

# Non-Justiciability of Fundamental Objectives: Paradox and Bane of Governance in Nigeria

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## Abstract

The non-justiciability of fundamental objectives, outlined in chapter II of the Constitution of the Federal Republic of Nigeria 1999, is by this discourse termed one of the several factors serving as substructure to poor and irresponsible governance in Nigeria. The particular objectives contemplated by this study, derived from chapter II, are: the political, economic, social, educational, health, and environmental objectives. This paper deliberates that abdication of these objectives could be regarded as crime against humanity; because the objectives represent the core values that give any human or group of people a sense of fulfillment of their humanity. It further deliberates that non-justiciability of fundamental objectives is nothing but a paradox, mockery of constitutionalism, and bane of governance. Unfortunately, by virtue of the leeway created by section 6(6)(c) of the Constitution, the Nigerian government cannot be held responsible for failing in these objectives that have been reduced to a mere non-justiciable component of the Nigerian Constitution. Implicitly, a fallout of/follow-up to the non-justiciable element is the ‘untouchability’ of the President, vice President, Governors and their deputies, by virtue of the ‘immunity clause’ contained in section 308 of the Constitution. The consequence of this is that when the tenure of a government fails in its responsibility to the people it governs, by the combined effect of the porous constitutional provisions, it can hardly be held accountable in the present or future. Therefore, this paper, *inter alia*, considers and proposes the Judiciary as bastion of reparation and restoration; and so adjures it to rise to the occasion of rescuing Nigeria from the failure of the fundamental objectives and directive principle of State policy, like its Indian Counterpart. By employing the doctrinal methodology, this paper explores the origin and rationale for the non-justiciability principle; its introduction into the Nigerian politics and Constitution; a comparison with India, in extracting helpful lessons; the paradox of non-justiciability of supposed fundamental objectives, being a bane of governance in Nigeria; among other pertinent issues.

**Keywords:** Non-Justiciability; Fundamental Objectives; Governance; Nigeria.

## 1. Introduction

Governance is the activity of governing or controlling a country or a company or an organisation.<sup>1</sup> It is also described as the process of decision-making and the process by which decisions are implemented (or not implemented); an analysis of which focuses on the formal and informal actors involved.<sup>2</sup> Furthermore, good governance has been categorized as one that, among other things, assures that corruption is minimized, the views of minorities are taken into account, and the voices of the most vulnerable in society are heard in decision-making; and being responsive to the present and future needs of society.<sup>3</sup> In Nigeria, particularly within the context of this discourse, perspective to governance seems still strongly rooted in the perspective to governance in old times, which is associated with myth, secrecy, opaqueness, and/or superstition. Taking a clue from the Yoruba, as documented by Johnson, “the government of Yoruba proper is an absolute monarchy; the King is more dreaded than even the gods.”<sup>4</sup> Furthermore, Trager, while discussing Yoruba Hometowns, particularly among the Ijesa, observed that “Chieftaincy positions represent important sources of status and influence and can provide access to resources.”<sup>5</sup> Again, research has shown that leadership in Yoruba land is vested in an individual who combines political and spiritual duties.<sup>6</sup> Implicitly, such leader is absolved of whatever wrongful political actions taken, because of the belief that his actions are sanctioned by the gods. In contemporary times, however, it is practically impossible to discuss governance without reference to the governed, who bestow their consent and legitimacy on the ‘governor’; particularly in view of the fact that the rule of force has become

<sup>1</sup> Sally Wehmeier, *Oxford Advanced Learner's Dictionary*, 6th Edition (Oxford University Press, 2000), p.514.

<sup>2</sup> United Nations Economic and Social Commission for Asia and the Pacific, “What is Good Governance?” Available at: <http://www.unescap.org/sites/default/files/good-governance.pdf> accessed Feb. 4, 2017.

<sup>3</sup> *Ibid.*

<sup>4</sup> Rev. Samuel Johnson, *The History of the Yorubas: From the Earliest Times to the Beginning of the British Protectorate* (CSS Bookshops Ltd, Lagos, 2009), p.40.

<sup>5</sup> Lillian Trager, *Yoruba Hometowns: Community, Identity, and Development in Nigeria* (Spectrum Books Ltd Ibadan, 2001), p.223. It is important to quickly add that the view expressed by Trager in this regard is not peculiar to the Ijesa, Yoruba, or Nigerians alone. Without doubt, it is a human predisposition, which could afflict anyone who fails to exercise caution while privileged to occupy certain positions of authority.

<sup>6</sup> Biodun Adediran, “Yorubaland up to the Emergence of the States” in ‘Deji Ogunremi & Biodun Adediran (eds.), *Culture and Society in Yorubaland* (Rex Charles Publication in association with Connel Publications, 1998), pp.5-8.

virtually routed, globally.<sup>1</sup> It however seems the perception held by the governed of public office holders in contemporary times is not much different from what obtained in the old days, as this discourse intends to reveal. In addition, it seems also that Nigeria excessively imbibed the culture from their colonialists (a culture which the colonialist have long discarded) that “the King can do no wrong.”<sup>2</sup> As a result, the culture of impunity has escalated in contemporary Nigeria, with public office holders strutting about with the air of being above the law; self aggrandizement; and the assumption that occupying public office offers the opportunity of being enriched from public coffers. This appears to be so because holding the reins of governance is perceived more as a personal opportunity than an altruistic responsibility. The altruistic responsibility is captured in chapter II of the Constitution<sup>3</sup> dubbed political, economic, social, educational, and environmental objectives; which as this discourse will show, are most lacking in contemporary Nigeria. The failure and/or refusal to effectuate the objectives has been attributed as a cardinal cause of tension across the ethnic and religious divides of Nigeria’s fragile national entity. It is for this, *inter alia*, that Adediran opined that if the fundamental objectives and directive principles of state policies are enforced, it would possibly avert a looming bloody revolution, which he considered to be imminent, if nothing is done to ameliorate or eradicate the abysmal condition of socio-political and economic infrastructure in Nigeria.<sup>4</sup>

This discourse therefore focuses on certain constitutional provisions that are perceived to have contributed to this misconception of governance in contemporary times, viz.: the fundamental objectives and directive principles of state policy (FODPSP), enunciated in chapter II of the Constitution;<sup>5</sup> and the non-justiciability clause contained in section 6(6)(c) thereof. This paper further considers the paradoxical perspective to these utterly contradictory provisions, which have become a bane of governance in Nigeria. It also considers a cognate constitutional provision, which in the Nigerian parlance is generally termed ‘immunity clause’, applicable to the President and Vice President of Nigeria, and Governor and Deputy of Governor of each State.<sup>6</sup> These, conjoined with other factors, are considered to be the bane of governance in Nigeria; which this paper shall carefully explore in a bid to proffering solutions to the lingering governance quagmire in Nigeria.

