

FUNDAMENTAL HUMAN RIGHTS: A LIMITATION

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ABSTRACT

Every Individual at birth is conferred with individual rights which are recognized and enshrine in the constitution of many countries in the world today. Those rights are Life, liberty and the pursuit of happiness and it is the cardinal responsibility of every state to ensure that its citizens no doubt enjoy all these rights. Given of that, this paper examined the concept of rights in particular and its antecedence in perspective. It also shades more light on the rights with the view of its application and limitation contained in the constitution of the federal republic of Nigeria. Against this, the paper aimed at making clear to the public that the fundamental human rights enshrined in the Nigeria constitution can only be enjoyed by citizens as long as he/she did not infringe the right of others, nor affect the moral, traditional value and peaceful co-existence among Nigerians. However, the paper employed the doctrinal method of legal research where attention is paid to the legislative enactment and existing work of most of the Nigerian authors. It further recommends that citizens must enjoy those rights within the unit set out by law; if not proper sanction is awaiting them.

INTRODUCTION

In the literary form of it, “Human” simply means ‘relating to human beings’ or ascribed to relating to members of the races of homo-sapiens, meaning men, women, and children. “Right” in this dimension is regarded as just or correct, truth, fairness, justice, just or legal claim (Ezejiolor, 1964). From another point of view human rights mean freedom, immunities, and benefits which accorded to modern values, all human beings; should be able to claim their right in the society they live (Justus, 2008). One of the cardinal aspects of human rights is moral principles that set out definite standards of human behaviors which are conceived as universal within intervention law, global and regional Institutions (Wikipedia, 2015). Rights have been categorized into three relating to human beings; there are some rights which are immediately enforceable binding commitment on reflective of the values, norms of the society in particular. While others rights deals with ethics and morality as future patterns of behaviors which entitles to them can only arise on under specific conditions (Sokefun, 1998).

The Historical Antecedent of Human Rights

In the historical epoch, Human Rights surpass any known period. It is believed that history is full of activities and struggle for people and by people over their rights to free themselves from the bondage of tyranny rules or social milieu. This fight had started over the century and continues, and the core forefront of this struggle is the United Nation, Organization, and the African Union respectively. From the Biblical point of view, Israelites made several efforts in Egypt, Babylon, over the time to free themselves from slavery and bondage. (Shaw, 1998). History has revealed



to us that the first use of the word with an equivalent meaning of freedom was in the 24th century B. C in the Lagash province of Samaria. One of the events that took place during the reign of King Lagash, Urukagina was between tax collectors and citizens in the Kingdom. The King had no other alternative than to chase away both the tax collectors and the priest out of the town just to save his crown from a protest from his subjects (Justus, 2008).

The origin of human rights can be found in the Greek philosophy and the various worlds in the 18th century, the concept of human rights emerged as an explicit category. Much of the content of literature on Human rights that we have today was a developed and improvement on Roman law by the Hellenistic stoic philosophers. At the time the Roman law had what they called the Jus Gentium. These were the laws and rules essentially for all humanity (d' Entreves, 1970). During the renaissance period, tyranny rule became the order of the day. Therefore, "the rights of man" became a slogan during the struggle for self-determination, against injustices, for independence, for inequalities and indignities that have taken place and committed by some governments and are still proceeding in most of the world. These "right" were turned to "natural rights," and they were claimed to derive from "natural law," the law that ruled the universe (Mansell, 2006) (Sokefun, 1998). Those who contributed immensely toward achieving this struggle were renowned philosophers such as John Locke of England, Jean Jacques Rousseau of France, Thomas Jefferson of the United States of America among others (Olakanmi, 2007).

In Nigeria, the struggle for human rights started during the colonial rule before Nigeria attained independence in 1960. From the available record, Nigeria did not fight a war before gaining independence from the British. In fact, there was saying the country got its independence on a "Platter of gold" meaning to that the people of Nigeria did not have the demand or fight a war for the entrenchment of human rights in our constitution. At the eve of independence a commission was set up to ascertain the minority ethnic groups demand of self-determination which they believe could offer them a chance for an escape route from the tyranny of the majority ethnic groups in the regions (Ajomo, 1993). The Willinks commission set up in 1958 by the British Colonial government comes up with the following recommendation. The adoption of some of the norms of the 1948 Universal Declaration of Human Rights into the Nigeria constitution as a panacea for fears expressed by the minority group in the country. These norms were finally adopted and introduced into chapter 111 of the independence constitution of 1960 as Fundamental Rights. These were subsequently entrenched in 1963, 1979 and the 1999 constitution of the Federal Republic of Nigeria (Ngurua, 2003).

