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collaterals, then it means the strength of his claim supercedes those of the collaterals hence he be allowed to exclude the collaterals totally as in the Hanafi School Law.

FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY IN CONSTITUTIONS: THE NIGERIA AND INDIA EXPERIENCE

M.K ADEBAYO ESQ[1*]
KAMAL ALHAJI DAUD[2**]
DR .H.I BAZZA[3***]

ABSTRACT

The concept of Fundamental objectives and Directive Principles of State policy as proclaimed in Constitutions deals with a range of subjects ranging from freedom, equality, justice, participatory democracy, to social justice as the ideas upon which the Nation is founded and declares by way of amplification that the welfare of the citizens shall be the primary purpose of Government. Furthermore, that Government shall be responsible and accountable to the people; that every citizen shall have equal rights, obligations and opportunities before the law; that the sanctity of human person shall be recognized and human dignity shall be maintained and enhanced; that Governmental actions shall be humane; that human exploitation in any form whatever shall be prevented, and that the independence, impartiality, integrity of the judiciary and easy accessibility to the courts of law shall be secured and maintained.

It is important and worthy of note that the ideas and values to be enshrined in the constitution of a nation should be truly fundamental ones, widely shared in the community and not the sectional objectives of a group or the particular social and economic policies of a ruling party. In this bid, in order to reflect the true ideas, values, aspirations and objectives of the society, State often times adopt the principle of a socialist oriented control of free enterprises mixed with state ownership of certain sectors of the economy as a subtle device of interpreting the economic orientation and attitude of the nation at

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the prevailing time. By enshrining the concept of Fundamental Objectives and Directive Principles of State Policy in Constitutions, the direction in which the nation is to go in its economic life is thus made clear for all to see and uncertainty and controversy are removed. These ideas and objectives are not of course invested with the quality of immutable, unchanging truth by the mere fact of their inclusion in Constitutions. All values are relative to time and place, and every society should attempt to formulate the values that are relevant to its needs.

1.0. INTRODUCTION

The idea of a constitution is one that is familiar to all people of various capacities of life, be it as member of a club, trade union, professional associations, village or town unions. Every association is governed by a constitution which sets out the aims and objectives of that association and how its affairs are to be conducted and managed. It is the same idea that is applied to the association of all people living within a geographical area.[1]

In a broader perspective, a constitution can be said to be the means by which a group of people organized themselves into a political community and defines the aims and objectives of its association, the conditions of membership, the organs and powers necessary for the conduct of the affairs of the association and the duties and responsibilities of those organs to the individual members.[2]

The concept of Fundamental Objective and Directive Principle of State Policy is a reminiscence of an era known as the '*Laissez Faire*', when states were mainly concerned with the maintenance of law and order and defence of the country against external aggression. This restrictive concept of State is no longer valid. Today, we are living in an era of '*welfarism*' where States seek to promote the prosperity and well-being of its citizens.[3] It is now a common place for most constitutions to proclaim the principle on which the state is organized and spell out the ideas and objectives of the social order. Every constitution is set and operates in the context of certain organized ideas

1 Nwabueze, B.O (1982) The Presidential Constitution of Nigeria (London: C. Hurst & Co with Nwamife Publishers Ltd, Enugu) p.18
2 Ibid.
3 Jain, M.P (1978) Indian constitutional law (Delhi: Law Book Company) p.594

and principles which inform the behavior of its members and institutions and define goals of the society and prescribed the institutional framework, forms and procedure for pursuing the set objectives. These principles seek to direct the efforts and actions of the people towards the achievement of those goals and unite the society into one nation bound together by common attitudes and values, common social objectives and destiny. These '*ideas*' and *objectives*' are tagged '*FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY*'. The term Fundamental Objectives refers to the identification of the ultimate objectives of the nation; whilst Directive Principles of State Policy indicates the path or policies which lead to those objectives. According to the Constitutional Drafting Committee Report of 1976, a definition of the concept is proffered thus:-

> '*Fundamental objectives are ideas towards which the nation is expected to strive; whilst Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideas*'.[1]

From the above definition one can deduced that the term 'Fundamental Objective' and 'Directive Principles' are often used interchangeably. The Constitution Drafting Committee in set up by the Nigerian Government in 1973, in its report indicated that the objective may be in the nature of immediate, specific goals or of long term ideas. The specific goals it stated are the things Nigerians expect Government to secure for them, for example food, clothing, water, medical facilities, education and so on; while the long term ideas imply an ideology which define the goals, fundamental attitudes and values that should inform the citizens of the forms and procedure to pursue these directives.

One of the most significant and exalt provisions/innovations of contemporary constitutions in Nigeria is the inclusion of the chapter on Fundamental Objectives and Directive Principles of State Policy, an idea which in Nigeria is borrowed from the India Constitution,[2] while the India Constitution on the other hand drew its inspiration and menthol from the Irish Constitution.[3] In Nigeria, only two Constitutions since independence, i.e the 1979 (repealed) and 1999 Presidential Constitutions of the Federal Republic, contain in their

1 ' Reports of the Constitutional Drafting Committee, Vol. I (Lagos: Federal Ministry of Information Printing Division, 1976) p.v
2 Ibid.
3 Anad, C.L (1966) The Constitution Of India (Delhi: Law Book Company) p.208

Chapter II provisions on Fundamental Objectives and Directive Principles of State Policy.[1] There are many provisions in the 1999 Constitution and indeed in other previous Constitutions, which pretend to lay solid bases for the good living of the average Nigerian. Such provisions paint a beautiful picture of what Government is all about and the good things it has in store for the people; but at the end of the day, the people are given less than expected, because such provisions are merely academic; they are never implemented.[2] After years of experimental democracy in Nigeria, the country continues to falter on the part to development, and the so-called dividends of democracy have continued to elude the common man, in spite of the deluge of reform policies, which Obasanjo's Administration has churned out. Why have things refused to work in Nigeria? This is the question that keeps coming to mind like recurring decimal. The answer remains that corruption has eaten deep into the very fabrics of the society and thus left a people's collective sense of responsibility and accountability in the doldrums of decadence.[3]

The India Constitution of 1950 made provisions for the entrenchment of these economic and social rights in the form of ' *DIRECTIVE PRINCIPLES OF STATE POLICY*'. These Constitutions aimed at establishing a political democracy often described as a '*WELFARE OR SOCIAL SERVICE STATE*'. The Constitutions of the former Union of Soviet Socialist Republics and Federal Republic of German Constitution contained similar provision, likewise that of Yugoslavia, China and Uganda.[4]

The most spectacular and unique feature of the concept of Fundamental Objectives and Directive Principles of State policy is the non-justiciability. It has been categorically stated thus:-

> *'the purpose of proclaiming these ideas in the constitution is not to enable people to go to court to enforce them; it is rather to emphasize in a solemn manner through the supreme law*

1 Sections 13-22 of the 1979 Presidential Constitution (repealed) and 1999 Federal Constitutions of Nigeria.

2 Williams, A 'What Nigerians Desire: National Political Reform Conference' The Guardian Newspaper, February 10, 2005, p2.

