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THE EFFECT OF EXTORTION AS AN OFFENCE AGAINSTS PROPERTY UNDER NIGERIAN LAW

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Abstract

As one of the prominent civil crimes increasingly committed during the current decade, extortion is considered as some commitment against social security which lead to robbing individuals' belongings through exercising violence or utilizing different weapons. Criminology science not only emphasis on the criminal behavior with regard to the commitment of crimes but also underscores the victim's behavior with respect to the realization of criminal phenomenon. Here, the behavior and manner of victims cannot be overlooked with reference to the commitment of crimes. The current study focuses on the victim's role in the commitment of extortion crimes as a potential factor. Criminal misappropriation and criminal breach of trust exist as distinct offences only under the Penal Code. The differences between the two offences is very marginal. Those two offences differ from theft only because the offender is in the possession of the property at the time of the commission of the offence. In theft the property must have been possessed by the person other than the offender. All these offences will amount to stealing under the Criminal Code while extortion as an offence differ by the element that constitute the offence of extortion.

Introduction

That man is by nature, a gregarious being, remains an incontrovertible fact. By whatever descriptive nomenclature groups of men and women bound by the ultimate purpose of pursuing commonly acceptable goals choose to be known, one common existential denominator is the idea of law as the bastion of an orderly, just and equitable society. Law regulates the conduct of individuals in society to the extent that it summons to duty by its command and from wrong doing, by its prohibition.

True to the truism that regardless of the otherwise idyllic "equality of all men" thesis, life, at various times puts men on unequal pedestals, individuals and corporate bodies have overtime, suffered from the congenital defects of certain 'deviants' who explore circumstances to cause fear of injury to their victims for dishonest gains. This anti-social behavior is as old as human history and has been proscribed and criminalized by the penal laws of states as the offence of 'extortion'.

Law is so invested with evolutionary and revolutionary traits because of its prime relevance in curtailing the excesses of man and his reckless rascality. The criminal law on extortion is no exception in this regard. However, what is very important, which forms the central question of this research is whether the development of the law on extortion to where it is today has met the expectation of the growing world in naming the crime and protecting all vulnerable persons against the scourge of this reprehensible act? Has the development of domestic and international criminal law from antiquity till date, properly situated extortion within the parameter of an

appropriate, all embracing and acceptable conceptualization and descriptive nomenclature?

Indeed, the fact of properly naming acts in the proper context of what they represent is however the first proper step towards the understanding of its nature and character, which forms the basis of successful investigation and prosecution. Hence, this paper attempts an on-the-whole examination of the offence of extortion. The definitive provision on the extant laws on the subject matter will be considered with a view of identifying some of its inadequacies in moving with the times. This paper concludes by proffering solutions for the inadequacies and limitation of the law on extortion.

The research work is divided into the following rubrics:

- Conceptual clarification:
- (a) What is extortion?
- (b) What extortion is not:
- i. Distinction between extortion and theft
- ii. Distinction between extortion and bribery
- The position of Nigerian law on extortion:

Extortion: The Penal Code provision

Extortion under the Criminal Code: Wither the Law

- Extortion in other jurisdictions
- Cyber-extortion: the recent trend
- Findings, Recommendations and suggestions
- Conclusion

Conceptual Clarification

1. What extortion is: -

The term 'extortion' means "the offence committed by a public officer who illegally obtains property under the color of office, esp., an official's collection of an unlawful fee".[1]

'Extortion' is an offshoot of the verb 'extort' which means "to compel or coerce (a confession, etc.) by means that overcome one's power to resist; the gain by wrongful methods; to obtain in an unlawful manner; to exact wrongfully by threat or intimidation".[2]

Certain questions, evolve from the above cited definition of 'extortion'- is the offence only limited to a 'public officer'? What happens when a private individual 'extorts' another or when he extorts a corporate body? What definition will be ascribed to obtaining property from another

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[1] Garner, B. A. Black's Law Dictionary. Thomas Renters, US 10th Edition (2014), p.704

[2] Ibid

when the act was not done under the colour of office? These issues will be addressed under subsequent sub-heads.

2. What extortion is not:-

It is not uncommon to use the terms extortion, theft, robbery and bribery, interchangeably. While this may pose no harm to the trade of the linguist, the lawyer's verdict of 'per in curium' meaning, mistake of law and fact, will be easily slammed on any such attempt to mix the waters of these distinct legal concepts.

The distinction between extortion and similar offences such as robbery, theft and bribery are examined seriatim in order to show what extortion is not and to invariably reinforce the structure on what extortion actually is.

(a.) Distinction Between Extortion and Theft:

The essential difference between extortion and theft is that in extortion, property is obtained with the consent of the person suffering the loss; albeit the consent was forced.[3] Chukkol puts this point succinctly thus; "in the case of theft, the victim parts with his property because the accused takes it away himself. In extortion, it is the victim who hands over his property to the accused under threat".[4]

Put graphically, A finds a gold wristwatch belonging to B on a desk in the office which B occupies. Here, the gold wristwatch is in B's possession and if A dishonestly removes it, A commits theft.

On the other hand, A threatens B to inform B's wife that B is having an extramarital affair with C, unless B gives him money. B then gives A money out of the fear of being exposed. A therefore, commits Extortion.

Another striking difference between extortion and theft is that in the case of extortion, the accused person issues a threat of injury to the victim. However, no such threat may exist in the majority of theft cases.[5] An illustration may explain this point further: X threatens to destroy Y's orchard unless Y signs and delivers and already prepared deed to convey Y's car to X. Here, X commits extortion.

