

Fundamental Objectives and Directive Principles of State Policy as Panacea for National Transformation and Sustainable Development in Nigeria

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Abstract

Obviously, it is not an understatement or even a misstatement to state that the provisions relating to fundamental objectives and directive principles of state policy as enshrined in Chapter 2 (two) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) are controversial. The controversy trailing the said chapter is not unconnected with the provision in S.6 (6) (C) of the Constitution regarding the fact of its non-justiciability, this has made the realization of the lofty fundamental objectives a pipe dream and unachievable. Notwithstanding the above, this article seeks to thoroughly examine the provisions in Chapter 2 of the constitution and then conclude that if the provisions are made justiciable, it can actually be a veritable tool and platform for achieving national transformation and sustainable development in Nigeria.

Keywords: Fundamental, Objectives, Directive Principles, Transformation, Sustainable Development.

Introduction

If there is any provision in the constitution, which has generated so much controversy or which has been debated repeatedly by academics, legal practitioners and generally in judicial circles since its inclusion in the constitution, it is the provision on fundamental objectives and Directive Principles of State Policy. The provision was one of the striking and indeed radical innovations of the 1979 Constitution of the Federal Republic of Nigeria. Prior to 1979, provisions relating to fundamental objectives and Directive principles of State policy never featured in the constitutional history of Nigeria. This provision again featured as one of the illuminating provisions of 1999 Constitution. Although it was included in the 1989 Constitution, military incursion into the political scene never allowed the Constitution to see the light of the day. This paper will therefore consider the meaning of fundamental objectives and directive principles of state policy, the various facets of the said objectives and the relevance or otherwise of this provision of the constitution.

Efforts will also be made to contend that in spite of the various comments against its inclusion in the constitution (Professor Abiola Ojo), it has undoubtedly contributed in no small way to Nigeria's constitutional development. This article further argues that if the provisions are implemented and made justiciable, it will no doubt be a veritable tool for achieving national transformation and sustainable development.

1. Meaning, Content and Justification For The Provision

In the words of the Constitution Drafting Committee that drafted the 1979 Constitution, a Fundamental objective means "the identification of the ultimate objectives of the nation whilst directive principles of the State Policy indicate the path which leads to those objectives". It is an attempt by the constitution to set the objectives required of any government and lay down the standards which a government must not go below. The philosophical basis for the inclusion of objectives in the constitution was that "governments in developing countries have tended to be pre-occupied with power and its material perquisites with scant regard for political ideals as to how society can be organized and ruled to the best advantage of all". The rationale is of special relevance to the Nigerian polity whose cardinal features are "heterogeneity of the society, the increasing gap between the rich and the poor, the growing cleavage between the social groupings, all of which combine to confuse the nation and bedevil the concerted march to orderly progress". Moreover, the objectives and directive principles are attempts to incorporate the second-generation human rights into the constitution, that is, the social and economic rights. This is because in Nigeria's constitutional history, attention had been focused on civil and political rights, without due recognition of social and economic rights. The social and economic rights are justified on the fact that the full realization of civil and political rights is difficult, if not impossible without the enjoyment of economic, social and cultural rights. Justice Bhagwati in the Indian case of **Minerva Mills Ltd v. Unions of India** observed as follows: "The large majority of people who are living in almost sub human existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notions of individual freedom and liberation, though representing some of the most cherished values of a free society would sound as empty words bandied about in the drawing rooms of the rich and the well to do, and the only solution for making these rights meaningful to them was to remake the material conditions and usher in a new social order where socio-economic justice will inform all institutions of public life so that the precondition of fundamental liberties for all may be secured" In spite of the supportive views of Professor Ben Nwabueze on

the non-justiceability of the fundamental objectives and directive principles of state policy, he appears to have changed his mind in a recent paper delivered by him when he stated inter-alia that “As I read and re-read the chapter on fundamental objectives and directives principles of state policy in the 1979 constitution of Nigeria, I cannot help pondering how beautiful the provisions are, but they are so only on paper. I doubt whether they have real existence for any of the governments that have ruled the country since then. I feel certain that none ever consulted them, much less trying to put them into practice. Such is the measure of the neglect and deprivation”. (Nwabueze B.O. 1998)

Consequently, in obviously unmistakable terms, section 14(2) (b) of the Constitution provides that **“the security and welfare of the people shall be the primary purpose of government”**. This is a clear departure from the *laissez faire* period in the history of mankind when it was thought that the state was mainly concerned with the maintenance of law and order and protection of life, liberty and property of the subject. Such a restrictive role of government is no longer valid as a concept. Consequently, constitutional declarations regarding political, social, economic, educational objectives, foreign policy objectives, environmental objectives, directives on Nigerian culture and national ethics of the State have been variously provided for in the Constitution, especially in Chapter 2 of the 1999 Constitution which deals with fundamental objectives and directive principles of State Policy. S.15 states the political objectives of the state. S.16 codifies the economic objectives of the state. S. 17 explain the social objectives of the state. S.18, 19, 20 state the educational, foreign policy and environmental objectives respectively. S.21 incorporates the directives on Nigerian Culture while sections 22 and 23 state the obligations of the mass media as well as the directives on National Ethics.