3 Moneke, F. 'Legal Status of Chapter Two of the Constitution' The Daily Independent Newspaper Thursday, March 8th, 2007, p.5.

4 Research/Evaluation: Constitution of the Republic of Uganda 1995 @ http://www.unhcr.org/cgi-bin/texis/vtx of April 19, 2007. p1of10.

3.0. Critical Examination f the Concept of Fundamental Objectives and Directive Principles of State Policy as a Constitutional Practice in Nigeria and India

We intend to examine this concept as a constitutional phenomenon first in Nigeria; and later in India. Two Nigerian Constitutions after independence provides for this concept and contain specific provisions in respect thereto; they are the 1979 repealed Constitution and the 1999 Constitution of the Federal republic of Nigeria. Under the 1999 Constitution the relevant chapter is chapter II and the provision through Sections 13-22. Section 13 provides that:-

> *'it shall be the duty and responsibility of all organs of Government and of all authorities and persons, exercising legislative, executive or judicial powers to conform to; observe and apply the provisions of this chapter'*

This section has been the subject of comments by writers and authors alike as to its true interpretation. A learned text writer J.O Akande in an attempt to interprete this section opined that it would appear to be in conflict with other provisions of the constitution notably Section 6(6)(c) and Item 59 of the Exclusive Legislative List, as it would appear that the duty and responsibility on all organs of Government is limited extent that the judiciary cannot enforce any of the provisions of the chapter II and thus to that extent the Executive do not necessarily have to comply with any of the provisions unless and until the legislature has enacted specific laws for the enforcement.[1]

Section 14 also provides in entirety that the Federal Republic of Nigeria shall be a state based on the principle of democracy and social justice; sovereignty belongs to the people through which the constitution derives its powers and authority; the participation of people in their Government shall be ensured; the affairs of the Government shall be carried out in manner so as to reflect the federal character of Nigeria and the diversity of the people and the need to promote a sense of belonging and loyalty among all the people of the federation.

It has been submitted that this Section is merely declaratory of the facts and principles that underline every democratic system of administration and

1 Akande, J.O (1982) Introduction to Nigerian Constitution (London: Sweet &Maxwell) p.13-14

the basis of Government and the subordinate position of those who wields its powers from time to time. The provisions have therefore a pre-eminently educative, emotive, and psychological value for the governors as well the governed'.[1]

The reason often given for the non-justiceability of this concept is that it imposes positive obligations on the state. While taking positive actions, Government functions under severe restrain; the most crucial being that of resources. The constitution makers, therefore, in taking a pragmatic view, refrain from giving the force of law to this concept. They believe more in an awakened public opinion rather than in court procedures as the ultimate sanction for the fulfillment of these principles. More so is the fact by making this concept justiceable will imply giving more powers to the Government which will in the long, run pose a threat to the liberty of the citizens, in the case of an excessive and tyrannical Government.

Indeed a corrupt Government stultifies the essence of good governance, because those to whom the mantle of government has been entrusted, to hold for the well being of the people, turn around to apply same for personal aggrandizement. This is the situation in Nigeria, where politics or governance is viewed as a most lucrative venture. The rule of law, patriotism and integrity have all been thrown to the dogs in the mad race for public funds looting and abuse of office. The welfare of the people is subjugated under a Constitution that conveniently relegates the right to a decent living to the species of non-justiceable rights.[2]

2.0. OBJECTIVES OF THE PAPER

This paper, amongst others, seeks to achieve the followings: a) to examine critically the Nigerian and Indian Constitutions in relation to the concept of Fundamental Objectives and Directive Principles of State Policy; b) the relevance of this constitutional concept and its effect on constitutional practice; c) fundamental objectives and directive principles of state policy and fundamental human rights concept; d) the limitations of this concept as a constitutional phenomenon.

1 Jain,op. cit. footnote 3 at p.595
2 Moneke, F op. cit. footnote 8 p.6

herefore evoke no controversy. On the other hand it draws attention to the need for ensuring fair and equitable treatment for all component states 1and ethnic groups within the country, but it has been observed that the provision of Section 14 is salient on the question of political ideology for the country.[1] In practice, however the process of contracting Government between the people and their representatives is well beyond the people. The electoral system has suffered series of abuse and damage so much that elections do not reflect the true wishes of the electorate. On that count, sovereignty, which ought to belong to the people, is hijacked and the contract is abused.[2]

Section 15 provides for the political objectives that the motto of the Federal Republic of Nigeria shall be unity and faith, peace and progress. Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic, or linguistic association or ties shall be prohibited.

Though it has been expressed that all these political objectives are indeed laudable and desirable, but the enforcement and observance of some these ideas are difficult if not impracticable,[3] for between 1999 – 2004, differences in language, religion, geographical location, and ethnic origin have heightened to a very dangerous level. The state had no answer to all the tendencies, which tore apart the people and Jos, Kaduna, Warri, Kano and regions of Taraba and Benue State ungovernable, in fact chapter four of the 1999 Constitution paints an attractive picture of how to be a Nigerian. There it is said in Section 33(1) that every Nigerian has a right to and that no one shall be deprived of his life; but Attorney General and Minister of Justice, Chief Bola Ige was deprived of his life and nothing happened. Similar fate befell the respective Vice-Chairmen (south-south) of the ruling PDP, Chief Harry Marshall, and Aminasoari Dikibo and the pilot and aviation safety activist, Mr Jerry Agbeyegbe. It is this section that encourages call for a national conference where will decide both their physical and constitutional boundaries. Section 16 provides for the Economic objectives, it states amongst others that the State shall control the national economy in such manner as to secure the maximum welfare,

1 Joye, M and Igweike, K (1982) Introduction to the 1979 Constitution (London: Macmillan Press Limited) p.52
2 Williams, A 'What Nigerians Desires: National Political Reform Conference The Guardian Newspaper February, 10, 2005. p3of6.
3 Akande, op. cit. note 9 p.15

freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity and also to protect the right of every citizen to engage in economic activities outside the major sectors of the economy. The state shall direct its policy towards ensuring the promotion of a planned and balanced economic development; that the economic resources of the community shall best be distributed to serve the common good; and the concentration of the economic means of production and wealth in the hands of few individual shall not be permitted.