Fundamental Human Rights Provisions and Their Limitation

1. Right to Life: Right to life is provided for in the constitution of the Federal Republic of Nigeria 1999 (as amended) in section 33 (1)

Right to life is an inalienable right that cannot be denied the citizens because it is the existence of an individual. It is not to be deprived unless after the due process of law and in the execution of the sentence of a court for a criminal offense for which the person has been found guilty in Nigeria (Malami, 2010).

As a result of the above constitutional provision section 221 provides death sentence for the offense of culpable homicide (Pend code Law, LFN 1963). However, in the case of Bello V. Attorney General of Oyo State (1986), 17 SCLNR 1257 the deceased was executed for armed robbery during the pendency of his appeal. Bello, JSC (as he then was) stated that, it is clear from the constitutional and statutory provisions where a convict sentenced to death in respect of which the power of pardon is exercisable by the President or the military Governors of Northern states has appealed against his conviction, the death sentence should not be carried out until the appeal has been determined.

The constitutional provision and the above-decided case shows that a right to life is not absolute, which means an individual can be deprived of his or her life strictly in accord once with the law.

2. Right to Dignity of Human person: The Nigerian constitution provides for the right to dignity of human person under section 34 (1) that
 - (a) No person shall be subjected to torture or inhuman or degrading treatment;
 - (b) No person shall be held in slavery or servitude; and
 - (c) No person shall be required to perform forced or compulsory labor (Nigeria, 1999).

Under the Nigerian constitution, a person is entitled to a right to dignity. Accordingly, a person shall not be subjected to any form of torture, any form of inhumanity, any form of degrading treatment, slavery, servitude, forced or compulsory labor (Malami, 2010).

In Ireland V. United Kingdom (1978) 2 E.H.R.R. 25, the court provided that, torture means deliberate inhuman treatment is causing severe and cruel suffering.

However, withholding of food, water and medical treatment, Extradition or deportation and mental torture has been classified as inhuman treatment. In assessing whether punishment is inhuman subjective consideration needs to be given to various factors including the physical and mental suffering, the applicant sex, age, health (Rehman, 2010). In Mogaji & Ors V. Board of Custom (1982), 3 NCLR 552 at 562 some market women were maltreated by the officials of customs and exercise who were aided by the police officers and soldiers with the use of guns, the firing of same when the said customs officials raided their shops, sized and detained their goods suspected to be prohibited, the court held as follows:

“Law would make an order for a declaration that, the action by customs men aided by police officers and soldiers with the use of guns, the firing of the same, the use of horse whip and less gas for the apprehension, seizure and detention of goods suspected to be prohibited and removal of their goods without due investigation violate the rights of the plaintiffs under the constitution of the Federal Republic of Nigeria, not to be subjected to any inhuman or degrading treatment”.

The above constitutional provisions and a decided case indicate that the right to dignity of the human person applies to both men and women, to all tribes and Religions across Nigeria.

3. Right to Personal Liberty: The right to personal liberty is one of the most cherished fundamental rights of the right to life. The Nigerian constitution provided in section 35 (1)

The section stated that right guarantees the freedom of the person from physical restraint by arrest or detention except in lawful execution of the order of a court or for some other reasons permitted by law (Alobo, 2010). In addition to this, Lord Denning said that liberty is the freedom of every law-abiding citizen to think what he will. To say what he will on his lawful occasions without hindrance from any other person. (Malami, 2010).

