

The Fundamental Aspect of Fundamental Human Rights with Emphasis on the Right to Life.*

Abstract

Human rights overtime have settled in apparent congruence amongst mankind as fundamental to human existence. The overture expressed in the early pages of the Universal Declaration of Human Rights 1948 sets it out as a religion for which the human family has reaffirmed its faith as the foundation for freedom, justice and peace in the world. The vantage realization of these rights necessitated the deluge of policies at differentiated levels of governance. This paper propagates a clinical overview on the fundamental aspect of the fundamental human rights, having regards to the facts that fundamental rights are not all at the same pedestal. This work is replete with opinionated judicial and juridical allusions on the primacy of the right to life. It surveys the jurisprudence regarding the right to life as it features in different jurisdictions. Fundamentally, every State must attain the threshold that the protection of this right is in the public interest and must be treated with sacredness.

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I. INTRODUCTION

Regards for human right is now famous and at the front business of civilised states. Democratic and modern values are anticipatory of actual respect to human rights. The concurrent reality is to appropriate regard to states based on their attitudinal disposition and culture as respecting human rights. Although, there are numerous forms of human rights, the right to life is fundamental and cardinal *vis-à-vis* the other rights and freedoms, in the sense that it guarantees the utility of the other human rights. The symbiotic essence can be clearly understood in the fundamental nature of other rights positioned to enhance the quality and the right to living. Historically, the essentiality of human rights cannot be overstated, as it has served to forestall the feasible outbreak of a 'Third World War'. The vehicle of human rights is flagged down in many developing countries as the constant and gross violation meted on these rights are overwhelming, conjuring the fears whether human right jurisprudence is a reality in these climes or a mere theory of law. This notwithstanding, the traverse of humanitarian rights have crystallised into customary policies of modern political structures. Similarly, the social contract theory emerged to project fundamental human rights upwards as an inalienable term of the social contract itself. Citizens in democratic dispensations have continually beefed up their moxie in outright kicks against governmental infractions on human rights. These popular crusades, have found varying expressions in peaceful and otherwise ferocious protest in the pursuit of worthy living.¹

This paper sets out to appraise the fundamental aspect of fundamental human rights with keen compass on the individual right to life. The fairground to aid this appraisal necessitates a distinct and expository consideration of the keywords – Fundamental, Human Rights and Fundamental Human Rights before delving into the clinical examination of the right to life in earnest.

Fundamental

A thing qualifies as fundamental when it is basic and central to a class or group in the estimation of values. The Oxford Advanced Learner's Dictionary of Current English describes fundamental to mean 'to be serious and very important; affecting the most central and important parts of something.'² A thing is said to be fundamental when it is basic and essential, or when it affects the foundation of something.

Human Rights

The concept of human rights is evidently mature in diverse extent and viably stuffed with organic definitions, owing to the dynamic and appreciating value of the concept, as a central concern to all, and its varied contextualization by states in degree. The trend is to attach the reputation of a state to its regard for human rights as a precondition to political, socio and economic relations among states with huge conceivable practice given to the declarations pledged. As famously tailored to knowledge, Oputa defined human rights to be 'rights attached to man as a necessary automatic diminution of his humanity'³. Human right is a legal concept of

antiquity, and it has grown into universal prominence over successive ages and generations.⁴ Remarkably, Nasir PCA explained human rights thus:

Human rights were derived from and out of the wider concept of natural rights. They are rights which every civilised society must accept as belonging to each person as a human being.... When the United Nations made its declaration it was in respect of "Human Rights" as it was envisaged that certain Rights belong to all human beings irrespective of citizenship, race, religion and so on.⁵

The practice at all levels – international, regional and domestic, is to orient and channel all policies dimension towards securing maximum respect and consideration for human rights. In initiating understanding of the fundamentals underpinning the ideation behind human rights, reference to an old document of American origin, "The Declaration of Independence" is instructive. It states-

We hold these truth to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure this rights, government are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of this ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.⁶

The initiating intent and the provisional similarity of certain rights coupled with judicial interpretation and jurisprudence overtime, is affirmative of the substantial compelling proposition that what is meant as fundamental rights in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 is human rights⁷. Although, it can be succinctly contended, that the fundamental rights provision in the 1999 Constitution projects human rights in a selective limitation. The wavering controversy stems from the antecedent believe that the fundamental rights provision in the constitution has suffered a historical military abatement and trodden derogation, instead of human rights that should inure naturally and should enjoy immunity from arbitrary fate, owing to their natural derivation by virtue of humanness. The pulsating twist, is whether the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁸, is bridgeable of this gap, having regards to its international flavour *vis-à-vis* Nigeria's municipal Law⁹.

