

**FUNDAMENTAL HUMAN RIGHTS AS ENSHRINED UNDER CHAPTER IV OF THE 1999  
CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED) AND ITS  
REALIZATION WHETHER A MIGHT OR A MIRAGE**

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**ABSTRACT**

*Fundamental human rights are constitutionally guaranteed rights to citizens of states by their governments. Everyone has a right to life, dignity, security, proper development etc. This is more true of democratic states where the government has a constitutional obligation to protect these rights. This paper looks at the fundamental rights of citizens in Nigeria as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 (as Amended), case law regarding fundamental rights, procedure for enforcement of the rights as well as the limitations and challenges associated with full enjoyment of the rights. It concludes by proffering certain solutions to these problems and makes necessary recommendations.*

**Keyword:** *Human Right Chapter 4 of 199, Chapter iv Constitution Federal Republic of Nigeria, Realization*

**INTRODUCTION**

Before delving into the definition of this topic, it is good to first appreciate the concept of Human Rights which encompasses it. And the starting point to appreciating the concept of human rights is understanding the concept of 'right's itself. According to Dowrick<sup>1</sup>, rights encompasses the

“Wider concept of claims i.e. wants, desires, aspirations people have and express... whether those of a code of morality or ethical theory, or those of political system or political theory of those... of a legal system”.

From the above, rights include claims which may be legal, political or moral, it is said to be legal when it can be legally binding<sup>2</sup>

Human right has no universal definition and has been defined by various writers based on the jurisprudential school of thought. For instance, Dorrick's definition of human rights is linked to the philosophy of natural law which in its time was politically motivated. His definition reads:

“Those claims made by men, for themselves or on behalf of other men, supported by this theory, which concentrates on the humanity of man, or man as a human being, a member of humankind...<sup>3</sup>

In the same vein, Ezejiolora defines human rights as:

“Moral rights which every human being everywhere at all times ought to have simply, of the fact that in contradistinction with other beings, he is a radical and moral being.

Osita taking a positivist dimension to his own view on human rights posits,

“Human rights represent demand and claims which individuals or group make, one see some of which are protected by law and have become part of Lex lata while others of aspirations to be attained in the future”<sup>5</sup>

Michelin R. in her book defines human rights as:

“Rights held by individuals simply because they are part of human species, they are rights shared equally by everyone regardless of sex, race, nationality and economic background. They are universal in content. Across the centuries, conflicting political traditions have elaborated different components of human rights or differed over which elements had priority”<sup>6</sup>.

Basically, human rights are “basic rights and freedoms that all people are entitled to regardless of nationality, sex, national or ethnic origin, race, religion, language or other status.”<sup>7</sup>

The Nigerian Supreme Court in the case of *Ransome Kuti V. Attorney General*<sup>8</sup> describes human rights as:

“A right which stands above the ordinary laws of the land and which in fact is antecedent to political society itself. It is a primary condition to civilized existence and what has been done by our constitutions since independence is to have these rights enshrined in the constitution so that the rights could be immutable to the extent of non-immutability of the constitution”.

It is against this backdrop that we can now discuss the concept of fundamental human rights which are strictly justiceable rights statutorily provided for while human rights encompasses all the rights accruable to all individuals including justiceable and non-justiceable rights.

Fundamental human rights are entrenched particularly in the constitution of a country and the extend to international treaties.

Perrett in commenting on fundamental human rights has this to say:

If the fundamental right being asserted is intended to be legal right... such rights are properly called fundamental when they are expressed in, or guaranteed by laws which are based on preeminent laws of the legal system in question, e.g. rights which are specified in a written constitution, or in judgments of a superior court interpreting the constitution more specific and certain area... By analogy, some other legal rights may be called “fundamental” when sense that they are, or closely appertain to the rules that Kelson would call *pari grundnorms* or Hart, the ‘basic’ rules of recognition, adjudication and change of the legal system nevertheless these rights are legally basic in the sense that their existence and content essential to the existence and content of many other lesser legal rights of the system<sup>9</sup>

From the above there is just a slim boundary in the difference that exists between human rights as fundamental human rights which is just a matter of codification.