Observably, the element of threat is absent in most theft cases for the reason already advanced- the victim is usually not even aware that the accused has deprived him of his property by taking same. Unlike extortion where the victim is induced to fearfully consent to being deprived of his

[3] Richardson, S. S. Notes on the Penal Code Law, Ahmadu Bello University Press Limited, Zaria, 4th Edition (1987), p.229

[4] Chukkol, K. S. The Law of Crimes in Nigeria, Ahmadu Bello University Press Limited, Zaria, Revised Edition (2010), p.354

[5] Ibid

property by giving same to his 'assailant', no such opportunity to 'give consent (albeit forcefully) is availed the victim of theft in most cases.

(b) Distinction between extortion and bribery

The difference between extortion and bribery is best viewed from the prism of extortion as an offence carried out by a public officer under color of his office (something in the mould of demanding with menaces).[6]

Here, the offences, though belonging to the family of 'official corruption', do not flock together. While it has been settled that the accused person in the offence of extortion, puts his victim in fear of injury and dishonestly induces the latter to deliver property to the accused person,[7] the offence of bribery is committed where a public official corruptly asks for, receives or obtains any property of benefit of any kind for himself or any other person.[8] Or, conversely, where the offeror "corruptly gives, confers, or procures, or promises, or offers to give or confer or to procure or attempt to procure" the bribe.[9]

Hence, the fact remains that inducement by threat of injury to deliver property from a victim to an assailant is the cynosure of the offence of extortion. Whereas, no such requirement exists in the ingredients that constitute the offence of bribery. We may conveniently assert therefore, that while extortion presents a scenario of a bargain between two unequals (at least, so the law presumes), one dishonestly demanding property from another by instilling fear in that other,[10] Bribery is a two-pronged regime, where a public official asks a usually consenting person for property or benefit.

Thus, the payer in the offence of bribery is usually a partly and an accomplice to the commission of the offence, especially if the facts do not show fraud or duress vitiating the payer's consent to part with the bribe though not to the whole transaction.[11]

The Position of Nigerian Law on Extortion

It is no news that Nigeria's penal law regime is bifurcated. The Penal Code Law applies to the northern part of Nigeria, while the Criminal Code Act is applicable to the southern part. Hence, the understanding of crimes committed in this country must first proceed from an understanding of the

[6] See Section 406 of the Criminal Code Act, Cap. 491 Laws of the Federation of Nigeria, 2004
[7] Section 291 Penal Code, Law of Kaduna State, 1991
[8] Section 98(1) and 116(1), Criminal Code Act, Laws of the Federation of Nigeria, 2004
[9] Sections 98(2) and 116(2) Criminal Code Act, Cap. 491, Laws of the Federation of Nigeria, 2004
[10] It must be added that extortion also differs from robbery. The harm threatened in robbery is 'immediate' while that threatened in extortion is to be done in the future. See Garner, B. A. Op.cit at p.704
[11] Osidola v. C.O.P. (1958) N.R.N.L.R. 42 at p.48

relevant Code that applies to the jurisdiction where the crime was committed. This holds true for the offence of extortion.

1. Extortion: The penal code provision

   Under the Penal Code, extortion is defined in section 291 thus:

   > whoever intentionally puts any person in fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear to deliver to any person, any property or document of title or anything signed or sealed which may be converted into a valuable security, commits extortion.

The offence is punishable with a term of imprisonment which may extend to five years or fine or with both. Addressing the issue of inchoate offences, Section 293 of the penal Code law prescribes punishment with a term of imprisonment which may extend to two years or with fine or with both for a person convicted of attempted extortion.[12] That is, where the offence of extortion as defined in section 291 penal code law is incomplete because there has been no delivery of property.[13]

An authority for convicting an accused for an attempt to commit an offence is found in S. 219 of the Criminal Procedure Code which provides, "when a person is charged with an offence, he may be convicted of an attempt to commit that offence although the attempt is not separately charged". The hallmark of the offence of extortion is 'threat of injury' to the victim as a result of which the latter parts with his property and delivers same to the accused person. Hence, it is helpful for prosecuting counsel in extortion trial puts the question to the complainant: "why did you deliver what you did to so and so?" in order to obtain a direct evidence of the motivation.[14]

'Injury' as contemplated by section 291 Penal Code is one threatened to a person and not to property.[15] By this position, no conviction will be obtained if in answer to prosecution counsel's question therefore, the complainant replies "…. because I feared he will damage my property". A discerning mind may ask; why will the law of extortion not cover threat of injury to the person's property, when in reality, a man's true worth is often seen from the perspective of the property he owns? Plus, economic property, it seems agreed, even among laymen, ranks above other property such as reputation. This line of thought may appeal to some property in person's apologists, but on the flipside, considered spurious since damaging the property of another is a crime known to law as Mischief.[16]

For the avoidance of doubt, the law mentions the kinds of injuries that section 291 penal code relates to. Accordingly, section 31 of the penal

[12] See Section 95 Penal Code Law of Kaduna State, 1991 on the definition of 'Attempts'. See also Section 4 Criminal Code Act for a clearer definition of 'Attempts'

[13] Richardson, S. S. Op.cit at p.230

[14] State v. Salihu Hong (1966) 1 All N.L.R. 199

[15] Richardson, S. S. Op.cit at p.229; Chukkol, K. S. Op.cit at p.354

[16] Section 326 and 327, Penal Code Law of Kaduna State, 1991

code provides; "the word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property." This provision clearly flies in the fact of the above juristic opinion that threat of injury to property is no threat of 'injury' as contemplated in the penal code provision on extortion. It is however submitted that in view of the clear provision of the law which criminalizes the act of causing damage to a person's property as 'mischief', courts should excise 'the causing of harm to property' aspect of section 31 penal code when called upon to interpret the word 'injury' in section 291 of the penal code.