The reality is that Government acts in manner that says it does not owe anyone a living. This is exemplified in the numerous face- offs between the Government and the people over prices of petroleum products. Government embarks on economic reforms that do not receives any input from the people, while it is the same Government in the past that plundered the economy.[1] Dr Akande while commenting further on the provision of this section said it is merely a confirmation of the existing practice of a mixed economy whereby Government do not assume full control/ownership of key sectors of the economy whenever it is necessary in the national interest to do so, while at the same time encouraging and protecting individual ownership and initiative in these sectors of the economy where it is felt that Government ownership/control is not in the national Interest. However, this view had been criticized by socialist theorist as a veil or disguised capitalism and essentially exploitative and a device by the bourgeoisie to preserve their status- quo.[2] The protagonists of this view (socialist theorists) favored an outright system of socialism because this is the only way to control ways of controlling the economy to secure the maximum welfare and happiness of all Nigerians. Thus in the case of ALHAJI J.A ADEWOLE & ORS V ALHAJI LATEEF JAKANDE & ORS[3] the court held that by virtue of the provision of section 16 which supports free enterprises the Applicants were ipso facto allowed to carry on their chosen economic activity namely the establishment of private schools and this right cannot be impeached on grounds that section 18 of the Constitution provides for a separate objectives on education. The right of the Applicants to own and operate private schools must be protected from being abolished by Government.

1 Williams, A op. cit footnote 12 p.5of6
2 Okere,B.O (1978-1988) 'Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution' 3 Nig. J.R p.77
3 (1981) 1 NCLR P.2

On Social objectives, section 17 of the 1999 Constitution provides that; the state social order is founded on the ideals of freedom, equality and justice, every citizen shall have equality of rights, obligations and opportunities before the law; the sanctity of human person shall be recognized and human dignity shall be maintained and enhanced; the independence, impartiality and integrity of courts of law and easy accessibility thereto be secured and maintained; conditions of work are just and humane and adequate facilities for social, religion, and cultural life and there are adequate medical/health facilities for all persons. It has been argued that this section serves as a substantive political manifesto of the whole Constitution and incorporates a few of the fundamental human rights later to be entrenched in chapter IV of the Constitution, for example right to life and dignity of persons, right to fair hearing, right to freedom of thought, but since Nigeria is not yet a welfare state in western European accepted sense, all the provisions for welfare assistance remain attainable goods and ideas.[1]

Section 18 of the Constitution deals with the educational objectives, it provides that; Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. Government shall promote science and technology and strive to eradicate illiteracy-and as practicable provide free, compulsory, and universal education primary education. In order to realize this educational objectives, in 1977 the then Federal Military Government promulgated the 'Federal Republic of Nigeria National Policy on Education'. The policy stated amongst other things that the Nigeria's philosophy of education is based on integration of the individual into an enlightened and effective citizen and equal educational opportunities for citizens of the Nation at the primary, secondary and tertiary institutions, both inside and outside the formal school system.[2] An addendum to this is the Convention on the Rights of the Child (CRC) which was adopted by the United Nations General Assembly on November 20, 1989, and it entered into force on September 2, 1990. As of January 1, 2000, it had been ratified by 191 States including Nigeria.[3] The Convention's coverage is considerable: it applies to every human being below the age of 18years unless, under the law applicable to a child, majority is attained. Article 28 of the Convention recognizes the right of the child to education, and with a view to achieving

Akande, op.cit footnote 9 p.18.
Joye and Igweike, op. cit. footnote 10 p.58
Human Rights and Human Development @ http://www.hinduonnet.com/fline of 29th Apr 2007. p3of7.

this right progressively and on the basis of equal opportunity, the state shall in particular make primary education compulsory and available free to all children.

The Child's right to education is a matter not only of access, but also of content. An education with its contents firmly rooted in the values of the Convention on Rights of the Child is for every child an indispensable tool for her or his efforts to achieve in the course of life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental changes driven by globalization, new technologies and related phenomena. Article 29 of the Convention on the Rights of the Child;[1] the aims of child education which have been agreed to by all states-parties, is to promote, support, and protect the human dignity innate in every child and his or her equal inalienable rights; equally is the holistic development of the full potentials of the child , including the development of respect for human rights; an enhanced sense of identity and affiliation, and her or his socialization and interaction with others and with the environment .[2]

At the international scene, Section 19 of the constitution provides that Nigeria shall promote African unity as well as total political, economic, social, and cultural liberation of Africa and shall combat racial discrimination in all its ramifications. In this light, Nigeria as a member of international organization like the United Nations, regional organizations like the Organization of African Unity and sub-regional organization like the Economic Community of West African States and international peace keeping force operations in Rwanda and Somalia, has also contributed to economic advancement of her neighbors.

Nigeria's foreign policy has transcended through a number of phases since independence in search of a sustained progressive role in Africa as the whole. At independence Nigeria opted for a policy of non-alignment and declared Africa as the cornerstone of her foreign policy. Section 20 provides for directive on Nigerian culture when it provides that the state shall protect and enhance Nigerian culture. In realization of these objectives, the government has set up a National Council for Arts and Culture with branches all over the Federation. However, this provision has been criticized to be vague in that it

1 ibid
2 ibid

does not define Nigerian culture or specific policy or some aspect of it, but it has been observed that Nigerian culture may be the whole spectrum of life in the society, its language, religion, art, out look and many others.[1]

On the obligations of the mass media, Section 21 provides that that the press, radio, television, and other agencies of mass media shall at all times be free to uphold the Fundamental Objectives and the responsibility and accountability of the Government to the people. It has been observed that despite the non-justiciability of this Section, the press have used its provisions to agitate for a more specific provision for press freedom in the Constitution, their arguments being that in order to fulfill the specific obligations imposed on them, they must have corresponding facilities to ensure their effective performance.[2]

Lastly, on this note Section 22 of the Constitution provides that the national ethic shall be discipline, self-reliance, and patriotism. The lacuna here is that the same constitution has failed to define what the words Discipline, Self-reliance and Patriotism are.[3]