## 2. Fundamental Objectives and Directive Principle of State Policy

The fundamental objectives and directive principles of state policy, as earlier said, are enunciated in chapter II of the Constitution,<sup>7</sup> with focus on the following: political objectives; economic objectives; social objectives; educational objectives; foreign policy objectives; environmental objectives; directive on Nigerian cultures; objectives on the mass media; national ethics; and duties of the citizen.<sup>8</sup> FODPSP are clearly distinguished from the fundamental rights (FRs) elaborated in chapter IV of the Constitution. However, whereas chapter IV is justiciable, chapter II is not.<sup>9</sup> Supposedly, both the FRs and FODPSP are meant for socio-economic and political welfare of the citizens, as well as progress of the nation.<sup>10</sup>

2.1 *Origin of FODPSP in Nigeria:* FODPSP was first introduced into Nigeria by the Constitution Drafting Committee (CDC) composed to prepare the 1979 Constitution. According to the Report of the CDC:<sup>11</sup>

As the idea of writing provisions concerning Fundamental Objectives and Directive Principles of State Policy into the Constitution is completely new in this country, it is expedient to begin this part of our

<sup>1</sup> *Ibid.* See also Olaolu S. Opadere, “Legal Benchmark for Good Governance” in Festus Emiri and Gowon Deinduomo (eds.) *Law, Oil and Contemporary Development Issues in Nigeria* (Malthouse Law Books, 2008), p.266.

<sup>2</sup> See C.K. Takwani, *Lectures on Administrative Law* 5<sup>th</sup> Edition (Eastern Book Company, Lucknow 2012), pp.9-11.

<sup>3</sup> Constitution of the Federal Republic of Nigeria (CFRN), 1999.

<sup>4</sup> Adediran, M.O., “Enforcement of the Fundamental Objectives and Directive Principles of State Policies in Nigeria”, *The Advocate*, Vol.32, 2016, pp.80-90. The author further argued in the direction that “all the directive principles and fundamental objectives listed under sections 15 to 24 are those things that should interest any government or any citizen in the country.” Unfortunately, this is not so, particular with those at the helm of government. As a result, the presumption of rectitude or propriety reposed in political office holders, by Adediran, is an expectation too much of those oblivious of the sacredness of the responsibility required of them.

<sup>5</sup> CFRN 1999.

<sup>6</sup> *Ibid.*, s.308. Which is to the effect that: i) civil or criminal proceedings cannot be instituted or continued against them while in office; ii) the persons concerned cannot be arrested or imprisoned while in office; iii) they cannot be required or compelled to appear in court while in office; iv) limitation period for any matter concerning them starts to count from the moment of expiration of their term in office; v) civil actions may, however, be taken out against them in their official capacity, or even civil or criminal proceedings where they are mere nominal parties. The implication of this may very well be that the holders of these offices are above the law while in office; and may equally use the benefit of time and privileged opportunity to accumulate wealth while in office to prepare a good defence for themselves, in the probable event of prosecution against them.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, ss.15-24.

<sup>9</sup> *Ibid.*, s.6(6)(c).

<sup>10</sup> Roshni Duhan, “Fundamental Rights and Directive Principles: An Analytical Approach Towards Social Justice”, *Journal of Advance Research in Humanities and Social Science*, Vol.1, Issue 5, May 2016.

<sup>11</sup> Report of the Constitution Drafting Committee Containing the Draft Constitution for the Federal Republic of Nigeria, submitted on September 14, 1976.

Report with a definition of both terms. By Fundamental Objectives we refer to the identification of the ultimate objectives of the Nation whilst Directive Principles of state Policy indicate the paths which lead to those objectives. Fundamental Objectives are ideals towards which the Nation is expected to strive whilst Directive Principles lay down the policies which are expected to be pursued in the efforts of the Nation to realize the national ideals.<sup>1</sup>

While stating the rationale for this novel introduction into the Nigerian constitutionalism, the CDC noted in the Report, *inter alia*, that:

A Constitution ... should proclaim the principle on which the State is organized and spell out the ideals and objectives of the social order. Every Constitution is set and operates in the context of certain organizing ideas but these are often left unexpressed. Again this approach to constitution making is out of tune with modern Constitutions. A Constitution should not be simply a code of legally enforceable rules and regulations; it is a charter of government, and government involves relations and concepts that are not amenable to the test of justiciability or capable of enforcement only in courts of law.... Spelling them out in the Constitution provides a yardstick for judging the performance of any government. It invests them with the quality of a constitutional directive to the organs of the state to inform and guide their actions by reference to the declared principles.... The need for such provisions in the Nigerian Constitution is all the greater because of the 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. Only an explicit statement of objectives and directive principles which clearly sets the parameters of government and informs its policies and actions can generate a spirit of co-operation, peace, unity and progress. If the fundamental objectives and directive principles are enshrined in the constitution, then this may make them appear less of political slogans, investing them with the quality of constitutional, albeit non-justiciable norms, and thereby making it easier for political leaders, and all public functionaries to establish and show the desired identification with them.<sup>2</sup>

Before returning to evaluate the above excerpted Report and others like it, it is important to state that the concept of FODPSP is not of Nigerian origin. Tripathi had chronologically traced the concept of rights and directive principles to the American Constitution of 18<sup>th</sup> century and its interpretation by the judiciary; then the British experience; explicit expression in the German Constitution; the Irish Constitution of 1937; from where it was borrowed and included as the directive principles of state policy in the Indian Constitution.<sup>3</sup> Along this line, Olaiya attributed the struggle for the entrenchment of rights of man as being part and parcel of revolutions; and by extension to the Universal Declaration of Human Rights.<sup>4</sup> Reddy however proffered the view, with regards to India, that enjoyment of fundamental rights in India preceded revolutions and the perceived 'age of rights'. He claims that they were enjoyed expressly and otherwise by ancient Indians; to whom this had its roots in the ancient days. With respect to the directive principles, Reddy further opined that "it is the ancient Indian practice of laying down policies, by *Dharmasastras*, for the state."<sup>5</sup> In ancient India the state used to undertake many functions which socialists, ancient and modern, are advocating, yet these went hand in hand with the enlargement of rights and freedom."<sup>6</sup> As observed by Akande, "one of the significant innovations of the 1979 Constitution is the inclusion of the chapter on fundamental objectives and directive principles of State Policy, an idea probably borrowed from India."<sup>7</sup> While reverberating Orwin and Pangle, Mowoe also stated that:

The introduction of non-political rights into modern constitutions since World War I is becoming more fashionable though for various reasons and with varying status. In Spain, India, and Nigeria for example, they are made non-justiciable. The demand for recognition of some social and economic rights especially in the third world has been prompted by the demands of the changing world economy and the growing need for governments to provide certain basic amenities, which are seen as prerequisites for other rights often recognized under national constitutions.<sup>8</sup>

In India, FODPSP was formulated for the first time under the Sepru Report of 1945 on constitutional

<sup>1</sup> *Ibid.*, p.(v), para.3.1

<sup>2</sup> *Ibid.*, p. (vi), para.3.2-3

<sup>3</sup> See S. Sundara Rami Reddy, "Fundamentalness of Fundamental Rights and Directive Principles in the Indian Constitution" in *Journal of the Indian Law Institute*, Vol.22, No.3 (July-September 1980), p.402, quoting P.K. Tripathi, "Directive Principles of State Policy: The Lawyer's Approach to Them Hitherto, Parochial, Injurious and Unconstitutional" in *Spotlights on Constitutional Interpretation* (1972), p.291 ff.

<sup>4</sup> Taiwo A. Olaiya, "Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria", *Journal of Politics and Law* Vol.8, No.3 2015, p.24.

<sup>5</sup> *Dharmasastras* are ancient texts, also referred to as the treatises of Hinduism. See "Dharmasastra". Available at: <https://en.m.wikipedia.org/wiki/dharmasastra> accessed May 31, 2018.

<sup>6</sup> Reddy (note 20).

<sup>7</sup> Jadesola O. Akande, *Introduction to the Constitution of the Federal Republic of Nigeria 1999* (MIJ Professional Publishers Ltd, 2000), p.52.

<sup>8</sup> Kehinde M. Mowoe, *Constitutional Law in Nigeria* (Malthouse Press Ltd., 2008), p.272, wherein she echoed the views of Clifford Orwin & Thomas Pangle, *The Philosophical Federation of Human Rights in our Time*, 1984.

development of India. It observed that assurances and guarantees to be given to minorities be divided in such a way that the breaches of some may form the subject of judicial pronouncement, while others may be remedied without recourse to the courts of law.<sup>1</sup>

It is important to note that for the other countries that have similar constitutional provisions as the FODPSP, the historical exigencies that necessitated the entrenchment of the FODPSP are radically different from what obtained and led to it in Nigeria. As observed by the CDC, “the need for such provisions in the Nigerian Constitution is all the greater because of the 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.”<sup>2</sup> As shall be substantiated very shortly, the whole essence of the FODPSP, as furnished by the CDC for its entrenchment, has been defeated. The concerns, to wit: the heterogeneity of the society, increasing gap between the rich and the poor, and the growing cleavage between the social groupings, are all in worse condition presently. Hence their being the premise for the FODPSP, about forty years after its first introduction in Nigeria’s Constitution, is no longer tenable.

### 3. Non-justiciability Principle

The term non-justiciable indicates that a matter is not proper for judicial determination.<sup>3</sup> With regards to the FODPSP, the non-justiciability derives from the provision of section 6(6)(c) of the Constitution, to the effect that: “The judicial powers vested in accordance with the foregoing provisions of this section— (c) 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 any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.” As a result, though the said objectives in chapter II are regarded as fundamental, they have been reduced to mere letters with no spirit; having reposed them in the whims and caprices of politicians. It was one of the considerations in *Archbishop A.O. Okogie v. The Attorney-General of Lagos State*<sup>4</sup> where the Court held the directive principles of state policy in chapter II of the 1979 Constitution as subsidiary to the fundamental rights under chapter IV. In other words, the FODPSP and fundamental rights are not of equal force; whilst the latter is made up of purely enforceable rights, the former is a mere decorative apparatus embedded within the prerogative of politicians, who may as well end up utilizing it as bargaining chip with the electorate, as hitherto evident in the Nigerian political culture. It is indeed dehumanizing! In Nigeria, the non-justiciability provision is very much comparable to the ‘immunity clause’, contained in section 308 of the Nigerian Constitution; whereby the President of Nigeria and his/her deputy, and the Governor of a State and his/her deputy are generally immune to judicial proceedings during their ‘period of office’. This is essentially to the effect that no civil or criminal proceedings can be instituted or continued against such persons, while in office; they cannot be arrested or imprisoned, while in office; and their appearance in court, while in office, cannot be required or compelled.<sup>5</sup> The only exception is where they would feature as mere nominal parties. Implicitly, the Constitution confers virtually absolute immunity on Nigeria’s heads of government; understandably, to avoid frivolous distraction from dutifully performing their constitutional responsibilities. Unfortunately, this has been overreached, as Nigeria’s case study reveals repeated abuse of the same constitutional protection by the beneficiaries who end up looming larger than the law of the land. Consequently, drawing inference from the foregoing, the non-justiciability of the FODPSP coupled with the immunity clause end up conferring absolutely unquestionable powers and privileges on Nigeria’s heads of government, who naturally end up being prone to irresponsible governance and self aggrandizement; knowing they have a virtually absolute shield under the law. At the time of this writing, Nigeria is celebrating the 19<sup>th</sup> anniversary of her return to democracy (from 1999), and warming up towards another round of national elections. Part of the current debate is on what the populace has benefitted from democratic rule. The response is deeply polarized, mostly in the negative. This then leaves one at a loss on the use of the so-called fundamental provisions, which should have made remarkable positive difference to daily living, but which are not enforceable! Little wonder the argument that the FODPSP shouldn’t have been in the Constitution in the first place, as such, should be expunged.<sup>6</sup>

<sup>1</sup> *Ibid.*, p.273

<sup>2</sup> Report of the Constitution Drafting Committee (note 17).

<sup>3</sup> Bryan A. Garner (Ed.), *Black’s Law Dictionary*, 8<sup>th</sup> Edition (Thompson West, 2004), p.1081.

<sup>4</sup> [1981] 1 NCLR, pp.229-231.

<sup>5</sup> CFRN 1999, s.308(1)-(3).

<sup>6</sup> See Popoola, A.O., “Fundamental Objectives and Directive Principles of State Policy: Executive Responsibility and the Justiciability Dilemma” in Azinge E. & Owasanoye B. (eds.), *Justiciability and Constitutionalism: An Economic Analysis of Law* (Lagos: Nigerian Institute of Advanced Legal Studies, 2010), pp.324-368. See also Aborisade Femi, “The Imperatives of Justiciability of Socio-Economic Rights in Nigeria: An Analysis of Chapter II of the 1999 Constitution and Judicial Attitudes”. Available at: [http://femiorisade.blogspot.com.ng/2013/05/the-imperatives-of-justiciability-of\\_1.html](http://femiorisade.blogspot.com.ng/2013/05/the-imperatives-of-justiciability-of_1.html) accessed May 26, 2018.