It is interesting to note that by section 291 of the penal code, the threat of injury may include the accused person causing injury to himself as where the accused threatens that unless his victim delivers some property to him, he will kill himself in the victim's bedroom.[17] Remote as this threat of injury seems, it follows nature's course for the victim to deliver the property to the accused for fear of being arraigned and charged with culpable homicide or murder as the case may be.[18] In the case of **Ebenezer V. state**[19] the court of appeal per Mukhtar J.C.A, identified 'inducement' and intention as elements of extortion. Much has been advanced on the issue of inducement. The element of intention is by no means less important as the courts have over time beamed their search light on the intention of the victim in yielding to the dishonest demand of the accused person: Thus, if the threatened injury is exactly the type the victim was expecting, all things been equal, the accused will not be liable for extortion, if he demands and receives property from the victim. The case of **I.G.P v. Okeani**[20] is a locus classicus on this point. In this case, the accused threatened to report his victims to the law enforcement agencies unless they gave him some money. Although the victims were sure that their abdication of official duties as tax collectors made them susceptible to the wrath of the law, they obliged the accused. On the strength of these facts, the court discharged the accused who was charged for extortion, on the ground that the victims had in the same measure, expected the "fear" he allegedly "induced" in their minds.[21]

It is not uncommon to find a victim of extortion delivering his property to the accused, not because he felt threatened but because he intended to ensnare the accused. In this instance, no extortion is committed. At best, conviction can only be secured for attempted extortion.[22] This was the lot of the victim in **State v. Salihu Hong,**[23] who with an intention to trap

[17] Chukkol, K. S. Op.cit at p.354
[18] The case of R v. Kalio (1943) 9 W.A.C.A. 28, though decided under the Criminal Code makes an interesting reading in this regard
[19] (2014) LPELR – 23791 (C.A.)
[20] (1956) ERNLR 25
[21] Chukkol, K. S. Op.cit at p.355
[22] Ibid
[23] Supra

the accused, gave the latter marked money and later reported the matter. The gist of the case is that the accused, a police constable having knowledge that his victim's relation was disinterested in prosecuting a case against her, visited the victim's house and demanded for some dishonest gain, threatening to open the victim's case if same was not delivered to him. The Supreme Court held that the accused was not guilty of extortion as the victim parted with his money not as a result of any fear induced in him by the accused similarly, the accused in **Police V. omotosho**[24] was acquitted of a charge of extortion as the court found that even though the accused, a police officer, demanding money from his victim who had allegedly obtained a job without proper qualification. The court found that since the victim knew he was qualified, no fear was induced in his mind by the accused person's threat. The fluidity of the law on extortion makes it susceptible to confusion when faced with facts which while showing ingredients of the offence, may also ground charges for other offences. For instance, extortion remains a vital tool of trade in the hands of kidnappers. It is usual therefore, to find prosecution counsel, in kidnapping trials, seeking to secure conviction for extortion against the accused. This played out in the case of **Ebenezer v. state**.[25] The accused persons in this case were charged with the offence of kidnapping the children of Chief Duro Adeyele, SAN, contrary to the kwara state prohibition of kidnapping law, 2010. In the course of trial, the facts were established that the accused having intentions to kidnap the victims, sent text messages to their mother's phone demanding for money to avert his threatened act of kidnap. On this, the prosecution having failed to prove its case of kidnapping prayed the court to convict the accused for the offence of extortion under S.292 penal code being a lesser offence. The court of appeal however held that while such over act can ground conviction for attempted kidnap under Section 3 of the Prohibition of Kidnap Law of Kwara State, conviction for extortion will not hold as the charged could not ground same. It was the decision of the court that the criminal procedure code does not accord the court jurisdiction to convict for an offence not provided for in the kidnap prohibition law (under which the accused was charged) to wit: extortion. That a charge under one law cannot lead to conviction under a totally different law that has not been mentioned in the charge. And that the court could only charge the accused for a lesser offence. If the lesser offence is under the same law, under which the charge is framed and had its ingredients must be subsumed by the more graved offence charged.

Furthermore, robbery or armed robbery as the case may be, bears some semblance with extortion for the singular reason that threat of injury made by the accused in both cases. The point has been made however that robbery/armed robbery victims deliver property to the accused under fear of

[24] (1961) 1 All N.L.R. 693 CF Police v. Ededey (1966) N.M.L.R. 383
[25] Supra at pp.19-22

immediate harm while the harm of injury threatened in extortion is usually not of an immediate character. It is interesting therefore that the court held that "for prosecution to prove the offence of armed robbery under Section 298 (l) penal code, it must prove…. That accused caused or attempted to cause some death, hurt or wrongly restraint, or fear of instant death instant hurt or instant wrongful restraint. In proving this, prosecution must show:

a. That accused committed extortion
b. That he was at the time of committing it, in the presence of the person so put in fear, and
c. That he committed it by putting that person or some other person in fear of instant death or instant hurt, or of instant wrongful restraint that he thereby induced the person to deliver up then and there, the thing extorted".[26]

Useful comment must be made at this juncture on the fact that the offence of extortion easily snowballs into the offence of bribery, the latter, being an omnibus which a victim must weary of (for the reason already stated in this pages). In the words of Shakespeare, "it is the bright day that bring fourth adder, which craves weary walking". If the bright day here represents 'power', or, 'authority', it truly brings forth the 'adder' of abuse in public officials, especially law enforcement agents, hence the need for victim of their extortionist tendencies not to be labeled 'bribe givers'- slippery public officials abound in Nigeria who will delight in exploring the shadowy difference between extortion and bribery.