It is also pertinent to note that fundamental human rights which are guaranteed in the constitution are not privileges in the sense that they could be withdrawn at the whims and caprices of the government of the day. They are rights and freedoms which the executive, legislative and judiciary are all enjoined to preserve and protect. Any violation by anybody even the government is liable to be called to order, where the violation has resulted to injury which could be compensated in financial terms. Courts are duty bound to make orders or reparation in monetary terms.<sup>10</sup> In fact, most supporters of government believe that the fundamental purpose of government is the maintenance basic security and order<sup>11</sup> which includes among other things, the protection of citizens fundamental rights. It is the view of this writer that one of the determinants of a great nation is in its ability to ensure the protection of fundamental human rights.

Fundamental Human Rights are guaranteed internationally, regionally and locally by different countries because of how important they are in maintaining modern society. As a result several conventions and treaties have been signed and adopted to guarantee these rights.

In Nigeria, fundamental rights are guaranteed in chapter IV of the constitution of the Federal Republic of Nigeria 1999 (as Amended) (hereinafter referred to as the 1999 Constitution). All fundamental rights of every citizen are enshrined in chapter IV of the constitution. The rights however only restrain the government from taking negative actions against the citizens; they do not encourage government in taking positive steps, to promote the welfare of the citizens. These other rights were to enforce the economic, social and cultural rights of the citizens are merely Fundamental objectives and directive principles of state policy which are enshrined in chapter II of the constitution and are not enforceable.<sup>12</sup>

In addition, fundamental human rights as enshrined in the constitution is not absolute but to be exercised within the limits of section 45 of the 1999 constitution which includes among other things that these rights are subject to the protection of the interest of defence, public safety, public morality or public health or for the purposes of protecting the rights and freedoms of other persons.<sup>13</sup>

## **FUNDAMENTAL HUMAN RIGHTS AS ENSHRINED IN CHAPTER IV OF THE 1999 CONSTITUTION**

### **(a) THE RIGHT TO LIFE**

This right is provided for under section 33(1) as follows:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of a sentence of a court in respect of a criminal offence of which he has been found guilty.

The Supreme Court interpreting this section, stated in *Okoro V. The State*<sup>14</sup> that the death penalty is not inconsistent with the provisions of this section in respect of a criminal offence of which one has been found guilty but can only be justified where there is no pending appeal.<sup>15</sup>

This section is silent on whether there is an imposition of any positive obligation in addition to the negative one not to take life on the state to act to save life. In this vein, the United Nations Human Rights Committee has noted that the expression “inherent right to life cannot properly be understood in a restrictive manner and the protection of this right requires that measures be taken to also reduce infant mortality, increase life expectancy and eliminate malnutrition and epidemics. It also includes the duty of preventing wars, acts of genocide and other acts of mass violence causing arbitrary loss of life.<sup>16</sup>

More so, the doctrine of the rule of law requires that there must be an effective government capable of maintaining law and order.<sup>17</sup>

All these connote that the right to life requires states not only to abstain from taking life but also to take positive steps to protect it and not to endanger it including threatening a persons means of livelihood. But as already been stated, these other rights are not enforceable in Nigeria but have been interpreted to be in India as may be seen in the position taken by the supreme court of India in *Olga Tellis V. Bombay Municipal Corporation*<sup>18</sup>, where the court stated that “the sweep of the right to life... Does not mean

merely that life cannot be extinguished or taken away... an equally important facet of that right is the right to livelihood because no person can live without his means of livelihood.

The right to life under section 33(2) provides certain permissible limitations where the circumstances are permitted by the law such as:

- a. The defence of any person from unlawful violence or property
- b. In effecting a lawful arrest or preventing the escape of a person lawfully detained or
- c. For the purposes of suppressing a riot insurrection or mutiny

The court however in the case of *Ahmed V. The State*<sup>19</sup>, has stated that where one is acting in defence of his property as regards this section, the force used and the weapons employed must not be out of proportion with the way such property should be defended against attackers who were not armed.

In most civilized societies it is not permitted to kill at all in defence of property e.g. Article 2 (2) of the European convention on human rights which is similar to section 33 (2) of the 1999 Constitution does not permit killing in defence of property.

