FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY IN NIGERIAN AND INDIAN CONSTITUTIONS: NIGERIA'S NEED FOR JUDICIAL PROACTIVENESS*

Abstract

The Fundamental Objectives and Directive Principles of State Policy which was first introduced into the 1979 Constitution of the Federal Republic of Nigeria and retained in Chapter II of the 1999 Constitution as amended is generally believed to have been borrowed from similar provisions in Part IV of the 1950 Constitution of India. The Nigerian Constitution like the Indian Constitution classifies various rights into two-rights which are fundamental and justiciable, and rights which are not fundamental and non-justiciable. Chapter IV of the Nigerian Constitution like Part III of Indian's contains provisions on Fundamental Rights, while Chapter II like Part IV of Indian Constitution contains provisions on Fundamental Objectives and Directive Principles of State Policy. Ironically, while the Indian judiciary has through judicial activism put life into the provisions of its Part IV and has elevated them into enforceable rights, the same cannot be said of Nigeria. The Nigerian Courts have continued to insist that Chapter II of the Constitution is not justiciable or enforceable. It is this different application of similar provisions in the said Constitutions by the judiciary in the two countries that is the focus of this essay. Suggestions for reforms are also made and conclusion drawn.

Keywords: Fundamental Objectives and Directive Principles of State policy, Constitutions, Nigeria, India, Judicial Proactiveness.

1. Introduction.

The Universal Declaration of Human Rights (UDHR) on 10th December, 1948, which marked the very first attempt to globally start the process of defining, protecting and promoting human rights, represents the first global expression of the rights inherent in all human being.[1] Its aim was to establish universal norms and standards of rights. Though, not a treaty, the UDHR however, explicitly adopted a universal definition of the words, 'fundamental freedoms' and 'human rights' appearing in the United Nation (UN) Charter.[2] The UDHR's provisions contained in Thirty articles can be divided into two broad categories. The first, are those provisions commonly referred to as civil and political rights, while the second consists of provisions commonly known as economic, social and cultural rights.[3] These rights laudable as they are, are however, not legally binding, except in honour, although, the provisions is believed to have some positive effect generally on the World affairs. For instance, it is believed to form part of customary international law and therefore a powerful tool in the application of diplomatic and moral pressure on governments that violates any of the articles.[4] Besides, UDHR constitutes an obligation for members of the international community to all persons. Also, individuals, governments, academics, advocates, non-governmental Organization (NGOs) and constitutional Courts often appeal to its principles for the protection of the recongnized human rights.[5] More significantly, the UDHR served as the foundation for the legally binding UN human rights covenants, namely the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.[6] Nigeria became a member of the UN and a subscriber to the universality of human rights on 7th October, 1960.[7] In addition, Nigeria is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, both treaties have not been domesticated in Nigeria as required under the provisions of section 12(1) of the 1999 Constitution as amended. They are therefore not justicable in Nigeria. Although, their provisions is believed to have influenced Nigeria, and thus, formed the basis of the provisions of

* **By O. D. EJERE**, **LLB, BL, LLM, PhD**, Senior Lecturer, Acting HOD, Department of Public Law, Faculty of Law, Ambrose Alli University, Ekpoma, former Member, Edo State Law Review Commission, former Special Adviser to the Governor of Edo State on Inter-Party Affairs, e-mail: ejeredennis@yahoo.com, GSM No 08034992074.

[1] See generally, J Humphery, *Human Rights and United Nation: A Great Adventure* (Transnational Publishers, Debba Ferry, 1984); H Ahmed, 'Regional/Sub-regional institutions in Human Rights: The case of ECOWAS in Deepening the Culture of Constitutionalism', *in Regional Institutions and Constitutional Development in Africa* (ed) Kayode Fayemi, Centre for Democracy and Development (2003) 55,57.

[2] 'United Nation Declaration of Human Rights'< www.un.org/universaldeclaration> accessed 28th May, 2020.

[3] These broad categories (in articles 3-21, and 22-26 respectively) corresponds with Chapter IV and II of the 1999 Constitution of Nigeria and Parts III and IV of the 1950 Constitution of India.

[4] 'Universal Declaration of Human Rights',<http//en.wikipedia.org/wiki> accessed 13th April ,2020.

[5] Ibid; Tahir Mamman,'Beyond Rhetoric: Challenges for the International and Regional Human Rights Regime in the new millenium' in *Nigerian Bar Journal* (2004) vol 2 No1, 1, 3.

[6] Ibid.

[7] Kayode Eso, *further thoughts on law and jurisprudence* (Spectrum Law Publishing 2003)154.

Chapters IV and II of the 1979 and indeed the 1999 Constitutions of Nigeria. It is significant to remark that the ICCPR, 1966 and the ICESCR,1966 which elaborated on the provisions of the UDHR, constitutes the core of international human rights. The universality, indivisibility, interdependence and interrelatedness of the human rights provisions in the two covenants was affirmed in 1968 and 1993 in Word Conference on Human Rights in Tehran and Vienna respectively.[8] Also, the desire to treat the human rights in both covenants in a fair and equal manner, on the same footing has been emphasized.[9] Despite this, greater emphasis is still being accorded the civil and political rights over and above economic, social and cultural rights. This is due mainly to resources constraints, infrastructural deficit and other limiting clauses in many Constitutions, which regards socio-economic rights as mere aspiration which requires progressive implementation.[10] The dichotomy between the two set of rights also have same historic basis. Civil and political rights are the first to be taken cognisance of, long before the economic, social and cultural rights.

