

Fundamental Objective and Directives Principles of State Policy: An Appraisal

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Abstract

The Fundamental Objectives and Directives Principles was coined from the preamble of the Constitution of the Federal Republic of Nigeria 1999 and enshrined in Chapter II of the Constitution. The provisions of Chapter II, therefore, described how we can achieve these preamble promises by providing for the welfare of the teeming millions of down-trodden Nigerians, steeped on poverty and destitution. It is a devise to attain the social, political, cultural and economic development of our country. It is therefore the view of this paper that justice, equality, and freedom as stated in the preamble can only be achieved if the principles outlined in the Chapter II which aimed at removing socio-economic inequalities are acknowledged, and policies for their attainment implemented, by a democratic government. The political, economic, social, educational, foreign policy and environmental objectives of our Nation were also x-rayed. It believes that the objectives and principles represent a dynamic move towards the goal providing for an ideal welfare state.

Keywords: *Fundamental objectives, Directives principles, Constitution, Legislative adherence, Judiciary*

Introduction

The Constitution Drafting Committee, the body of forty-nine ‘wise men’ set up to frame the 1979 Constitution, deemed it necessary to fashion a national ideology. The Fundamental Objectives and Directive Principles of State Policy can be found in Chapter II. These provisions gleaned from the Indian experience draw copiously from the International Covenant on Economic, Social and Cultural Rights. They could be said to be means devised to attain the Constitutional promises made in the preamble, and are considered necessary for the social, political, cultural and economic development of our country.

The preamble to CFRN 1999 conveys the firm resolve of the people of Nigeria to inter alia:

Provide to a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice...

The provisions of Chapter II, therefore describe how we can achieve these preambular promises by providing for the welfare of the teeming millions of the downtrodden Nigerians, steeped in poverty and destitution. At the same time, they imposed a duty upon the Nigerian State to uplift the citizenry from their hardship. The attainment of justice, equality and freedom, as stated in the preamble, can only be achieved if the principles outlined in Chapter

II, which aim at removing socio-economic inequalities in the true sense, are acknowledged and the policies for their attainment implemented by a democratic government. The objectives and principles thus represent a dynamic move towards the goal providing for an ideal welfare state.

The Chapter establishes the political, economic, social, educational, foreign policy and environmental objectives of our Nation. It also spells out National ethics, obligations of the mass media, directives on Nigerian culture and the duties of the Nigerian citizen. Most importantly, Section 13 states clearly and unequivocally that:

It shall be the duty and responsibility of all organs of government, and all authorities and persons exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of this chapter of the Constitution.

Furthermore, in elaborating on their nature as obligations imposed for securing the collective welfare and well-being of the people, Bhagwati J. said:

Directive principles impose an obligation on the state to take positive action for creating socio-economic condition in which there shall be an equalitarian social order with social and economic justice for all, so that individual liberty would become a cherished value for all and the dignity of the individual a living reality (not for a few privileged persons but for the entire people).

However, it has been argued, quite forcefully, that the Objectives and Directives contained in Chapter II are merely Pious wishes “empty platitudes”, “hollow admonitions like a cheque and bank payable when able”, because they are not enforceable in a court of law. This is because both the preamble, and the provisions of chapter II, reflect the high ideals of a liberal democratic polity, and are available as guidelines to action or as major goals of policy. They neither confer powers nor bestow rights, and cannot, by themselves, give rise to a cause of action from which a remedy is available in a court of law.

The Nature of the Objectives and the Principles

It is not a court that can enforce the provisions of chapter II. It is the public and the strength of public opinion. Once after a specified period of time, elections would be held in a country. The electorate would be given the chance to decide whether or not to re-elect a government that is indifferent to public opinion. Chapter II, therefore, represents the yardstick by which a government’s performance would be measured by their people. Its provisions also serve as a reminder to government functionaries that theirs is a position of trust, responsibility and duties owned to its people and since the provisions of Chapter II form an integral and fundamental part of the Constitution, they have of necessity got to be read along with other parts of the Constitution. They require a careful and imaginative approach and faithful adherence, as they entrench democracy and social justice in our nation.

Chapter II gives our nation a sense of direction and purpose, and also spells out in great detail the rights of citizens and the duties and obligations of the government that flow

from these rights. In this sense, they constitute a Charter of government, defining the immediate specific policy goals, and it is long-term ideals.

The import and significance of the provisions of Chapter II would best be appreciated in the contest of the obvious fact that excellence comes only after an existence. It is only where men exist, that they can strive to excel. The socio-economic rights entrenched in the constitution ensure that powers are granted to the government for the sake of the governed. The Rule of Law is a dynamic concept which should be employed not only to safeguard and advance civil and political rights of individuals, but also to establish social, economic, educational and cultural conditions under which the individual's legitimate aspirations and dignity may be realized.