Chukkol[27] opined that even though police officers are entitled by the nature of their duties to issue threats (of arrests, etc), whoever delivers his property to them in the absence of any demand from them, is a bribe giver. That is, threats by a police officer, without more, cannot grand a charge for extortion. Indeed, this position is reinforced by the nomenclature of extortion under the section 406 criminal code: 'demanding with menaces'. The wisdom therefore is that the threat of arrest for instance, even though it may instill fear in the mind of a person, it is not enough to sustain a charge for extortion, where the recipient of the real, in order to pervert the course of justice, decides to "grease the palms" of an offices of the law. By the same token, the door has been bolted against those who in order to avoid being charged with bribery, play the victim and slam allegations of extortion against a public officer. Apparently, the presumption of the law were that the public officer is a good man who will not use the colour of his office to extort innocent Nigerians, but merely issues threats (if he must) for the purpose of carrying out his constitutional duties.[28]

[26] Sumaila v. State (2012) LPELR – 19724 CA. Per Bada JCA (pp.11-12, Paras. F-C)
[27] Chukkol, K. S. Op.cit at p.356
[28] The practical workings of the Nigerian Police in this regard are briefly examined in a subsequent subhead

However, instances abound where public officers, particularly police officers in addition to threats of injury to innocent persons, make serious demands for wrongful gain. This nefarious act, if proved, sustains a charge for extortion. Thus, where a police officer while investigating an alleged theft of a cheque, said to his victim, "whether you are guilty or not, give me E20 to avoid being locked up" and the victim delivered the money to him, the court held the accused guilty of extortion.[29] Also, in the case of ***I.G.P v. Wada***[30] a police officer while investigating the loss of certain property, said to his victim, "pay ten pounds or have you house searched". The victim, handed over the money to the accused who the court held, was guilty of extortion. On the reason the victim yielded to the dishonest demand of the accused over what appears a very innocuous threat, an innocent, scholar wrote that the victim obliged because he might have been practicing purdah with his wives and was averse to suffering the embarrassment of having his house ransacked.[31]

When considered differently, it may as well be that the victim who was probably in custody of the lost item, delivered the money as a way out of the omnibus of justice, hence, presenting a case for bribery, especially if the case was decided under the criminal code and if the element of induced consent was vitiated on the part of the complainant. No doubt, the law is an ass!

Constant reference has been made to the expression 'dishonest demand' in humiliating the element for proving extortion. It is pertinent to clear the air on what, when a demand for property is dishonest. Section 16 of the Penal Code states that "a person is said to do a thing "dishonestly" who does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other person". Hazy as discerning dishonesty mastering the law's barometer is the presumption evident from the consequence of a person's act as a man is presumed to intend the natural consequence of his on act.[32] Consequently, a customer who says to his banker, "unless you honour my mandate by paying me my money, I will interrupt your operations today" cannot be guilty of extortion, if for fear of losing business time and funds to interrupted operations, his banker hands over the customer's money to him. For by law, banker customer relation, is strictly sensu that of debtor-creditor and a creditor cannot be accused of making "wrongful gain" (within its meaning violent approach he adopted, notwithstanding.

[29] Commissioner of Police v. Osidola (1958) N.R.N.L.R 42
[30] (1957) NR NLR 1
[31] Chukkol, K.S. Op.cit at p.357
[32] Rishardson, SS, op.cit, p.33

2. Extortion under the Criminal Code: Whither the Law?

The criminal code's approach to the offence of extortion is a rather passive one. While the code recognizes official corruption as an offence, no section of the code is devoted to what is known as 'extortion' in its strict sense. Extortion by public officers by section 99 of the criminal code is capable of being committed only by a public officer. The section provides "any person who, being employed in the public service, takes or accepts from any person, for the performance of his duty as such officer, any reward beyond his proper pay and employments, or any promise of such reward, is guilty of a felony, and is liable to imprisonment for three years". A wider provision that bears resemblance with S.291 of the Penal Code is found in section 406 of the Criminal Code which provides for the offence of demanding property with menaces thus:

> Any person who with intent to steal anything, demands it from any person with threats of any injury or vehement of any kind to be caused to him, either by the offender or by any other person, if the demand is not complied with, is guilty of a felony, and is liable to imprisonment for three year

As regards the near distinction without a difference approach adopted in treating offence under the broad head of official corruption, eminent scholars[33] wrote that offences of official corruption can be roughly divided into offences of bribery and extortion, but that the division "is only one of convenience" as it carries "no special legal significance, and that not all offences can be fitted neatly into one or other category. This submission, with the greatest respect, stands itself in the head. When regard is had to the hazy but significant distinction between the offences of extortion and bribery presented in the early part of this work (which we do not intend to repeat), one is left in no doubt that the division between extortion and bribery is of quintessential value to Nigerian criminal law and jurisprudence. one readily discernible value of such distinction being that at least, it saves the prosecution the perplexing of battling with the choice of laws under which the accused will be charged, more so that it informs the prosecution of the property person to be charged, bearing in mind the facts of the case and the different elements of the offences.

In fact, the learned writers, by reprobating their stance (perhaps in advertently) justify our argument when they wrote: "in the offences of extortion, the public officer is using his office as a lever to extract more, and the payer of the money can usually, if not always, be regarded as a victim (at least as far as the law of evidence is concerned). In offences of bribery, on the other hand, the payer will usually be a party and an accomplice".[34] A better justification of dividing the line between extortion and bribery, cannot be pound.