#### 4. Highlighted Objectives for Appraisal

To underscore the point this paper is laboring to establish, it is imperative to highlight some objectives that impinge virtually all Nigerians in their day-to-day operations, consciously or otherwise. Owing to the constricted space of this discourse, only four (out of the very many, contained in chapter II of the Constitution) of such objectives, viz.: security;<sup>1</sup> planned and balanced economic development;<sup>2</sup> medical and health facilities for all persons;<sup>3</sup> and equal and adequate educational opportunities at all levels,<sup>4</sup> shall be evaluated.

4.1 *Security*: One of the first *responsibilities*<sup>5</sup> of the government to the people of Nigeria, as unequivocally enunciated in the early parts of chapter II is security: “It is hereby, accordingly, declared that... the security and welfare of the people shall be the primary purpose of government.”<sup>6</sup> It is common knowledge that life and property is anything but safe/secure in Nigeria; particularly with the rampaging Boko Haram and Herders’ terrorist activities. Right from the North-East, to the North-West, down through the North-Central/Middle belt region, security—safety of life and property—has become utterly tenuous and/or near totally absent, as a result of government’s inability to contain terrorists’ domination. The irony in this, however, is that insecurity is most times suffered by the weak and vulnerable in the society; because the rich, influential, and ‘connected’ could always use Police-VIP arrangement, or have their own private security arrangement. Essentially, the government has failed in this objective, which is considered primary for the meaningful existence of every citizen of Nigeria. Connected to this is the federal government’s refusal of state policing. Section 214(1) of the Constitution stipulates that “there shall be a Police force for Nigeria, which shall be known as the Nigeria Police Force, and *subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.*”<sup>7</sup> As a result, the Nigerian policing system remains completely centralized and greatly inefficient; thus, the Nigerian masses that deserve protection are the ones bearing the brunt. In addition to this, the Federal Government of Nigeria has refused to allow citizens bear arms for their personal defence and protection; thereby increasing the psychological trauma of insecurity on the people. Therefore, this insecurity situation will most likely persist for as long as it is impossible for the Nigerian people to take legal action against their government and other concerned authorities, for failing to provide effective and efficient protection for their lives and properties. For now, the policy remains merely ornamental in the Constitution, for as long as there is no intention or plan for its execution.

4.2 *Planned and Balanced Economic Development*: To this end it is provided that “the state shall direct its policy towards ensuring the promotion of a planned and balanced economic development.”<sup>8</sup> To put it mildly, Nigeria’s economic development is far from planned and balanced; as a result of which the nation has been grossly stagnated. It is such that economic plan for the nation is mostly uncertain; to start with, budgets are typically passed late, among several other ills bedeviling the economy. Further to planned and balanced economic development is the requirement that “the material resources of the nation are harnessed and distributed as best as possible to serve the common good.”<sup>9</sup> The situation is indeed far from this requirement at the moment. This is against the backdrop that Nigeria still depends, almost solely, on revenue from crude oil; which primarily determines the status of the economy and strength of the currency. The sad compliment to this is the fact that the right to legislate on, and prospect other mineral resources in Nigeria, apart from oil, remains absolutely in the Federal Government.<sup>10</sup> At this rate, the economic development of the nation is naturally retarded. Worse still, the respective states in which the mineral resources are domiciled are precluded from exploring or exploiting the minerals; and they depend largely on the financial allocation given by the Federal Government periodically. Despite this shortcoming, the Federal Government remains un-favourably disposed to the political and economic restructuring of the country and/or devolution of more power and autonomy to the states and/or federating units.

Furthermore, the same section 16 provides that the State shall direct its policy towards ensuring “that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of

<sup>1</sup>CFRN 1999, s.14(2)(b).

<sup>2</sup> *Ibid.*, s.16(2)(a).

<sup>3</sup> *Ibid.*, s.17(3)(d).

<sup>4</sup> *Ibid.*, s.18(1).

<sup>5</sup> See Wehmeier (note1), p.1002: where responsibility is described as a duty, obligation or liability for which someone is held accountable. Responsibility is the word employed by section 13 of the Constitution, imposed on all organs of government, *inter alia*, in the execution of the FODPSP. Implicitly, this suggests either of two things, at least: confusion on the part of the CDC and the drafters of the 1999 Constitution on what was really intended; and/or outright intention to deceive and defraud the people of Nigeria with respect to this fundamental provision. The fact that chapter II confers responsibility, and in section 6(6)(c) surreptitiously withdraws/nullifies the obligation, is absolutely fraudulent.

<sup>6</sup> CFRN 1999, s.14(2)(b).

<sup>7</sup> *Ibid.* Emphasis added.

<sup>8</sup> *Ibid.*, s.16(2)(a).

<sup>9</sup> *Ibid.*, s.16(2)(b).

<sup>10</sup> *Ibid.*, Second Schedule, Legislative Powers, Part I—Exclusive Legislative List, Item 39.

production and exchange in the hands of few individuals or of a group....”<sup>1</sup> It could be said, without fear of contradiction, that there was no other time the letter and spirit of this provision has been more violated than the current democratic dispensation in Nigeria. Sadly, the violation has been enhanced more by the political class who has ensured overtly and covertly that they are financially and every other wise aggrandized, while the masses are incredibly utterly impoverished.<sup>2</sup> A quick example is the so far un-debunked allegation/fact that a Nigerian legislator earns about N3b per annum,<sup>3</sup> while many states insist on their inability to pay the supposed N18,000.00 monthly minimum wage.

This paper submits that the current political class in Nigeria is very conscious of the impotence of Chapter II of the Constitution, as such, it is resolved to take the most advantage of it and pauperise the nation to the peak before any well-meaning regime would be courageous enough to remedy the situation. Hence the vicarious liability of failure to execute the objectives is on “all authorities and persons, exercising legislative, executive or judicial powers.”<sup>4</sup> They are all (without exception) content with their socio-economic wellbeing, to the exclusion of all others; knowing full well that the objectives are lame, impotent and non-justiciable. The Nigerian non-justiciability clause is a well crafted contraption by the military; which the current dispensation of politicians, by their disposition, are determined to exploit to the fullest.

