

THE RULE OF LAW AS AN INSTRUMENT OF SOCIETAL PROTECTION AND ITS IMPACT ON GENDER ISSUES IN NIGERIA

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ABSTRACT

This study aimed at showing that the rule of law is not worthy of being so called in a polity where there is no societal protection and gender sensitivity. The review showed that the rule of law is an indispensable tool for the protection of the society and as such it could be described as the oxygen of a well governed polity, without it, governance will collapse and the polity will suffer. However, in the course of this study, the findings revealed that one of the major challenges of the operation of role of law in Nigeria is gender marginalization. In view of that, it was suggested that government (at all levels be it federal, state and local) must not relent in their efforts to embrace gender equality principles and practices through programme reforms and policies.

Keywords: *Rule of Law, instrument, societal protection, Gender issues*

INTRODUCTION

Law is generally a dynamic concept which is used not only to safeguard and advance the civil and political rights of an individual in a free society, but also to establish social, economic, educational and cultural conditions under which an individual's legitimate aspirations and dignity may be realized be it a man or a woman. Simplicita, it would be correct to say that rule of law is founded on the ideals of freedom, equality and justice for all and sundry (men and women and even the physically challenged persons). In 1690, John Locke asserted that the rule of law is the freedom of men under government to have a standing rule to live by..., a liberty to follow my own will in all things, where that rule not: and not to be subject to the inconstant, uncertain, arbitrary will of another man¹. Explicitly, the understanding of Locke's definition of the rule of law could be summarized as follows:

- (1). The purpose of government is the protection of lives, liberty and property of the citizenry, and that as long as this purpose is fulfilled; a government deserves obedience by the general populace. Otherwise, it could be overthrown².
- (2). The rulers (government) must not exercise arbitrary power over the lives, freedom and property of the people. The state can only deprive the citizen of his property with his consent and there should be no compulsory acquisition without the payment of compensation³.

- (3). The state must rule only through proper legislation (rule of law) and a judicial system⁴, and
- (4). The legislative arm of the state is to make law for the protection of natural rights while the executive arm has the duty of enforcing the laws⁵.

Locke's teachings had tremendous influence on the revolution of 1688-89 in England, the resistance of the American colonies in 1775 - 1785 against Britain's bad governance and also became embodied in the American Declaration of independence⁶.

In 1885, the most vocal exponent of the rule of law, Prof. A. V. Dicey, propounded three meanings to it. In the first place, it means, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative or even of wide discretionary authority on the part of the government...; a man may with us be punished for a breach of law, but he can be punished for nothing else⁷. By virtue of the above, it means that, the only laws by which men in society are to be governed in their affairs and actions in the sense required by the rule of laws must be standing fixed law, not extemporary or adhoc decrees. And they must be certain and known laws⁸ which apply only with respect to the future, and not retrospectively⁹; showing how an individual stand before the law from time to time.

Thus there is no rule of law if laws are made separately for specific named persons or with respect to specific acts or transactions which have already taken place in the past, with the object of invalidating them or otherwise prejudicing the rights of the individuals concerned or making criminal, acts which were not so when they were done or increasing retrospectively the punishment for prohibited acts¹⁰. The gist here is that, governance should be conducted within a framework of recognized rules and principles which restricts discretionary power.

Secondly, the rule of law meant, "equality before the law, or equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts¹¹". The above connotes that, no one should be above the law, the government and its officials included. All acts or omissions by government and its officials must be subject to the same law as it governs the acts or omissions of private persons, and must attract the same consequences, whether they be breach of contract, tort, or criminal offences.

For, any exemption allowed to the rulers would enable them to commit breaches of contracts, torts, criminal offences etcetera, with impunity knowing that they are not answerable to the law for their misdeeds, and leaving the injured individual without any remedy. Infact, all rules must be applied equally to all, including those who govern, which makes it improbable that any oppressive rules will be adopted. The requirement that law should apply equally to all persons, means also that it should not discriminate between individuals solely on unfair or arbitrary grounds, such as race, colour, ethnicity, place of origin, political opinion, creed or sex (gender)¹². In this regard, S. 142, Constitution Federal Republic of Nigeria (CFRN) as another aspect of the rule of law which prohibits discrimination must be respected.