[33] Okonkwo, C. O. and Naish, Op.cit at p.356
[34] Ibid

Also, the snag in the definition of extortion by public officers as capture in section 99 of the criminal code erodes the sanctity of the threat of 'injury', and 'dishonest inducement requirements'. Clearly, while these elements, the legal definition of extortion in the penal code, scores a fabulous point even in the school of laymen who will spontaneously christen extortion as 'blackmail', section 99 criminal code, at best, defines 'bribery'. It's restriction of what it calls extortion to the performance of the accused person's official duty, while further indicting the draftsmen of defining bribery instead of extortion, has offered an escape route to accused persons charged with extortion under section 99 criminal code in ***R v. Minimah***[35] where a native court clerk was charged with "taking or accepting E4 for the performance of his duties as a clear of the native court", the conviction was quashed because the particular duty was not specified in the charge and did not appear clearly on the evidence. The court remarked on this point "a clerk's duty cannot merely be assumed because it is within the knowledge of the court".

Similarly, in the case of ***Ezebuiro v. C.O.P.***[36] the court quashed a conviction under section 99 because of what it considered a misstatement of the actual duty of the accused. The accused in this case, an employee of the posts and Telegraphs Department received money in order to allocate the honour a radio diffusion set out of turn and before a set would in the ordinary manned be allocated. It was the employee's duty to allocate sets, but the conviction under section 99 was quashed, because it was not part of his duty to allocate them out of turn.

With profound respect, the decisions in these two cases form an affront on the policy consideration in criminalizing extortion. The health of the law is that it should relative to the rest of lifer. This being the case, shouldn't the core issues in any extortion trial be: why did the victim part with his property and does the demand for the property by the accused constitute an honest or dishonest act?

How effective is the provision of section 99 criminal code in addressing these issues? Simply, it presents the case of a wrong name tag.

As established in this paper, the broader provision of section 406 of the criminal code define the offence of demanding with menaces. It no doubt carries the constituent elements of the offence of extortion under the penal code. The only useful comment that may be made here is that the section contemplates that the accused must possess an "intent to steal" while extorting his victim. Such feature being however absent in the penal code provision.

[35] (1940) 6 W.A.C.A. 192
[36] (1958) N.R.N.L.R 84 (C.A)

Extortion in other Jurisdictions

The law on extortion in Nigeria has its good and bad moments. The world being a global village, nay, a global school, states should freely learn from one another to another to promote the improvement of their various legal systems. The discussion below is hinged on this understanding.

In the United States of America, "whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall first under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both".[37]

Clearly, the U.S. code adopts the criminal code's approach of addressing extortion from the prism of 'a public officer's offence'. The code emphasizes that the accused must have committed the offence under the color of his office (actually or interpretence) it is interesting that the U.S. Code has blurred the distinction between the actual commission of the offence and an attempt to so do, as against the position under Nigerian Law.[38] While we do not intend to critique the U.S. position in this regard, it is submitted that the distinction in definition and punishment between extortion and attempted extortion as with other offences, is proper. For the law to flaunt this distinction is to disregard the importance of the convenience of *actus reus* and *mens rea* for an offence, other than that which the law calls an inchoate offence, to be proved.

In Canada, "everyone commits extortion who without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person whether or not he is the person threatened accused or menaced or to whom violence is shown, to anything accused or cause anything to be done".[39] Further, if a restricted or prohibited firearm is used in the commission of the offence and the offence is committed for the benefit of, at the time friction of, or in association with a criminal organization, a convicted accused may be liable to imprisonment for life and to a minimum punishment of imprisonment for a term of five years, in the case of first offender or seven years in the case of second or subsequent offender.[40] Where however, the firearm was not used in connection to any criminal organization, a convicted accused will be liable to imprisonment for life and to a minimum punishment for a term of four years.[41]

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[37] Section 872, Chapter 41 U.S. Code-Extortion by Officers or Employees of the united State. Available on http://www.law.cornell.edu; 25th April, 2018

[38] Sections 4 Criminal Code and 95 Penal Code define "attempts".

[39] Section 346(1) of the Criminal Code of Canada, 1985. http://www.laws-lois-justice.gc.ca.

[40] Section 346(1)(1.1)(a) and (b) Criminal Code of Canada, 1985

[41] Ibid

A little commentary is provided on the above provision, basically the definition of extortion under the Canadian Criminal Code reveal that inducement may be caused by means other than threats such include "accusations" (as in the case of blackmail, a typical incident of extortion), "menaces" or "violence". The latter is quite novel. None of the already examined penal laws subsumed in its definition of 'extortion', incidence of actual violence as a marker of inducement. The Canadian code aligns itself with that of the U.S. on the issue of 'extortion' and 'attempted extortion' as one and the same offence. No further comment is made on this issue. It is however worthy of note that the Canadian Code contemplates as extortion, a situation where the victim is not necessarily one to whom the threat or inducement was made, but whoever, for fear of same, delivers to the accused, the wrongful gain sought by the latter.

The difference here being that under the Nigerian Penal Code, the direct recipient by himself, delivers the property to the accused for fear of injury that may be inflicted on him or to "any other person" whole under the Canadian code, extortion is established once the accused, with intent to obtain anything by unjustifiable inducement, induces or attempts to induce the delivery to himself, the property of another or, the doing of anything regardless of whether it is the recipient of his threat that delivers the property to him or does the thing he required. Here, little emphasis is placed on the victim, but the motive of the accused is interrogated by the section.

In what appears to be a nod to the position of the court in the Nigerian case of ***Sumaila v. State***[42] the Canadian code recognizes a situation where by the use of firearms, extortion is used merely as a means to an end, armed robbery. Note that under the Canadian Criminal Code, a threat to institute civil proceedings is not a threat for the purpose of establishing a charge of extortion.[43]

Cyber Extortion: The Recent Trend

The exponential growth of information communication technology (ICT) chauffeurs rosy and thorny moments for individuals and states. The world has had to grapple with a number of cybercrimes which by the unique characters, threaten national information infrastructure, cybersecurity, intellectual property and privacy rights. Occupying a position of inglorious frame in the league of cybercrimes is 'cyber extortion', also known as 'cyber stalking'.