#### (b) **RIGHT TO THE DIGNITY OF THE HUMAN PERSON**

This is guaranteed under section 34 as follows:

Every individual is entitled to respect for the dignity of his person and accordingly;

- a. No person shall be subjected to torture or to 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 labour

This right in Nigeria is most commonly violated in relation to detainees and prisoners who are subjected to all manner of torture, inhuman or degrading treatment especially as it regards the extraction of confessional statements. Also worthy of note is cases regarding child abuse, human trafficking and the maltreatment of house helps.

In the case of *Pertter Nem V. AG. Lagos State and Anor*<sup>20</sup> it was held that the right to the dignity of the human person avails even condemned persons.

However in the case of *Onuoha Kalu V. The State*<sup>21</sup>, it was held that this right including the right to life are subject to the execution of a death sentence of a court of law in respect to criminal offences of which one has been found guilty in Nigeria.

As it relates to free individual citizens, the court has held that the word “dignity” is *ejusdem generic* to the specific acts mentioned in the section and as such, the courts have no right to go outside those acts. Thus a mere vulgar abuse like calling someone a slave does not constitute in human or degrading treatment.<sup>22</sup>

An inhuman treatment has been defined to mean a barbarous, uncouth, and cruel treatment; a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty while torture means to put a person to some form of pain which could be extreme or to put a person to some form of anguish or excessive pain. This could either be by physical brutalization or mental torture where a person’s mental orientation is very much disturbed that he cannot think and do things rationally.<sup>23</sup>

In *Alaboh V. Boyles and Anor*<sup>24</sup> the beating, pushing and submersion of the applicants head in a pool of water by the first respondent was held to constitute inhuman and degrading treatment while in *Mogaji V. Board of Customs and Excise*<sup>25</sup>, it was held that it is a violation of this section to organize a raid with guns, horse whips, tear-gas and to strike or otherwise injure custodians of goods.

#### (c) **RIGHT TO PERSONAL LIBERTY**

Section 35(1) guarantees this provision as follows:

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.

- a. In executing a sentence or order of court.
- b. Where failure to comply with a court order.
- c. Bringing a person before a court of law on reasonable suspicion.
- d. Education or welfare of a person under 18 years.
- e. In case of a person suffering from health problems.
- f. For the purpose of preventing unlawful entry into the country.

In addition to these exceptions, the court has held in *Medical and Dental Practitioners Disciplinary Tribunal V. John Okonkwo*<sup>26</sup> that the role of the law and court in ensuring full liberty to individuals is without danger to public interest.

The most commonly abused of the stipulated limitations on this right is section 351(c) when authorizes deprivation of a persons liberty upon reasonable suspicion of his having committed criminal offence, or to such extent as may be reasonably necessary to prevent him from committing criminal offence.

Any physical deprivation of liberty is detention. An arrest on the other hand is one of the ways of initiating a detention or prosecution<sup>27</sup>

In the case of *Adams V.A.G. Fed*<sup>28</sup> whenever a power exists to deprive people of their personal liberty, that power must be strictly construed and not stretched beyond its least onerous meaning consequently, section 236(3) of the criminal procedure law of Lagos state which provides for the remand of persons accused of offences while preparation for their arraignment continues must not be interpreted in a way that offends the constitutionally guaranteed rights to personal liberty, fair hearing within a reasonable time, presumption of innocence and the right to be charged for an offence promptly.<sup>29</sup>

To constitute an arrest, the police officer shall actually touch or confine the body of the person to be arrested, unless there be submission to custody by word or conduct<sup>30</sup> and a person cannot be arrested for the offence of another<sup>31</sup> as criminal liability is personal and not vicarious.

In addition, a person is not to be handcuffed, bound or subjected to unnecessary restraint without the order of a court, magistrate, or justice of peace except when there is likelihood of violence being committed or an attempt to escape or for the personal safety of the person concerned.<sup>32</sup>

Section 35(2) of the 1999 Constitution further provides that any person who is arrested detained shall have the right to remain silent or avoid answering any question until and consultation with a legal practitioner or any person of his choice while section 35(3) provides that any person who is arrested or detained shall be informed in writing within 24 hours (and in the language he understands) of the facts and grounds of his arrest.

