

Contextualizing the Inherence and Inalienability Theories of Human Rights

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Abstract: This Paper came up against the background that some of the principal qualities of human rights lie in its inherence in man solely and unconditionally as a member of the human kind or family and because they are natural to him, man cannot be alienated from his rights. The objective of this Paper therefore is in general to appraise the context and validity of the inherence and inalienability principles of human rights and situate them in proper context for effective observance, protection or otherwise enjoyment. To achieve this objective, the Paper has utilized both international and Nigerian domestic legislations as well as case law to contextualize and advance the argument that human rights are both inherent and inalienable.

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I. INTRODUCTION

The inherence theory holds that human rights are inherent and inure in man by reason only that he is human. The conceptual framework of the inherence theory of human rights is inspired by the natural law thoughts that man by nature is endowed with certain freedoms and liberties that are ingrained in his nature as such. These rights exist by virtue of that law of nature which is higher than positive or man-made law and which constitutes a universal and absolute set of principles governing all human beings in time and space.¹ Human rights cannot be taken away permanently from any person nor may anyone renounce his rights as a human person. This is the inalienability theory of human rights. In other words, human rights are inalienable. This paper proffers a critique of the two theories or principles as a contribution to the pool of knowledge necessary for a better appreciation of the subject of human rights.

II. THE INHERENCE THEORY OF HUMAN RIGHTS

The first paragraph of the preamble to the Universal Declaration of Human Rights, 1948,² states that “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”. Umozurike has also described human rights as those rights which the international community recognizes as belonging to all individuals by the very fact of their humanity.³ For Dowrick, human rights are those claims made by man for themselves or on behalf of other men, supported by some theory which concentrates on the humanity of man, on man as a human being and a member of humankind.⁴

According to David Miller, “rights are the property of men as man without any exception; that is the reason we say that a man without rights is not more than animals”.⁵ For the United Nations, human rights could be generally defined as those rights, which are inherent in our nature and without which we cannot function as human beings.⁶ The American Declaration of Independence, 1776, states that “it is self-evident principle that the

¹ M.N. Shaw *International Law*, 4th ed. (Cambridge: Cambridge University Press, 1997) p. 197, 939 p.

² United Nations General Assembly Resolution 2174 (111).

³ U.O. Umozurike, *Introduction to International Law*, 3rd ed. (Ibadan; Spectrum Books Ltd, 2005) p.139, 272 p.

⁴ F.E. Dowrick (ed.) *Human Rights, Problems, Prospects and Texts* (Westmead: Saxon House 1979) pp. 6-9, 224 p.

⁵ Cited in O. Okpara, *Human Rights Law and Practice in Nigeria* (Enugu: Chenglo Ltd, 2006), p. 41, 548 p.

⁶ The definition, was proffered in 1987 and cited in O. Okpara, op. cit. p. 41.

creator has endowed man with certain inalienable rights-life, liberty, and the pursuit of happiness". Legal writers have equally posited that:

The existence of human rights does not depend on any legal or constitutional authority and it is for this fact that men could still enjoy them as their legitimate and authentic claim without their being officially enacted by authority. However, human rights are better and easily enforced when positively prescribed in a social compact. By its nature, human rights is beyond the power of legal or political authority to make void because it is impossible to annul or remove from existence, something that is an inherent aspect of human nature.⁷

Paragraph one of the preamble to the United Nations International Covenant on Economic, Social and Cultural Rights, 1966, recognizes that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.⁸ The preamble of the African Charter on Human and Peoples' Rights, 1981, states in part "that fundamental human rights stem from the attributes of human beings, which justifies their national and international protection and on the other hand that the reality and respect of the peoples' rights should necessarily guarantee human rights". Natural law and natural justice which are the basis of the inherence theory have found significant expression in areas such as fair hearing with all its concomitant manifestations that have now been firmly entrenched in all legal regimes across the world, as we find in both international covenants, domestic statutory provisions and judicial decisions.

Article 10 of the Universal Declaration of Human Rights provides that every one is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 14 of the International Covenant on Civil and Political Rights provides that all persons shall be equal before the courts and tribunals, and in the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. By Article VII of the African Charter on Human and Peoples Rights:

1. Every individual shall have the right to have his cause heard. This comprises;
 - (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - (c) the right to defence, including the right to be defended by Counsel of his choice.
 - (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, 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 manner as to secure its independence and impartiality.

