

JUSTICIABLE OR NON-JUSTICIABLE RIGHTS: A DEBATE ON SOCIO-ECONOMIC AND POLITICAL RIGHTS IN NIGERIA

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ABSTRACT: *Justiciable or non-justiciable rights are hot debate in jurisprudence. The 1999 Constitution of the Federal Republic of Nigeria grouped rights into fundamental rights and fundamental objectives. Accordingly, fundamental objectives entail socio-economic and political rights which are non-justiciable in the court of law. However, socio-economic rights are necessary instruments for accountable government and good governance while non-justiciable rights work hardship on the citizens by restricting their rights of redress in the court of law. Non-justiciability is a constitutional cover to bad leadership and corruption. Hence, the investigation into justiciable or non-justiciable rights: a debate on socio-economic and political rights in Nigeria. The paper examined the position of South-Africa Courts' judgments on socio-economic cases brought before them. The views of pro-justiciability and anti-justiciability schools were also juxtaposed. The study found out that the courts rather judges had upheld socio-economic and political rights as justiciable by inextricably connecting them to justiciable rights. The paper therefore recommends that all ouster clauses in the Constitution be expunged to promote accountable government, strengthen the judiciary and enforce citizen's rights of redress.*

KEYWORDS: rights, justiciable, non-justiciable, fundamental rights, fundamental Objectives, constitution.

INTRODUCTION

Right is a broad concept in jurisprudence. There are different types of rights such as absolute right, inherent right, perfect right, political right, economic right, fundamental rights and so on. Ordinarily, right may mean a proper act, action or purpose under law, morality or ethics¹. Simply put, right is the converse of wrong. The debate on right or wrong is another riddle in law, political science or philosophy. The melodrama of what is right to certain persons, group of persons, tribes or nations may be wrong to the other person, tribes or nations. Unraveling the correlation or mis correlation between right and wrong, we are delving into the philosophical and psychological ideals/or realm of man's conscience that is spiritually discerned. Law is embedded in morality and/or morality is the source of law (positive or natural). Morality is either positive or ideal. The individual sense of right and wrong, good and evil depends on his conscience.² Truth is assumed to be nurtured by conscience because conscience is the seat for truth.

¹ The Black Law Dictionary, 9th Edition pg 1436 – 1441

² Appadoral A. (2004). The substance of politic 4th edition

The 1999 Constitution of the Federal Republic of Nigeria (CFRN) divided rights into fundamental rights or fundamental human rights and socio-economic, cultural and political rights. Fundamental rights as enshrined in chapter four encompasses sections 33–44 while socio – economic and political rights are articulated under chapter two of the constitution³. The provisions in chapter two of the 1999 CFRN are collectively entitled as fundamental objectives and directive principles of state policy shorten as fundamental objectives or directive principles shall be used interchangeably in the study. They are regarded as mere directive principles for the purpose of governance. These provisions are fundamental guidelines to policy formulation by political parties and government. Therefore, they are non-justiciable in the court of law pursuant to entrenched ouster clauses⁴.

On the other hand, fundamental rights are justiciable as provided by the constitution. The semantic and applicable differences between chapter two and four are that, the former is state objectives and not actionable while the latter is citizen's inalienable rights that are actionable when violated before a competent court of law.

Justiciability of fundamental objectives is further foreclosed by the immunity clause that insulates designated public officers such as President, Vice-president, Governors and Deputy-governors from prosecution on alleged violations of these provisions⁵. This limitation against the right of redress of victims, concerned citizens or civil societies may frustrate the hand of justice and hinders accountable government. The ouster clauses are negation to rule of law and supremacy of the constitution⁶. Non-justiciability also limits the inherent powers of the judiciary from entertaining actions from alleged infringements of directive principles of state policy⁷.

In this era of global renaissance of fundamental, economic, social, cultural and political rights, no right ought to be non-justiciable. The right to life which is a justiciable right is inextricably connected to economic social, cultural and political rights. Extinguishing the socio-political rights of citizens is tantamount to their enslavement and banishment of their rights to freedom of speech, association and suffrage⁸.