Thirdly, according to Dicey, the rule of law meant that:

...with us the law of the constitution, the rules which in foreign countries naturally, for part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the courts; that, in short, the principles of private law have with us been by the action of the courts and parliament so extended as to determine the position of the crown and of its servants; the constitution is the result of the ordinary law of the land¹³.

Dicey's third meaning above, expressed a strong preference for the principles of common law declared by the judges as the basis of the citizen's rights and liberties. Dicey had in mind the fundamental political freedoms, ranging from right to life, right to dignity of human persons, right to personal liberty, right to fair hearing, right to freedom of expression and the press and etcetera¹⁴. In this regard, any citizen whose freedom is infringed could seek a remedy in the courts. At this juncture, it means that for rule of law to be effective, independent judiciary is needed for settlement of disputes, particularly, as to the legality of the acts of the government officials (executives). It is in connection to this fact, that the constitution¹⁵ provides that judicial powers shall extend to all matters between persons, or between government or authority and any persons in Nigeria, and to all actions and proceedings thereto, for the determination of any person as to the civil rights and obligations of that person. Thus, this provision also constitutes an important aspect of rule of law in the constitution.

For this reason therefore, disputing parties (even where government officials are involved) are treated equally before the courts and in addition, there are no special courts for special people or government officials. The generality of the foregoing shows that it is not possible to formulate a simple and clear cut statement of the meaning of rule of law because it is a broad legal and political concept. In addition, the concept is also dynamic to such an extent that as the society develops, and the task of government changes, lawyers, politicians, and administrators must be prepared to adopt new values of law to keep abreast with the changing patterns of activities in the polity; otherwise rule of law would not be sustained without giving response to novel issues. But, be it as it may, the essential elements of rule of law could be summarized as follows:

1. All government departments and functionaries must be able to justify their actions according to law. If they are unable to justify such actions, any affected persons may always resort to the courts of law for appropriate remedy¹⁶.
2. every citizen shall have equality of rights, obligations and opportunities before the law regardless of his race, colour, ethnicity, place of origin, political opinion, creed or sex (gender).
3. the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.
4. the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.
5. adoption of strategies for full realization of democracy.

6. the law should be a conscious means of economic development of the community to such an extent that any exploitation of natural resources must be for the general advancement of the community (i.e. social, health, education wise and etcetera).
7. Reasonableness of public policies and the respect for public opinions to strategies such policies.
8. it should aim at consciously improving the moral as well as the cultural tone of the community¹⁷.
9. it should above all promote the unity of the various ethnic groups...through deliberate discouragement of ethnic particularisms and ethnocentric prejudices¹⁸.
10. It should foster growth of uniformity of laws...¹⁹

Notably, as a backup to the application to the rule of law in Nigeria, most of its principles have been enshrined in the constitution, namely, the supremacy of the constitution²⁰, constitutional guarantee of basic rights and freedom²¹, popularly elected legislatures and its separation from the executive arm²², democracy and social justice²³, judicial review of the legislature and the executive action²⁴, and the principle of non-discrimination by the state²⁵. Therefore, the aim of this study is to show that the rule of law is not worthy of being so called in a polity where there is no societal protection and gender sensitivity.

RULE OF LAW AS AN INSTRUMENT OF SOCIETAL PROTECTION

Having dwell so much on the understanding of the rule of law in the preceding sections, it could not be overemphasized to say that rule is a veritable tool for societal protection. This is because the rule of law is a philosophical view of society which is linked with three basic notions identified as follows:

- i. Law and order rather than anarchy, warfare and constant strife.
- ii. Governance according to law
- iii. A broad political doctrine

Thus, an analysis of each of the above three listed related but separate ideas shall be made succinctly below:

Law and Order rather than Anarchy, Warfare and Constant Strife

In this sense rule of law is linked with basic democratic notions such as the citizens' right to participate in governance, the citizens' right to free and fair elections, and citizens' right to freedom of information, all being the pivotal of the right to democratic governance and also identified as the constitutional rights of the citizens of many nations e.g. Nigeria²⁶. The bottom line of this is that, in a polity where the rule of law reigns every citizen shall have a right to participate freely in the governance of his country, either directly or through freely chosen representatives in accordance with the provision of the law. In this wise, where there is no law and order, there cannot be democracy and where there is no democracy, there will be no rule of law and consequently, the polity will be faced with constant civil strife as way of fighting

for their constitutional rights because they (citizens) believe that their political liberty guaranteed by the constitution has been suppressed. In a democracy, it must be possible by the exercise of political rights to change a government without threatening the existence of the state. Unless this possibility exists, the state becomes identified with the sheer force of coercive might and the role of law within the state is virtually emptied of moral content: for the state cannot be conceived in terms of force alone²⁷.