4.3 *Medical and Health Facilities for all Persons*: Section 17(3)(d) requires that “the State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons.”<sup>5</sup> It is a sad commentary that this requirement marks one of the areas of greatest failures of the Nigerian nation. At the time of this writing, health workers (comprising of ‘all other staff’ of government owned hospitals in Nigeria, except medical doctors) have just suspended a forty-three day old strike,<sup>6</sup> a period of which many patients’ lives were consumed. Such strikes have become a recurrent nightmare, either by medical doctors themselves, or the above mentioned all other health workers. In addition to the incessant spate of industrial actions in the health sector, it is no secret that healthcare services in Nigeria are extremely poor.<sup>7</sup> Ironically, most in the political class are aware of this fact, but are content with seeking medical attention abroad, for themselves and their families, to the detriment of “all persons” sought to be protect by section 17(3)(d) of the Constitution. Annoyingly, some of the elected political office holders (including the president of Nigeria himself<sup>8</sup>) are proud to announce their periodic medical vacation abroad, at huge cost,<sup>9</sup> to all who care to listen. It seems obvious that the political class delights in reserving adequate medical and health facilities for themselves alone, with scant concern for other Nigerians.<sup>10</sup> This also suggests why the policy of providing adequate healthcare would be left to rot eternally in the non-justiciable cocoon. It looks certain that if Nigerians could sue the government and those at the helm of affairs for inadequate medical and health facilities, the situation as presently experience would change for the better. This also accounts for why Nigeria’s Minister of Health could admit in a report, that “health professionals have turned medical tourism into racket.”<sup>11</sup> Of course, it should be expected! Since the government is not committed to the policy on health—realising it is non-justiciable—, those who are ill and lucre-motivated should be expected to take advantage of government’s inaction. In short, the abysmal status of Nigeria’s medical and health facilities is a sad and dark reflection of the nation’s democratic dispensation, emboldened by the non-justiciability clause.

<sup>1</sup> *Ibid.*, s.16(2)(c).

<sup>2</sup> See Chijioke Jannah, “World Bank Backs IMF on Poverty Rate in Nigeria”. Available at: <http://dailypost.ng/2018/05/03/world-bank-backs-imf-poverty-rate-nigeria/> accessed May 31, 2018.

<sup>3</sup> See Joseph Olaoluwa, “Senators Earn N3bn Per Annum—Sagay”, *The Nation Online*, Sept. 6, 2017. Available at: <http://thenationonline.net/senators-earn-n3bn-per-annum-sagay/> accessed May 31, 2018; and Fikayo Olowolagba, “Shehu Sani Reveals Senators’ Monthly Salary, Estimated Running Cost”, *Daily Post*, March 7, 2018. Available at: <http://dailypost.ng/2018/03/07/shehu-sani-reveals-senators-monthly-salary-estimated-running-cost/> accessed May 31, 2018.

<sup>4</sup> CFRN 1999, s.13.

<sup>5</sup> *Ibid.*, s.17(3)(d).

<sup>6</sup> See Eniola Akinkuotu, “Health Workers Slam FG, Suspend 43-Day Strike”, *The PUNCH*, Friday, June 01, 2018, Vol.42, No.21,691, p.10.

<sup>7</sup> Chike Okafor, “A Reflection on Healthcare Services in Nigeria and the Challenges of Medical Tourism” (Excerpts of a public lecture delivered by Chike Okafor, Member House of Representatives and chairman house committee on health care services, at the Grand Campus, Eastern Kentucky University, USA, on 7/4/2017). Available at: [www.businessdayonline.com/reflection-healthcare-services-nigeria-challenges-medical-tourism/](http://www.businessdayonline.com/reflection-healthcare-services-nigeria-challenges-medical-tourism/) accessed June 1, 2018.

<sup>8</sup> “Diary of Buhari’s Medical Vacation”. Available at: <http://punchng.com/diary-of-buharis-medical-vacation/> accessed June 1, 2018.

<sup>9</sup> See Prince Okafor, “Nigeria Loses \$1bn Annually to Medical Tourism—Omatseye”. Available at: <https://www.vanguardngr.com/2017/08/nigeria-loses-1bn-annually-medical-tourism-omatseye/> accessed June 1, 2018. Although, they fail/refuse to personally mention how much they expend on such medical vacations.

<sup>10</sup> See Ebuka Onyeji, “2018 Budget: Again, Nigeria falls Short of AU Health Funding Commitment”. Available at: <https://www.premiumtimesng.com/news/headlines/248909-2018-budget-nigeria-falls-short-au-health-funding-commitment.html> accessed June 1, 2018; and Nigeria HEALTHWATCH, “The State of the Nigerian Health Sector in 2017”. Available at: <https://nigeriahealthwatch.com/the-state-of-the-nigerian-health-sector-in-2017/#.WxGP69JKjIV> accessed May 31, 2018.

<sup>11</sup> See Chioma Obinna, “Our Health Professionals Have Turned Medical Tourism into Racket”. Available at: <http://www.vanguardngr.com/2016/11/health-professionals-turned-medical-tourism-racket/> accessed June 1, 2018.

4.4 *Equal and Adequate Educational Opportunities at all Levels:* The objective contained in section 18(1) is to the effect that “Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.”<sup>1</sup> It further provides that “Government shall strive to eradicate illiteracy; and to this end *Government shall as and when practicable* provide: a) free, compulsory and universal primary education; b) free university education; and c) free adult literacy programme.”<sup>2</sup> Without much ado, it is obvious that since 1979 and/or 1999 (as the case may be) to date, this objective has not been deemed practicable. This conclusion is based on the premise that majority of Nigerians are either poorly education or not at all;<sup>3</sup> terrorist activities and other forms of insurgency is forcing more and more school-age pupils out of school;<sup>4</sup> and, comparatively with the tone of the education policy in the Constitution as cited above, the government cannot be said to be committed to the Nigerian education system.<sup>5</sup> To further establish and/or entrench the disdain for Nigeria’s education system, most of those in the political class and other wealthy Nigerians alike, have fully resorted to patronizing foreign education institutions for themselves and their offspring, at huge cost, and at the expense of Nigerian masses who have no option but to patronize the heavily degraded Nigeria’s education facilities.<sup>6</sup> On the whole, the situation is so and will persist, for a long time as long as Nigeria’s education policy, as noble as it is, remains non-justiciable. In the midst of this, many Nigerian politicians have successfully established their own education institutions, at all levels, to the detriment of the nation’s education institutions.

Time and space fail one to say much on the obviously deplorable condition of Nigerian roads,<sup>7</sup> energy supply crisis,<sup>8</sup> among several other ills confronting the nation; all because the Nigerian political class do not mean well for Nigeria and her citizens, and the constitutional policies encapsulating these basic socio-political and economic benefits are not enforceable; for which no one could be held responsible.

