

Inalienability of Human Rights: A Mistake in the Choice of Words

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Abstract

Human rights have been variously defined by jurists, scholars and judges in the course of delivering judgment. The basic understanding being that human rights are fundamental and inalienable. Rights have been classified and segregated into several generations, natural rights, basic or fundamental rights, this work is not going to dwell on those but will stand on the provisions of the Nigerian Constitution to judge the word “inalienable” and ascertain its relevance in the definition of human rights.

Keywords: Human rights, inalienable, fundamental, qualified, Nigerian constitution.

INTRODUCTION

The Preamble to the Universal Declaration of Human Rights states that “the recognition of the inherent dignity and of the equal and **inalienable** rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The American revolution of 1776 was hinged on the following declaration-

We hold these Truths to be self-evident, that all men are equal, that they are endowed by their Creator with certain **inalienable** rights e.g. right to life, right to liberty and the pursuit of happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed, that whenever, any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

What is inalienability? Inalienability presupposes absoluteness, that which cannot be taken away. Oxford Dictionary defines “inalienable” as “not subject to being taken away from or given away by the possessor.” Are human rights truly inalienable? Hardly, the correlation between right and duty presupposes that when one fails in his duty, he loses his right. Again, it is a trite saying that “to every rule, there is an exception.” This is particularly true with regard to rights. Most legal instruments that purpose to protect human rights also contain riders limiting such rights. For instance, the British bill of human rights (Magna Carta) declares:

No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, **except** by the lawful judgment of his equals, or in accordance with the law of the land

The idea that human rights are inalienable have informed all sorts of rights springing up every day, new and fresh rights without responsibility. This belief has prompted the incessant fight in courts across the world over human rights and its supposed violations. Mostly as it concerns the foremost fundamental right, the right to life. The battle over abolition or not of the death penalty rages on. Nigeria’s 1999 Constitution has incorporated into it, the fundamental human rights, incorporated also are the limitations to those rights. The fundamental human rights are in Chapter 4 of the 1999 Constitution, they are:

Right to Life.

Section 33(1) provides that “every person has a right to life, and no one shall intentionally be deprived of his life, **save** in execution of a sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

International human rights law while advocating the abolition of the death penalty falls short of outrightly declaring it to be a violation of human rights. Amnesty International however continues to kick against the death penalty. Amnesty holds that, “the death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the State. This cruel inhuman and degrading punishment is done in the name of Justice. It violates the right to life as proclaimed in the Universal Declaration on Human Rights.” Every human being has the inherent right to life, which shall be protected by law. In countries which have not abolished the death penalty, it shall be imposed only for the most serious crimes and after a final judgment rendered by a competent court.

The death penalty shall not be imposed for crimes committed by persons below the age of eighteen and shall not be carried out on pregnant women, new mothers or persons who have become insane. Where capital punishment occurs, it is to be carried out so as to inflict the minimum possible suffering.

Right to Dignity of the Human Person.

Section 34(1) provides that “every individual is entitled to respect for the dignity of his person, and accordingly -

- (a) no person shall be subjected to torture or to inhuman or degrading treatment;
- (b) no person shall be held in slavery or servitude; and
- (c) no person shall be required to perform forced or compulsory labour.

Section 34(2) went on to exclude from the ambit of “forced or compulsory labour,” among other exceptions, any labour required which is reasonably necessary in the event of an emergency or calamity threatening the life or well-being of the community, any labour or service that forms part of a normal communal or other civic obligations for the well being of the community, any labour required in consequence of a sentence or order of a court.

Right to Personal Liberty.

Section 35 provides that “every person shall be entitled to his personal liberty and no person shall be deprived of such liberty **save** in the following cases and in accordance with a procedure permitted by law -

- (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;
- (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (d) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
- (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community ; or
- (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

Right to Fair Hearing.

Section 36(1) provides that “in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. Even this all important right is still subject to exceptions. Subsection (4) provides for public trial within a reasonable time and by a court or tribunal in criminal cases. Yet where the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties and in some circumstances which the court may consider it necessary, the requirement of publicity may be dispensed with.

Right to Freedom of Expression and the Press.

By Section 39 (1), every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. This does not however invalidate any law which is reasonably justifiable in a democratic society for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts; or imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or member of the Nigerian Police Force or other Government security services or agencies established by law.¹

Right to Peaceful Assembly and Association.

Section 40 provides that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. Still the Independent National Electoral Commission has powers to deal with such a party in a certain manner if the party is not recognized by it.

Right to Freedom of Movement.

Section 41 (1) of the 1999 Constitution provides 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 exit there from. Notwithstanding the above provision, Section 41 (2) affirms any law which - imposes restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or provides for the removal of any person from Nigeria to any other country to be tried for any criminal offence; or undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty. This will obtain only if there is reciprocal agreement between Nigeria and such other country in relation to such matter.

Right to Freedom from Discrimination.

Section 42 provides that “a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person -

(a) be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject.

Notwithstanding, the provisions of Section 42(1), section 42(3) affirms the validity of any law which imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

The only right that seems to be unqualified and therefore inalienable is the right to freedom of thought, conscience and religion (Section 38). This however can only remain unqualified as long as it remains in the region of thought and belief. As soon as it translates into action or inaction depending on the circumstance, so soon it becomes subject to judgment and the eye of the law. Thus Section 45(1) of the 1999 constitution provides that “nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society -

(a) in the interest of defense, public safety, public order, public morality or public health; or
(b) for the purpose of protecting the rights and freedoms of other persons

Nigerian courts have upheld the provisions qualifying the absolute exercise of human rights in various cases. For instance, in the case of *Brian Anderson v Federal Ministry of Internal Affairs*, the applicant, a British citizen resident in Nigeria alleged the infringement of his rights to personal liberty. In the application for the enforcement of his fundamental rights, he sought an order restraining the respondent from expelling him from Nigeria. The court rightly dismissed the application and held that the right to personal liberty could not be invoked to prevent the lawful expulsion of an alien from Nigeria. In *Mrs Yetunde Ogungbesan & others v Honourable Minister of Health and Social Services*, the applicants who were nurses, had sued the respondents for their right to freedom of association. The learned judge rightly held that since the applicants were engaged to provide essential services, their rights to embark on industrial action was properly curtailed by the Trade Dispute (Essential Services) Act in the interest of public health. In *Chief Obafemi Awolowo v The Honourable Mallam Usman Sarki & Another*, the court held that the right of the applicant to a legal practitioner of his choice was limited to lawyers who could enter into Nigeria as of right. This view was confirmed by the Supreme Court in the case of *Director, State Security Services v Olisa Agbakoba*, where it was stated that only Nigerians have the exclusive right to move in and out of the country at will.

The qualification to the right to life has been widely criticized since various jurists hold capital punishment to be a violation of that right. If the right to life is absolute, then all other fundamental rights by extension should be absolute also. The right to personal liberty will then presuppose that convicted criminals can no longer be imprisoned. In the same vein, the right to dignity of the human person will presuppose the abolition of any form of punishment. When these are removed, then there will be no more need for trials and the law; ultimately a return to jungle justice and survival of the fittest. To kick at these balances is to totally overlook the importance of “order” in every civilized society. It seems equally to show ignorance of the fact that “rights” without limits is the very cradle of anarchy and chaos.

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