Governance According To Law

The doctrine of governance according to law means that government officials must operate through the law and that any person (without any discrimination whatsoever) directly affected by such governmental action must be able to seek redress in a court of law. In this wise, government officials must be subjected to effective sanctions where they act contrary to the law. Currently, the experience is that such acts are declared invalid by the courts²⁸ as a sanction. Infact, this is not enough government authorities should be able to compensate the aggrieved citizens for the acts of their officials.

The doctrine of governance according to law stresses the importance of legal authority and the dimension which such legal authority should take so as to avoid the doing of the right thing in a wrong way. For example, in a system of constitutional supremacy like Nigeria²⁹, it means that all governmental organs must abide by constitutional rules and limitations. Here, government officials must know that the law should not be used as an instrument of fraud to achieve whatever ends that may favour a particular government. Government according to law also means that there should be adequate control against abuse of power, by the executives, independence of the judiciary and the observance of separation of powers.

Rule of Law as a Broad Political Doctrine

The rule of law in this broad sense goes beyond the typical values associated with law and order and governance according to law as it encompasses the establishment of social, economic, educational and cultural conditions under which a citizen may realize his legitimate aspirations. Pursuant to the foregoing is also the concern of rule of law that government actions are not only bound by rules but fixed and announced before hand. By so doing it will be possible to foresee with fair certainty how the authority will use its coercive powers in a given circumstances, and then the citizen will be able to plan his programmes (even if it means an adjustment) on the basis of such knowledge. In a nutshell, the gist here is that, the welfare of the citizens require that certainty and predictability are values to be associated with law for attainment of society's welfare otherwise, it is fundamentally wrong and inconsistent with the rule of law that power to take decisions affecting an individual's whole life (both present and future) should be determined without certainty and predictability in view of his social, economic, cultural and educational aspirations.

In Nigeria, by virtue of the fundamental objectives and directive principle of

state policy³⁰, the government is responsible for the economic affairs of the citizens by ensuring, "the control of the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity"³¹. In this regard, the rule of law presupposes that every citizen (without discrimination whatsoever and all things being equal) is entitled to equal opportunity in economic emancipation to such an extent that the state shall protect every citizen to engage in any economic activities outside the major³² sectors of the economy.

Social wise, the rule of law protects the society by ensuring that there is freedom, equality and justice for every citizen without discrimination to such an extent that the sanctity of human person shall be recognized and human dignity shall be maintained and enhanced, and governmental actions shall be humane³³. In the field of education, the rule of law requires that government shall direct its policy towards ensuring that there are equal and adequate educational opportunities for every person at all levels. Thus, government will strive to eradicate illiteracy at all levels³⁴. Cultural wise, the rule of law presupposes that government shall protect, preserve and promote Nigerian cultures which enhanced human dignity and encourage the development of technical and scientific studies which enhance cultural values³⁵.

In the field of human rights, the rule of law is seen as a shield for its protection as the universal declaration of Human Rights said, "it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by rule of law"³⁶. Similarly, in 1991 at Harare, the heads of Government of Commonwealth linked the rule of law with the protection of human rights alongside with other concepts such as democracy and the independence of the judiciary³⁷. Thus, in as much as rule of law advocates the subjection of every citizen to equal law, human rights automatically becomes its major area of concern so as to ensure that all those sets of rights recognized by both international³⁹ and domestic instruments are enjoyed equally by every citizens without any discrimination whatsoever.

Finally, in the field of environment law, the rule of law presupposes that government protects and improve the environment regardless of its location without any discrimination and, to safeguard the air, water, land, forest, wild life of Nigeria³⁹.

Rule of Law and its Impact on Gender Issues

Gender issues relate to the condition of being a male or a female under the rule of law. From the generality of what has been discussed above, it could be safer said that the rule of law does not accommodate discrimination on any ground whatsoever be it colour, race, ethnicity or gender. On this score the rule of law forbids any form of discrimination⁴⁰ that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. What amounts to discrimination (underlined above) is stated by Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the following terms:

.....any distinction, exclusion or restriction/made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other fields⁴¹.