## 5. The Paradox of Non-justiciable Fundamental Objectives

Chapter II of the Nigerian 1999 Constitution, that embodies the Directive Principles, is titled *Fundamental Objectives* and Directive Principles of State Policy. Hence the imperativeness of exploring the meaning of the word ‘fundamental’, to enable this discourse put things in proper perspective. Fundamental is described as “serious and very important; affecting the most central and important parts of something...; forming the source or base from which everything else is made....”<sup>9</sup> While objective describes “something that you are trying to achieve”.<sup>10</sup> The essence of this exploration is the concern that the directive principles of state policy are predicated on certain objectives regarded as fundamental, yet non-justiciable! This is considered the height of contradictions, in other word, deceit. As observed above (paragraph 4.1) in respect of the word ‘responsibility’, the words fundamental objective, responsibility, etc., were merely employed rhetorically with an obvious intention to deceive, mislead, and/or defraud Nigerians. Employing all these terms in chapter II, while surreptitiously deflating/taking the soul out of it, in chapter I, could be termed the height of fraud. It is a sad commentary of Nigeria’s democracy that many political office holders and/or their spouses have become ‘philanthropists’, based on wealth stealthily accumulated from being involved in politics and nothing more. This class, which could be described as a class of ‘accidental philanthropists’ now award paltry scholarships, give tools for various vocations, distribute motorcycles for transportation business (okada), and the likes. In fact, ridiculously, a state governor distributed noodles and other accessories as his own way of empowering his people.<sup>11</sup> Whereas, the government this same class of people run cannot prioritize the clearly stated fundamental objectives. For avoidance of doubt, section 13 states clearly that: “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.”<sup>12</sup> Following the affirmation

<sup>1</sup> CFRN 1999.

<sup>2</sup> *Ibid.*, s.18(3)(a-c). Emphasis added.

<sup>3</sup> See BBC News, “Nigeria has ‘Largest Number of Children out-of-School’ in the World”. Available at: [www.bbc.com/news/world-africa-40715305](http://www.bbc.com/news/world-africa-40715305) accessed May 31, 2018.

<sup>4</sup> See Yekeen Akinwale, “10.5m Out-of-School Children Data no Longer Reliable—UBEC”. Available at: <https://www.icirnigeria.org/10-5m-out-of-school-children-statistics-no-longer-a-reliable-data-ubec/> accessed May 31, 2018.

<sup>5</sup> See Elvis Boniface, “16 Sad Facts About Nigeria Education and Why All Hands Must Be on Deck”. Available at: <https://edugist.org/16-sad-facts-about-nigeria-education-and-why-all-hands-must-be-deck/> accessed May 31, 2018; and Global Partnership for Education, “Education in Nigeria”. Available at: <https://www.globalpartnership.org/country/nigeria> accessed May 31, 2018.

<sup>6</sup> See WENR, “Education in Nigeria”. Available at: <https://wenr.wes.org/2017/03/education-in-nigeria> accessed May 31, 2018.

<sup>7</sup> See Kingsley Adegboye, “No Motorable Roads in Nigeria”. Available at: <https://www.vanguardngr.com/2017/07/no-motorable-roads-nigeria/> accessed June 1, 2018.

<sup>8</sup> See Prince Okafor, “Nigeria Ranks Second Worst Electricity Supply Nation in 2017”. Available at: <https://www.vanguardngr.com/2018/01/nigeria-ranks-second-worst-electricity-supply-nation-2017/> accessed June 1, 2018; and Wikipedia, “Nigerian Energy Supply Crisis”. Available at: [https://en.wikipedia.org/wiki/Nigerian\\_energy\\_supply\\_crisis](https://en.wikipedia.org/wiki/Nigerian_energy_supply_crisis) accessed June 1, 2018.

<sup>9</sup> Wehmeier (note 1), p.482.

<sup>10</sup> *Ibid.*, p.804.

<sup>11</sup> See Ted Odogwu, “Ganduje Buys N208m Noodles, Others to Empower Tea Sellers”, *PUNCH Mobile*, Nov. 13, 2017. Available at: <http://punchng.com/ganduje-buys-n208m-noodles-others-to-empower-tea-sellers/> accessed May 30, 2018.

<sup>12</sup> CFRN 1999, s.13.

in section 13 are the objectives of social welfare and core elements for the progress of the nation, though seriously and clearly enunciated, but recklessly abandoned to the whims and caprices of the political class, by the non-justiciability clause; to such extent that the social welfare contained in the FODPSP could be deployed to compensate political friends and/or punish perceived and/or actual political enemies. This paper opines that if the provisions of chapter II, as therein enumerated, imposed as “duty” and “responsibility” on all organs of government, authorities and persons exercising legislative, executive or judicial powers, then such duty and responsibility ought to be enforceable; otherwise, the entire provision is reduced to nothing but mockery of constitutionalism. From available information, India, which is Nigeria’s precursor in respect of the FODPSP, is worth looking to for examples and lessons in respect of implementation and/or enforcement.

5.1 *Excerpts from India:* As earlier stated, the FODPSP was more or less directly copied from India. Interestingly, the approach and implementation in India has been progressive. Without doubt, the ‘duty and responsibility’ aspect is taken seriously by all organs of government, authorities, and persons exercising legislative, executive, or judicial powers. In particular, the judiciary has adopted a revolutionary approach to the FODPSP, progressively and incrementally in India, since the advent of the Constitution in 1950.<sup>1</sup> By way of brief highlight, it suffices to say that Part III comprises the fundamental rights, while Part IV comprises the directive principles of state policy. Unlike the Nigerian Constitution in which the non-justiciability clause is tucked away in chapter I, while FODPSP is contained in chapter II; the clause is contained in Article 37, which is the second article under the directive principles of state policy (DPSP); thereby openly disclosing the non-justiciability posture of the Part in issue, from the outset. The constricted space of this paper will only permit a quick consideration of India’s journey through the evolution of the DPSP from beginning to where it presently is. Notably, the Indian judiciary has played a major role in the evolution of the DPSP from a docile state of non-justiciability, to its present state of being equated with the fundamental rights (FRs). The disposition of India to the DPSP has evolved through major stages, to where it is today.<sup>2</sup>

