbers of women and teenagers have also taken up the habit. More than half of Filipino children between the ages of 7 and 17 now smoke, a 150% 348.3 billion cigarettes, or 2,786 for every Japanese. The region’s appetite for nicotine may have dwarfed that of Western countries. One out of every three cigarettes manufactured today is consumed in China; the state owned China National Tobacco Corp. alone produces 1.7 trillion cigarettes a year, three times the total U.S. output. We are urged to have our own data in Nigeria. Knowing that we do not have the technological or medical know-how combined perhaps with hardship written over the faces of Nigerians, efforts should be geared towards statistical data on our cigarettes. This is particularly necessary now the Tobacco companies are having Nigeria as their save heavens.

**BENOWITZ RATING**

<b>Substance:</b>	<b>Withdrawal</b>	<b>Reinforcement</b>	<b>Tolerance</b>	<b>Dependence</b>	<b>Intoxication</b>
Nicotine	3*	4	4	1	6
Heroin	2	2	2	2	2
Cocaine	3*	1	1	3	3
Alcohol	1	3	4	4	1
Caffeine	4	5	3	5	5
Marijuana	5	6	5	6	4

\* equal ratings

On the issue of violence, of all psychoactive substances, alcohol is the only one whose consumption has been shown to commonly increase aggression. After large doses of amphetamines, cocaine, ISD, and PCP, certain individuals may experience violent

outbursts, probably because of preexisting psychosis. Research is needed on the pharmacological effects of crack, which enters the brain more directly than cocaine used in other form<sup>98</sup>.

Alcohol drinking and violence are linked through pharmacological effects on behaviour, through expectations that heavy drinking and violence go together in certain settings, and through patterns of binge drinking and fighting that sometimes develop in adolescence...<sup>99</sup>. Illegal drugs and violence are linked primarily through drug marketing: disputes among rival distributors, arguments and robberies involving buyers and sellers, property crimes committed to raise drug money and, more speculatively, social and economic interactions between the illegal markets and the surrounding communities<sup>100</sup>.

All major authorities agree that the vast majority of drug related violent crime is caused by the prohibition against drugs, rather than the drugs themselves. This was the same situation, which was true during alcohol prohibition<sup>101</sup>. Alcohol prohibition gave rise to a violent criminal organization. It is taken in secluded areas and barracks.

There are about 25,000 homicides in the U.S. each year. A study of 414 homicides in New York City at the height of the crack epidemic showed that only three murders, less than one percent, could be attributed to the behavioural effects of cocaine or crack. Of these, two were victim-precipitated. For example, one homicide victim tried to rape someone who was high on crack and got killed in the process.

**3. Political factors** – There is no logical reason why potentially dangerous substances such as alcohol, tobacco and kolanuts should be freely available in the country while Indian hemp is not, its prohibition must be ascribed to an often unspoken set of assumptions about the nature of Indian Hemp use and its place in the society – assumptions deeply influenced by matters of convention, culture and economics<sup>102</sup>. At the heart of the attitude towards hemp seems to be a deepseated fear of the effect of this substance on so called moral values. Unlike many other recreational drugs, Indian Hemp is a homegrown product. Researchers claim that Indian Hemp played an important role in indigenous African Culture for

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<sup>98</sup> See Schaffer Library of Drug Policy, 9:<http://www.druglibrary.org/schaffer/hemp/general/who.magnitude.htm>.

<sup>99</sup> *Op cit.*, 9.

<sup>100</sup> *Ibid*, 9: See *Psychoactive Substances and Violence*, by Jeffrey A. Roth. Dept. of Justice series: Research in Brief, Published Feb. 1994.

<sup>101</sup> Recall that Zamfara State and some other States in Nigeria Prohibited alcohol.

<sup>102</sup> Wisotsky S, *Beyond the War on Drugs*, 1990, 185.

recreational, religious and medicinal purposes for centuries although its use had been strictly regulated<sup>103</sup>.

Its possession and use was first criminalized by the state on 1<sup>st</sup> July, 1935 but despite this and subsequent acts, all available evidence show that its use today is widespread<sup>104</sup>. Distinction may be made between different types of possession – whether for the purpose of personal use (which is itself not always criminalized because of religious use) or for trafficking. Some may not like this distinction. In most cases the law is used to serve the interest of the strong/majority and to the detriment of the weak/minor.