Relationship between Chapter II and IV of the CFRN

Fundamental Objectives and Directive Principles represent a dynamic move towards creating a welfare state. While the Fundamental Rights provided in Chapter IV represent something static; the preservation of certain settled relationships which already exist.

Both chapters, together, attempt to free citizens from unreasonable restrictions by the State, and make liberty available to all. They form one organic unit that casts positive duties upon the state to attain the welfare of its citizens. The other deals with fundamental freedoms and the extent to which the State can legally restrain or infringe upon these freedoms. They were, however divided into two parts for the sake of convenience, because it was anticipated that the provisions of Chapter II, by their very nature were not enforceable in a court of law.

Unfortunately, in situations where an apparent conflict has risen between the two chapters, the tendency has been for the courts to elevate the provisions of fundamental rights over and above those of directive principles. Courts should always ensure that no part of the constitution limits another, and ensure that all provisions keep pace with the changing needs and requirements of a developing society.

In *Minerva Mills V. Union of India AIR*, Bhagwati J. had this to say about the relationship between the two chapters:

Together they are intended to carry out the objectives set out in the preamble of the Constitution and to establish an egalitarian social order informed with political, social and economic justice, and ensuring the dignity of the individual not only to a few privilege persons but to the entire people of the country, including the have-nots and the handicapped, the lowliest and the lost.

The rights conferred by Chapter IV would be without a radar or a compass if they are not geared towards the ideals set out in Directive Principles. The latter would be a pretext to tyranny if the price to be paid for achieving those freedoms would be to sacrifice the former.

Fundamental Rights are no doubt important and valuable in a democracy, but there can be no real democracy without social and economic justice to everyone which is the theme of Directive Principles.

It is the Directive Principles which nourish the roots of our democracy, provide strength and vigour to it and attempt to make it a real participatory democracy which does not

remain a political democracy but also becomes a social and economic democracy with Fundamental Rights available to all irrespective of power, position or wealth. The dynamic provisions of Directive Principles fertilise the static provisions of Fundamental Rights. The object of Fundamental Rights is to protect individual liberty, but can individual liberty be considered in isolation from the socio-economic structure in which it is to operate. It is axiomatic that the real controversies in the present day society are not between power and freedom, but between one form of liberty and another. Under the present socio-economic system, it is the freedom of the few which is in conflict with the liberty of many. Fundamental Rights, though precious and valuable, have no meaning for the poor, downtrodden and economically backward classes of the people who unfortunately constitute the bulk of the people in Nigeria and the only way in which Fundamental Rights can be made meaningful for them is by implementing the Directive Principles.

Legislative Adherence

Item 60 of the Exclusive Legislative list of the CFRN specifically empowers the National Assembly to establish and regulate authorities for the Federation to promote and enforce the observance of the Fundamental Objectives and Directive Principles and to prescribe minimum standards of education at all levels amongst other powers. The breathtaking possibilities created by this provision have sadly been obscured and negated by non-observance. This is definitely one avenue that could be meaningfully exploited by our legislators to assure betterment of the lives of the masses of Nigerians, whose hope for survival and development in today's Nigeria have remained bleak and continuously diminishing. The utilization of this power would ensure the creation of requisite bodies to oversee the needs of the weak often overlooked and neglected in our society. It would also provide a unique and potent opportunity for our legislators to monitor and regulate the functions of these bodies where the Executive, for reasons best known to it, fails or neglects to prioritize the welfare of all Nigerians.

The Challenges for the Nigerian Judiciary

The enforceability of the provisions of the African Charter on Human and Peoples' Rights (which embody socio-economic rights) in Nigeria.

This paper therefore attempts to focus not on the applicability or enforceability of these rights, but on the character and significance of the specific rights contained in Chapter II of the 1999 CFRN which have categorically been stated to be non-justiciable.

In Nigeria, with the exceptions of the rights to life, dignity and personal liberty, fair hearing and freedom from discrimination, all other rights are guaranteed subject to reasonably justifiable restrictions that may be required by law in the interest of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights and liberties of other persons.

Courts could therefore effectively utilize this clause by ensuring that the provisions of Chapter II remain the yardstick for determining what constitutes a reasonably justifiable restriction on the rights of individuals. It is the ultimate responsibility of our courts, as the

interpreter of the law and the Constitution to ensure the evolution of these provisions. The judiciary, therefore, has a special responsibility to recognize them as part of the duties of State and use them as beacons by relying on them when determining the validity of restrictions, if any is placed on enforceable rights.

The role of the courts would also include highlighting the breaches by the other organs of government. In discharging this duty, the judiciary is bound to adopt a flexible, progressive and imaginative approach, disallow a negation of the preambular promises contained in Chapter II, since these promises give flesh and blood to the bare bones of hope held out especially for the lowliest and the under privilege in our society. In this matter, they provide a basis for a new approach to constitutional interpretation.