What then is cyber extortion? It is a form of online crime which occurs when a person uses the internet to demand money or other goods of behavior (such as sex), from another person by threatening to inflict harm to his person, his reputable or his property. There are various forms of cyber

[42] (Supra) at pp.11-12

[43] Section 346(2) Canadian Criminal Code, 1985

extortion initially, denial of service (DOS) were the commonest methods used by cyber extortionists: A website, email server of computer system may be subjected to repeated denial of service by malicious-attackers, who demand money in reform for promising to stop the attacks. In recent years however, cybercriminals have developed ransom ware that can be used to encrypt the victim's data-the attacker then demands for money for the decryption key.[44] Usually, these cybercriminals operate from countries other than those of their victims and use anonymous accounts, and fake e-mail addresses, thereby making the investigation and prosecution of this novel offence, difficult.

While individuals daily fall prey in the trials of cyber extortionists, corporate organizations and governments are the worst victims of this crime. Usually, the cyber extortionist's scandal-company threatening e-mail, stating that they have receives confidential information about the company and will exploit a security leak, launch an attack that will harm the company's network. The message sent through the e-mail usually demands money in exchange for the prevention of the attack.[45] In the United States of America, in March 2008, one Anthony Digati was arrested on federal charges of extortion through interstate communication. He had put $50,000 into a valuable life insurance policy by New York Life Insurance Company and wanted a return of $198,303.88. When the firm did not comply, he threatened to send out 6 million spam emails. He then registered a domain in February, 2008 that contained the company's name in the URL to display false public statements about the company and increased his demands to $3 million. According to prosecutors, the Digatis intent was not to inform or advocate, but to "damage the reputation of New York Life and cost the company millions of dollars in revenue". New York Life contacted the Federal Bureau of Investigation and Digati was apprehended.[46]

Happily, Nigeria has braced up in providing legal and institutional framework for combating cybercrimes which include cyber-extortion. By section 24(2) of the Cybercrime (Prohibition, Prevention, etc) Act, 2015.
Any person who knowingly by or intentionally transmits or causes the transmission of any communication through a computer system or network-

a) Any to bully, threaten or harass another person, where such communication places another person in fear of death, violence or bodily harm or to another person;
b) Containing any threat to kidnap any person or any threat to harm the person of another, and demand or request for a ransom for the release of any kidnapped person, to extort from the person, firm, association or corporation, any money or other thing of value; or

[44] http://definitions.uslegal.com, 25th April, 2018
[45] http://en.wikipedia.org 25th April, 2018
[46] Ibid

c) Containing any threat to harm the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accused the firm any person, in association or corporation, any money or other thing of value; commits and offence under this Act and shall be liable on conviction –

i. In the case of paragraphs (a) and (b) of this subsection to imprisonment for a term of 10years and/or a minimum fine of N25,000,000.00; and

ii. In the case of paragraphs (c) and (d) of this subsection minimum fine of N15,000,000.00.

The path and substance of the above provision is that cyber stalking or cyber extortion is an offence known to Nigerian law. It is "a course of conduct directed at a specific person that would cause a reasonable person to fear".[47]

The term 'computer system' as used in the afore cited section, refers to any device narrow of interconnected or related devices, one or more of which pursuant to a program, performs automated or interactive processing of data. It covers any type of device with data processing capabilities, including, consisting of hardware and software may include input, output and storage components which may stand above or be connected in a network or other similar devices. It also includes computer data storage device or media.[48] The cybercrime, otherwise known as "yahoo-business", G-business, 'yahoo plus', etcetera. It is hoped that our courts, when called to action, will give judicial effect to tenets of this fine legislation.

Extortion: The Myths and Realities of Investigation and Prosecution

The researchers briefly put the machinery of law examined above, into pragmatic assessment by examining the beauty and nemeses of the land as it affects the subject of discussion with a view to making suggestions for improvement.

Extortion, we have agreed is a crime hinged on the element of inducement. The *modus operandi* of an accused in inflicting fear in the mind of his victim may include threat of physical injury, menace, accusation, violence etc, depending on the grammatical construct that best capture the issue of threat. It is time that man is a product of society and remains as inseparable from his society, as the hen and the egg are inseparable. Law itself has been labeled a product of society, evolving with fluidity as society itself evolves. Regrettably however, law, particularly Nigerian criminal law shoots itself in the foot by wearing, the garb of modernization, westernization at the detriment of the lofty ideals and sound values of the Nigerian society. If Mr. A alleges that he delivered his property, for the fear of being bewitched by

[47] Section 57 Cybercrime (Prohibition, Prevention, etc) Act, 2015.

[48] Ibid

Mr. B who threatened that unless he does so, he (Mr. B) will have a juju man cause harm to Mr. A? The misfortune of Mr. A is that members of his community will definitely sympathize with him as a victim of extortion should be part with his property in order to pacify the valiant, Mr. B. however, the courts of his country may labellion an unreasonable man unworthy of the protection of the law, for "unwillingly" partying with his property unless circumstances the law does not regard as 'threat of injury'.[49] A case is made for Nigerian law to accommodate reality by making provisions that will recognize threat harm by witchcraft as an inducement capable of making a victim of extortion paid with his property. If anything, threat of harm by metaphysical means illicit the greatest fear in the mind of any reasonable Nigeria. A victim of extortion should not be left without a remedy simply because his assailant those a means of threat which the law in a pretentious manner, downplays, despite its 'sacred' relevance in everyday life in this country.