The primary purpose of law is to enhance good governance, peace and order, unity and stability, growth and development of a country. It is widely acclaimed that rule of law is the bedrock of democratic nations in the world⁹. Developed countries like Britain and United States of America (USA) are governed on the basis of law. The presidential system of government in Nigeria is patterned after the American presidential style, however with minute modifications to accommodate local intrigues and interests. In South Africa, there is no such division between fundamental rights and fundamental objectives but a Bill of Rights which is justiciable. However, in India and Irish Republic, socio – economic and political rights are guidelines to

³ Chapter 2 and 4, 1999 CFRN

⁴ Sections 6 96) c and 308, 1999 CFRN

⁵ Ibid,

⁶ Ibid, Section 1 (1), 1999 CFRN

⁷ Chapter 7, 1999 CFRN

⁸ India Supreme Court, Daka (2010), chapter 4, 1999 CFRN

⁹ A-V Dicey (), Chapter 2&4, 1999, CFRN

making laws. All laws made in India and Irish Republic must originate from these directive principles.¹⁰

Therefore justiciability or non-justiciability of socio-economic rights (ESCR) are hot debate in legal philosophy. Hence, the study sought to provide answers which are not exhaustive or perfectly rationalize the minds of legal thinkers and political philosophers. Can we guarantee good governance if socio-economic rights remain non-justiciable? Are there no reasons to extinguish provisions that limit judicial powers in the constitution and don't you think the abrogation of the immunity clause will promote accountable and transparent government? The study is therefore, organized into seven sections with introduction in section one while section two reviews the theoretical framework. Section three discusses non-justiciability and section four dissects concept of justiciability. Consequently, section five considers the views of pro-justiciability school and section six addresses the suggestions of anti-justiciability school. Invariably, section seven proffers recommendations for or against the study.

THEORETICAL REVIEW

The theoretical anchorage for the study is the principle of justiciability of actions in the court of law due to violations of human rights which are predominant in the world. A substantiated experience of a Nigerian pensioner was a sad description and woes of non-justiciability of economic, social, cultural and political rights before the court of law. The pensioner protested against the non-payment of his pension for decades at Nigerian Postal Service (NIPOST) office in Ibadan, Nigeria. The pensioner lamented of not having a house to live in, his wife and children have abandoned him and could not provide for his needs.

The children had no opportunity for education any longer. The pensioner is homeless, hungry, no clothe and sick with no hope for a better future. Can the pensioner and his children ask the government to provide free education as a right under the law? Can they also ask the government for housing, health care and employment as rights under the law? If the government declines to provide them as provided in chapter two of the 1999 Constitution of the Federal Republic of Nigeria, do they have the rights to go to court for remedy¹¹. The right of redress is referred to as justiciable in the court of law. The black's law dictionary explains justiciable to mean any issue to be examined in the court of justice and non-justiciable as the inability of any court of law to try any matter even where real interests rights are infringed.¹² The content and context of this debate is that, should social-economic, cultural and political rights be made justiciable or otherwise?

Non-Justiciability: Path to Bad Governance

Non-justiciability of matters imposes limitation on the inherent powers of the judiciary to interpret laws or the constitution. Ouster clauses are hindrance to accountable government because violations of socio-economic and political rights cannot be entertained by the court.¹³ The fundamental objectives and directive principles enshrined in the Nigerian Constitution are compilations of the ideals of good governance in modern world.

¹⁰ Dakas (2010)

¹¹ Femi, A. (2015) Imperatives of Justiciability of Socio-economic rights in Nigeria

¹² International Harvest Hat Co v Caradine Hat Co Cited in Black's Law Dictionary (Garner, 1990)

¹³ Section 6(6)c and 308, 1999 CFRN

The judicial arm of government is the arbiter between the executive arm and the citizens of the country. Disputes and violations of rights are arbitrated in the court of law. The courts are empowered by law to adjudicate on matters before her and pronounce judgments that will confer justice to the injured party.¹⁴ The Federal Character Principle¹⁵ in the constitution may be misapplied against merit in the appointment of persons into federal, state and local offices and selection of students for admission into unity schools and tertiary institutions if not given the appropriate interpretation, application and enforcement.