4.0. India

The Indian Constitution also set out the aims and objectives to be taken up by the state in the governance of the country.[4] These Directives Principles in Indian's Constitution was borrowed from the Irish Constitution of 1937. This idea of a welfare state envisaged by Indian's Constitution can only be achieved if the state endeavors to implement this principles or objectives with a high sense of moral duty. The constitution lays down the basic structure of the Nation's polity based on the foundations of certain fundamental values. The vision of the India's founding fathers and the aims and objectives which they wanted to achieve through the constitution are contained in the preamble to the constitution which is described as the soul of the constitution and the testament of the founding fathers to the succeeding generation.[5]The preamble expresses the ideas and aspirations of a renascent India. At independence, emerging out of long period of foreign

1 Ibid at p.62
2 Akande, op. cit. footnote 9. p.19
3 Ibid at p.23
4 The Constitution of the India 1950 part IV Articles 38-51
5 Fundamental Rights, Directive Principles and Fundamental Duties @http://lawmin.nic.in/ncrwc/finalreport/v of 27/4/2007 p2of24.

domination and oppression under a feudal system, the people were grimly struggling to be reborn into a life of dignity and hope. The effect of the past was heavy on the citizen to bear and the future uncertain; there was social and economic exploitation around, coupled with a whole host of social ills such as illiteracy, superstition, child –marriage, agrarian exploitation, child-labour, gender-inequality, bedeviling the society and polity.

The framers of the constitution sought to unite the vast country with its great diversity of languages and creeds within a common bond of constitutional justice based on the great ideas of liberty, equality, fraternity and justice. The framers showed an uncompromising respect for human dignity, an unquestioning commitment to equality and non-discrimination, and an abiding concern for the poor and the weak. The framers of the constitution to made bold attempt to base the constitutional foundations on the firm faith that all classes of people, followers of all faith, and particularly the traditionally under-privileged should all join to work for harmony, progress, prosperity and nation building.[1] The preamble to the India constitution in its noble words promised justice, social, economic and political; liberty of thought, expression, belief, freedom, of faith and worship; equality of status and of opportunity and to promote fraternity, assuring the dignity of the individual and the unity and integrity of the Nation.

The Directive Principles obligate the state to take positive action in certain directions in order to promote the welfare of the people of India and to achieve social and economic order. These Directive Principles are; Article 38 provides that:-

> *'the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may social order in which justice, social, economic and political well-being, shall inform all the institutions of the nation'*

This directive has been said to be reiterative of the preamble to the Constitution of India according to which the functions of the Republic is to secure to all citizens social, economic and political justice.[2] The constitution makes it mandatory to protect and promote freedoms, and to assure

1 Ibid.
2 Pandey, J.N (1982) Constitutional Law of India (Allahabad: Central Law Agency) p.208.

every citizen a decent standard of living. It makes a strong commitment to promoting the well-being of all citizens without any discrimination on the grounds of caste, creed, community or gender. The State is enjoined to strive to minimize inequalities in status, facilities and opportunities not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations.[1]

Article 39 further specifically requires the state to direct its policy towards securing equal rights for men and women; distribution of the ownership and control of the material resources and economic system of the community to the common goods; equal pay for equal work; and that children are given opportunities and facilities to develop in a healthy and conditions of freedom and dignity.[2]

Article 39A further obligates the state to secure that the operation of the legal system promote justice on a basis of equal opportunity and shall in particular provide free legal aid to deserving people and not to deny anyone justice merely because of economic disability.

Article 40 provides that the state shall take steps to organize village panchayats and endowed them with such powers and authority as may be necessary for them to function as a unit of self government. This constitutional provision has been employed to introduce grass root democracy in India, though it does specify what power should be given to the panchayats or what their structures should be. Furthermore, Article 41 provides for social services in that the state shall within the limits of its economic resources and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness, and disablement. This should be noted does not obligate the state to render compensation to the worker whose continuous employment suffers as a result of Governmental actions. The right to work, education and public assistance is further guaranteed by Article 42 by providing that the state shall make provision for securing just and human condition of work and for maternity relief. This provision has been said to be the genesis of the large body of labor laws that is obtainable in India.[3] Thus the Supreme Court of

1 The Constitution of India (44th Amendment) Act, 1978.
2 Jain, M.P (1978) Indian Constitutional Law (Bombay: N.M Tripathi Private Ltd) p.598.
3 Ibid at p.599.

India in the case of D.B.M. PATNAIK VS. ANDHRA PRADESH[1] suggested that Article 42 may benevolently be extended to living conditions in prisons. The barbarous and subtle form of punishment to which convicts and under-trials are subjected to, offend the letter and spirit of the Constitution.

Article 43 provides further that the state shall endeavor to secure by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial, or otherwise, work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. This provision enunciates the revolutionary doctrine that employees are entitled to as of right to certain reliefs. Thus, in the case of HINDUSTAN ANTIBIOTICS VS. WORKMEN[2] the supreme court of India rejected the argument that the pattern of wage fixation in case of government companies in public sector should necessarily be different from companies in the private sector, arguing that Articles 39 and 43 would be disobeyed if distinction is made between the same class of laborers on the ground that some of them are employed in state enterprises and others in private enterprises.

A uniform code for the citizens was provided for under Article 44 which states that the state shall endeavor to secure for the citizens a uniform code throughout the territory of India. This provision was met with opposition from the Constituent Assembly Muslim members who apprehended the fear that their personal law might be abrogated. This objection was met by pointing out that though there were diversities in personal laws; there was nothing sacrosanct about them; the secular activities such as inheritance covered by personal laws should be separated from religion; that a uniform code would only promote national unity.[3]

Article 45 makes provision for free and compulsory education for children. It provides that the state shall endeavor to within a period of ten years provide free and compulsory education for all children until they complete the age of fourteen. In re: KERALA EDUCATION BILL'S[4] case; the state banned charging of fees from students in the primary classes, but made no provision

1 A.I.R 1979 S.C 2097
2 A.I.R. 1967 S.C p.948
3 Seervai, H.M (1976) Constitutional Law of India 2nd Ed. (Bombay: N.M Tripathi Private Ltd) p.1038.
4 A.I.R 1958 S.C p. 956

for payment of compensation to the school for loosing revenue; this was held to contravened Article 45 to provide for free and compulsory education for children which can be discharged through Government aided schools and that Article 45 does not require that obligation to be discharged at the expense of minority communities. Further, no citizen can be discriminated upon for admission in State or State aided institutions. All religious and ethno-linguistic communities can set up their own educational institutions in order to preserve and develop their own culture.[1]Despite this provisions, child labor in hazardous environment has been reduced, but their employment in non-hazardous jobs, including their prevalent employment in as domestic help violates the spirit of the Constitution. In India, 16.5 Million children are being used as Labor.[2]Efforts to implement the Directive Principle include the programme for the Universalisation of Elementary Education and the Five-Year Plans have accorded the highest priority in order to provide free education to all children up to the age of 14 years. The state runs programmes such as boys and girls Hostel for scheduled caste and scheduled tribes students. The Government provides free textbooks to students belonging to scheduled caste and tribes pursuing medicine and engineering courses. It was further held in the case of MOHINI JAIN V STATE OF KARNATAKA[3] by the India's Supreme Court that the right to education was part of the Fundamental Rights to life and personal liberty guaranteed by Article 21 of the Constitution.