Furthermore, that most persons accused of extortion on this country are public officers is an unassailable fact. The procedure for criminal trial in Nigeria therefore poses a threat to effective prosecution of the offence. It is lugubrious that the law has already spoken to the effect that a victim of extortion who for instance marks the currency notes he hands to an extortionist, has already taken the act of the accused out of the province of extortion. Only a charge for attempted extortion may be sustained. It is a glorified myth in Nigeria that an individual commits social blasphemy when he attempts to call to question, the acts of public officers, especially the law enforcement agents. The law having seized from a victim of extortion what appears to be his "best evidence", how then can he properly form a prima facie complaint of extortion against the accused who may be a Police Officer? To whom will he lodge the complaint? Street wisdom will chide him for attempting to "report a Police Officer to his brethren in espirit de corps for doing what they now perform as an unwritten 'constitutional duty". Even if the victim in focus successfully lodges a complaint against the extortionist, who will investigate the offence, compile the case diary and forward its duplicate copy to the Ministry of Justice for advice? The thing speaks for itself! Only a limited number of Police Officers have been caught in the act and a good case (at least on the media and in the court of public opinion) made against them.

[49] R v. Odo (1938) 4 W.A.C.A. 71 the court, on the presumption that witchcraft or belief in same is a fallacy, discharged the Accused who was charged with attempting to pervert the course of justice under Section 126(2) Criminal code by placing some claims on the Judge's seat. Also in R. v. Udo Aka Eka Ebong (1947) 12 WACA 139, the court admitted confession of an Accused (who had confessed out of fear that the invoked Juju will make the killer of the deceased mad) against the clear provision of the Evidence Act which made such confession inadmissible due to inducement. The court distance itself from the belief that Juju could instill fear in a person

On the 7th day of August, 2013, the Lagos State Police command dismissed a Police Sergeant, Chris Omeleze who was caught on video camera extorting the sum of #25,000 from a Motorist in Lagos. In the video footage, Omeleze, who was seen on a passenger seat, places a phone call to his superior saying the motorist's car must be impounded for his refusal to "cooperate". The Sergeant who was attached to the state Traffic Division, Ikeja, was arrested after the then Inspector-General of Police, Mohammed Abubakar saw the video which went viral on the internet. It was leant that the then Commissioner of Police, Umar Manko ordered that he should face an orderly room trial. A Panel of Policemen found the Sergeant guilty and recommended his dismissal which the Commissioner approved. Following this event, the Public Relations Officer of Lagos Command, Ngozi Braide, responding to allegations of extortion by operatives of the STD especially along Obafemi Awolowo Way, Ikeja, said members of the Public should make the habit of reporting cases of extortion to the Police, backed with evide3nce "as this will help the Police fish out bad eggs from the force."[50]

Perhaps the Police delved into the Omeleze's case because the video recording his cruel act went viral on the internet. With the rape of justice done to the victm of extortion in **the Salihu Hong's case**[51] for attempting to garner evidence by marking the currencies he gave the accused under threat of injury, video or audio recording of the act is perhaps the best form of evidence may show to ground his complaint and of course, the prosecution of a Police man for extortion.

Also, it is not in all cases that a Policeman suspected of extortion may be summarily tried and dismissed by the Force. It is not out of place to forward the case to the Ministry of Justice for advice and possible prosecution. The probability that the Police may not cooperate the Ministry's Prosecutors in the latter circumstance is not negligible.

Prosecutors is not a negligible. Indeed, the issues that becloud successful investigation and prosecution of the offence of extortion are numerous. They defy exhaustive discussion in any literary. We submit that continuous enlightenment campaigns be carried out by relevant agencies such as the National Orientation Agency, the public complaint commission in order to encourage Nigerian citizens to report cases of exertion by public officers. Thus, adequate protection should be made available to whistleblowers who report such misconduct.

Findings, Recommendations and Suggestions

1. Findings

This paper has made the following insightful findings

[50] http://punchng.com 25th April, 2018
[51] Supra at p.199

- The definition of extortion as encapsulated in the criminal code – the U.S criminal code which extinct the offence to acts of public officers is not very helpful. Even though a plethora of cases revealed that public officers are the "usual extortionists", the spate of occurrences of extortion among private individuals in the mould of cyber extortion, extortion in the commission of commission of armed robbery and kidnapping revealed that the offence is a lucrative trade to the unscrupulous mind public officer or not and no one should be let off the hook of criminal law by some semantic fixture.
- Extortion is an offence that is easily confused with other kindred offences. It is surely not the same as bribery, theft or robbery. The elements that distinguish extortion from all such offences inducement and inanition. It has been found that extortion easily snowball into bribery and the failure of prosecution to establish the victim's intention in handling over his property to the accused as that of fear may easily turn a victim of a crime into a party or an accomplice to a distinct crime.
- Threat of injury, cardinal as it is in establishing the offence of extortion under the Penal Code must relate to "a person and not the victim's property. It is submitted that the fact that section 31 of the Penal Code includes harm to property in its definition of injury suggests otherwise.
- Extortion, though employed by kidnappers as a tool of trade, it is found that the offence cannot be arbitrarily slammed on persons accused of kidnapping and charged under a kidnap prohibition law which makes no provision or tap offence of extortion.
- The definition of extortion under Section 91 Criminal Code at best defines the offence of bribery. This trouble is further compounded by the fact that the section makes an escape route available to extortionist public offers who as shown in the cases of ***R. v. Minimah***[52] and ***Ezebuiro v. C.O.P*** will escape justice if the prosecution fails (in the court's opinion) to describe the duty performed by the accused in the course of which the alleges offence occurrence. An issue that is as invite as a public officer's duty should not be glorified as a material fact in an extortion trial. What the court should be concerned with should be whether the accused actually extorted property or any benefit from his victim.
- Outside this clinic, the offence of extortion is also prescribed, the Criminal Code of the United States of American and that of Canada subsume as one and the same offence extortion and attempted extortion. Whatever the policy consideration for such position is, it downplays the essence of 'the age-long concurrence of act as reus