The extent to which limit of the right to personal liberty has been captured by the supreme court in the case of *Dokubo Asari V. FRN* (2008), 2 SC 450, that where National security is threatened or there is the likelihood of being threatened then the rights of individual of those responsible take second place. The individual right can be suspended until the National security well taken care of. In addition to that Per Muhammad JSC (2005) said that right to personal liberty is not absolute. This is because liberty can only be restrained to just to prevent him from committing further offenses. The constitutional provision has shown that case concerning right to personal liberty is not absolute therefore has some limitations; this is because an individual can be deprived of his/her liberty in the execution of the offense in which he was found guilty or upon reasonable suspicion of his having committed a criminal offense to prevent him/her committing an offence or for the protection of public morality.

4. Right to a fair hearing: Right to fair hearing is provided for in the constitution of Nigeria in section 36(1)

- a. A hearing can only be fair when all parties to the dispute are given a hearing or opportunity of hearing. If one of the parties is refused a hearing or not given an opportunity to be heard the hearing cannot qualify as a fair hearing.
- b. The principle of fair hearing implies that both sides must be given an opportunity to present their respective cases. It is also implied that each side is fully entitled to know what case is being made against it can be given the opportunity, to respond to it. It also implied some obligations on the tribunal or court hearing the case, and fundamentally the court or tribunal should not take or hear evidence in a case or receive a submission or representation from a party at the back of the other;
- c. A party should not be denied not only the opportunity to present his Defense to the defense being put up against his case sit also includes right to be heard at any material stage of the proceedings;
- d. Fair hearing involves a fair trial; in all cases what is required is that from the observation of persons present at any trial or investigation justice must appear to be done.

In *Okeke V. "Yar'aduwa* (2008), 12 NWLR .ptillo at 95 the supreme court held that every citizen of Nigeria has a right of access to court for a legal redress and ipso facto a right of appeal. On the permissible limit to the right to fair hearing, per Tobi, Jsc said in the case of *Major Bello Magaji V. Nigerian Army* (2008), 3 Nsc 490 that the fair hearing constitutional provision is designed for both parties to the litigation, in the interest of fair play and justice. The court must not give a burden to the provisions which it cannot carry or shoulder it is a principle when is based and must be based on the facts of the case before the court.



5. Right to private and Family Life: Family life was regarded from time immemorial in human historical, cultural, sociological and economic development. It was dully recognized that man requires privacy for him to be happy, resourceful and satisfied (Alobo, 2010). Right to private and family life is provided for in the constitution as in section (37)

A man has the right to set up a home, live alone as a bachelor throughout his life. He may however on his volition decide to marry a woman or women, raise children and form a family. He has the right to live the way he likes within the ambit of law and acceptable practice of civilized society. His style of living must not constitute an offense under the law or becomes a nuisance to his fellow men. It is also deemed that a person's past life is his private asset and should not be the object of public discussion unless it is beneficial to the society or a matter of substantial public interest.

However, (Alobo, 2010) said, the right to private and family life is not only limited to privacy of himself, his homes of citizens but also include such essential social service as telephone, telegram, fax, letter writing and various multinational communication outfits such as MTN, ZAIN, GLOBACOM, etc.

The right to marry established in the Nigerian constitution was intertwined with procreation and childbearing and thus was only a right to opposite-sex marriage and that Nigeria through legislation has openly expressed her refusal to accord recognition to Gay-marriage through legislation known as same-sex marriage (Prohibition) Act, 2013. As a result, Obiwoye (2011) has said that a foremost human right group known as civil liberties organization lauded the decisions of the legislators who described the homosexual act as ungodly, morally and religiously unacceptable.

5. Right to Freedom of Thought, Conscience, and Religion are provided for in section 38 (1) The supreme court illustrated above constitutional provision in the Disciplinary Tribunal V. Okonew O, (2001); 7 NWLR (pt 71) 206 that, the right to freedom of thought, conscience and religion implies a right not to be prevented without lawful justification from choosing the course of one's life, fashioned on what one believes in and a right not to be coerced into acting contrary to one's religious belief. The limit of these freedoms in all cases is where they impinge on the right of others or where they put the welfare of society or public health in jeopardy.

6. Right to Freedom of expression and the Press: Right to freedom of expression and the press is provided for in the constitution as follows: 39 (1) Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference. (Nigeria, 1999).