At first, the literal interpretation of Article 37 (the non-justiciability clause) was strictly adhered to; whereby, the directive principles of state principle were regarded by the State and accordingly interpreted by the Court to be subordinate to the fundamental rights. Issues arose on this in *State of Madras v. Champakam Dorairajan*,<sup>3</sup> and the Supreme Court of India stated *inter alia* thus: “The directive principles of State Policy, which by Article 37 are expressly made unenforceable by a court, cannot override the provisions found in Part III, which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under Article 32.... The directive principles of State policy have to conform to and run as subsidiary to the chapter of Fundamental Rights. In our opinion, that is the correct way in which the provisions found in Parts III and IV have to be understood.”<sup>4</sup> Obviously, this was the decision followed by Agoro J, in the earlier cited *Okogie & Ors v.A.G. Lagos State*,<sup>5</sup> in arriving at a similar verdict. The decision in *Dorairajan* sparked intellectual unrest in the Indian academia, which led to a revolutionary article by Professor Tripathi to the effect that the lawyers’ approach to the directive principles was parochial, injurious and unconstitutional.<sup>6</sup> He averred that fundamental rights ought to be interpreted in the light of the directive principles. That it is the fundamental rights that should be made to conform to and seek their synthesis in the directive principles of state policy and not the other way round.

Due to the constrictive interpretation given by the Court in the *Dorairajan* case, the first amendment of the Indian Constitution took place, introducing Articles 31-A and 31-B, in other to make room for a better interpretation of Parts III and IV by the Courts. After several judicial attempts at improving the interpretation,<sup>7</sup> the opportunity eventually came in *Kesavananda Bharati v. State of Kerala*<sup>8</sup> where the majority decision clearly asserted the importance of the directive principles in the constitutional scheme. Ray J observed that “the main

<sup>1</sup> The Constitution of India, 1950.

<sup>2</sup> P. Parmeswara Rao, “The Directive Principle of State Policy” in Mahendra P. Singh (ed.), *Comparative Constitutional Law: Festschrift in Honour of Professor P.K. Tripathi* 2<sup>nd</sup> Ed. (Eastern Book Company, 2011), pp.649-660; S. Sundara Rami Reddy, “Fundamentalness of Fundamental Rights and Directive Principles in the Indian Constitution”, *Journal of the Indian Law Institute* Vol.22, No.3 (July-September 1980), pp.399-407; and Roshni Duhan, “Fundamental Rights and Directive Principle: An Analytical Approach Towards Social Justice”, *Journal of Advance Research in Humanities and Social Science* Vol.1, Issue 5, May 2016, pp.1-8.

<sup>3</sup> AIR 1951 SC 226.

<sup>4</sup> *Ibid.*, p.228.

<sup>5</sup> NCLR (1981) 218 at 232.

<sup>6</sup> P.K. Tripathi, “Directive Principles of State Policy: The Lawyers’ Approach to them Hitherto, Parochial, Injurious and Unconstitutional”, *Supreme Court Journal* Vol.17, 1954, pp.7-36.

<sup>7</sup> See *Golak Nath v. State of Punjab*, AIR 1967 SC, 1643: where majority decision took the view that the fundamental rights have a fixed content and the laws enacted for giving effect to the directive principles could take away or abridge the fundamental rights; and *Chandra Bhavan Boarding and Lodging v. State of Mysore*, AIR 1970 SC, 2042: in which the court was of the view that “while the rights conferred under Part III are fundamental, the directive given in Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other.”

<sup>8</sup> AIR 1973 SC 1461.



reason for introducing Articles 31-A and 31-B was to exclude the operation of Part III as a whole from those provisions. The true relationship between the directive principles in Part IV and the fundamental rights in Part III became clear. It was realized that though the liberty of the individual was valuable, it should not operate as an insurmountable barrier against the achievement of the directive principles.”<sup>1</sup> As a result, the directive principles became a guide to the interpretation of the Constitution.<sup>2</sup> While looking for the best approach to adopt in according the DPSP its deserved priority position in India, the need arose for the interpretation of the word ‘State’ within the context of Article 12 of the Constitution. It states thus: “In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.” To correctly interpret this, reference was had to Article 36, which states thus: “In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.” After much rigorous evaluation and affirmation,<sup>3</sup> it was again reaffirmed in *A.R. Antulay v. R.S. Nayak*<sup>4</sup> that judiciary is “State” and even the Supreme Court is subject to the constitutional limitations contained in Part III.<sup>5</sup> Consequently, it was reestablished that the Supreme Court was duty bound to apply the DPSP while interpreting the Constitution and the laws. In other words, the judiciary’s law-making function was underscored, and the courts reminded to live up to expectation in this regard, in the discharge of their judicial duties. This was well articulated in *State of Karnataka v. Ranganatha Reddy*<sup>6</sup> that: “the dialectics of social justice should not be missed if the synthesis of Part III and Part IV is to influence State action and court pronouncements. Constitutional problems cannot be studied in a socio-economic vacuum, since socio-cultural changes are the source of the new values, and sloughing off old legal thought is part of the process of the new equity-loaded legality. A Judge is a social scientist in his role as a constitutional invigilator and fails functionally if he forgets this dimension in his complex duties.”<sup>7</sup>

As a result of the advocated ‘activism’ posture, the directive principle to provide free legal aid<sup>8</sup> was read into fundamental right to life and liberty<sup>9</sup> in *M.H. Hoskot v. State of Maharashtra*.<sup>10</sup> In which also, the directive to protect and improve the environment<sup>11</sup> was read into the same fundamental right to life and liberty. In *Unni Krishnan, J.P. v. State of A.P.*,<sup>12</sup> the directive of free education for all children up to the age of 14 years<sup>13</sup> was read into the right to life,<sup>14</sup> having regard to the capacity of the State to provide such education. The progression of the evolution had resulted at certain constitutional amendments,<sup>15</sup> and sometimes what some regarded as inconsistent decisions.<sup>16</sup> Importantly, it is instructive that all duty-bound parties in the ‘State of India’ have taken very tangible steps in effectuating the fundamental rights and directive principles of state policy, as enshrined in the Constitution, with the utmost seriousness it deserves. It is evident that since *Kesavananda Bharati v. State of Kerala*,<sup>17</sup> and later, *Minerva Mills Ltd. v. Union of India*,<sup>18</sup> the Supreme Court of India has relied more and more on the DPSP in interpreting the Constitution generally and the fundamental rights, in particular.<sup>19</sup>

**5.2 *Juxtaposition of India and Nigeria:*** The aim of this juxtaposition is to, without wasting time, distil useful lessons for Nigeria from the above excerpted Indian experience, with respect to the execution of the FRs and the DPSP.