In addition Article 46 provides that the state shall also promote with special care the educational and economic interest of the weaker sections of the people, in particular the scheduled castes and tribes shall be protected from social injustice and exploitation.

In the same vein, Article 47 provides that the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the state shall endeavor to bring about prohibition of the consumption except for medical purposes intoxicating drinks and drugs which are injurious to health. The prohibition of intoxicating liquor had long been part of the policy of the Indian National Congress and it's inclusion in Article 47 received the support of the Moslem community whose social habits were reinforced by

1 86th Constitutional Amendment Bill of India, 2002
2 Child Labor in India @ http://www.indiatogether.org/photo/2006/chi-labor.htm.
3 (1992-93) A.I.R S.C p.27

the Quranic injunctions. Thus in the case of BOMBAY V. BALSARA[1] the first prohibition case decided by the supreme court, the Bombay Prohibition Act 1949, was impugned inter-alia as violating the Petitioner's fundamental rights under Article 19(1)(F). The Trial Judge said that the impugned provision prima-facie infringed the fundamental right of India citizens to acquire, hold and dispose of a kind of property, namely liquor and the provision would be void under Article 13 unless they were saved by Article 19(5).

According to Article 48, the state shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other mulch and draught cattle. Thus in the case of QUARESHI V BIHAR[2] Article 48 has been accorded recognition in some what grounded and hesitant form to Hindu sentiment regarding cows. Under Article 48, a total ban on cow slaughter is possible and this position has been accepted by the supreme court of India. While the test of usefulness has to be applied in extending protection to other animals. It's not to be applied to laws; but this has been criticized as anti- secular and uneconomic.[3] Article 49 on the other hand provides for protection of National monuments. It states that it shall be the obligation of the state to protect every monument or place or object of artistic or historic interest, declared or order law made by parliament to be of national importance, from spoliation, disfigurement, destruction, removal, and disposal or export as the case may be.

Article 50 further provides for the independence and impartiality of the judiciary, it provides that the state shall take steps to separate the judiciary from the executive in the public services of the state. The separation of the judiciary from the executive is often regarded as a very necessary element for proper administration of justice; the idea is that the judiciary be freed from the executive control. Lastly on the international scene, Article 51 provides that the state shall endeavor to promote international peace and security; maintain just and honorable relations between nations; foster respect for international law and treaty obligations in the dealings of organized people with one another; and encouraged settlement of international disputes by arbitration. This provision is embodied in the Indian's Foreign Policy.

1 (1951) A.I.R S.C p.318
2 A.I. R. 1958 S.C p. 731
3 Jain, op. cit. footnote 21 p.206.

5.0. Relevance of the Concept Fundamental Objectives and Directive Principles of State Policy to Constitutional Practice

Governments in developing countries have tended to be pre-occupied with power and material acquisition thus neglecting political ethics as to how the society can be organized and ruled to the best advantage of all. Furthermore, in developing countries, the constitutions only speak in terms of power and rights, but never of duties. The constitution assumes that those who exercise powers of the state will be conscious of and responsive to its obligation and responsibilities; this has been said to be wrong approach to constitution making and development.[1] The Constitution as the Fundamental Law of the land and indeed the Government should make it clear that powers are bestowed upon the organs and institutions of government not for the personal aggrandizement of those who exercise them from time to time, but for the welfare and advancement of the society as a whole. The idea behind Constitutional making should caste on the state definite duties towards her subjects. The constitution should as much as possible proclaim the principles around which the state is governed, organized and spell out the ideas and objectives of the social order.[2] Unless these goals and the fundamental attitudes that should inform the behavior of its members and institutions are clearly stated and accepted, the nation will lack a sense of purpose and direction.

By defining the goals of the society and prescribing the institutional forms and procedures for pursuing the statement of fundamental objectives and directive principles of state policy in Constitutions; there will be direct and concerted efforts by the people towards the achievement of those goals.[3] In line with these postulations, lots of theories have been propounded to justify the inclusion of this concept in Constitutions. Firstly, that these objectives and principles prescribed on the state definite duties towards its subjects; it emphasizes that powers are bestow on the organs and institutions of government for the advancement and welfare of the society as a whole.[4]

'Reports of the Constitution Drafting Committee' Vo.II op. cit. footnote 4 p.35
Ibid.
Ibid Vol. IV p.vi
Ibid p.v-vii

Secondly, that there must be designed targets towards which the country must aim in its development. The Constituent Assembly of 1976 stated in their Report that:-

> *'spelling them out in the constitution provides a yardstick for judging the performance of any government. It invest them with the quality of constitutional directive to the organs of the state to inform and guide their action by reference to the declared principles.'*[1]

Thirdly, these objectives and principles define goals for the nation without which it would continue to drift aimlessly; unless the goals and fundamental attitudes and values are clearly stated and accepted, a new nation is likely to find itself rudderless with no sense of purpose and direction. Fourthly, in a country as vast as Nigeria and India, where people still give priority to local interests, the objectives and principles serve as a constant reminder and guide to successive Government to maintain a sense of unity. Thus it was observed that:-

> *'the need for such provision in Nigerian constitution is all The greater because of the heterogeneity of the society of the society, the increasing gap between the rich and poor, the growing cleavage between the social groupings, all of which combine to confuse march to orderly progress, only an express statement of objectives and directive principles which clearly set out the parameters of Government and informs its policies and actions can generate a spirit of cooperation, peace, unity and progress.'*[2]

Fifthly, spelling out the objectives and principles in the constitution removes them from the province of political controversy, leaving a future debates to centre on the practical implementation and timing of the policies and the ability of the Government to shoulder their responsibility.