In the above terms discrimination against women within the rule of law would mean denying unjustly a women completely or partially the attainment of her education, political, economic, social, cultural and civil rights, just because she is a woman. In this regard, women are being deprived of their equal enjoyment and exercise of human rights and fundamental freedom which is against the dictates of the rule of law. It is on this account that gender discrimination has drawn much concern at the international, regional and domestic level in the past 20 years.

At the international level, CEDAW provides a broad framework for addressing gender discrimination but gender discrimination cannot be addressed fully without expressly including the expression "violence against women" which is omitted in the CEDAW provisions, because at time CEDAW was drafted⁴², the issue of violence against women was not regarded as a significant issue on the international agenda.

Therefore, to take care of this lacunae, a committee was established for CEDAW. It was through the committee's General Recommendations 12 and 19 respectively dated 1989 and 1992 that such omissions were corrected. Thus, the committee recommended that state parties should adopt measures for addressing gender based violence as well as report on such measures. Nevertheless, CEDAW provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex at the international level⁴³.

Concurrently with CEDAW at international level, other related bodies at both regional⁴⁴ and domestic⁴⁵ levels also added efforts towards the eradication of gender discrimination through their various constitutive legal instruments. Today, the status of a Nigerian woman has improved from what is used to be before, although clear instances of obstacles inhibiting against their educational, political, social and cultural life could not be wiped out. For example, an average Nigerian woman can hardly deliver a baby in a good government hospital of her choice.

This is because, in most cases the policy makers do not put them in consideration while executing their policies, and in that manner many government teaching hospitals (particularly) the one in Zaria, Kaduna State) are situated at the outskirts of the town where it would very very difficult for an average woman under labour to reach. Consequently, instead of having good government maternity homes in the town, policy makers prefer to have a football fields at easily accessible areas of the town. Again, the Civil Service Rule, has not protected an expectant mother, whom when on maternity leave is to forfeit her annual leave⁴⁶. Of course, annual leave and maternity leave are two different things which should be treated separately (or is it their making that they are created as women?) besides, it must be admitted that:

Pregnancy is a medical condition. It is a condition which applies only to women. It is a condition which will lead to a request for time off from work for the confinement. A man is in similar circumstances and is employed by the same employer and who in the course of the year will require time off for a hernia operation; to have his tonsils removed; or for some other medical reasons the employer must not discriminate by applying different and less favourable criteria to the pregnant woman than to the men requiring time off⁴⁷.

In addition, women are also discriminated against in terms of promotion and seniority. In a typical tradition, a woman is believed to have been created for particular important purposes like procreation and for child upbringing. It is, therefore, unheard for a woman to abandon this important role to seek for paid employment. Paid employment was said to be exclusive preserve of the males, who are the bread winner for the family⁴⁸, therefore, for this reason, it is surprising to see some men displaying certain elements of barbarism to their female colleagues at work by not being gender friendly. Infact of recent some women politicians had a taste of this barbarism when they were faced with violent threats and attack against their persons and properties by their male colleagues in politics⁴⁹.

Elatedly, today Nigerian women have access to western education to enable them fit in for paid jobs but then the question is how many of them occupy senior official posts so as to have an equal spread with their male counterparts. The answer to that is that, only very few (so scanty) could be found occupying such meaningful posts rather, majority of women are found in petty paid jobs that the salary cannot even sustain them for one week. The notable reason for this is poor educational background for women which is largely attributed to inadequate finance and in some cases cultural factors which include child marriage, over bearing domestic responsibilities, teenage pregnancies, non-enrolment at school and attrition from primary, secondary schools to higher education due to poverty. Against this background, it could be safely submitted that one of the major problems of women to meet up with their political, economic, social and cultural aspirations on equal basis of comfort with men as intended by rule of law is "education" which is a public necessity.

CHALLENGES TO THE RULE OF LAW IN NIGERIA

Poverty: A major challenge to the rule of law in Nigeria is poverty. Poverty is a phenomenon which leads to other things such as, strikes, protests and demonstration, terrorism, campaigns of civil disobedience etcetera, which no doubt, today, are lumped together in Nigeria as a growing threat to the rule of law currently constituting, political, economic, social and cultural insecurity to the citizens and consequently, the polity is stagnated, and progress could only be achieved at a snail moving pace.

