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EDITORIAL COMMENT Political Science Review (PSR) is the official journal of the Department of Political Science, University of Ilorin. The journal is published twice a year and contains insightful articles about political processes in Nigeria, Africa and the entire globe. This edition has not detracted from that focus. From Tunde Agara's piece on constructivism as a tool for analyzing International Relations to Hassan Saliu's article on Buhari's Many Perceived Sins, this edition moved from theoretical premise to reality as far as International Relations is concerned. It is thus, a stimulating intellectual engagement.

Abdulrasheed Alada MUHAMMAD, PhD Editor

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The Limitations of Fundamental Human Rights in Nigeria: A Critical Analysis

The Limitations of Fundamental Human Rights in Nigeria: A Critical
Analysis

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Abstract Human rights are those inalienable rights vested on
man from birth. These rights are so fundamental that, they have found their ways into
constitutions of many countries both in the developed and developing world. In Nigeria, for
example, these rights are enshrined in Chapter IV of the 1999 Constitution of Nigeria (as amended).

Every Nigerian citizen is guaranteed these rights; these rights are only restricted in application subject to the overriding interest of the Nigerian nation. Therefore, this paper examines these rights as enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended), and the extent to which an individual can exercise such rights in the society.

Keywords: Limitations, Law, Fundamental Rights, Constitution, Republic of Nigeria

Introduction

Man, undoubtedly co-exists in the society with some forms of norms, traditional, beliefs, values and customs. These values include certain inalienable rights that are fundamental to the smooth functioning of man in the society. It is on this basis that these rights need to be safeguarded and protected for a just and egalitarian society; otherwise the society shall be reduced to a state of anarchy. Notwithstanding, these rights inherent in man, which though arise from the very nature of man as social animal recognized and protected in a civilized legal order, they are not to be exercised to injure any other person, group or the society at large.

The paper is divided into five sections. Section one embodies the abstract and introduction to the paper. Section two discusses the conceptual clarification of fundamental human rights. Section three discusses the fundamental human rights as embodied in the Constitution of Nigeria. Section four discusses the limitations of the fundamental human rights

provision in the Constitution. The conclusion is contained in the last section of this work.

Conceptual Clarification: Fundamental Human Rights

The Concept of Rights: A Global View

It is noted that, in spite of the inalienable and naturally endowed rights of man, such rights cannot exist in a vacuum. Put differently, for a man to cry for his right he must have been a member of a society. No person has rights except in the society of other persons, for right implies a relationship between two persons. Rights can be described as a relationship between a person and another person, and on that state, it is pertinent to note that there are several relationships and rights, which may exist, in a particular society.

Thus, there are moral relationships, and social relationships as well as moral rights and social rights. The legal basis of the society existence is predicated upon its moral and social values and legal rights are founded in the moral and social relationships which are the concerns of law or which the

law recognizes as enforceable. Hence, it is pertinent to note that a legal right is not "a law" but a relationship, which is justifiable. This assertion has been adumbrated by Professor Montrose: (1996: 23) thus: Whereas laws are concerned with abstract possibilities of application, rights are concerned with the application of legal propositions to specific individuals

The term right has several meanings. The concept of right as a human term appears in diverse contexts and situations, and at different times and places. The term right, known as Rector in Latin means straight, just and moral, it has now evolved to mean, simply, that which the law directs, approves of or supports. It has been described as a liberty or power of possessing something, the disturbance or infringement of which there is a legal sanction. A right in its most general sense is either the liberty protected by law to act or react in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing or possessing a particular thing.

Ikhariale (1995: 6) described a legal right for our purpose is a capacity resident in one person of controlling with the support of the legal order, the action of others. In other words, a right could be something extracted from the fundamental basis of free will or sometimes based on legal relationship between person as determined by rule of law and

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sanctioned and protected by that legal order, or an interest, claim, privilege duly recognized and protected by a rule of legal justice. The learned author has also described right in the following terms "specifically, it refers to the which is so directed or the protection and advantage of an individual or group and is said to be his or her rights".

It is pertinent to note that our jurisprudence has evolved to recognize that both natural and artificial persons can have rights; however, our discourse is more concerned about the rights of natural persons. The concept of right also goes along with its correlative duties because the existence of a right in favour of Y imposes a duty on Z to perform or to refrain from engaging in a certain conduct that may affect that right of Y. A right therefore makes more meaning if the beneficiary is sufficiently enlightened about the existence of the right and has the means of enforcing same (Barko E. (1961)

From the foregoing analysis, it is important to note that human rights are therefore the demands or claims which individuals or groups make on society, which are protected by laws, and have become part of *EX-lege*. while others remained aspirations to be attained in the future.