There are equally a plethora of judicial authorities that are supportive of natural justice and fair hearing. In *BILL Construction Ltd V. Imani and Sons and Anor*⁹, the Supreme Court of Nigeria held that in the determination of a person's 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 in line with section 33(1) of the 1979 Constitution (now section 36(1) of the 1999 Constitution). The Court went further to state that:

It is settled law that the above provision entrenches the common law concept of natural justice with its twin pillars, namely: (i) that a man shall not be condemned unheard or what is commonly known as *audi alteram partem*, and (ii) that a man shall not be a judge in his own cause or *nemo iudex in causa sua*. The section confers on every citizen of this great nation, who has any grievance, the right of access to the Courts and leaves the doors of the Courts open to any person with the desire to ventilate his grievances and compels the Court that will determine the rights of such person to accord the person a fair hearing.

⁷ F.N. Ndubuisi and O. C. Nathaniel, *Issues in Jurisprudence and Principles of Human Rights*, (Lagos: Dmodus Publishers, 2002), p. 181, 341 p.

⁸ The first paragraph of the International Covenant on Civil and Political Rights, 1966, speaks in the same vein.

⁹ (2006) 28 NSCQR 1 at 2-4.

In *Ononuju V. Ononuju*¹⁰, the Respondent, a judge of the High Court of Imo State, filed a petition for divorce against the Appellant praying for a decree of dissolution of marriage between the Appellant and the Respondent solemnized at Christ Church, Owerri, Imo State on 21/8/1965. He also prayed for the custody of all the five children of the marriage, the youngest of whom was 16 years in 1988. The petition was filed on 24/5/1988. The Respondent in his petition admitted having committed adultery but did not file a discretion statement as required by Rule 28 of the Matrimonial Causes Rules, 1983; neither did the petition contain a notation as required by Rules 29 and 31 of the same 1983 Rules. The Appellant filed an answer to the petition objecting to the jurisdiction of the Court. The Registrar's certificate that the petition should be set down for trial was issued on 4/7/1988 and the petition was set down for trial on 11/7/1988. On 11/7/1988, the Court sat in chambers. Counsel for the Appellant unsuccessfully tried to effect sitting in open Court. It was after then that some unpleasant event occurred which led to the withdrawal of the Appellant's Counsel. The Appellant then applied for adjournment to enable her brief another Counsel. The learned trial judge conceded only a three-day adjournment. On 14/7/1988, the learned trial judge in the absence of the Appellant and her Counsel took the evidence of the Respondent and his witness and granted all the reliefs sought immediately after conclusion of hearing. He further ordered that the decree nisi was to be made absolute within 28 days from the date of the order and equally ordered the Appellant to pay ₦ 520.00 costs. The Appellant being dissatisfied with the decision appealed to the Court of Appeal complaining inter alia that:

- (1) The learned trial judge was wrong in not taking the objection to jurisdiction.
- (2) The decree nisi ought not to have been made absolute within 28 days from the date of the order since no special circumstances were shown to have warranted a departure from section 58(3) of the Matrimonial Causes Act, 1970.
- (3) The adjournment for three days to enable the Appellant secure the services of another lawyer was hasty and unconstitutional.

In a unanimous judgment allowing the appeal, the Court of Appeal held that:

It is settled law that the right to fair hearing entrenched in section 33(1) of the 1979 Constitution (now section 36(1) of the 1999 Constitution) also entails not only hearing a party on any issue which could be resolved to his prejudice but also ensuring that the hearing is fair and in accordance with the twin pillars of justice, namely, *audi alteram partem* and *nemo iudex in causa sua*.