The underlying objectives of the directive principles of the position or situation in India can better be understood from the erudite speech of Dr Ambedkar in the Constituent Assembly of India. He said:-

> *'..... in my judgment the directive principles have a great value for they lay down that our idea is economic democracy... our object in framing this Constitution is really two fold: (1) to lay down that our idea is economic democracy and also to prescribe that every Government whatsoever is in power, shall strive to bring about economic democracy, (2) to lay down the form of political democracy.'*[1]

In order words, the Directive Principles of State policy in Indian's Constitution are guidelines for creating a social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the Constitution preamble.[2] Furthermore, the Supreme Court of India has, in a number of judgments, referred to the importance of the Directive Principle. It has called these principle the '*Conscience*' of the constitution and also as the core of the constitution.[3] These principles are the goals intended to ensure distributive justice for removal of inequalities and disabilities and to achieve a fair division of wealth amongst the members of the society.

The Supreme Court of India further held that , the courts can look at the Directive Principles for the purpose of interpretation of the fundamental rights.[4] The courts will adopt that interpretation which makes fundamental rights meaningful and efficacious. The courts will have to make every attempt to reconcile the fundamental rights with the Directive Principles remembering that the reason why the Directive Principles were left behind by the founding fathers as non-enforceable was to give effect to the Government sufficient latitude to implement them. The Directive principles are indeed precursor to the Economic, Social and Cultural Rights Specified in the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). They reflect the consensus on the intrinsic necessity of these means and envisage state action which would facilitate the transfer and distribution of power leading to the transmission of power to the citizens and this is loosely called '*empowerment*' of the citizens. Thus Mahatma Ghandi the Father of India Nation echoed at the second round table conference in London, long before the UN Declaration of Human Rights, 1948 that his aim was:-

1 Ibid .
2 Ibid.

1 Indian Constituent Assembly Debates, Vol. Viii, pp. 494-495 cited In Pandey, J.N op. cit. footnote 20, pp. 207-208
2 India Directive Principles of State Policy @ http://www.photius.com/country/india/government of 5/20/2007. p1of3.
3 Fundamental Rights, Directive Principle and Fundamental Duties, op. cit foot note 26 p13of24.
4 Ibid.

"to establish a political society in India in which there would be no distinction between high class of people and low class of people, that women should enjoy the same right as men; and dignity, justice, social, economic and political, would be ensured to the teeming millions of India."

Thus in these Objectives and Principles aimed at overturning the inequalities of pre-independence social practices. Specifically, they resulted in the abolishment of the untouchability class and prohibit discrimination on the grounds of religion, race, caste, sex or place of birth. They forbid human trafficking and forced labor; they protect cultural and educational rights of ethnics and religious minorities by allowing them to preserve their languages and administer their own educational institutions.

In addition to this, the Directive Principle of State Policy have been a great source of legal, jurisprudential and constitutional support for the judiciary in making decisions, besides guiding Governmental Bodies in formulating human development policies, thereby promoting good governance. Thus it may be inferred that the Constitution has the basic framework upon which the human rights and human development policies of this country may be formulated for effective governance.[1]

6.0. Fundamental Objectives and Directive Principles of State Policy and Fundamental Human Rights Concept.

The concept Fundamental Objectives and Directive Principles of State Policy differs from Fundamental Human Rights in a lot of aspects though the general assertion is that the two concepts are related. By analogy, Fundamental Human Rights can be said to be certain, essential, basic, natural and inalienable rights or freedom which the state protects through the force of law in order that human dignity, liberty and may be preserved, human personality developed and an effective social and democratic life promoted, to recognize these rights and freedom and allow them a free play.[2]

Fundamental Human Rights are entrenched in such a way that they may not be violated by any oppressive Government; they can only be taken away

1 Human Rights and Human Development (2002) op: Cit footnote number 24.
2 , Jain, op. cit. footnote 21 p.400

by formal process of Constitutional amendment. They consist of civil and political rights for example right to life; dignity of person; personal liberty; fair hearing; private and family life; freedom of thought, conscience and religion; peaceful assembly and association; freedom from discrimination and compulsory acquisition of property.[1] Fundamental Human Rights are essential for the protection of the rights and liberties of the citizens against encroachment by the Government; they are essentials for the protection of private and public rights; they are Fundamental because they are essential for the attainment by the individual of his full intellectual, moral and spiritual stature; these rights are entrenched in the Constitution as extant feature and are enforceable by the courts; the courts are bound are bound to declare as void any law that is inconsistent with any of the Fundamental Rights.[2]

The Directive Principles and Fundamental Objectives on the other hand, are not enforceable by the courts nor can the courts declare as void any law that contravenes any of Directive Principles. For instance, if a personal is illegally detained, a writ of '*Habeas Corpus*' can be obtained by the Detainee to enforce his Fundamental Human Rights, but if the Government does not introduce free and compulsory education, the courts cannot help the aggrieved. Thus the supreme court of India observed in the case of STATE OF MANDRAS V CHAMPAKAM DORAIRAJAN[3] that:-

> *'the Directive Principles of state policy which by Article 17 are expressly made unenforceable by courts cannot override the provision found in part III which, notwithstanding other provisions, are expressly made enforceable by appropriate Writs, orders, or directions under Article 32. The chapter on Fundamental Human Rights is sacrosanct and not liable to be abridge by legislature or executive acts, orders or except to the extent provided for in the appropriate Articles in part III. The directive principles of state policy have to conform and to run as subsidiary to the chapter on Fundamental rights. In our opinion that is the correct approach in which the provision found in parts III and IV have to be understood ....'* [4]

1 Chapter IV, Sections 33-45 of the 1999 CFRN and as well as Article 19-35 of the 1950 Indian Constitution, part III
2 Pandey, op. cit. footnote 20 p.46-47
3 (1951) A.I.R S.C p.522.
4 Ibid at p. 531

The court concluded that in case of any conflict between Fundamental Human Rights and Directive Principles of state policy, Fundamental Human Rights shall prevail.

In India as well as in Nigeria, over the years, there has been a modified approach and a change in the attitude of the courts in resolving conflicts between Fundamental Rights and Directive Principles. The courts have started giving some value to the Directive Principles from a legal point of view. For instance, the courts have come to adopt the view that while Directive Principles are non-enforceable, nevertheless, in statutory interpretation, the courts could look for a guide from the Directive Principles.[1] Thus in the case of MUMBAI KAMGAR SABHA V ABDULBHAI[2] the court held that where two judicial choices are available, the construction in conformity with the social philosophy of Directive Principles should prevail.[3] Furthermore, the courts also adopted the view that in determining the scope and ambit of Fundamental Rights, the Directive Principles should not be completely ignored and that the courts should adopt the principle of harmonious construction and attempt to give effect to both as far as possible.