Why are some rights fundamental?

It is relevant to state here that no specific rights or class of rights which can be ordinarily considered as fundamental. Fundamental human rights are not a new morality just developing in contemporary society. Thus, Worley (1996: 8) stated that they are rights inherent in man; they arise

from the very nature of man as social animal and they are recognized and predicated in a civilized legal order. It is to be further noted that the word "fundamental", merely qualified certain rights for reasons of emphasis on importance. Consequently, a right is a right to the extent that the legal order guarantees it as such. Therefore, to qualify a right as fundamental is a function of value rather than nature.

It must be noted that, whether a right is fundamental or not depends on the concession that has been reached, for the time being between the oppressors and the oppressed. And from a historical point of view, it is clear that what we today take for granted as inherent, natural and inalienable were in fact concessions and the result of bitter battles fought and won by the oppressed against their oppressors down the ages. It is therefore not easy to

explain why certain rights are regarded as fundamental and others are not so fundamental, at different countries at different times.

What is fundamental human right?

The term fundamental human rights has been defined by Justice Kayode Eso JSC in *Ransome Kuti, V. Attorney General of Federation* (1995) 2 NWLR (Pt. 6) 200 thus: It is 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 a civilized existence is to have these rights enshrined in the constitution so that the rights could be "immutable" to the extent of the "non-immutability" of the constitution itself

Fundamental human rights, which are guaranteed by the Constitution, are not privileges in the sense that they could not be withdrawn at the caprices of the government of the day. They are rights, which the executive, the legislature and judiciary are all enjoined to protect.

Aduba (1992) observed that there has never been successful attempts to alter any of the provisions of the constitution relating to fundamental human rights during the civilian regimes since their inclusion in our constitution. *Justice Idigbe (1982)* drew a distinction between human rights and fundamental human rights in a scholarly paper when he noted that:

...it must be pointed out at this stage that these rights which antecedent to the political society itself do not exist only in societies or states with written constitution. However, unless their existence or continued existence is guaranteed under the state's constitution they cannot with reference to that particular state or political society be described as fundamental rights. It is therefore my respectful view that a description of these rights as fundamental rights ought to be confined to state or political societies governed by written constitution

The above opinion about the nature of fundamental human rights was further clarified by Dr. Mudiaga Ode, SAN (1986) thus:

it follows that while all rights enjoyed and asserted by human person may be described generally as human rights not all human

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rights can be termed fundamental rights or fundamental human rights under our classification unless they are entrenched in the constitution.

Nigeria has adopted political and civil rights rather than socio economic rights because of her nature as a developing country. Several reasons have emerged for the origin of human rights provisions in our 1960 Constitution, among which is the popular recommendations of Willink Commission Minorities Report of 1958

It is germane to state that the fundamental human rights were enshrined in the constitution in order to assemble the existing human rights in one entrenched chapter, which could not be easily amended. Ikhariale (1996: 11) quoted Chief Obafemi Awolowo as saying:

Fundamental human rights are ordained not for the protection of ethnic minorities as such but for the protection of the citizens at large against executive and legislature tyranny or excesses.

In considering the above statement, it is therefore necessary to state that all fundamental rights are in the final analysis rights which impose limitations on executive government and are accordingly easily justifiable.

Basic Fundamental Human Rights in Nigeria

Following the reports of Sir WILLINK COMMISSION, human rights were entrenched in Chapter III of 1960 Constitution and justifiable. The adoption of fundamental rights followed a Royal Commission of 1958, the Minorities Commission headed by Sir Henry Willink. Note further, that, these rights were reported verbatim in the Republican constitution of 1963 and the subsequent 1979 and 1999 constitutions.

The rights as contained under Sections 33-44 of the 1999 Constitution (as amended) are as follows:

(a) Right to life;

Right to dignity of human person; Right to personal liberty;

Right to fair hearing; (e) Right to private and family life; (f) Right to freedom of thought, conscience and religion;

Right to freedom of expression and press; (h) Right to peaceful

(1) (1) (k)

Right to freedom of movement; Right to freedom from discrimination, and Right to acquire and own immovable property anywhere in Nigeria.