Interpretation of the Federal Character Principle came before a High Court with respect to admission of students into federal government colleges. The general cut off mark was 295. However, students from states designated as educationally disadvantaged who scored below 293 were invited for interview while the applicant who scored 273 was not invited. The Trial Court held that the applicant lacked locus standi while the Court of Appeal held that the applicant had locus but the matter has been overtaken by events. The Supreme Court upheld the position of the Court of Appeal. This action of denial may mean constitutional discrimination if the right to education is not linked to right to life, a justiciable provision in the 1999 Constitution.¹⁶

Good governance is anchored on appropriate laws. Ousters clauses are restrictions against right to redress that is working hardship on the Nigerian populace. They are draconian laws against the efficacy of the constitution being supreme and the sovereignty of the people which invariably hampers good governance. Non-justiciable clauses abrogate the functional powers of the courts and also weaken citizens from exercising their rights to seek redress in the court of law against violations of their social, economic and political rights. They may be tantamount to decrees that out-rightly suspend the constitution during military regimes.¹⁷

The immunity clause which insulates the Presidents, Vice- president, Governors and Deputy-governors perpetuate or fan the embers of corruption in government's ministries, departments and agencies (MDAs). Plethora cases prosecuted by Economic and Financial Crimes Commission (EFCC), Independent and Corrupt Practices and Related Offences Commission (ICPC) and recently, the whistle-blowing policy can attest to it.¹⁸

Justiciable: Instrument for Accountable Government

Government is accountable to the citizens when the activities of governance are reported on regular basis. Government is accountable to the citizens when the government can be summoned or sued before the courts for violations of rights and other provisions provided for in the constitution. Accountable government is a threshold for good governance. Accountable government recognizes the supremacy of the constitution, the people's sovereignty over the government and transparent administration and the rule of law¹⁹.

¹⁴Chapter 7, 1999 CFRN

¹⁵Suit 14(3), 1999 CFRN

¹⁶Section 33, 1999, CFRN, DAKAS (2010), 308

¹⁷ Constitution modification & suspension decree No. 1 1966/67

¹⁸EFCC v Ibori (NWLR) P 1127i, Saraki V, CCT (2016) cases .

¹⁹ Section 1(1), 14(2)a, 1999 CFRN.

Chapter four of the 1999 Constitution articulates 12 fundamental rights that are justiciable. These rights are: right to life, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria and compulsory acquisition of property²⁰.

Justiciability is the right of a citizen or corporate organization or government to sue another person or government or company before the court of law. However, these rights are restricted or foreclosed by the 1999 Constitution on certain areas. To promote accountability in government, judicial activism must be provoked. Judges should be courageous in interpreting the law. They should keep the law alive and progressive for the purpose of achieving judgments and justice ²¹.

In South Africa, all rights are justiciable before the court of law. The South African constitution has a Bill of Rights in chapter two. The Supreme Court upheld several judgments which are impetus to accountable government in South Africa. The Court upheld the right to water as source of livelihood. The Court found a violation to the Constitutional right to water on the basis that the applicant had existing access to water before the Council disconnected the supply. An interim injunction was issued ordering the local authority to restore the water supply to residents.

The Indian Supreme Court also supported the argument that justiciability leads to accountable government by drawing a nexus between directive principles and fundamental rights. In other words directive principles should be seen as fundamental rights. The Supreme Court declared that charging of capitation fees in professional colleges as illegal and unconstitutional on the ground that the right to education flows from the right to life. The right to life and dignity of labor of a citizen cannot be guaranteed without the right to education as a fundamental right under part three of the Constitution of India. Fundamental rights shall remain out of reach of the majority who are illiterate if the right to education is not tied to right to life. It therefore held that, directive principles are fundamental to good governance and must not be separated from fundamental rights ²².