In view of the above, it is suggested that government has to do a lot to set up effective structures and mechanisms for improving the economic development of this country by providing a more humane social climate, where the needs of men

and women, old and young boys and girls, rich and poor will become the focus of policies and development plans e.g. employment opportunities for the youths, improved medical technologies in the hospital at reasonable minimum affordable rates and situating the hospitals at accessible targeted arrears of the community. Politically, in order to ensure a free and fair election without doubts in the minds of the citizens, the constitution should be amended to the effect that an executive, wishing to have a re-run of an election for the second term while still serving, should be made to resign within a span of 3 - 6 months before the election.

By so doing, cases of electoral violence, riots and demonstrations will be reduced; this is because in the minds of the electorates the doubts would have been cleared that none of the contestants enjoys an undue benefit beyond the other. Similarly, at the local government level, the issue of caretakers committee or sole administrators should be totally wiped out but where it becomes expedient to have one then, he should not exceed a period of 3 - 6 months so that an elected chairman will be organized to take his rightful position in accordance with the provision of Section. 7 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, and by so doing there will be fairness in the polity.

Judicial Rigidity: It could not be over-emphasized to state here that the rule of law stresses the importance of an effective and independent judiciary, but sometimes, judicial law making are not openly acknowledged (or accepted) because their scope are not expanded. In such situations, the society is bitter and consequently loose confidence in the judiciary. Lack of confidence in the judiciary means that the polity has no legal direction to the effect that there is no rule of law.

Thus, the rule of law cannot be made effective by a rigid, doctrinaire insistence on the so-called declaratory theory of the judicial function, which asserts that, in adjudicating a case before it, the court is simply to act according to law which is supposed to exist and to be well-known; its role is to be the somewhat mechanical and passive one of merely declaring the law and applying it to the determination of the case. Whatever the issue involved, it is not to exercise any creativity by invoking any ethical notions of a just or wise decision. The doctrinal basis of the declaratory theory is analytical positivism whose central thesis is the view that only rules forming a logically consistent system, and not any ethical notions of a just or wise result, are to be the sole guide for a judicial decision⁵⁰.

Such a view of the judicial function is utterly out-moded today. The maintenance of the rule of law demands of the courts a positive role, it demands that they should look beyond the formal letters of the law, and engage themselves in a purposeful effort to try to distill principles of fairness and justice from the moral, ethical and other fundamental values of the society. It is not suggested that expediency or the judge's subjective notions of a right or wrong decision should form the basis of judicial decision. That would itself be a negation of the rule of law, which requires that justice be administered according to law; not according to any and every one's notions of what justice requires⁵¹.

The point being made here is that the law should embody reason and the moral, ethnical and other fundamental values of the community, which are an expression of the community's collective sense of right and wrong. They are values which underlie the community and in the basis of which it is organized. While the letters of the law are and must remain the core elements of the rule of law, their interpretation and application by the court should be informed by reason and by the fundamental values of the community. A narrow positivist view of the law could only make it sterile devoid of a proper moral content. And judges are eminently well placed to instill into it the necessary moral content based on the notions of reasonableness, fairness, justice and respect for individual liberty⁵².

From the application of the community's fundamental values, judicial review of administrative action will eventually grow a body of specific rules to enrich the corpus of the law. After all, a considerable part of English Law, the so-called rules of equity, was evolved in just this fashion⁵³. A typical example of this type of judicial rigidity is found in the recent decision of Supreme Court in the case of Global Excellence Communications Ltd. V. Donald Duke⁵⁴ where the Supreme Court hold that pursuant to the provision of S. 308⁵⁵, there is an absolute immunity on persons mentioned therein not to be sued without a corresponding disability on them to sue others in their personal capacities in any court of law for redress during their tenure of office⁵⁶. Meanwhile, the intent of S. 308 from the independence period to date (not until 2007 when Duke's case came up) has been construed to mean that if you cannot be sued then, you should not sue; many cases have been decided in this just manner⁵⁷. The reason for such a deviation, according to the Supreme Court is that there is nothing expressly or by necessary implication in the provision of S. 308 to show that the persons mentioned therein cannot sue.

This position taken by the Supreme Court appears to be rigid and could not be acknowledged as a good precedent on the subject matter and could consequently pose a threat to the rule of law. More so, contrary to view of the Supreme Court in that case, a study of S. 308(1)(c) and (b) show that there is no way persons mentioned in S. 308 can sue in their personal capacity (particularly in cases of defamation which is the subject matter of Duke's case where he is the principal witness to be served with a summon to go and testify the damages done to his personal status).