In *Buhari V. INEC*¹¹, the Court stated that it is an elementary principle of law that a party cannot be condemned for an offence or wrong unless he is heard or given an opportunity to be heard. In *Amanchukwu V. F.R.N.*¹² the Appellant was arraigned on 4/10/1990, before the defunct Miscellaneous Offences Tribunal sitting in Kano on a one count charge of unlawful importation of 600 grams of heroin by concealing the same in his body contrary to and punishable under section 10 (a) of the National Drug Law Enforcement Agency Decree No. 48 of 1989. He pleaded guilty and was convicted and sentenced to life imprisonment. Aggrieved by his conviction and sentence, he appealed to the Court of Appeal, Ibadan Division. On 25/5/2006, the Court of Appeal dismissed his appeal as lacking in merits. The accused further appealed to the Supreme Court. In dismissing his appeal, the Supreme Court held that fair hearing within the meaning of section 33(1) of the 1979 Constitution (now section 36(1) of the 1999 Constitution) means a trial conducted according to all legal rules formulated to ensure that justice is done to the parties. That it encompasses not only the compliance with the rules of natural justice, but also *audi alteram partem*. And it also entailed doing, in the course of trial, whether civil or criminal, all the things which would make an impartial observer leave the Court room to believe that the trial has been balanced and fair on both sides to the trial.

The right to fair hearing also entails that a person alleged to have committed a crime cannot be compelled to incriminate himself. In *Adekunle V. State*¹³, the Supreme Court per I.F. Ogbuagu, J.S.C stated that:

I am aware of and I recognize the right of an accused person to remain silent throughout the trial, leaving the burden of proof of his guilt beyond reasonable doubt to the prosecution. In other words, an accused person is presumed innocent until he is proved guilty. There is therefore, no question of his proving his innocence. This is because for the duration of a trial, an accused person may not utter a word. He is not bound to say anything. It is his constitutional right to remain silent. The duty is on the prosecution, to prove the charge against him, as I had said, beyond reasonable doubt. After all, an accused person is not a compellable witness. However, if an appellant asserts that the prosecution has failed to prove his guilt beyond reasonable doubt before conviction, it is now firmly settled that it is for him to establish that it is so and it is the duty of an

¹⁰.(2005) NSCQR 145 at 147-149.

¹¹.(2008) 36 NSCQR 475 at 509.

¹².(2009) 37 NSCQR 616 at 617 and 619.

¹³.(2007) 2 NCC 211 at 215.

appellant court to examine the assertion against the whole background of the case and in particular against the evidence leading to the guilt of the appellant.

In *Igabele V. State*¹⁴, the Supreme Court stated that an accused person has the right to remain silent and leave the trial to the prosecution to prove the charge against him. This, according to the Court, is because the citizen's right to remain silent even when arraigned for a criminal offence is an inviolable one, the prosecution being bound to prove its case beyond reasonable doubt.

Furthermore, the rules of natural justice demand that a person facing trial must understand the language of the trial to be able to respond adequately to the allegations leveled against him. Accordingly, where an accused does not understand the language of court during his trial, he must be provided with an interpreter. Section 36(6)(a) of the 1999 Constitution gives an accused the right to be informed promptly in the language that he understands and in detail of the nature of the offence alleged against him. Again, section 36 (6)(e) entitles an accused to the assistance of an interpreter without payment, if he cannot understand the language used at the trial of the offence against him. Similarly, section 215 of the Criminal Procedure Act,¹⁵ provides that the charge shall be read over and explained to the accused to the satisfaction of the Court by the registrar or other officer of the Court before the accused is called upon to plead to the charge. The Court in *Amanchukwu's case*¹⁶, went ahead to state that "it is to be emphasized that Counsel for an accused person has no right to waive the right to interpretation as that right is not his but that of the accused person".

In *Idris Rabi V. State*¹⁷, the Court of Appeal stated that fair hearing incorporates a trial done in accordance with the rules of natural justice, and that natural justice in the broad sense is justice done in circumstances which are just, equitable and impartial. It further stated that the right to be heard is a fundamental and indispensable requirement of any judicial decision. For the Court, justice delayed is justice denied. At the same time justice rushed is justice denied. In *Ceekey Traders V. General Motors*¹⁸, the Supreme Court stated that delay of justice is bad but that denial of justice is worse and outrageous as the denial inflicts pain, grief, suffering and untold hardship on those who rely on impartial administration of justice. In *Unongo V. Aper Aku*¹⁹, the Court observed that "the old adage that delay of justice is denial of justice has the same force as the maxim that hasty or hurried justice is also a denial of justice". And in *Kajubo V. State*²⁰, the Supreme Court again stated that "there is thus a vital, radical and fundamental constitutional requirement that anyone arrested and / or charged with an offence has a right, a constitutional right to be informed of the nature and details of the offence alleged against him. And this information should be in the language the person arrested or charged understands".