Pro-Justiciable Rights Debate

Justiciable or non-justiciable rights are causing deep reflections on the import of the inherent powers/functions and independence of the judiciary. The doctrine of separation of powers and the rule of law advocated by Montesquieu and Dicey are under severe scrutiny. Also, the fundamental right of citizens to sue and be sued in the event of alleged violations of rights in real interests or fundamental objectives are palpably undermined. Legal thinkers, political scientists and administrators are divided in this subject. The pro-justiciability school argues that chapter two (fundamental objectives) be made justiciable and retained in the constitution. The views of the pro-justiciability school are hinged on the constitutional and statutory provisions supportive of justiciability of the directive principles of State policy.

²⁰ Sections 33-44, 1999 CFRN

²¹ Transbridge Trading Co. Ltd v Survey Int Ltd 91996) 4 NWLR (pt. 37) at 596-597 cited in Dakas 92013:313)

²² Mohini Jain v State of Karnataka (1992) cited in Dakas (2010:301)

The following sections of the 1999 CFRN, Section 6(6)c, Section 1(1), Section 13, Section 224, and item 60(a) of the exclusive legislature list provided grounds of justiciability for socio-economic and political rights.

These sections are reproduced as follows

Section 6(6) c:

The judicial power vested in accordance with the foregoing provisions of this section; shall not, except as otherwise provided for this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directives Principles of State Policy set out in Chapter two of this Constitution.

The phrase “except as otherwise” provided for in the Constitution does not entirely foreclose justiciability of chapter two. This position had been upheld by the court²³. The Supreme Court upheld that, the non-justiciability of Section 6(6)c of the Constitution is not total because the subsection provided a leeway by the use of the words ‘except as otherwise provided by this constitution’²⁴.

Section 1 (1)

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria

Section 13

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 of this Constitution.

Section 224

The programme as well as the aims and objects of a political party shall conform with the provisions of chapter two of this Constitution.

Item 60(a)

The establishment and regulation of authorities for the Federation or any part thereof- to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.

The views of pro-justiciability school are further strengthened by statutory provisions. The African Charter contains nine articles that provided for socio-economic rights such as right to work (Article 15), right to health (Article 16), right to education (Article 17(1), right to participate in the cultural life of one’s community (Article 17(2), Duty of State to promote and protect the moral and traditional value recognized by the community (Article 17(3), recognition of as the natural unit and basis of a society (Article 18(1), right to the family to be assisted as custodian of morals and traditional values (Article 18(2), protection of the of women and children (Article 18(3) and right of aged and disabled (Articles 18(4)²⁵.

²³ Femi Aborishade (2015) Imperatives of Justiciability of Socio-economic Rights in Nigeria.

²⁴ FRN v Anache (2004) 14 NWLR pt 1-90

²⁵ African Charter on Human and Peoples Rights Act 10 LFN, 1990.

In similar vein, the Supreme Court held that the African Charter which had been incorporated into the municipal laws was binding and the court must enforce it ²⁶. This judgment is a justification to the opinions of the pro-justiciable school.

Anti-justiciable Rights Debate.

This school is supportive of the literal meaning of the provisions in Sections 6(6)c and 308 of the 1999 CFRN. The school equally agreed that the fundamental objectives and directive principles of state policy are mere policy guidelines for governance. It contends that chapter two is a manifesto of aims and aspirations of government and political parties which serves as a moral homily ²⁷.

In the words of Dr. Ojo, there can hardly be any national dissent on the need to provide good shelter, free education, free healthcare for the aged and disabled, free welfare for all. It is not advisable to degenerate into seeking provisions for leisure, social life and adequate food for all Nigerians in the Constitution. He opined that socio-economic, cultural and political rights be expunged from the Constitution ²⁸.