In the case of Queen V. the Amalgamated press of (Nigeria) Ltd & Fatogun, the defendants were arraigned before the High court of Lagos on information charging them on two counts with the offenses of publishing a seditious publication contrary to section

51 (i) © and publishing false news likely to cause fear and alarm contrary to section 59 (i) of the criminal code Act. At the end of the trial counsel for the defendants in his address submitted to the court that in view of the provisions relating to the entrenchment of fundamental human rights in the constitution of

the federation, the two sections of the criminal code under which the defendant was charged have become null and void as they are ultra vires the constitution.

The supreme court held that, the constitution of the Federation relating to fundamental human rights guaranteed nothing but ordered freedom and it cannot be used as a license to spread false news likely to cause fear and alarm to the public, therefore, these sections of the criminal code has not been invalidated by that constitutional provision (Queen V. The Amalgamated press of (Nigeria)Ltd & Fatogun (1961), 3 All NLR 199.

Again it is stated that a fundamental principle of Nigerian law that everyone is free to say or write what he likes, but one's right of expression ends where the right of one's neighbor or that of the public begins. The Nigerian constitution therefore authorizes the state to impose absolute restriction on the individual's freedom of expression in the interest of public safety, defense, health and morals with this, the Nigerian legislation limited the rights to freedom of expression and press on anything to do with same-sex sexual relationship, As such anyone reporting neutral information related to same-sex issues could be accused of promoting publicity of such act (Alobo, 2010)

7. Right to Peaceful Assembly and Association: This is provided for in the constitution of Nigeria under section 40. A person may, therefore, form or belong to any political party, trade union or any other association of political, social or economic in pursuance of lawful interests, the right is not granted to any person to assemble for unpeaceful or other unlawful purposes, the police are empowered to stop or disperse on unpeaceful gathering or unlawful gathering (Malami, 2010).

The constitutional provision, therefore, does not extend to the registration of the gayclubs, societies and organizations, their sustenance, processions, and meetings; this is because the word every person in section 40 did not contemplate gender-neutrality to accord the right of freedom to assembly and association to thegay community.

8. Right to Freedom from Discrimination: Is provided for in the constitution under section 42 (i)

- (a) Be subjected either expressly by or in the practical application of any law inforce in Nigeria or any executive or administrative action of that government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not madesubjector
- (b) Be accorded either expressly by, or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privileged or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth (Nigeria, 1999).

However, there are instances where the constitution will recognize discriminatory treatment of persons. In the case of Anzaku V. Governor Nasarawa state (1990), 6 N.W.L.R 708, the courts of appeal held that the rule of law under the constitution take care situations and it recognized that certain differences in treatment of persons do occur. Professor B. O. Nwabueze

stated that fairness and justice demand that people who are similarly circumstanced should be treated equally by the state. There is no discrimination where special restrictions imposed upon a class or special advantages accorded to it are reasonably designed to reflect real and substantial differences between it and other classes or groups. It is indeed unfair and unjust to treat unequal things equally (Alobo, 2010),

CONCLUSION

The paper has examined the fundamental human right provisions; this is because the greatest value of human being is best represented in recognition of fundamental human rights. According to (Olakanmi, 2007), the rights set out in the international covenants on Human rights are not absolute and are in each case subject to limitations. The Nigerian constitution defines the legitimate restrictions on the rights which it sets forth by limiting them to those which are provided by law are necessary to protect national security, public order, public health or morals or the rights and freedom of others. However, the case law has also provided the limitation to these fundamental rights as judiciary was empowered by the national constitution to limit or restrain the individual rights (Adbul-Ethem, 2002). Human rights, therefore, are moral, principles that set out certain standards of human behavior; they are protected as legal rights in international instruments and National laws like the CFR 1999. (Wikipedia, 2015).

RECOMMENDATION

Since the provisions are made available for the protection, enjoyment, and limitation of fundamental human rights, the paper wishes to recommend as follows:

- a. The government should be committed to the implementation of human rights provisions, particularly where the interest of the fewer privileged members of the society is involved.
- b. The court should stop granting bail to those accused of committing criminal offenses like corruption and kidnapping; this is because a right to personal liberty is not absolute.
- c. The police officers investigating suspect accused of committing a capital offense like treasonable felony should be given adequate time to detain, the suspect pending the completion of the investigation, this is because releasing them may affect the investigation entirely.

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