An analysis of the Restrictions and Limitations of Fundamental Human Rights

It is essential to note that these rights are well protected by law; however there is a limit within which these rights can be enjoyed and protected. The 1999 Constitution provides for the restriction and derogation from fundamental human rights. These restrictions are spelt out in Section 45 of the 1999 Constitution. The section is to the effect that nothing in the provisions of Sections 37, 38, 39, 40 and 41 of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society:

- (a) In the interest of defence, public safety, public order, public morality or public health; or
- (b) For the purpose of protecting the rights and freedom of others person

At this juncture, it is pertinent to note that in spite of the entrenchment of the rights to life in the constitution as one of the fundamental human rights, the right is not absolute. The limitations of these rights can be seen in the power of the sovereign state to prepare its citizen majority, those in the armed forces to defend the territorial sovereignty of the state in time of war. Therefore, if these members of the armed forces go to war to defend their state and die, these rights become unenforceable as no one can be held responsible for the act of the infringement. Hence, the right to life of members of the armed forces end where these rights of the sovereign state to order them to war commence. Whatever befalls the soldiers in the war front is an occupational hazard of the regular soldier. They have willingly chosen that profession and they must take it with all its hazards. Put differently, the situation is what is usually referred to as *volute non-fit injuria*. The maxim cannot, however, apply in the case of a man compulsorily forced to go to battle.

It is to be noted further that the rights to life as guaranteed by the Constitution are not breached where it is done for the defence of any person from unlawful violence or for the defence of property. Where it is also to cite a lawful arrest or to prevent the escape of person lawfully detained or for the purpose of suppressing a riot, or insurrection or mutiny. From the

provision to Section 33 of the Constitution, it means any police officer or soldier who might have died in the course of his duty while suppressing riot or in the war front cannot enforce his fundamental right to life. In *Okonkwo V. The State (1988) 4 NWLR (Pt.544) 256 Akpabio J.C.A* observed as follows:

Section 30 of the 1979 Constitution of the Federal Republic of Nigeria allows a person to use such force as is reasonably necessary for the defense of any person from unlawful violence or for the defense of property. A person is even entitled to kill in the defense of his property provided the force used is reasonably necessary in the circumstances.

The legal implication of the above proposition as well as the provision to Section 33 of the 1999 Constitution is that a person may be justified to deprive other persons of their lives under the circumstances discussed above.

It is to be further noted that the rights to private and family life though enshrined in the constitution is by itself not absolute. The limitations of these rights can be seen in the right and power of the state to interfere into the privacy of its citizens. This can be seen where the correspondence, telephone conversations and telegraphic messages and intercepted where same is viewed to constitute and likely to constitute threat, and or affect the public safety, public order, public morality and public health. Also, the right can be limited in order to protect the right of others. A right should not and must not exist to the detriment of other members of the society. Hence, going by this, this right becomes restricted and the right of a person to private life ends where same is likely to affect other members of the society.

There is also a right to freedom of Assembly and Association as guaranteed by the Constitution. The Constitution provides that every person shall be entitled to assemble freely and associated with other persons, and in particular he or she may form association for the protection of his or her interests. The right to assembly is peaceful. It allows individuals to come together to form political party and only the gathering of people belonging to a recognized or registered political party will be regarded as peaceful.

However, the right becomes limited where the assembly and association is no longer peaceful and/or where people gathered together to form a political party and such is not registered or recognized by the Independent National Electoral Commission, the body vested with power to

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register political parties before they can be recognised. The implication of an association or assembly of people, which is not not legal or likely to be inimical to the public peace, indicates that the right is not absolute.

A person reserves the right to enjoy the right to peaceful assembly and

association; however, where the right may spell doom to the peaceful co existence of the society at large then, the right may be checked and restricted in its application of a person to enjoy same absolutely, where the exercise of same will affect public safety, public order, public morality and public health. The right then becomes restricted and limited in the interest of defence. The right then becomes restricted and limited in the interest of defence.

Okunniga (1975: 12) rightly observed that the rights to freedom of thought, conscience and religion could not have been much recognized in Christian Europe of the Middle Ages in view of the relish and ferocity with which the church hunted or was allowed to hunt for and punish dissenters. Even today one wonders whether in view of the English Act of Settlement of 1701, a professed Roman Catholic or Presbyterian would be allowed to ascend the throne of England. In Nigeria, one wonders whether a member of Ogboni Fraternity, a fraternity akin to traditional religion can ascend or be elected into a political office.

The constitution guarantees rights to the freedom of thought, conscience and religion. Specifically, Section 10 of the Constitution makes Nigeria a secular state and secularity in this contest requires giving the people of Nigeria rights to practice any religion, which are practiced in the country equal opportunity to flourish.

In *Jelegi Ojonge.V. Aleyi Adegbudu* (1983) 4 NCLR 4924 the Court held that no one can be forced to perform a native rite which is conflict with his or her religion. This is, indeed, a freedom to practice any religion of one's choice. However, in *Ojiegbi & Others V. Uballi* (1961) ALL NLR 177 An election was fixed for Saturday December, 27, 1969 and because it was Saturday, the people of Seventh Days Adventist Church boycotted the election. They now went to court to challenge the fixing of election to Saturday because it violated their freedom of religion. The court decided against them on the ground that:

- (a) That nobody is forced to vote in all election;
- (b) And that if the election was fixed for another date, the people in other religion could also sue of violation of their right.