There is no arrest where a person is merely invited to the police station and he honours the invitation.<sup>33</sup>

Section 35(4) and (5) stipulated the duration within a reasonable time that an arrested or detained person is to be brought to court.

In accordance with this, section 341(2) of the C.P.C. lists outailable offences and the court in *Enwere V. C.O.P.*<sup>34</sup> listed the points to be taken into consideration in an application for bail by an accused person.

a. Likelihood of an accused coming to trail

b. Seriousness of the charge and duty of prosecution to bring such facts to the notice of the court

In *Pius Uzo Anakwe V. C.O.P.*<sup>35</sup>, the court has held that although bail is not granted in capital offences such as murder cases, a situation where there is no material before the trial court to show the charge or proof of evidence qualifies as a special circumstance in which the court can grant bail.

However, in *Dokubo-Abari, V. F.R.N.*<sup>36</sup>, the court has held that a charge of reasonable felony is a very serious offence especially where national security is threatened. The human right of the individual here takes second place and is suspended until national security can be protected or well taken care of. Thus, it would be prejudicial to national security to grant bail.

In Nigeria even with the structures put in place by the law and courts, the requirement that a person who is not tried within a reasonable time should be released is routinely violates incidents of indiscriminate arrest and inordinate delays in the criminal justice system and prevalent. An investigation carried out by the Constitutional Rights Project (CRP) reveals that more than sixty percent of Nigeria's prison population is awaiting trial while several have been held in prison custody without trial for long periods of between two to twelve years.<sup>37</sup>

**(d) RIGHT TO FAIR HEARING**

Guaranteed by section 36 as follows:

36(1) in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and in such manner as to secure its independence and impartiality.

In the recent case of *Rear Admiral Agbiti V. Nigerian Navy*,<sup>38</sup> the court held that in Nigerian legal system, fair hearing is not only a common law right but a constitutional right as guaranteed by section 36(1) of the 1999 Constitution and the term fair hearing connotes the impression given to an ordinary reasonable person watching the proceedings. If he goes with the impression that a person has not been treated fairly, then there is breach of fair hearing.

Fair hearing is synonymous but not necessary conterminous with natural justice or fair trial because it determines a higher standard. Fair hearing requires the observance of the twin pillars of the rules of natural justice namely:

- a. *Audi altarem Partem* – to hear the other side and
- b. *Nemo Judex in causa sua* – No one should be a judge in his own case

As it relates to (a) above, a person whose conduct is the subject of inquiry should have an opportunity of knowing what evidence has been given against him and to challenge hostile witnesses while (b) connotes that the person who is tainted by likelihood of or actual bias should not take part in the decision making process where the adjudicator is under a duty to act fairly.<sup>39</sup>

In the same vein, the court in *Womiloju & Anor V. Anibke & Ors*<sup>40</sup> has held that where a trial has been conducted in which the authority of the court has been exercised in consistence with the fundamental principles of justice embraced within the conception of the process of law, then there is said to be fair hearing. This contemplates allowing the parties equal opportunity to present evidence cross-examine witnesses and for the trial court to make findings which are supported by evidence.

In addition to these principles, the renowned case of *Garba V. University of Maiduguri*<sup>41</sup> has added that a person who is liable to be affected by any decision, acts or proceedings (whether administrative, judicial or quasi-judicial) must be given adequate notice of what is proposed so that he may be in a position to make representation by himself or through someone else on his behalf, or appear at the hearing or inquiry and to effectively prepare his defence and to answer the case he has to meet. More so, that the discretion to grant an adjournment must be exercised judiciously if not, it would amount to denial of fair hearing.