In an engrossed exploration of the relevance of human rights, Weje underscored the term that:

Human rights are the tap root of humanity and divine securities of Universality. Fundamentally, they represent birth rights and baggage to humanize. In extent they seem endless and there comprehension as sacred is the icing on social contract. Emphatically, there appellation supply there monopolised utility for the human family. Widely, they constitute conceivable aisle through to true human being and are impliedly and imperatively appellative to the reputation of any nation as enviable ensigns of civility.¹⁰

The most significant constitutional impact on these rights, is the provision for procedural methodology for the redress and judicial review in a superior court in the event of any breach. In the operative wordings of section 46 (1), 'Any person who alleges that any of the provisions of this chapter has been, or is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress'. It would negate the principle behind the guarantee of fundamental rights of a citizen if there is to be any obstacle placed in the path of enforcing these rights. Human rights are said to have been derived from natural or fundamental rights.¹¹ Admittedly, there exist a myriad of human rights ranging from the right to life¹², dignity¹³, liberty¹⁴, fair hearing¹⁵, privacy¹⁶, religion¹⁷, freedom of expression¹⁸, association¹⁹, movement²⁰, freedom from discrimination²¹, ownership of property²², compensation²³, access to justice²⁴ and the deluge of rights recognised and conceived under the international bill of rights²⁵ and regional instruments on human rights²⁶. Undoubtedly, human rights enjoys constitutional guarantees to the extent of their legal recognition but not to as their creation.

Fundamental Human Rights

Human rights are rights that inure to the human person as evidence of his humanity, and they are fundamental because they radically colour and define the basic endowments of the human being. The postulations and self-reflecting guarantee set out in the preamble to the Universal Declaration of Human Rights leave no one in doubt that it is a universal truism that respect for human rights is necessary for a satisfactory human existence. The preamble partly reads thus-

Whereas recognition of 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.

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

As earlier stated, fundamental rights are derived from natural or fundamental law. It is a significant component of liberty, encroachments of which are rigorously tested by courts to ascertain the soundness of purported governmental justifications.²⁷

Right to Life

Human life and existence is the trigger for other forms of fundamental human rights. The assignment or appropriation of human rights is a matter for the living and not for the dead. The right to life is a fundamental aspect of fundamental human rights in the direction that only the living can sue for the violations of his allied rights. The court distilled the visible prominence of human right to life when it held that ‘The entrenchment of fundamental rights and the mode of enforcing its breach in the Nigerian Constitution over the years, undoubtedly underscores its importance and the need to zealously protect the sanctity of human life.’²⁸ The corresponding judicial attitude over time exhibits the veracity in the nuanced categorization of fundamental human rights with the right to life in reflect as nearly absolute and inviolable. Pragmatically, it leads off in Chapter IV of the Constitution of the Federal Republic of Nigeria in these lines:

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

33(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary-

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny²⁹.

The provisions of articles 4 of the African Charter on Human and Peoples’ Rights is fundamental and soul-searching, it guarantees that ‘Human beings are inviolable. Every human being shall be entitled respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.’³⁰

Jerry illustrated when these exceptions may be applicable. According to him:

It is submitted that death caused to a terrorist in the bid to arrest, or rescue those held hostage by him will not amount to murder. It will not be extra judicial killing where a terrorist who has attempted to carry out a suicide mission has been killed to forestall him and to save the lives of his targets.³¹

What there is to surmise, in the provisions of the above instruments, is that, the right to life could be deprived in necessitating circumstances permissible by the law. In this respect, the sanction of the law should be the ruler, with the court primarily obligated to ascertain whether violations come under the excusable ambit of the law or reprimand the violator. The additional and keen elements to probe include the proportionality and reasonability in the culmination of such violation. In *Aminu v State*³², the Supreme Court held that:

Section 271 Criminal Code Law of Rivers State only avails the appellant if the force used to restrain the deceased was “reasonably necessary to prevent the escape” of the deceased from arrest. As found concurrently by the two courts below, from the prosecution’s evidence the deceased had already been subdued and had been forced to lie on the ground. Shooting him at the back of his head, was, in my firm view, no longer a reasonably necessary act to prevent him from escaping.