The above decision of the court corroborates and affirms the principle that the right of a person to freedom of religion end where others begin. That is to say no one should force another person to adopt a religion other than the one he chooses to practice.

More importantly, the fundamental right to acquire and own immovable property does not mean that property can be acquired by any means whether just or fraudulently. A man is entitled and eligible to acquire and own property but such property should not be acquired through illegal means such as robbery. This right as provided under the Constitution further provides that one can do whatever one wishes with one's property but subject to several limitations either in the interest of the public, in general or in the interest of a Section thereof.

It should be further noted that while it is true that a man may use his land the way he likes, such a man should not lose sight of the law of nuisance to the effect that such land should not be used in such a way as to cause injury to his neighbours. The neighbour though not co-owner of the land but are entitled to equal right to the use of the land for peaceful co-existence between one another.

The above analysis was illustrated in *Ryland V. Fletcher* (1886) L.R.Ex. 265, the principle in this case is that if Mr. Z brings something unto his land, provided that, thing is not naturally there and that thing by nature is capable of escaping, and it escapes and causes damage to Y's land, Z is strictly liable to Y in damages, whether or not "Z" has knowledge of the escape. Also, the state may impose regulations relation to how individual may use property for example, by regulating the size of rooms, the size of doors and windows, the height of the building, the distance from the public highway and so on.

In addition, the right to dignity of person is guaranteed by the constitution and it is provided that no person should be subjected to torture or any inhuman or degrading treatment. Note however that this right is limited to members of the armed force and the Nigerian Police to perform a duty, which shall not be regarded as forced labour. In addition, any such compulsory national service which forms part of the education and training

of citizen of Nigeria as may be prescribed by an act of the National Assembly, for example, compulsory National Youth Service Corps training shall not be regarded as forced labour. Therefore, the right of a person to

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dignity is determined once a person becomes a graduate of University or Polytechnic and qualifies to participate in the exercise by virtue of his not being above the age of thirty years.

The right to personal liberty is also guaranteed in the Constitution. Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except where it is for the execution of sentence or court order in criminal matter. The personal liberty of a person ends where an order of a court is pronounced and imposed on a person. It is also the same where the right is breached for purpose of welfare and education of citizen below 18 years and also for the purpose of medical care for somebody who is suffering from contagious disease.

The right to individual the freedom of expression and press is also guaranteed in the constitution. The constitution specifically in Section 39 provides that every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference. Essentially, press freedom is a corollary of freedom of expression, which is itself a fundamental right without which genuine democracy cannot thrive.

It is to be further noted that in furtherance of the provision stated above with regards to freedom to hold opinion to receive and impart ideas. The Supreme Court as per Francois J.S.C in the case of *New Patriotic Party V. Ghana Broadcasting Corporation (2000) 20 WRN.163, 174* stated the essence and purport of freedom of expression as follows:

It is pertinent to observe that in the comity of nations where the democratic order secure the highest place of honour in the social fabric, the freedom of exchanging information and ideas appears to occupy the noblest point in the social scheme and serves as an essential point...

In spite of the above propositions, the freedom of expression and press is not absolute. Thus in the case of *Oyegbemi & Others v. Attorney General of the Federation (1982) 2 NCLR 35* it was held that this right was not absolute subject to public safety, order, public morality, welfare of person and preventive of disorder and crime. The gist in the above cited case shows clearly that the freedom of expression and press ends where it will affect the public

order and morality.

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It is to be further stated that Section 41 of the 1999 Constitution provides for the right to freedom of movement. The provision is to the effect that 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 exists there from.

Thus, where the right of freedom of movement of a Nigeria will be inimical to the peace and order in the country such right becomes limited and no longer absolutely exercisable. The implication of which makes such a person's right terminable where that of public at large commence.

Conclusion

In the light of the foregoing, it is clear that though the 1999 Constitution (as amended) guaranteed the fundamental human rights for all citizenry, however, there are limitations in exercising such rights. Every citizen of Nigerian has inalienable rights to all the rights enshrined in the constitution. There is no impediment that can take away any of the rights from being enjoyed by a citizen of Nigeria.

However, there are limitations to the fullest enjoyment of these rights which of course could be limited in application for the sake of security, public policy and many other factors that may be in the interest of the Nigeria nation. It is only in those circumstances that the rights could be taken away not by an individual but by the government for security and protection of all other citizens. The purport of this scenario can best be described as to mean where the rights of a citizen end that of millions of other citizens begin.