S. 24 contains another novel provision of the constitution. The section states expressly the duties of the citizen which includes abiding by the constitution, respecting its ideals and institutions, the National flag, the National Anthem, the National pledge and legitimate authorities. A renowned Professor of law contended that the provision was an attempt to encourage in the citizenry, a sense of obligation to the country and to practicalise the truism that to every right there must be a corresponding duty.(Prof. Jadesola Akande 1999) It is submitted that since no right is conferred under Chapter 2, one wonders why the constitution is imposing such duties in Chapter 2. Even more surprising is the fact that the duties immediately follow the fundamental objectives of the state. One is however inclined to agree with the views of Prof. Akande that the provision has no more legal force other than that which may be conferred upon it by express and specific legislation on any of the items mentioned in S.24. Moreover, the provision in S.24 is aimed at inculcating the culture of patriotism in the citizenry while preparing them for the leadership roles ahead.

S.13 specifically mandates all organs of government and all authorities and persons, exercising legislative, executive and judicial powers to conform to, observe and apply the provisions of this chapter of the Constitution. The provision would appear to be mandatory, but as would be seen in this write-up, the provisions are not justiciable thereby rendering nugatory and indeed ineffectual the provisions on fundamental objectives and directive principles of state policy or at least raising some fundamental questions about its relevance. However, any of its provisions can be implemented by legislation (A.G. Ondo State V. A.G. Federation & 35ors (2002)

Section 14 (1) of the Constitution enacts the fundamental principles of democratic government. It declares that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. Accordingly, sovereignty belongs to the people of Nigeria from whom government through the constitution derives all its power and authority; Section 14(2) stipulates that the security and welfare of the people shall be the primary purpose of government; and the participation by the people in their government shall be ensured in accordance with the provisions of the Constitution. This section further stipulates that the composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the Federal character of Nigeria and the need to promote national unity, and to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies. It requires also that the composition of the Government of a state, a local government council, or any of the agencies of such Government or Council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such a manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation.

2. Non Justiciability Of Fundamental Objectives And Directive Principles Of State Policy

The provision on the non-justiciability of the fundamental objectives is contained in S.6 (6) (C) of the 1999 Constitution. This section provides in clear terms that “the judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by 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 judicial decision is in conformity with the fundamental objectives and Directive Principles of State Policy set out in Chapter 2 of this Constitution”. The section 6(6) (C) appears to exclude the jurisdiction of the courts on questions relating to contravention of the provisions relating to fundamental objectives and directive principles

of state policy. This provision has therefore made critics to argue that since the courts cannot enforce the Directive principles as it does not create any justiciable right in favour of any individual, it should at best be suitable for the preamble of the Constitution or the manifesto of political parties. They are considered as mere pious hopes and aspirations, which could be likened to a cheque drawn on a bank and made payable when able or only when the resources of the bank permits the payment. Thus one may entertain fear as to the possibility of achieving these lofty aspirations since it appears these are merely a set of platitudes designed by clever politicians to hoodwink the credulous and unsuspecting Nigerian citizens.

The wordings of the provision have been criticized as being vague for the government may never find a period practicable for the realization of those laudable goals and objectives since it cannot be a subject matter of legal proceedings (Okere B.O 1978- 1988).

Professor B. O. Nwabueze, a renowned constitutional lawyer, however argued in support of the non-justiciability that a constitution operating as law and imposing judicially enforceable restraints upon government should not abandon its other functions as a source of legitimacy for those political concepts and governmental powers and relations that are by their very nature non-justiciable, nor should it renounce its roles in the affirmation of fundamental objectives and ideals or directive principles of government which serve to inform and inspire governmental actions along desirable lines.

However, S.13 of the constitution provides that it shall be the duty and responsibility of all organs of government exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of Chapter 2 of the constitution.