However, we have to recall that limitation clause jurisprudence dictates that once the individual or group shows that there was or is indeed an infringement of his or their right, the onus shifts to the state to provide the requisite justification particularly in the present global village. This will elicit the factual information to assist the court in making a finding on the reasonableness of the limitation or on the other hand kick-start the conscience of the legislature so as to legislate for the peace, order and the good government of the nation. The continued criminalization of Indian Hemp will continue to leave the impression that Rastafarians are small and misunderstood minority. Their most sacred rite, the rite on which their religious identity is based is prohibited by the state. So, they are made criminals by the state merely because they adhere to their religion.

## 8. Conclusion

The paramount concern of law is not logical consistency but socially desirable consequences. Law as an instrument of government and jurisprudence should focus less on legal concepts than on social facts. So, law is, if you will, the part of politics that is supposed to be left to courts and judges<sup>105</sup>.

He who tries to fix and determine everything by law inflames rather than correct the vices of the world<sup>106</sup>. For this, our courts are with due respect urged to rehearse the constitutional jurisprudence of our Dangerous Drugs Act as per Indian hemp. They should have in mind the sacramental value of the substance as well as its potential economic

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<sup>103</sup> *Du Toit, Cannabis in Africa, 1980, 11-13 quoted in Milton & Cowling, 1988. f3:1*

<sup>104</sup> *Boister op cit, 29, See also Van dan Bergn C, Some epidemiological aspects of dagga in South Africa in South African Conference on Dagga held on 14 and 15 Sept... 1993 at the University of Natal-Durban: University of Natal, 1993, 13.*

<sup>105</sup> *An illuminating analysis of the law/politics distinction is founded in DON HERZOG Happy slaves: A critique of Consent Theory, 1989, 110-47.*

<sup>106</sup> *L.B Curzon. Q & A Series Jurisprudence, 2001, 3<sup>rd</sup> Edn. Cavendish Publication Ltd., 321.*

values. When such matter is brought to the attention of the court, it needs only declare the applicable law invalid not to rewrite it, to include an exemption for Rastafarians. The invalidity may be for a certain period to enable the legislature rewrite to include the requisite exemption for Rastafarians and our scientists know the economic values derivable therefrom. This is because the court has a testing power to declare a legislation invalid when it finds any of the provisions of such legislation to be inconsistent with the constitution as provided in *Section 1 (3) of the 1999 Constitution*. Also, a right vested by the Constitution cannot be taken away or interfered with by any other legislation or statutory provisions except the constitution itself and any such other law purportedly made abrogating a right vested by the constitution will be void to the extent of its inconsistency<sup>107</sup>.

When considering whether any infringement of a right is justifiable or not, it is imperative that a court evaluates all relevant factors and competing interests. At the very least, a court must consider those factors explicitly mentioned in *sections 10 and 38 of the Constitution of the Federal Republic of Nigeria, 1999* to determine overall whether the limitation or criminalization is justified in an open and democratic society based on human dignity, equality and freedom. The court should consider the nature of the right to freedom of thought, conscience and religion particularly in a country where God is for us all and every one to himself due to corruption, greed and poverty: Jobs “Babu”; (at all) Government opportunities, assistance and hope “No-way”; Prisons congested if not non-existent. The court should ask itself; is this important right worth protecting in the face of the prevailing circumstances? What is the place of religious freedom in a secular state like Nigeria and a democratic society in the face of minorities’ pressure groupings?

The ulterior motives of the colonialists in colonizing Africa when they did, and who provided the drug law reflect in the wordings of the law. Their views and intentions seem almost quaint and should be given another look. The unspoken but deeply held belief by the Colonialists that what ever comes from Africa should be labeled illegal, immoral, criminal etc, affected our daily lives perhaps through religion that Africans do not have origin or even religion. The Eurocentric world view about the nature of religion contributed

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<sup>107</sup> *Akande v. Alagbe* (2000) FWLR (pt. 38) 1350 OR (2000) 15 WNLR (pt. 690) 353; *Amusan v. Olawuni* (2002) FWLR (pt. 118) 1385 at 1404 – paras G-B.

in the tag which hemp is bearing. After all, if the Western world grows Indian hemp they should have come to Africa with it in substitution to tobacco, which they grow. Alcohol was used in getting some chiefs in Africa that assist them in their slave trade and other nefarious activities in Africa. The wars in Africa from time immemorial have always been sponsored by the Western world. This enables them sell their arms and ammunitions as well as their dangerous/hard drugs.