The provisions of Chapter II could also be enforced through the progressive utilization of enforceable rights (i.e. fundamental human rights) for instance, where a person's right to employment was violated, the justice should reason that the individual's right to earn a living had also been tempered with and consequently, his right to life, which is a fundamental human right, had been emasculated. The right to life includes the right to live in dignity, so a person's right to adequate housing is intrinsic to his right to life. The application of a combined reading of these provisions with the fundamental rights under Chapter IV is that since the latter are justiciable, any rights that are implied or could be derived from any of the rights in that Chapter are justiciable. Accordingly any right under the Chapter II provisions that may be derived from or implied in the operation of the right to non-discrimination under Section 42 (of Chapter IV) of the Constitution would be justiciable in our courts of law in terms of the interdependent rights of all Nigerians to freedom from discrimination.

Our courts could, therefore develop the capacity of the right to non-discrimination to operate in such a way as to effectively confer justiciability on Chapter II provisions notwithstanding the provision of Section 6 (6) (c) the non-justiciable clause of the Constitution. There is no reason why our justices could not apply this liberal and wholesome approach to fulfill their obligations under section 13 of the CFRN. As a corollary to this, the provisions of Chapter II could also be enforced through the integrated reading of our Constitution. Section 13 begins with; "Except as otherwise provided by this Constitution."

Consequently, where there is any other section of the Constitution that expressly creates an obligation to provide a service, the non-justiciable clause would not apply.

The responsibility for the development of jurisprudence in respect of the provisions of Chapter II rests squarely on both the Bar and the Bench to ensure progress of social, economic, educational and cultural justice in Nigeria. If rights are not competently canvassed and tested in our courts, their development is certain to remain rudimentary.

Undoubtedly, the judicious management of resources and mobilization of manpower in Nigeria would go a long way to ameliorate suffering and ensure social justice to the poor and the under-privileged. It is imperative in our circumstance, where evidence abounds that uncontrolled power, and an arbitrary and unguided decision making process have led to our present sorry state of affairs. There is a near total collapse of our educational system, massive unemployment, decay in our environment and poor state of health facilities. So if the

judiciary develops our jurisprudence in furtherance of its constitutional obligations, it should be ultimately contributing its own quota to the enhancement of the good governance and the welfare of Nigerians. Indeed, this pitiful scenario against the background of revelations of massive corruption by government officials and their cohorts makes argument about the insufficiency or unavailability of government resources untenable in today's Nigeria.

Fundamental Rights, though precious and valuable have no meaning for the poor, downtrodden and economically backward classes of people who unfortunately constitute the bulk of the people in Nigeria and the only way in which fundamental Rights can be made meaningful for them is by implementing the Directive Principles.

In a developing country such as ours, one can ask, "how equal are opportunities among human beings who have unequal opportunities to grasp them? It is the removal of socio-economic inequalities alone that can assure the dignity and the self-respect of man, and the task of its removal cannot be so trivial as to be belittled by non-consideration. To ignore the provisions of Chapter II is to ignore the sustenance provided for in the Constitution, the hopes and aspirations held out to the Nation, and the very ideals upon which our Constitution is built.

Surely, the time has arrived, since momentum is fast gathering for the amendment to our 1999 Constitution to truly reflect the popular will of the people of Nigeria by ensuring that at the very minimum, the justiciable dimensions in unenforceable rights (i.e. the minimum core obligations) even under Chapter II of the CFRN are elevated to fundamental constitutional guarantees.

To this end, it may be necessary to analyse the existing provisions under Chapter II with a view to dissecting them, and proposing a transfer of the justiciable elements to Chapter IV – while permitting only the fulfillment obligations to remain under Chapter II of the amended Constitution, being not immediately enforceable.

Conclusion

For an in-depth appreciation of the nature and significance of the rights established under Chapter II, the principles of indivisibility, interrelatedness and interdependence of all human rights and fundamental freedoms need to be emphasized and identified as the starting point of all activities relating to the implementation of these rights.

These principles have been stressed over and over again internationally, from the First World Conference on Human Rights held in Teheran in 1968, to the Vienna World Conference on Human Rights held in 1993.

Specifically, at the UN General Assembly in 1997, it was resolved that:

All human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political rights and economic, social and cultural rights. The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of

human right is dependent upon sound and effective national and international policies of economic and social development.

The infusion of civil and political rights with the values and principles enshrined under Chapter II is mandatory if we are to make a conscious effort to protect the liberty and dignity of all Nigerians, irrespective of positions, power and wealth. Our courts, therefore, need to develop these values through judicial decisions, as the current approach that effectively puts them beyond the reach of courts is arbitrary and incompatible with the principles of interdependence and interrelatedness and effectively curtails their capacity to protect the rights of the most vulnerable and disadvantaged groups in our society.

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