This obvious conflict between S. 13 and S.6 (6) (C) could only mean that the spirit of the objectives and directive principles should inspire and inform judicial Interpretations although an action to enforce the objectives per se are not maintainable. In *OKOGIE V. ATTORNEY GENERAL OF LAGOS STATE* (1981) the government of Lagos State enacted Education law under which it closed privately owned schools. The proprietors went to the court and obtained a declaration that this offended their constitutional right to own schools. The court held that the directive principles of state policy in Chapter 2 of the constitution have to conform to and run subsidiary to the fundamental rights provision in Chapter 4 of the then 1979 constitution and that chapter 2 is subject to legislative powers conferred on the State. Also the provision in item 60 of the exclusive legislative list, gives to the National assembly power to make laws with respect to the establishment and regulation of authorities for Nigeria, to promote and enforce the observance of the fundamental objectives and directive principles in the Constitution.

It has therefore been contended (Professor Jadesola Akande 1999) that the duty and responsibility of all organs of government is limited to the extent that the judiciary cannot enforce any of the provisions on the fundamental objectives and directive principles of state. The judgment in Okogie's case discloses that the court did not have much difficulty in rigidly applying the provisions of S.6 subsection 6(C), which declares that the directive principles shall not be enforceable by any court. It was also held in Okogie's case that where the provision of the constitution defines a certain course of action or enshrine certain rights, these provisions must be applied without any inhibition emanating from chapter 2.

This approach of the court is in our view rigid and could stultify this chapter of the constitution thereby rendering it almost useless. In *ADAMU V. A.G. Bornu State* (1996), it was held that where a local authority as in that case on the implementation of the fundamental objectives and directives principles of State Policy adopted a system which infringes on citizen's fundamental right of freedom of religion and freedom from discrimination on ground of religion, that breach of the citizen's fundamental right is justiciable.

In the case of *DONALD MOREBISHE & 2 ORS V. LAGOS STATE HOUSE OF ASSEMBLY* (2003) the court in considering the utility value of the fundamental objectives and Directive principles of State Policy in the Constitution held that the fundamental objectives and directive principles of State Policy are not justiciable, nevertheless they remain pillars of guide and focus of attention for all tiers of government.

While the general principles remain as specifically mentioned in Section 6, that the directive principles are not justiciable, it is submitted that our courts could give a greater recognition to the values contained in these directives through the development of a practice bordering on a constitutional doctrine that in all cases where the relationship between the directives and fundamental rights are in question, the court should necessarily look at the values in balancing the contending claims involved. This constitutional doctrine is the doctrine of 'harmonious construction' which was applied in many cases. The Indian Courts have however improved on their earlier positions and their courts are more favourably disposed to giving statutes and executive actions such interpretations that where they do not conform with the spirit of the directive principles of state policy, they are held unconstitutional and ipso facto null and void to the extent of its inconsistency. The courts have also given the rights to life and to the dignity of the human persons such liberal interpretation as to embrace some socio-economic rights (*Mohini Jain V. State of Karanataka AIR 1988*). The Supreme Court of India held in ***Olga Tellis v. Bombay Municipal Corporation*** that an important facet of right to life is the right to livelihood. The case itself involves an action by slum and pavement dwellers to prevent their eviction from their shelters without

provision for alternative accommodation. They contended that their eviction would deprive them of their economic livelihood, and hence their right to life under Article 21, because their shelters were the only place where they could reside in close proximity to their employment. The Supreme Court of India held that an important facet of right to life is the right to livelihood. It is hoped that the Nigerian courts would adopt the approach of the Indian courts as to give effect to the promotion and enforcement of fundamental objectives and directive principles of state policy. Although item 60 of the Exclusive legislative list empowers the National Assembly to make laws for the enforcement and observance of the fundamental objectives and directive principles of State Policy, no such laws have so far been made by the National Assembly. This tends to support the views of critics that the provision on fundamental objectives is utterly useless and merely of cosmetic value and should therefore be expunged from the constitution. Consequently, a careful and subtle application of the said doctrine of harmonious Construction will go a long way to resolve the apparent conflict of the provisions in S.13 with other provisions of the Constitution particularly S.6 (6) C of 1999 constitution. The courts in the interpretation of this part of the constitution should be guided by the provisions in S.14 (2) (b) that the security and welfare of the people should be the primary purpose of government and should therefore ensure that the said purpose is accomplished.