The unjust deprivation of a person’s right to life is the climax of any violation as it encompasses a violation of all of his rights simultaneously. Hence, the burden lies heavily on the defence to establish his life-taking excuse. Eko, JSC enunciated the rule thus-

The defendant, in murder trial, who raises self-defence pleads invariably, justification in law for the killing. He has evidential burden to discharge. He must establish the facts on which he stands for the plea of justification or self-defence. The law is settled that the prosecution is not obliged to rebut the defendant’s plea of justification or self-defence until the defendant himself had raised the defence.³³

In *Henderson (a protected party, by her litigation friend the Official Solicitor) v Dorset Healthcare University NHS Foundation Trust*³⁴, the United Kingdom Supreme Court affirmed the transcendental status of right to life. For the law Lords:

As far as the public is concerned there could be no more important right to be protected than the right to life. It is clearly in the public interest that everything possible is done to enhance protection of that fundamental right. There is also a public interest in the public condemnation of unlawful killing and the punishment of those who behave in that way.

In fact, Hayden J construed that right to life extends to an unborn child. According to him ‘The approach of the court in the Republic of Ireland is particularly illuminating, given that the Irish constitution expressly acknowledges the right to life of the unborn child and weighs it, in equal terms alongside the mother’s.’³⁵ Constitutional jurisprudence seldom refers to the rights of generations unborn. It follows that ‘Where the right to life is at stake, even decisions taken under prerogative powers may be subject to more anxious scrutiny than they would be’³⁶, given the universal sanctity of all human life. As a matter of fact, the most fundamental of all fundamental human rights recognised and protected by the European Convention on Human Rights and Fundamental Freedom 1950 is the right to life. The right is no doubt absolute. It is not qualified or subject to any vagary of restrictions.³⁷

Unveiling the significance of the right to life under the UK law, the English Supreme Court in *Re Northern Ireland Human Rights Commission's application for judicial review (reference by the Court of Appeal (Northern Ireland))*³⁸, expressed the view that:

[338] The distinction between absolute and qualified right is fundamental to the operation of the convention. The absolute rights reflect unconditional moral imperatives which are owed to the individuals simply as human beings: not to kill them other than in certain specific situations, not to torture them, not to subject them to inhumane or degrading treatment, and to hold them in slavery. Although the content of these rights is nuanced, and they might even be said to be subject, in substance, to certain qualifications, they are not in principle amenable to balancing against other interests. There is no scope for their being restricted by democratic policy choices. They are not issues on which the convention accepts that there is scope for democratic debate. The court's task is not to assess the proportionality of murder, torture or enslavement, but to secure that the right to be protected against such treatment is respected.

The right to life extends to a person who though had been convicted to death has lodged an appeal challenging that verdict. In *Bello v A.G. Oyo State*³⁹ one Nasiru Bello was convicted and sentenced to death. He filled an appeal against his conviction. While the appeal was subsisting, he was executed. The appellants who were his dependants brought an action to challenge his execution. The Supreme Court affirmed that the execution of Nasiru Bello while his appeal was subsisting was a breach of his right to life, and accordingly the court awarded some reparations to his dependants. Bello JSC's captivating contention is to the effect that 'The constitution forbids the execution of a convict who has appealed and his appeal has not been determined. The execution of the deceased was therefore illegal. Consequently, I hold the execution to be not only wrong but also illegal.'

It has also been held that the right to life extends to the bounden duty of government to provide life sustaining treatment and the likes facilities.⁴⁰ The case of *Esabunor v Faweya*⁴¹ offers a melodramatic example of how the life of a child was threatened by the extremist religious belief of the parents. The 1st appellant, a child became sick after one month of his birth. Owing to the gravity of the sickness the doctor managing him recommended blood transfusion procedure for him. The 2nd appellant, the mother and her husband who are Jehovah's Witnesses objected to the medical procedure. The doctor reported the matter to the police. The police swiftly obtained an order of court, *ex parte*, to carry out the blood transfusion to save the life of the child. Based on the order of the court the medical procedure was performed leading to the recovery and subsequent discharge of the 1st appellant. Subsequently, the appellants filed an application in court seeking for an order of court discharging the order by which the blood transfusion was effected. The court refused the application. Eventually, the matter came by way of appeal before the Supreme Court of Nigeria. While dismissing the appeal in a unanimous decision the court held *inter alia*:

It is instructive to note that the law exists primarily to protect life and preserve the fundamental right of its citizens inclusive of infants. The law would not override the decision of a competent mature adult who refuses medical treatment that may prolong his life but would readily intervene in the case of a child who lacks the competence to make decisions for himself.⁴²

Where a person is remanded to prison, or is serving a term of imprisonment, he is said to be in involuntary custody⁴³, with the state responsible for the safety of his life *vis a vis* his relation and presence amongst other cellmate through the prison authorities. The court simplified this legal notion in *R (on the application of Amin) v Secretary for the Home Department*⁴⁴ in a disastrous score, where a prisoner was murdered by his cellmate who disposed dangerous institutional behaviours to the knowledge of the prison authorities. Lord Bingham, lamentably stated:

[30] A profound respect for sanctity of human life underpins the common law as it underpins the jurisprudence under arts 1 and 2 of the convention. This means that a state must not unlawfully take life and must take appropriate legislative and administrative steps to protect it. But the duty does not stop there. The State owes a particular duty to does involuntarily in its custody. As Anand J succinctly put it in *Nilabati Behera v State of Orissa* [1993] 2 SCR 581 at 607: 'There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life'. Such persons must be protected against violence or abuse at the hands of the state agents. They must be protected against self-harm (see *Reeves v Comr. of Police of Metropolis* [1999] 3 All ER 897, [2000] 1 AC 360). Reasonable care must be taken to safeguard their lives and persons against the risk of avoidable harm.⁴⁵

It will be observed that the universal attitude to right to life is that life is absolute, inviolable and transcendental as compared to other forms of human rights. A denominating exception provision in the constitutional framework of civilised states is that certain human rights can be derogated in the interest of defence, public safety, public order, public morality and public health, among other factors, provided that the derogating provision can be justified as reasonably justifiable in a democratic society.⁴⁶ The uniqueness and primacy of the right to life is that it is not subject to legal restrictions, nor is it to be restricted for the convenience of any other party. Right to life is therefore the most fundamental in the community of fundamental rights.

Thus, any attempt to deprive a person of his right to life or the actual deprivation outside the legal boundaries is firmly criminalised by the various criminal justice systems with further obligation on the state to take steps to redress the wrong.

II. CONCLUSION

The pre-eminence of the right to life was examined in a panoramic sense as a fundamental aspect of fundamental human rights. Irrespective of its gory violations in many climes, the right to life, undoubtedly, flaunts in primacy as it is the first right acquired by a human being amongst his allied rights. It is upon the foundations of the right to life that the utility of other allied rights feature. A foetus exhibits the survival instincts while in the womb. The birth process is a struggle for life. It will then be ridiculous to take life after it is created. Where life is taken by an individual or by a state actor there is sacred obligation on the state to redress the wrong and provide reparations in deserving cases. In the same vein the state should not favour or enact any law which purports to deprive the right to life, or diminish the quality of the right to life.

¹ The '#END SARS' Nigerian Protest; The Minneapolis 'BLACK LIVES MATTER' Protest over Police brutality resulting in the death of George Floyd in the United States; the Hong Kong rights to self - determination protest.

² (9th edn., A.S. Hornby ed.), London, Oxford University Press, 2015, 637; See also *The New Webster's Dictionary of the English Language* (International edn., Philip Friedman ed.), New York, Guild Group Publishers, 1994, 384.

³ C. A. Oputa, *Our Temple of Justice* (friends' Law Publisher Ltd., 1993) 138.

⁴ Jerry Amadi, *Modern Civil Procedure Law and Practice in Nigeria* (2nd edn., Vol. II, Pearl Publishers International Ltd., Port Harcourt, 2020) 2922.

⁵ *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt. 200) 708, at 760-761, paras H-A

⁶ 4 July 1776.

⁷ *A.G., Kebbi State v Jokolo* (2020) 4 NWLR (Pt. 1715) 566 CA, at 614, paras D-E, per Akomolafe-Wilson JCA. The court in this case held that 'it is the duty of courts in this country to safeguard the fundamental rights of each individual. Human rights are usually described as inalienable and constitute birth right. The importance of these rights in this country is obvious by the entrenchment of such rights in our constitution'.

⁸ Cap A9, LFN 2004.

⁹ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228.

¹⁰ Weje Ibuchim Nnorom, *Human Rights PQA*, at Pictures Quotes and Creator App., accessed 27 May 2021; *Ransom-Kuti v A.G. Federation* (1985) 2 NWLR (Pt. 6) 211.

¹¹ *Ihim v Maduagwu* (2021) 5 NWLR (Pt. 1770) 584.

¹² CFRN 1999, section 33; *Aminu v State* (2020) 6 NWLR (Pt. 1720) 197.

¹³ *ibid*, section 34; *A.G., Kebbi State v Jokolo* (2020) 4 NWLR (Pt. 1715) 566.

¹⁴ *ibid*, section 35; *Ibe v Ajise* (2020) 10 NWLR (Pt. 1713) 1.

¹⁵ *ibid*, section 36; *Obasi v State* (2021) 4 NWLR (Pt. 1766) 242; *Access Bank Plc. v Y.K.M. Co. Ltd.* (2021) 1 NWLR (Pt. 1757) 388.