Gender marginalization: Injecting the rule of law into the Nigerian society must be informed by the truism: "a nation that is not engendered is endangered, therefore, gender sensitivity need to occupy a central stage in the rule of law. In this regard, all those traditional structures and believes that impede women's maximum participation in development process thereby providing a breeding ground for gender inequality in the society are threats to the existence of rule of law in Nigeria.

CONCLUSION AND RECOMMENDATIONS

No doubt rule of law ordains human dignity, the rights and liberties and citizens, free development of the human personality, justice and political pluralism

as the supreme values of a polity. In this regard, it could be concluded that the rule of law protects the society just as the shell of a snail protect it from the hazard of lurking predators and harsh weather. But, in order to achieve its purpose, as far as Nigeria is concerned, the government must improve an effective mechanisms needed to provide, a more humane social climate where the needs of men and women, old and young, boys and girls, rich and poor will be attended to evenly without prejudice to the rights of the other.

In view of the above, there is a need for the creation of more gender responsive and equitable society from the highest level of governance to the lowest level. For example, the presidency, the Federal Executive Council, the legislature and the judiciary must continue to embrace and demonstrate gender equality principles and practice for any meaningful change to occur in the wider society. This can be achieved through a well targeted coordination, networking, and monitoring efforts to achieve the following fundamental objectives:

- Policy, partnerships and programmes reforms through mainstreaming of gender concerns at all levels
- Gender education and capacity building develop technical expertise and positive gender culture.
- Legislative reforms to guarantee gender justice and human rights
- Economic reforms for enhanced productivity and sustainability development, especially that which addresses the needs of women, children and other vulnerable groups.

In line with the above objectives, however, since 2007, the National Gender Policy has continued to show its impact by adopting an effective performance of the policy in relation to gender capacity building.

NOTES

¹ See also Nwabueze, B., *Constitutional Democracy in Africa*, Vol 3, Spectrum books ltd, Ibadan, Nig. 2004 p. 19. Or see J. Locke, the second treatise of civil government; ed. Gough, J. W. (1946) Sec 22, p. 13.

² Oyeyipo, T.A., Gummi, L.H. and Umezulike, I.A., (Edited) *Judiciary and Democracy in Nigeria*, Snap Press Limited, Enugu, 2007, P. 344

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Wade and Bradley, *Constitutional and administrative law*, 11th Edition, Longman Group UK Ltd, England 199, p. 100.

⁸ See S. 36 (12) Constitution of the Federal Republic of Nigeria (CFRN) and the case of Taiwo Aoko v. Fagbemi (1961) WNLR 147 or 1961 ANLR 400

⁹ S. 36 (8) Constitution of the Federal Republic of Nigeria (CFRN) 1999 and Lakanmi VAG West NSCC (1970) Vol. 6, p. 143.

¹⁰ Nwabueze, B. op. cit p. 20.

¹¹ Wade and Bradley, *constitutional and administrative law*, 11th Edition, op. cit p. 100