The views of Professor Wheare also laid credence to the anti-justiciable rights debate on fundamental objectives. Wheare submitted that, it is worth stating that a Constitution is first and foremost a legal document that contains supreme rules of law, not opinions, aspirations, directives or political manifestoes²⁹. Therefore, aims and objectives, aspirations and directives cannot be justiciable or part of the constitution. Anti-justiciability school's arguments were further supported by the constitutions of India & Irish Republic. The Indian and Irish Republic Constitution made socio-economic and political rights as a guide for making laws. The Irish Republican constitution provided in section 45 as follows, the principle of social policy set for the in this Article are intended for the general guidance of the Qireachtas 2(3).³

In spite of this limitation, the Indian courts are enforcing socio-economic and political rights by establishing that, the rights to life is meaningless without enforcing the fundamental objectives of the constitution. The Indian Supreme Court held that the right to life includes the protection of every limb and faculty through which life is enjoyed.... namely, the bare necessities of life such as adequate nutrition, clothing and shelter, facilities for reading and writing, expressing oneself in diverse forms, freely moving about and...³⁰

From the attitudes of Courts, in the interpretation of objectives and directive principles for state policy, they are not entirely foreclosed. Judicial activism is required to make the law alive according to the prophecies of the courts are laws- O' Wendell Holmes.

²⁶ Olafiosoye v FRN (2005) 4 NWLR pt 864 p 580 SC

²⁷ Popoola A. O (2010,324) cited in Femi Aborishade article

²⁸ Ibid

²⁹ Ibid, Section 1 (1), 1999 CFRN.

³⁰ Irish Republic Constitution, cited in Anyebe (2010:377)

CONCLUSION

Law without enforcement is like a dead corpse. This justifies the need to make the directive principles as justiciable rights. Non-justiciability frustrates good governance and justice. The Nigerian courts most times have upheld the literal meanings of section 6(6)c and 308 in the interpretation of the fundamental objectives and directive principles of state policy. The citizens are therefore restricted from exercising their right of redress against alleged infringements of their social, economic, cultural and political rights..

However, the Irish Republic and Indian courts have invoked judicial activism in the interpretation and application of socio-economic and political rights in their jurisdictions. An unbreakable nexus has been established between fundamental rights and fundamental objectives in their climes. The right to life is creatively linked to the right to education, right to water, right to movement, right to self expression and so on.

Based on the foregoing, the paper recommends as follows;

1. The Legislature and Executive should discuss modalities to amending the Constitution. Civil societies should sponsor an amendment bill to the National Assembly to expunge all ouster clauses from the 1999 Constitution.
2. The Judicial arm of government should be allowed to exercise its inherent powers and functions devoid of restrictions. The independence³¹ of the Judiciary should be sacrosanct. Judges should invoke activism in the interpretation of the fundamental objectives with direct relation to fundamental rights.
3. Nigerian citizens should freely exercise their justiciable rights. This will promote accountable government, strengthen the judiciary and enforce citizens' right of redress.

References

- African charter in human rights act Cap 10 LFN 1990.
 Appadorai, A. (2004). The substance of politics 4th edition.
 FRN (1999). Constitution of the Federal Republic of Nigeria as amended.
 CMD (1966).Constitution modification and suspension decree No 1, 1966/67.
 Dakas, A. P (2010)
 Femi, A. (2015). Imperatives of Justicialbity of Socio-economic rights in Nigeria: An analysis of chapter 2 of the 1999 Constitution and Judicial attitudes.
 Francis Coralie v Union Territory of India (1981) cited in Dakas (2010)
 FRN v Anache (2004) 14 NWLR pt. 1-90.
 Mohini Jain v State of Karmataka (1982) cited in Dakas (2010).
 Olafiosoye v FRN (2005) 4 NWLR pt 864. P. 580 SC.
 Garner, B.A.(2009). The black law dictionary. 9thedition, 1436-1441.
 India (1950). Constitution of India (97th Amendments) Act, 2011.
 Irish Republican Constitution
 Transbirdge Trading Co. Ltd. V Survey Int Ltd (1996) 4 NWLR (pt. 37) at 596-596 cited in Dakas (2010)
 Shantistar and Builders v Narayau. K. Totamas (1990) cited in Dakas (2010).

³¹Francis Coralie v Union Territory of India (181), Shantistar and Builders v Narayau K. Totamas (1990), see Daka (2010)