Bias has been defined as that instance which causes the mind to incline towards a particular object or cause. Thus, where a judge appears to give more favour or consideration to one of the parties before him, either in his utterances, attention or actions which are capable of perverting the cause of justice, all in favour of the party he supports then an allegation of bias against him can be grounded.<sup>42</sup>

The position relating to fair hearing makes elaborate provisions aimed at safeguarding the rights of an accused in criminal trials as follows:

Section 36(4) – A person charged with a criminal offence is entitled to a fair hearing in public within a reasonable time only by a court or tribunal i.e., only a court qualified under section 6 of the constitution can exercise judicial power to convict and sentence for a criminal offence.<sup>43</sup>

Section 36(5) provides that any person charged with a criminal offence shall be presumed innocent until he is proved guilty.<sup>44</sup>

This presumption puts the burden on the prosecution to prove the guilt of the accused the quantum of proof is beyond reasonable doubt. Also, the person charged is to be informed promptly in a language that he understands and in detail of the nature of the offence. He must also be given adequate time and facilities for the preparation of his defence and should not be refused an adjournment where necessary. More so, be entitled to an interpreter without pay if he cannot understand the language used during<sup>45</sup>

Section 36(7)... provides that the court should keep the records of proceedings and that the accused can get copies of the judgment within days of the conclusion of his case and the next provision provides that no person shall be held to be guilty of a criminal offence on account of any act or omission that did not constitute an offence at the time it took place and no penalty shall be imposed heavier than the penalty in force at the time of the offence.<sup>46</sup>

Section 36(9) provides that any person who shows that he has been tried by any court of competent jurisdiction for a criminal offence and either reconvicted or acquitted shall not again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

In the same vein, no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.<sup>47</sup>

Section 36(11) provides that an accused person cannot be compelled to give evidence at his trial so as to avoid self-incrimination.

The cases of *Saraki V. Alshthom*<sup>48</sup> *Anor* and *Abosanya V. Onadeko & Ors*<sup>49</sup> have elaborated on the principles of fair hearing as stated above and have included that these principles are for the benefit of all parties in the litigation.

Also the court in *Eke V. Ogbona*<sup>50</sup> has held that the right to fair hearing is not breached when a party chooses not to utilize the opportunity given to him to present his case, that where a party failed to file his brief of argument, he cannot be entitled to complain a denial of fair hearing.

#### (e) **RIGHT TO PRIVATE LIFE**

Section 37 of the 1999 Constitution guarantees this life.

The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic are hereby granted and protected.

**(f) RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**

Section 38(1) – every person shall be entitled to freedom of thought conscience and religion including freedom to change his religion or belief and freedom (either alone or in a community with others, and in public or private to manifest and propagate his religion or belief in worship, teaching, practice and observance.

The principles of this section are normally read together with section 10 of the 1999 constitution which forbids state religion and consequently providing that Nigeria ought not to be a secular state. But some have argued otherwise e.g. Bashir Sambo<sup>51</sup> the then Secretary General Jama'atu Nasril Islam, has argued otherwise. According to him, section 17(3) (b) on social objectives contradicts secularity as the section provides that the government can promote religious affairs moreso, section 18 propagating religious objectives according to him means intellectual and moral training. Training of Muslims and Christians can only be taught through their respective religious which apply the principles of common law inspired by Christianity, Islamic law and customary law.

Thus unlike a true secular state which creates a wall between religion and the state to see Nigeria registering as one of the members to the organization of Islamic States (OIC) and sponsoring pilgrims for their respective pilgrimages.

In the case of *Adamu V.A.G. Borno State*,<sup>52</sup> the court held that a local authority can by purporting to be implementing the educational objectives under chapter 11 of the constitution, infringe on the right to freedom of religion and freedom from discrimination.

Similarly, in *Agbai V. Samuel Okogbue*<sup>53</sup> the Supreme Court held that since the respondent religion forbade him from joining an age grade, any custom which compelled him to do so violated his right to freedom of religion.

In the case of *Nat. Union of Electricity Employees and Anor V. Bureau of Public Enterprises*<sup>54</sup> it was held that this right is subject to the limitations in section 45 of the constitution for public order, public morality or public health, or for the purpose of protecting the rights and freedom of other persons.

**(g) RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS**

The right is guaranteed under section 39.

Section 39(1) provides: Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

Sub section (2) provides that this right also includes the right to establish and operate any medium for the dissemination of information, ideas and opinion subject to authorization of government.

The obligation of the press under this chapter is to uphold the fundamental objective and the responsibility of the government to the people. Prof. Nwabueze<sup>55</sup> believes that free speech and free press are instruments of self-government by the people because they enable the people to be informed and educated about affairs of government.