- ¹² Nwabueze, B., constitutional Democracy in Africa, Vol. 3 op. cit., p. 20.
- ¹³ Ibid., p. 100-101
- ¹⁴ See generally chapter IV, Fundamental freedoms, Ss 33-46 Constitution of the Federal Republic of Nigeria (CFRN), 1999.
- ¹⁵ S. 6(6)(b) Constitution of the Federal Republic of Nigeria (CFRN), 1999.
- ¹⁶ Oluyede, P. A., Nigerian Administrative Law, university, Press, Ibadan, 1995, p. 50.
- ¹⁷ Olarenwaju, A., The Bar and the Bench in the Defence of Rule of Law in Nigeria, Nigerian Law Pub. Ltd, Lagos 1992, p. 4
- ¹⁸ Ibid
- ¹⁹ Ibid
- ²⁰ Section 1, Constitution of the Federal Republic of Nigeria (CFRN), 1999.
- ²¹ Section 33-44, chapter 4, Fundamental Rights Constitution of the Federal Republic of Nigeria (CFRN), 1999, has justiciable rights enforced in the courts.
- ²² See Sections 4, 5, 6 and 130, Constitution of the Federal Republic of Nigeria (CFRN) 1999.
- ²³ Section 14, *ibid*.
- ²⁴ Section 48, *ibid*.
- ²⁵ Section 42, Constitution of the Federal Republic of Nigeria (CFRN) 1999.
- ²⁶ See SS 2, 14 and 17, Constitution of the Federal Republic of Nigeria (CFRN) 1999 as it relates to right to participate in governance; see SS, 17(3)(a), 42, 34, 178, 179(1)(2), 76, 77 and 7, Constitution of the Federal Republic of Nigeria (CFRN), 1999 as it relates to the right to free and fair election. See S. 39 CFRN as it relates to freedom of information.
- ²⁷ Nwabueze, B., op. cit. p. 104
- ²⁸ See the cases of Aiyetan V. NIFOR (1987) 3 Nigerian Weekly Law Report (NWLR), pt 69, p 48 SC and Wilson V. A. G. Bendel (1985)1 Nigerian Weekly Law Report (NWLR), pt. 4, p. 572 SC where governmental acts have been declared invalid.
- ²⁹ See generally section 1, Constitution of the Federal Republic of Nigeria (CFRN) 1999
- ³⁰ Chapter II, Constitution of the Federal Republic of Nigeria (CFRN), 1999
- ³¹ S. 16(b), *Ibid*
- ³² Major sectors of the economy are to be managed and operated by the state - S. 16(c) CFRN, 1999
- ³³ See S. 17 Constitution of the Federal Republic of Nigeria (CFRN), 1999 generally.
- ³⁴ See generally S. 18, Constitution of the Federal Republic of Nigeria (CFRN) 1999
- ³⁵ See generally S. 21 Constitution of the Federal Republic of Nigeria (CFRN).
- ³⁶ Preamble to the UDHR (3rd Paragraph), 1948.
- ³⁷ Nwabueze B., Op.cit., P. 108.
- ³⁸ See UDHR 1948, ICCPR 1966, ICESCR 1966, and the two optional protocols to ICCPR.
- ³⁹ See generally section 20, Constitution of the Federal Republic of Nigeria (CFRN) 1999.
- ⁴⁰ See S. 42, Chapter IV, Fundamental Rights, CFRN, 1999, as justifiable rights enforceable in courts
- ⁴¹ Article 1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.
- ⁴² The drafting process of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) took place between 1974 - 1979.
- ⁴³ Gender Based Violence in Africa: Perspectives from the continent July, 2006, P. 190 - 196 Regional.
- ⁴⁴ This is found in various human rights instruments, for e.g. The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; The European Social Charter, Turin, 1961; International American Convention in Nigeria on Human Rights, San Jose 1960; and the ACHPR, 198.
- ⁴⁵ In Nigeria, see S. 39 Constitution of the Federal Republic of Nigeria (CFRN), 1999; and the ACHPR (Ratification and Enforcement) Act, Cap A9 Law of the Federation of Nigeria (LFN), 2004.

- ⁴⁶ S. 54, Vol. 8, Cap L1, Labour Act, Law of the Federation of Nigeria (LFN), 2004.
- ⁴⁷ P. Smith, dissenting to the dismissal of a pregnant woman on an account of pregnancy in the case of *Turley v. Adlders Departments Stores Limited* (198) 16 FOR 45.
- ⁴⁸ Audi, J., *Gender Equality and Democracy: The Struggle for Women' Emancipation in Nigeria*, in *the Democracy, Rule of Law and the National Question*, Department of Public Law, A.B.U., Zaria, 2010, p.138.
- ⁴⁹ See *Weekly Trust*, Vol. 14, No. 29 (ISSN 119 - 1732), 19th March, 2011, Pp. 1 - 3.
- ⁵⁰ Nwabueze, B. op. cit. p. 30.
- ⁵¹ *Ibid*
- ⁵² *Ibid*
- ⁵³ *Ibid*
- ⁵⁴ (2007) 16 Nigerian Weekly Law Report (NWLRL), Pt. 1059, p. 22
- ⁵⁵ Constitution Federal Republic of Nigeria, (CFRN), 1999
- ⁵⁶ (2007) 16 Nigerian Weekly Law Report (NWLRL), pt. 1059, P.20
- ⁵⁷ For example, see *Obi V. Mbakwe* (1984) NSCC V. 15, p. 139 *Tinubu v. I.M.B. Securities* (2001) 16 Nigerian Weekly Law Report (NWLRL), Pt. 740, p. 681.
- ⁵⁸ National Gender Policy, Legal Awareness for Nigerian Women (LANW), Kaduna; 2008, p. 39.