III. THE INALIENABILITY THEORY OF HUMAN RIGHTS

As Cranston has stated, "a human right is something of which no one may be deprived without a great affront to justice. There are certain deeds which should never be done, certain freedoms which should never be invaded, some things which are supremely sacred".²¹ In *Ransome Kuti V. Attorney-General of the Federation*²², the Court held that a human right is a right which stands above the ordinary laws of the land and which is in fact antecedent to the political society itself. That it is a primary condition to a civilized existence and are immutable. However, we disagree with the Court when it went further to say that human rights are immutable to the extent of the immutability of the Constitution. Agreed that human rights derive their enforceability from the Constitution where they are entrenched but in circumstances where such Constitutions are suspended or annulled in whole or in part as happens in military dictatorships in Africa and Latin America, it does not translate to human rights being equally abrogated, annulled, or suspended.

In *Amechi V. INEC*,²³ the Appellant who was plaintiff in the trial court emerged as the candidate of the Peoples Democratic Party for Rivers State at the Governorship primaries conducted by the P.D.P. The result of the

¹⁴.(2006) Vol. 5 LRCNCC 30 at 35; see also *Utteh and Anor V. State* (1990) 3 NWLR (pt.138) 301 at 311; *Okoro V. State* (1988) 12 SCNJ (pt.2) 191.

¹⁵.Cap C41 LFN, 2004.

¹⁶.Supra; see also *Gwanto V. State* (1982) 3 N.C.L.R 312.

¹⁷.(2005) 1 NCC 578 at 584-585; In *Atano V. State* (2005) 4 ACLR 25 the Supreme Court stated that there is no difference between fair trial and fair hearing. In *Uguru V. State* (2005) 4 NCLR 523 the Supreme Court again emphasized that fair hearing and fair trial are synonymous and mean the same thing.

¹⁸.(1992) 23 NSCC 188.

¹⁹.(1983) 11 S.C. 129 at 153.

²⁰ (2005) 4 A.C.L.R. 314.

²¹ M. Cranston, "Human Rights: Real and Supposed"; in: G. Raphael (ed.) *Political Theory and Rights of Man* (Bloomington: Westend publishers, 1967) p. 52, 314 p.

²².(1975) 2 NMLR (pt.6) 211.

²³.(2008) 33 NSCQR 332.

primaries showed that the Appellant polled 6,527 votes out of a total of 6,575 votes. The second Respondent, Celestine Omehia did not contest at the primaries. Pursuant to the primaries, the P.D.P forwarded the Appellant's name to the Independent National Electoral Commission as the Governorship candidate for the State on 14 December, 2006. INEC subsequently published the Appellant's name as PDP candidate for the State. Soon after, rumour became rife that the Appellant's name was about to be substituted. The Appellant went to Court to stop the P.D.P from substituting his name or disqualifying him except in accordance with the provisions of the Electoral Act. Subsequently, on 2nd February, 2007, the P.D.P sent the name of the 2nd Respondent, Celestine Omehia to the INEC as its Gubernatorial candidate in substitution for the Appellant. INEC effected the substitution. The reason for this substitution was that the name of the Appellant was submitted in error. The substitution was done during the pendency of the Appellant's suit. At the conclusion of the proceedings at the appellate court, the Supreme Court held among other things that:

That a court, particularly, a court of last resort has a fundamental duty to safeguard fundamental rights of citizens admits of no doubts. A right that inures to the benefit of the entire public can never be waived. Nobody, not even the State can waive the rights entrenched in statutory or constitutional provisions which have been made in favour of the whole Country. It is clearly not PRO PUBLICO but CONTRA PUBLICO to introduce the doctrine of waiver to such rights.

Again in *Patrick Ziideeh V. Rivers State Civil Service Commission*²⁴, the Supreme Court held that: The right of a person to a fair hearing is so fundamental to our concept of justice that it can neither be waived nor taken away by a statute, whether expressly or by implication. Fair hearing is not only a common law right but also a constitutional right. Thus, by virtue of section 33(1) of the Constitution of the Federal Republic of Nigeria, 1979, relied upon in the present case, in the determination of his civil rights and obligations, a person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. The requirement of this provision of the Constitution entails the observance of the twin pillars of the rules of natural justice, namely *audi alteram partem* and *nemo iudex in causa sua*.²⁵