Democracy calls for an open society, thus in the search of truth, knowledge and there should be no hindrance from the society. This goes a long way to enact the information bill that has recently been passed by the National Assembly.

In an earlier case of *Adikwu V. Federal House of Representatives*<sup>56</sup> the Lagos High Court held that newspaper cannot be required to disclose its sources of information except in some exceptional circumstance.

While in *Tony Mormoh V. Senate*<sup>57</sup> the Court of Appeal held that “the press or other medium of information cannot claim any right to confidentiality of the source of their information in a proper investigation by the Houses of the National Assembly or Police.

The restrictions to this right are contained in section 39(3) for information received in confidence and for maintaining the authority and independence of the court and section 45(1) as has already been stated.<sup>58</sup>

Also important to note are the differences of decisions held between *D.P.P.V. Chike Obi*<sup>59</sup> and *Arthur Nwankwo V. The State*<sup>60</sup> in interpreting this right vis-à-vis the sedition law. The former stating that Nigerian sedition law without the requirement of incitement to violence is reasonably justifiable in democratic society while the latter decided that sections 50(2), 51 and 52 of the criminal code which defined the offence of sedition without requirement of incitement of violence are inconsistent with the provisions of the constitution.

**(h) RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION**

Section 40 guarantees this right as follows:

Every person shall be entitled to assembly freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

This right helps to facilitate freedom of religion, thought and conscience and allows citizens of a democratic society ventilate their feelings and desires through demonstrations and by forming interest groups. According to the public order law of Nigeria, a permit must be obtained before public meetings and processions in streets or other public places could be held. It may be refused where a breach of peace is likely.

Freedom to associate is subject to certain limitations for instance, this right does not imply a correlative duty on any person to agree to associate with another person. E.g. in *Egi V. Uperi*,<sup>61</sup> the Supreme Court stipulated that it may be contrary to the right to freedom of association for court to compel a wife to return to her husband.

In *Anigboro V. Sea Tucks (Nig.) Ltd.*<sup>62</sup> the Court of Appeal held that for an employee to force his employees to join a particular trade union other than that which they wished, was violation to their freedom of association.

Also, in *Adams V.A.G. Federation*,<sup>63</sup> the court held that this right allows any person to belong to any political party, trade union or other association for the protection of his interest and that this right is untrammelled, therefore, an individual cannot be penalized from leaving a political party to joining another one that is legally recognized by INEC.

**(i) RIGHT TO FREEDOM OF MOVEMENT**

Guaranteed under section 41

Section 41(1) provides: every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

While this section guarantees every citizen the right to move freely, it is limited by the restrictions provided in section 41(2) (a) and (b), section 5(1) of the Passport (Miscellaneous Provisions) Act, Cap 343 laws of the Federation of Nigeria, 1990 and section 45(1) as has earlier been cited.

Thus, the Supreme Court in *Director of State Security Service & Anor V. Olisa and Koba*<sup>64</sup> that the right to freedom of movement includes the right of citizens not to be expelled from Nigeria or be refused entry thereto or exit therefrom. The right to hold passport being ancillary to the right of egress from Nigeria is therefore concomitant to the right of egress without which that right of egress becomes hollow and empty. Thus, it is justified for courts to enforce the right to hold a passport.

**(j) RIGHT TO FREEDOM FROM DISCRIMINATION**

This right is guaranteed by section 42(2) (2) and (3) and basically provides that no citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected to any form of discrimination whatever or to disability or deprivation merely by reason of circumstances of his birth.

Note that the discrimination referred to in section 42(1) must have been based on law or an action by government or its agencies and it relates only to Nigerian citizens.<sup>65</sup>

It has also been stated that the kind of discrimination guarded against is that which is morally unacceptable i.e. treating a person less favourably than others on account of a consideration which is morally irrelevant.<sup>66</sup>

In *Adamu V.A.G. Borno State*<sup>67</sup> the court held that where a local authority in the implementation of the fundamental objectives adopts a policy which infringes a citizens fundamental right to non-discrimination, that breach is justiceable.