¹⁶ *ibid*, section 37; *Anozia v Nnani* (2015) 8 NWLR (Pt. 1416) 241.

¹⁷ *ibid*, section 38; *Abdulkareem v Lagos State Government* (2016) 15 NWLR (Pt. 1535) 177.

¹⁸ *ibid*, section 39; *President, F.R.N. v Isa* (2017) 3 NWLR (Pt. 1553) 347.

¹⁹ *ibid*, section 40; *Offodile v onejeme* (2021) 7 NWLR (Pt. 1775) 389.

²⁰ *ibid*, section 41; *Okafor v Lagos State Government* (2017) 4 NWLR (Pt. 1556) 404.

²¹ *ibid*, section 42; *Onyiriuka v A.G. Enugu State* (2020) 11 NWLR (Pt. 1735) 383.

²² *ibid*, section 43; *La Wari Furniture & Baths Ltd. v F.R.N.* (2019) 9 NWLR (Pt. 1677) 262.

²³ *ibid*, section 44; *Adamawa State Ministry of Land and Survey v Salisu* (2021) 2 NWLR (Pt. 1759) 1.

²⁴ *ibid*, section 46; *Ihim v Maduagwu (supra)*.

²⁵ Universal Declaration on Human Rights 1948; International Covenant on Civil and Political Rights 1966; International Covenant on Economic, Social and Cultural Rights 1966; Convention on the Elimination of All Forms of Discrimination against Women 1979; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984. Convention on the Rights of the Child 1989.

²⁶ African Charter on Human and Peoples' Rights 1981; European Convention on Human Rights and Fundamental Freedom 1950; American Convention on Human Rights 1969.

²⁷ *Onyiriuka v A.G. Enugu State (Supra)*.

²⁸ *Onyiriuka v A.G. Enugu State (Supra)*, at 405, para F, per Yakubu, JCA; adopting his earlier *dictum* in *Ukaobasi v Ezimora* (2016) LPELR - 40174 (CA).

²⁹ *Ofuadorho v State* (2019) 1 NWLR (Pt. 1654) 5338.

³⁰ See the English Human Rights Act, article 2; *R (on the application of Maguire) v Her Majesty's Senior Coroner for Blackpool and Fylde* (2021) 2 All ER 9; (2020) EWCA Civ 738.

³¹ *Ibid* (n4) at 2971.

³² (2020) 6 NWLR (Pt. 1720) 197, at 235, para D-E, per Eko, JSC.

³³ *Aminu v State* (*supra*), at 234, paras A-B.

³⁴ (2021) 2 All ER 257; (2020) UKSC 43.

³⁵ *Guy's and St Thomas' NHS Foundation Trust v R* (2020) 4 All ER 312; (2020) EWCOP 4, at [55]; cf *Paton v UK* (App no 8416/78) (1980) 19 DR 244.

³⁶ *R (on the application of El Gizouli) v Secretary of State for the Home Department* (2020) 3 All ER 1; (2020) UKSC 10, at [5], per Lady Hale.

³⁷ N36, at [14].

³⁸ (2019) 1 All ER at [338], per Lord Reed, DP.

³⁹ (1986) 5 NWLR (Pt. 45) 828, at 855, para B.

⁴⁰ *Raqeeb (by her litigation friend, XX) v Barts NHS Foundation Trust* (2020) 3 All ER 663; (2019) EWHC 2531 Admin).

⁴¹ (2019) 7 NWLR (Pt. 1671) 316.

⁴² At 343, paras F-G.

⁴³ *Ibid* (n4) at 2967.

⁴⁴ (2003) 4 All ER 1264; (2003) UKHL 51.

⁴⁵ At [30]; See also *R (on the application of Middleton) v West Somerset Coroner* (2002) 4 All ER 336; (2002) Civ 390; *Re Finucane's application for judicial review (Northern Ireland)* [2019] 3 All ER 191, at [83], per Lord Kerr.

⁴⁶ Constitution of the Federal Republic of Nigeria 1999, Section 45 (1); *R (on the application of Miranda) v Secretary of State for the Home Department* (2014) 3 All ER 447; *Mohammed v Ministry of Defence (No 2)* [2017] 3 All ER 215; *Ukegbu v National Broadcasting Commission* (2007) 14 NWLR (Pt. 1055) 551; *HA (Iraq) Secretary of State for the Home Department* (2021) 2 All ER 898; (2020) EWCA Civ 1176; *Sutherland v Her Majesty's Advocate* (2021) 1 All ER 271; (2020) UKSC 32; *Dulgheriu v Ealing London Borough Council* (2020) 3 All ER 545; (2019) EWCA Civ 1490.