The right to fair hearing is absolute and cannot be prejudiced, compromised, or otherwise waived under any circumstances. Other rights such as the rights to liberty, life, freedom of movement and association, right to property, freedom of speech, freedom of assembly and so forth may be restricted in any of the following circumstances, namely:

- (a) in execution of the sentence or order of a court in respect of a criminal offence of which a person has been found guilty;
- (b) by reason of a person's 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 infections 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;
- (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.²⁶

Again, a person may be deprived of the right to life in the following circumstances:

- (a) in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria;
- (b) for the defence of any person from unlawful violence or for the defence of property;
- (c) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (d) for the purpose of suppressing a riot, insurrection or mutiny.²⁷

The freedom from forced or compulsory labour may be compromised in the following events:

- (a) where the labour is required in consequence of the sentence or order of a court;

²⁴.(2007)1-2 S.C.!

²⁵.See further *Ntukidem V. Oko* (1986) 5 NWLR (pt.45) 909; *Bamgboye V. University of Illorin* (1999) 10 NWLR (pt. 622)290.

²⁶.See generally S. 35(1), 1999 Constitution of Nigeria.

²⁷.See S. 33(1) & (2) 1999 Constitution of Nigeria.

- (b) if the labour is required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
- (c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such services;
- (d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the Community;
- (e) Any labour or service that forms part of
 - (i) normal communal or other civil obligations for the well-being of the Community,
 - (ii) such compulsory national service in the armed forces of the federation as may be prescribed by an Act of the National Assembly,
 - (iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.²⁸

Furthermore, freedom of thought, conscience and religion guaranteed under section 38 of the 1999 Constitution of Nigeria does not thereby entitle any person to form, take part in the activity or be a member of a secret society.²⁹ The freedom of expression guaranteed under section 39 of the 1999 Constitution of Nigeria does not affect or otherwise invalidate any law that is reasonably justifiable in a democratic society,

- (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or
- (b) 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 members of the Nigeria Police Force or other Government security services or agencies established by law.³⁰

The freedom of movement guaranteed under section 41 of the 1999 Constitution of Nigeria does not invalidate any law that is reasonably justifiable in a democratic society,

- (a) imposing 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
- (b) providing for the removal of any person from Nigeria to any other Country to:
 - (i) be tried outside Nigeria for any criminal offence; or
 - (ii) 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.³¹

Section 42 of the 1999 Constitution of Nigeria guarantees the freedom from discrimination. However, section 42(3) states that nothing in the section shall invalidate any law by reason only that the law 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 any office in the service of a body corporate established directly by any law in force in Nigeria. Sections 43 and 44 of the 1999 Constitution of Nigeria secures the right to property. However, section 44(2) states that nothing in section 44(1) shall be construed as affecting any general law,

- (a) for the imposition or enforcement of any tax, rate or duty;
- (b) for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
- (c) relating to leases, tenancies, mortgages, charges, bills or sale or any other rights or obligation arising out of contracts;
- (d) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, or person of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up;
- (e) relating to the execution of judgments or orders of Court;
- (f) providing for the taking of possession of property that is in dangerous state or is injurious to the health of human beings, plants or animals;
- (g) relating to enemy property;
- (h) relating to trusts and trustees;

²⁸.See S. 34 (1) & (2) 1999 Constitution of Nigeria.

²⁹.See S. 38 (4) 1999 Constitution.

³⁰.See S. 39 (3) 1999 Constitution.

³¹.Provided there is reciprocal agreement between Nigeria and such Country in relation to such matter; See generally S. 41 (12) 1999 Constitution of Nigeria.

- (i) relating to limitation of actions;
- (j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;
- (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
- (l) providing for the carrying out of work on land for the purpose of soil conservation; or
- (m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water sewage, telecommunication services or other public facilities or public utilities.

As a sort of general caveat, section 45(1) of the 1999 Constitution provides that nothing in sections 37, 38, 39, 40, and 41 of the same Constitution shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality, or public health; or for the purpose of protecting the rights and freedom of other person(s).

IV. CONCLUSION

The foregoing analysis has shown that the major contribution of the inherence and inalienability theories of human rights is that though human rights are not absolute and may be curtailed in the larger interest of society, they nevertheless do not exist at the whims and caprices of the State or its official managers and may not be taken arbitrarily or waived by the persons in whom they inure.

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