In Nigeria, aside from cultural and religious discrimination, another prevalent form of discrimination on general basis e.g. some marriage laws, citizenship and residency right inheritance and property rights, employment practices, unequal tax structure etc. Certain discriminatory provisions also exist in sections 551(1)(d) of the Penal Code and 353 & 360 of the Criminal Code.

The case of *Mojekwu V. Mojekwu*<sup>68</sup> has however, marked a turning point in some customary practices which subjugate women. In that case, the court of appeal declare, repugnant to natural justice, equity and good conscience, the Oli'epke custom in Igbo which debars women from inheriting landed property.

**(k) RIGHT TO OWN IMMOVABLE PROPERTY ANYWHERE IN NIGERIA**

Section 43 provides:

Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

Section 44 prohibits compulsory acquisition of property.

44(1) no movable property or any interest in any immovable property shall be taken possession of compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by law which among other things includes:

- a. The prompt payment of compensation and
- b. The right of access to determine interest and amount of compensation.

In the case of *A.C.B.V. Okonkwo*<sup>69</sup> the court held that the 1<sup>st</sup> respondent was right to have come to court to enforce her fundamental right and seek redress against an *ex parte* order of court authorizing compulsory removal of her property in respect of an offence her son was alleged to have committed.

The restrictions on this ground are contained in section 44(2)(a) – (m) where the provisions of this right are limited. The right is further subject to the provisions of the Land Use Act.

### **PROCEDURE FOR ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA**

Section 46(1) provides that any person who alleges that any of the provisions of this chapter has been or is being or likely to be contravened in any state, in relation to him may apply to a high court in that state for redress.

Sub section (2) vests jurisdiction in a High Court while sub section (3) empowers the Chief Justice of Nigeria to make rules with respect to the practice and procedures regarding the section.

It was as a result to the equivalent provision of this section in the 1979 constitution that Justice Fatayi Williams, the then Chief Justice of Nigeria made what is known as the Fundamental Rights (Enforcement Procedure) Rules on the 5<sup>th</sup> of December 1979 which has been amended as Fundamental Human Rights (Enforcement Procedure) Rules 2009 which qualified as an existing law under section 315 of the 1999 constitution.

In the case of *Shehu Abdul Gafar V. Military Administrator of Kwara State & Anor*,<sup>70</sup> the court held that the jurisdiction to entertain suits concerning fundamental rights vests both in the State High Court and Federal High Court concurrently and that the enforcement of the rights so claimed must be the main claims and not ancillary claims.

Also, in *West African Examination Council V. A.O. Akinkumi*,<sup>71</sup> the commencement of suits by way of Fundamental Rights (Enforcement Procedure) Rules 1979 relates to the main claim provided for in chapter IV of the constitution and not ancillary claims. Otherwise the suit will be incompetent. Thus, the court must examine closely the reliefs claimed because mere assertion to violation of rights does not necessary make the action maintainable.

### **CONCLUSION**

This paper has examined the concept of Fundamental Human Rights and its application in Nigeria. It started by examining the concept of rights, human rights and its difference with fundamental rights. It particularly looked at fundamental rights as applied in Nigeria, its provisions as enshrined in chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) as well as Case Law regarding its application. It further discussed the procedure for the application of Fundamental Human Rights in Nigeria as well as the provisions limiting the scope of the enjoyment of these rights.

Aside from these limitations, other impediments to the realization of full enjoyment of fundamental rights as guaranteed under the Nigerian Constitution include: poverty, corruption, lack of sufficient legal aid, lack of basic infrastructure, unemployment, lack of physical security, lack of independent judiciary, cultural restrains, unchecked conducts of certain government officials, executive lawlessness/disobedience of court orders, etc. in addition, all the economic, social and cultural rights which are contained in chapter II are not justiceable and are merely regarded as Fundamental Objectives and Principles of State Policy.

It is recommended that in order to enjoy the full benefits of the fundamental rights guaranteed under chapter IV of the Constitution; those rights in chapter II must also be fully guaranteed and enforceable. Thus, there must be adequate provision of food, shelter, employment, education, basic infrastructure, adequate healthcare, social and physical security, independent judiciary efficient police force & legal aid, etc.



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