Another situation that may be visualized is where the States or Federal Government proposes legislations contrary to the directive principles of State Policy. As already noted, a law passed which is outside the powers of the legislative body concerned cannot be validated by reference to a Directive principle. As regards problems of conflicts or legislation between the state and the Federal Government on the same matter, the Constitution is very clear. In such cases, by virtue of section 4(5) of the Constitution, the Federal legislation will prevail over that of the State and the latter would to the extent of inconsistency be null and void. Also by virtue of the doctrine of “covering the field” in Nigeria’s Federalism where the Federal Government has validly legislated on a matter, any state legislation will be void to the extent of the inconsistency (Military Government, Ondo State V. Adewunmi 1988). The Directive principles are also relevant to consider what are “reasonable” or will pass as ‘public purposes’ in most of our legislations and executive actions. It should therefore be accepted as a ready and dependable index of what a public purpose is intended to be in the matter of acquisition of land by the Government under S. 28 of the land Use Act 1978. Moreover, an executive action which promotes one of the objectives of the Directive principles should naturally pass as reasonable. Moreover, it could be argued that the provisions of Chapter 2 of the 1999 Constitution are not merely of cosmetic value, but that they constitute what could be regarded as Roscoe Pound’s jural postulates of the Nigerian society.

The Principles and objectives constituting the directive principles of State Policy could also serve as the yardstick for measuring the performance of government at all levels, be it local, state or federal government especially in a multi-party system. It has also been contended in favour of the principle that it assists the courts where there is ambiguity in any provision of the law to read the mind of the legislature since it is presumed that the legislature will not enact laws that are inconsistent with fundamental objectives.

It is pertinent to note that despite the criticisms and arguments against fundamental objectives, there is no doubt that these values have influenced government actions and are expected to be taken into account by the government in its attempt to build a state based on the principles of democracy and social justice. This has influenced to a great extent the constitutional development of the Nigerian State.

From the foregoing, it is humbly submitted that the Nigerian courts have a crucial role to play in the interpretation of the provisions in chapter 2 by ensuring that it is not given a restricted meaning that would be contrary to the spirit and letters of S.13 and S.14 (2) (b) of the Constitution. They are enjoined to follow the liberal and progressive approach of the Indian courts where the judiciary had taken bold and decisive steps in the interpretation of the fundamental objectives and directive principles of the state policy

3. CONCLUSION

From the above expositions, it would be seen that although the provisions on fundamental objectives and Directive principles of state policy are not justiciable, the provisions nevertheless remain pillars of guide and focus of attention for all tiers of government. Also, the provisions constitute a bold attempt at bringing the second generation rights, that is social, economic and environmental rights into the constitution since attention has mainly been focused on civil and political rights in the human rights chapter of the constitution (Chapter 4).

The doctrine of human rights has however outgrown original conception of negative obligations on government not to do certain things which are within the individual’s sphere of autonomy. The contemporary conception of human rights implies some positive duties on government to provide the necessary social and economic conditions for a meaningful enjoyment of the so-called civil and political rights.

The views of Chief Obafemi Awolowo (1977) on this issue are very instructive when he observed as follows:

“Social objectives constitute the *raison d’être*, the bedrock and indeed the original legitimacy of the state. It is the entrenchment of the objectives that form the cornerstone of constitution. Nigerians cannot afford to leave anything as fundamental as the social objectives to what will amount to party political discretion which

sometimes can be whimsical and capricious"

In view of the importance of the fundamental objectives and Directive principles of state policy, it is submitted that efforts should be made to ensure that thenon justiciability of the provision are removed or expunged from the constitution as soon as possible. Fortunately, the African charter on Human and People's Rights, which has not only been ratified by Nigeria but has formed part of its municipal law, contains enforceable provisions on social and economic rights (Abacha V. GaniFawehinmi 2001). Recourse can therefore be made to the Charter for the enforcement of the rights.

As pointed out in this write up, the courts and indeed the legislature have crucial roles to play in ensuring that the provisions are not only given positive and progressive judicial interpretation, the legislature should be willing, more than ever before, to make laws that will generally promote and enforce the observance of the fundamental objectives and directive principles of state policy and inevitably enhance the nation's constitutional growth and development. It is the position of this writer that much as the provisions relating to fundamental objectives and Directive principles of State policy are seen as non-justiciable, governments at all levels in Nigeria should make concerted efforts to ensure that the various objectives and standards set remain the central and important issue for any government in power and indeed the barometer of electorate for assessing the performance of any government.

Moreover, we firmly believe that section 6 (6) (c) of constitution should be expunged to allow for the implementation of this part of the constitution. As rightly pointed out by some learned writers(O. Aigbokhaevbo& Stewart)"The absence of a firmly entrenched realization mechanism for social and economic rights has promoted exclusion and structural violence against the majority of the populace, denied them access to essential services (portable water, electricity, sanitation and so on). It has also led to the looting and privatization of common property resources and created ethnic and economic ghettos" These views also apply with equal force to non-justiciability of fundamental objectives and directive principles of State Policy. There is no doubt that a full implementation and realization of the objectives will be a panacea for national transformation and sustainable development.

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Reference to the constitution in this article means the 1999 Constitution of the Federal Republic of Nigeria (as amended)

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