Equally the courts in Nigeria have adopted a similar view, thus in the case of ARCHIBISHOP OLUBUNMI OKOGIE& ORS V ATTORNEY GENERAL OF LAGOS-STATE,[4] it was held that:-

> *'The Directive Principles of state policy in Chapter II of the Constitution have to conform to and run subsidiary to the Fundamental Rights and that Chapter II is Subject to Legislative Powers conferred on the State.'*[5]

Several Writers have advocated that the issue is not one of justiceability, but rather that of enforceability of these lofty Principles and Objectives, which means that the state must recognize and take steps by adopting legislative or other means /measures for the full realization of these objectives and principles. It is felt an appropriate mechanism must be devised to oblige the state to take action step by step and progressively for the realization of these

1 Jain, op. cit. footnote 21 p.596
2 A.I.R 1976 S.C 1455
3 Making of the Constitution @ http://www.legalserviceindia.com/constitution/const of 5/20/2007 p.4of5
4 (1981) 1 NCLR p.218
5 Ibid at p.221

rights to the maximum within the resources of the state.[1] For instance, the 42nd Amendment to the India Constitution which came into force in January 1977, attempted to raise the status of the Directive Principle by stating that no law implementing any of the Directive Principle could be declared unconstitutional on the ground that it violated any of the Fundamental Rights.[2] The Amendment simultaneously stated that laws prohibiting anti-national activities or the formation of anti-national association could not be invalidated because they infringed on any of the Fundamental Rights. The Amendment added a new section to the Constitution on '*Fundamental Duties*' that enjoined citizens to promote harmony and the spirit of common Brotherhood among all people of India, transcending religious, linguistic and regional or sectional diversities.

However, the Amendment reflected a new emphasis in governing circles on order and discipline to counteract what some leaders had come to perceive as the excessively freewheeling style of India's democracy.

7.0. Limitations on the Concept of Fundamental Objectives and Directive Principles of State Policy in Constitutions

The Constitutional entrenchment of the concept 'Fundamental Objectives and Directive Principles of state policy' are subject to certain limitations which are derived from its operations as a Constitutional concept. These are (a) the aspirations, goals and values of a society as reflected in these social, economic, and cultural objectives are not fixed or permanent in form; they changes and move along with the society as the society attains certain level of development, so there is the need to keep these objectives under constant review which by the nature of their non-justiceability is not possible to do; a learned text Writer Oyediran Olaitan, opined that too much emphasis is placed on justiceability even though justiceable rights are not available to majority of the people; further that most of the mechanisms put in place such as Housing fund, NISTF are mechanisms of the accumulation process by the ruling class.[3] The problems in Nigeria is not that of resources, but

Fundamental Rights, Directive Principle and Fundamental Duties, op. cit. footnote 26 p14of 24.
India Directive Principles of State Policy @ http://www.photius.com/countries/india/ government of 5/20/2007. p3of4
Reports of Coloquium on Social and Economic Rights Held at Chelsea Hotels, Central Area,

corruption and bad leadership; there must attitude of questioning issues and study true character of our lives, these Objectives and Principles have to be enforced within the context of a political economy, (b) these objectives may not in the real and actual sense be the true reflections of the current values of the society, so they may not be able to meet their general and desired intendments. In effect, these objectives are generally what the present generation of leaders believed them to be or think they should be.[1] (c) There is non- justiceable or constitutional remedy in any case of violation, non-observance or non-implementation of these Fundamental Objectives and Directive Principles of State Policy. The question is to what extent can an aggrieved party seek implementation of these objectives or principles or to what extent can the courts of law pronounce on it since they are essentially made up of non-enforceable provisions.

(d) the non-justiceability of the concept Fundamental Objectives and Directives Principles of state policy is further compounded by the provision of the constitution which stipulates that such objectives and principles can be derogated, abrogated, restricted or taken away in the interest of defence, public safety, public order, public morality, public health or in the period of emergency.[2] (e) lastly, these Fundamental Objectives and Directive Principles of state policy contained essentially of second generation of rights i.e social, economic and cultural rights; but due to the disappointing level of under-development in third world countries i.e Nigeria and India among others, there is limited capacities for their implementation due to the absence of necessary material and economic conditions and resources or by deliberate political choice. (f) the in-adequacies of the Fundamental Rights in providing freedom and opportunity for all Indians. Many political groups have demanded that the rights to work, the right to economic assistance in case of unemployment and similar socio-economic rights be ensured as a constitutional guarantees that are presently listed in the directive principle of state policy.[3] The right to freedom contains a number of limiting clauses and has been criticized for failing to check Government excessiveness of powers, such as provision of powers such as the provisions of preventive detention and suspension of Fundamental Rights in terms of emergency.

1 Okere, op. cit. footnote 12 p.82
2 Sections 45 and 308 of the 1999 CFRN
3 Fundamental Rights, Directive Principles and Fundamental Duties in India @ http://en.wikipedia.org.wiki of 5/20/2007. p7of12

The phrase '*security of state*', '*public order*' and '*morality*' are unclear, having wide implication. The wordings of some of the provisions are ambiguously worded. The meanings of these phrases have not been explicitly stated in the constitution, thus leading to frequent litigations. Thus the Maintenance of Internal Security Act (1975) of India was heavily criticized for given the then Prime-Minister Indira Ghandi the authority to arrest opposition leaders following declaration of state of emergency in India, 1975.[1]

8.0. Conclusion and Recommendations

Against the foregoing discussions, the Writers hereby recommend as a way towards future development of the law, the principle of constitutionalism and an enduring welfare state based on fairness, equity, equality and justice of all citizens; the followings:- the creation of or establishment of a '*Constitutional Court*' to look into cases of breaches or violations or non-observance of these objectives and principles, because the only means of enforcing a right is by litigation, so if a legal obligation is not justiceable , then it is not enforceable. Further, the provision of Section 6(6)(c) of the Nigerian Constitution should be expunged for the purpose of making the relevant provisions of Chapter II justiceable in conformity with Section 13 of the Constitution; since a constitution is essentially a document whose provisions are justiceable and legally enforceable.[2] Or in the alternative, a claim for these objectives and principles may on normative basis of non-discrimination be directly founded on the Constitution. This is because a combined reading of Section 6(6) and Chapter IV of the Constitution whose rights are justiceable; reveals that any of these Objectives and Principles which may be implied or derived from any of these rights entrenched in Chapter are also justiceable.