Africa, a raped continent, has found itself a veritable continent of darkness where future is imperceptible, clouded as it were by the smoke from the million guns shooting all over the continent. No African country manufactures the caliber of guns used in African conflicts and wars. Let us re-examine ourselves to know whether we cause all our wars. The Western world either ideologically, politically, economically or otherwise instigate the wars. For instance Indian Hemp which the Western world have researched and found 50,000 products from still retain its 1935 criminalization notwithstanding the political history of the criminalization. Geographers and agriculturists can tell us that the Western World cannot produce it as much as ourselves or at all.

A religion like Rastafarianism is viewed by the Western World as a bad religion, because it is said to have originated from Africa. At least in Christendom the Western World assigns the whites to heaven as saints and blacks as Satan and to hell. In election of Popes, black smoke indicates No, while white smoke indicates Yes. Here in Africa we should not on our own assign dirty and bad image to what belongs to us whether or not we are part of it. For instance the rights of Rastafarians should not be limited to their full practice of their religion. Indian Hemp had recreational and sacramental value to them so they should be allowed to be using it.

If Indian Hemp is decriminalized, it is most likely that, the cultivators or the smugglers who make heavy income from its sale will seek their alternative means of livelihood. At a time it will become scarce and unavailable or worthless to smokers like the illicit local gin. The plant is not grown everywhere due to soil adaptability.

Dangerous Drugs Act is most unruly and rather harsh in its application with particular reference to Indian Hemp. It epitomizes the obstinate and intimidating edges of the Colonial rule. The strict position and application of the law is unsustainable in modern times as countries have evolved the doctrine of Constitutional jurisprudence to intervene

with Human Rights which has remunerated human bondage in all its forms. The sordid intendment of the Dangerous Drugs Act maintains a persisting stain of Colonialism in Nigeria and bears sordid witness thereto. The Act is antithetic to modern concept of Human Rights as acceptable to the present global village.

In fact, the Dangerous Drugs Act has become absolutely farcical and made the colonial masters in the eyes of contemporary Nigerians reach such a nadir of popularity. But a close reading of the runes show that Indian Hemp was not really targeted revealing a very Big idea at the heart of government of the time.

Congruities of developments occur at various places, which for a while appears to be looking for philosophy. That philosophy is now, perhaps, discernible. Britain has now decriminalised or positively amended their related laws that Indian hemp can be carried by person who wishes to use it in manageable quantities.

The belief has been fostered that freedom of religion and liberty are premised on individuals making their own choices rather than having them foisted on them by the state. This in turn, means that not only must government welfare for the citizens in the land of plenty “milk and honey” become more efficient but that government must be also more imaginative and innovative so that choice in the remaining polity is maximized. The state cannot govern effectively by becoming involved in the minutiae of service delivery.

To use coercion to maintain the moral *status quo* at any given point in history would be artificially to arrest the process, which gives social institutions their value. Concept of law as a means to an end demands continuous examination of that end. Morality furnishes the criterion for the proper evaluation of our interests; law marks out the limits within which they ought to be confined.

In the words of Professor Ihonvbere “African states can no longer hide behind the ideology of development or the rabid quest or the so-called nation-building as a pretext to denying the identities and rights of their peoples”. Law is a very resilient tool. When it cannot solve a problem in a particular manner it may seek solution in another by repealing or amending the existing law or the courts interpret same to suit the dynamics of the society. Hard cases must not be allowed to make bad laws. No problem created by man can defile legal control or flexibility because law represents the will of society to solve

particular problems. We opted to write on this because the obligation of the legal profession is, or has long been thought to be, to serve as healers of human conflicts.

*Finally I will say that* it is salutary to remember – and here I gratefully remember and adopt the apt words of an erudite Jurist in the person of Hon. Justice Pats-Achalonu J.C.A. in the case of Attorney – General of the Federation v Agwuna<sup>108</sup> he said:

It is my view that a statute is inherently irrational and assault to the psyche of the citizen when it is extra-ordinarily in conflict with reason, is offensive and utterly hostile to rationality and so emptied of substance that it should be rejected by the people of whom it is directed... and to people of other nations who condemn it for its inhumanness. Such a law should not and ought not to be enforced by the court.

In the same vein, I concur with Kohler that: “There is no eternal law, the law that is suitable for one period is not so far another. We can only strive to provide every culture with its corresponding system of law”. We shall better not throw away the child with bath water.

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<sup>108</sup> (1995) 4 NWLR (pt. 390) 234 at 249.