**5.2.1** Beginning with the aim of the Constitution Drafting Committee (articulated in para. 2.1, above) in adopting the FODPSP from India, it is clear that like Indians, the CDC identified the ultimate objectives of the

<sup>1</sup> *Ibid.*

<sup>2</sup> P. Parmeswara Rao (note 66), p.652. See also *U.P. SEB v. Hari Shankar Jain* AIR 1979 SC 65; *State of Kerala v. N.M. Thomas* AIR 1976 SC 490, 534 (para. 159); and *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625: to the end that “the unanimous ruling there is that the Court must wisely read the collective directive principles of Part IV into the individual fundamental rights of Part III, neither part being superior to the other.”

<sup>3</sup> See *Prem Chand Garg v. Excise Commissioner* AIR 1963 SC 996; and *Naresh shridhar Mirajkar v. State of Maharashtra* AIR 1967 SC 1 .

<sup>4</sup> (1988) 2 SCC 602

<sup>5</sup> The importance and/or relevance of this to the Nigerian situation shall be elaborated shortly, in the light of the provision of section 13 of the Nigerian Constitution.

<sup>6</sup> (1977) 4 SCC 471 at 496.

<sup>7</sup> *Ibid.*, Per Krishna Iyer J. See also *Dalmia Cement (Bharat) Ltd. v. Union of India* (1996) 10 SCC 104 at 120.

<sup>8</sup> The Constitution of India 1950, Article 39-A.

<sup>9</sup> *Ibid.*, Article 21.

<sup>10</sup> (1978) 3 SCC 544.

<sup>11</sup> Article 48-A

<sup>12</sup> (1993) 1 SCC 645 at 728.

<sup>13</sup> Article 45.

<sup>14</sup> Article 21.

<sup>15</sup> As seen of Articles 31-A, 31-B, and 31-C, *inter alia*.

<sup>16</sup> P. Parmeswara Rao (note 66), p.657.

<sup>17</sup> (1973) 4 SCC 225.

<sup>18</sup> (1980) 3 SCC 625.

<sup>19</sup> P. Parmeswara Rao (note 66), p.659.

nation, and the paths which lead to those objectives. Just like India realized that the principles are fundamental, so also does Nigeria.

5.2.2 Indians predicated their DPSP on the fact that to Indians, the sense of enjoying rights had their roots from the ancient days.<sup>1</sup> Whereas in Nigeria, the need for such provisions was considered all the greater because of the heterogeneity of the society, the increasing gap between the rich and the poor, the growing cleavage between the social groupings, *inter alia*.<sup>2</sup> It thus seem the exigency necessitating the provisions in Nigeria are more dire than that in India; considering also that the exigency had led to a bitter civil war in Nigeria in the past, as a result of which the provisions should have been handled with greater seriousness rather than mere political slogans.<sup>3</sup>

5.2.3 The non-justiciability of the DPSP in India is disclosed at the beginning of the Part IV (the second provision—Article 37—in that part) of the Constitution; thereby putting the reader on notice of the clear intention of the part. Whereas, the Nigerian Constitution tucks the non-justiciability clause away in Chapter I of the Constitution, while the FODPSP is contained in Chapter II; suggesting an intention to mislead, deceive and or defraud. This is because any reader of the Nigerian Constitution in a hurry to know the FODPSP without patiently going through Chapter I, first, may never be aware of the exclusion clause, to his detriment. As such, the constitutional positioning of the provisions in Nigeria suggests insincerity, *ab initio*.

5.2.4 The philosophical dispositions of the two countries to the provisions are radically different, which also is responsible for the different result thereof. In ancient India the state used to undertake many functions which socialists, ancient and modern, are advocating; and it went hand in hand with the enlargement of rights and freedom.<sup>4</sup> In other words, Indians are predisposed to pursuing the principles/objectives by way of social justice. Whereas, the CDC in Nigeria at the time of enunciating the objectives were only anticipating that political leaders and all public functionaries would establish and show the desire to identify with them.<sup>5</sup> While India portrays herself as being naturally inclined to the DPSP, Nigeria shows that the inclination of the objectives is foreign to her. This explains why about 20 years after it first emergence in the Nigerian Constitution, the nation is yet to get the execution of the objectives right.

5.2.5 As seen above in the case of India, the Judiciary was ready to take responsibility for the execution of the principles, thus it took the risk of responsibility in interpreting the provision of the Constitution on the meaning of State to include the judiciary itself, in order to fashion some radical changes in the interest of executing the principles for the benefit of the Nation. Whereas in Nigeria, despite the clarity of section 13 of the Constitution, which reposes liability of execution on all authorities and persons, exercising legislative, executive, or judicial powers, without need for further interpretation, the Courts in Nigeria have not assumed leadership in the implementation like their Indian counterpart. This is at best complicity and conspiracy on all authorities and persons exercising legislative, executive, or judicial powers to perpetually deprive Nigerians from the benefits of the FODPSP.

Interestingly, the CDC at inception envisaged noble objectives for the betterment of a nascent nation just recovering from the effects of a bitter civil war; and anticipating ways to forestall an undesirable reoccurrence. The failure, refusal and/or neglect in respect of expeditiously and passionately executing the objectives, may cause a looming metamorphosis of the objectives to a prediction of doom, perceptible only to the discerning. Due to failure to enliven the FODPSP, the factors of heterogeneity of the Nigerian state, viz.: religion and ethnicity, are now more prominent than ever. The gap between the rich and the poor has now become a huge gulf, and the cleavage between the social groupings is now unimaginable. These were the concerns the CDC sought to forestall; sadly, they are still present with us, increasingly.

## 6. Conclusion

Although much time has been lost, and those saddled with the constitutional responsibility of effectuating the FODPSP are content with reveling in the mirage of being well provided for justly or otherwise, at the expense and to the neglect of a vast majority; it is yet not too late to salvage the situation, and reverse an impending doom foreseen by the CDC about 20 years ago. In the final analysis, this discourse rests the onus on the Nigerian Judiciary, like its Indian counterpart. In the event that the Executive and/or Legislature refuse to execute the objectives in a manner that will make being Nigerian meaningful to citizens, it is expected that the Judiciary will rise to the occasion and breath live into the FODPSP just like the fundamental rights. With a little more courage, will, and commitment, the Nigerian Judiciary has what it takes to reverse the abysmal condition of the country, as a result of the neglect of the FODPSP. Thereby, it will rescue Nigeria form impending dangers that may result from sustained harrowing deprivation.

<sup>1</sup> Reddy (note 66), p.400.

<sup>2</sup> Report of the CDC (note17).

<sup>3</sup> *Ibid*.

<sup>4</sup> Reddy (note 66).

<sup>5</sup> Report of the CDC (note 17), p.(vi), para.3.2—3.