In addition in order to render these objectives and principles meaningful, an appraisal of the economic and social evolution of the country should be carried out with a view to transfer some of the economic and social objectives into justiceable rights under the Fundamental Rights Chapter of the Constitution.[3] More so, even though these Objectives and Principles

1 Tayal, B.B & ? Jacob, A (2005) Indian History, World Development and Civics, p.A-33
2 Also Article 37 of the India Constitution 1950
3 Chapter iv of the 1999CFRN and part iv of the Indian Constitution on Directive Principles be transferred to its part v on Fundamental Rights.

are not enforceable, they should not be ignored completely. They may be called in aid to interprete and construct any law which contravenes the Constitution. The Directives can act as a guide or motivation and for legislative policy generally. There is need to amend the Constitution, reform the non-functional mechanisms necessary to a proper justiceability of this concept.

Furthermore, public consciousness should be created which will act as a crucial factor in the enforcement of these Fundamental Objectives and Directive Principles through an informed public pressure. Also, these Objectives and Principles can be used as an indicator; a sign post by the courts in determining an appropriate measure for social and distributive justice. And even as a barometer through which human rights records of various Government could be viewed; and where it is established that there is lack of commitment to the realization of these Objectives and Directive Principles, this may be used as a yardstick to commence impeachment proceedings against the Government of the day. For instance the Constitution of India reaffirms the aims and objectives of the Constitution: a sovereign Socialist Secular Democratic Republic built on tenets of Justice, social, economic, and political liberty; equality of status and of opportunity, and to promote among them all: fraternity assuring the dignity of the individual and the unity and integrity of the Nation. This preamble to India's Constitution seeks to establish what Mahatma Gandhi described as the India of my dream:

> *'...an India in which the poorest shall feel that it is their country in whose making they have an effective voice; an in which all communities shall leave in perfect harmony. There can be no room in such as India for the curse of untouchables, the curse of intoxicating drinks and drugs. Women will enjoy as the same right as man.'*[1]

It has also been advocated for ii Nigeria, that these objectives and principles should be constitutionally guaranteed so that the problems caused by agitation over marginalization, underdevelopment and resource control will be reduced ; it will focus the attention of the executive and the legislature on how to ensure that these Objectives and Directives are protected; it will in turn allow the judiciary to develop jurisprudence that will ultimately improve good governance and welfare of the people.[1] Furthermore, it has been submitted that the Fundamental Objectives and Directive Principles of State policy are in the neighborhood economic, social and cultural rights which has been ratified in Nigeria and domesticated in the African Charter on Human and People's Rights. Although the provisions of these Principles and Directives cover some of the internationally recognized economic, social and cultural rights, they fall short of international standards; there should be a clause giving automatic force of law to all treaties entered into and ratified in Nigeria; in order words, a number of international instruments have made provision for economic, social and cultural rights, but the African Charter on Human and People's Rights stands out, thus, since it has been domesticated as part of our municipal law, its provisions on economic, social and cultural rights atkin to these Directive Principles and Objectives i.e such as right to work under equitable and satisfactory conditions and to receive equal pay for equal work; right to enjoy the best attainable state of physical and mental health, the right to education and protection of the family, women and children: even though these rights are not justiceable on the basis of the Constitution, they can be made justiceable if they are founded on the basis of African Charter on Human and People's Rights.[2]

The National Assembly should established regulatory authorities or bodies to promote these objectives and principles. Equally the President should make annual report to the parliament on progress made in the protection of these Objectives and Principles. Nigerians are not sub-humans; there are sufficient resources to provide for these Objectives and principles. The inclusion of these objectives and Principles in the Constitution forms part of an effectively binding social compact. It speaks of the need of the poorest and ensures that they, too, are full citizens. It is part of building truly effective and sustainable democracy, especially in a country security is a big problem, there is housing problem and high rate of unemployment, 65% of the population live below poverty line.

1 Making of the Constitution @ http://www.legalserviceindia.com/constitution.const. of 5/20/2007 p1of5

1 Reports of Colloquium on Social and Economic Rights held at Chelsea Hotel, Central Area, Abuja, 5th-8th, July 2000. @ http://www.cdd.org.uk/cfcr/soc&eco rights of 8th March 2007. p.4of5

2 Ibid.

Furthermore, these Fundamental Objectives and Directive Principles of state policy are determinable, valid, claimable, and may be justiceable under both municipal and international law. The only thing remaining is to accord these objectives and principles their rightful pride of place as enforceable rights by the Government of the day and its agencies. And for prospective beneficiaries to muster sufficient courage to ventilate their grievances before the appropriate institutions whenever they perceive violations of the human rights be it political, economic, social, and cultural. The overriding argument here is that Nigeria will remain where it is today, if we do not put our Constitution aright to hold those in government responsible for the attainment of these Fundamental Objectives.

Alternatively too, the courts can extend their activism towards protecting these objectives because apart from the executive and the legislative arms, the judiciary is also under a duty to conform to and observe and apply these objectives and principles. Thus in the case of AG ONDO STATE V. AG FEDERATION & 35 ORS[1] the supreme court opined that because of their nature and declaration of non-justiceabiltiy, the provision of chapter two of the constitution cannot be enforced until the National Assembly has made specific laws for their enforcement. The apex court further held that these Fundamental Objectives not mere or pious declarations, that it is for the National Assembly and the executive to give expression to any one of them through appropriate enactment as occasion may demand.[2]

The purport of the above decision of the Supreme Court is that the Executive and National Assembly owe Nigerians the obligation to ensure that the Fundamental Objectives are realized by doing such things as may be expedient to give effect to them. By implication, this means that the Executive and National Assembly may by an administrative remedy of an Order for *Mandamus* be compelled to take the necessary steps towards achieving these Objectives. This is so because the whole essence of democracy is the welfare of the people, and chapter two of the Constitution embodies those items of public welfare, and the policies of the state should be deployed towards securing for all citizen a decent standard of living which embraces suitable and adequate shelter, reasonable employment,

1 (2002) 9 NWLR Pt 772 p.222
2 Moneke, F op. cit. footnote 8 p.4

capable of putting food on his table, medical and health facilities, facilities for leisure and for social, religious and cultural life, an education. These and more are the ingredients that are conducive to public welfare and they are fundamental to the existence of the State as an institution of governance.