[52] Supra

and mens rea principle of criminal law' as it exalts an inchoate offence to the pedestal of an actual offence. The Canadian Criminal Code goes miles further to provide a clear cut exception to what may not constitute 'threat of injury' occasioning extortion. The threat of instituting a civil proceeding against the complainant is no threat of injury. Since the land is that the mention of a thing is to tap exclusion of all others, Canadian courts unlike their counterparts in Nigeria have no business with conjecture when called upon to decide that "threat of injury" in an extortion base means. Moreso that the code, unlike any other examined in this work outlines likely threats of injury (including threats of violence which way occasion the use of firearms) that may suffice.

- Cyber stalking is the recent trend in the dirty business of extortion. The perpetrators employ the use of phone, computers and other information communication technology devices to extort wrongful gains from their victims. Nigeria has made enacted the cybercrime (prohibition, prevention, etc) Act 2015 to nip this offence in the bud. Much depends on the functionality or otherwise of the institutional framework established by the Act and in the forensic know-how of our law enforcement agencies in order to achieve the objectives of the Act.
- The success of investigating, prosecuting and ultimately preventing the occurrence of extortion in Nigeria as shrouded in some avoidable maladies: that a victim of extortion whose assailant threatens to harm him by means of witchcraft, cannot even though he knows and believes in the efficacy of witchcraft, seek redress in our courts is unfortunate. Also, that the offences in this peculiar crime are usually public officers, particularly law enforcements agents, strips the complainant in the case of extortion, of his confidence in the justice sector. This is an anomaly. Justice should be done and should be seen to be done to victim of offences regardless of the fact that the accused person wells public power. The heavens will not fall if this done. The conspiracy of silence between the law and public officers shown in the rather utopian through unwritten requirement of providing extortion cases by showing vides of the occurrence of some before justice is done (of good fortune suited at the complainant) leaves little to be desired. For in most cases, the victim of extortion by a public officer is expectedly misled into silence by the awe with which he beholds his assailant, an officer of the law and perhaps, his best bet is to mark the property he parts with an act which the courts have held cannot sustain a charge for extortion.

2. Recommendations and Suggestions

This paper recommends that;

- The definition of extortion should be made liberal in order to avoid double standards in the business of justice. Public officer or not whatever commits extortion should be made subject to one law.
- Since extortion may be easily confused with other offences, prosecution courses should diligently elicit from the complainant (as prosecution witness). Facts that will establish that the complainant (as prosecution witness) facts that will establish that the complainant parted with his property for the singular reason that he feared bring inflicted with injury by the Accused. The need for mastery in cross-examination cannot be over-emphasized.
- Section 31 Penal Code as far as it relates to section 291 Penal Code should be amended to reflect the position that the threat of injury required in extortion cases is that to a person not to property. Moreso that Section of the Penal Codes is already covers the field in that respect.
- If the intention of draftsmen is to avoid prosecution an opportunity to charge persons accused to the offence of kidnapping of the lesser offence of extortion, a section should be introduced to our kidnap. Prohibitions laws to avail prosecution the benefit of charging kidnappers for the offence of extortion.
- While it is recommended that Section 406 of the Criminal Code be considered the law on extortion under the Criminal code as against Section 99 of the code, courts should pay no attention to the proof of public officer's duty requirement of the said section 9 as it is of no practical utility in a trial for extortion.
- The U.S. and Canadian Criminal Codes which merged the offence of extortion and attempted extortion should be amended to reflect the known distinction between committing an offence and attempting to do so by putting one's criminal intention into execution but no fulfilling so as to commit the offence.
- It is advised that the institutions such as the computer professional's Registration Council (charged with the responsibility of registering all operators of cybercafé in Nigeria), Law enforcement agencies, the Nigerian Communication Commission (NCC) should be trained and retrained to keep up with development in the world of cybercrimes in order to prevent the occurrences of cyber stalking and the likes. These institutions should display uncommon zeal in discharging their duties in order to rid Nigeria of the menace of cyber extortion.
- The position need be belabored that our criminal law ought to face reality quit its union with pretense and give witchcraft the recognition it reserves in our *corpus juris* so that justice will be done to victims of extortion, with a human face, indeed with a Nigerian face.
    - Also, to avoid the prosecution clog in prosecuting extortion, it is advised that the right of private prosecution be employed

by persons who are not public officials that is, either the complainant himself or by a legal practitioner he engages.

Similarly, the law that marking currency notes in order to ensnare an extortionist public office cannot ground a charge for extortion, it should be overruled by our courts as this opens the gate for public officers to escape the wrath of the law.

Conclusion

This contribution to the law on the offence extortion, it is hoped clears the air on certain legal complexities surrounding extortion. The greater desire of the researcher is this – that Nigerians, public officers and private citizens alike should be morally reprehensible and religiously condemnable act which our laws criminalized. It is my submission that there is nothing improper in any modern state adopting such a practice. It is sometimes argued that such a stand will make those that are adjudged innocent later to suffer unnecessarily and that even suspected crooks are human beings that have right to be protected. It must be however that no individuals' rights exist independent of the wider societal interests and the question is: who is more important – the individual, society or the government?