2. Antecedents of Civil and Political Rights, and Economic and Social Cultural Rights

Eze,[11] aptly posited that from the earliest time, the primary concern was how to safeguard, by limiting the powers of the ruler and the state, individual rights and freedoms. '[T]hus, Civil and Political rights (sometimes called first generation rights) were the first to make their appearance in Euro-American Praxis and law particularly with the epoc making American and French Declarations of 18th century'. On the other hand, Social- economic and cultural rights (sometimes referred to as, second generation rights) developed much later than Civil and Political rights. According to Eze, 'the genesis of these rights could be traced to the *Papal Encyclical Rerum Novarum* of Pope Leo XII of 1891 and the Marxist critique of 19th century capitalism.[12] The divisions of the rights in most countries constitutions into civil and political right on the one hand and socio- economic and cultural rights on the other are therefore not an accident. This is quite apart from the difficulty associated with the justiciability of socio-economic rights.[13] There are however, some countries, like South Africa, whose 1996 Constitution guarantees a number of rights,[14] which are both civil and political, and socio-economic and cultural in one single justiciable Bill of Rights. Also under the African Charter on Human and Peoples' Rights, rights are not categorized or classified into two. Besides, both the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights are mandated to handle all the complaints arising from the provisions of the Charter, whether civil, political or economic, social and cultural rights on the same pedestral.[15]

Nigerian Constitutions[16]like the Indian Constitution, classifies 'rights' into two groups: rights which are fundamental and justiciable and rights that are non fundamental and non-justiciable.[17] The provisions of Chapters IV and II of the Nigerian Constitution, 1999 in this wise are similar to the provisions of Part III and IV respectively of the Indian Constitution. While the provisions of Chapter IV of the Nigeria Constitution and Part III of the Indian Constitution are fully justiciable, Chapter II of the Nigerian Constitution, like Part IV of the Indian Constitution are expressly excluded from justiciability. But by virtue of judicial creativity, the Indian judiciary had since as will be discussed *infra*, by expansive construction of their Constitution made the provisions of Part IV justiciable.[18]

[8] JW Nickel, Rethinking Indivisibility: Towards a Theory of Supporting Relations Between Human Rights (2008) *Human Rights Quarterly, 984-1001;* JC Mubanagizi*, 'The Protection of Human Rights in South Africa: A legal and Political Guide' (Juta and Co Ltd, 2004)4.*

[9] A Eide, 'Interdependence and Indivisibility of Human Rights' in Y. Dondors & V. Volodin (eds), *Human Rights in Education, Science and Culture (Legal Developments and Challeges)*(UNESC, publishing/ Asgate, 2007) 11-12; Avinash Govindjee &Elijah Adewale Taiwo, 'Justiciability and Enforcement of Fundamental Objectives and Directive Principles in Nigeria: Lessons from South Africa and India', in *Nigerian Bar Journal*, vol,7 No1 August, 2011, 65, 66.

[10] Ibid Govindjee and Tawo, 76

[11] Osita C Eze, 'Ecosoc Rights, Social Justice and Peace' a paper presented at the Annual General Conference of the Nigeria Bar Association, Wednesday, 28th August, 2002, 36, 40.

[12] Ibid, 42

[13] M Ssanyonjo, *Economic, social and cultural Rights in International Law* (Hart Publishing Oxford &Portland, 2009) 4.

[14] Ss7-39 of Act 108 of 1999.

[15] Linus Onyekeozurule Nwauzi, 'Justiciability of the Fundamental Objectives and Directive Principles of State Policy under the 1999 Nigerian Constitution' <https://www.resarechgate.nct>3200>, June, 2020; Eze (n11) 47,

[16] 1979 and 1999 as amended

[17] A Govindjee, 'The Constitutional Rights to Social Assistance as a Framework for Social Policy in South Africa: Lessons from India' (LLD Thesis, Nelson Mandela Metropolitan University, 2005) 22

[18] Nigerian and India are common law countries.

3. The Provisions of Chapter II of the 1999 Constitution which are similar to that of Part IV of Indian Constitution.

The relevant provisions of the 1999 Constitution, is contained in Chapter II which encompass sections 13-24 thereto. They are called 'Fundamental Objectives and Directive Principles of State Policy'. Its relevant specific provisions shall be the kennel of this essay. It is important to mention that while Fundamental Objectives and Directives Principles of State Policy are expressly made non-justiciable under the Indian and Nigerian Constitutions,[19] it is not expressly so stated under the 1992 Constitution of Ghana, that the Directive Principles,[20] are non-justiciable. This factor in appropriate circumstances may offer opportunity for judicial activism by Ghana judiciary in favour of the enforceability of these rights.[21] Furthermore, Chapter (IX) of the said Ghana Constitution went a step further than the Nigerian equivalent by making provisions for ensuring the implementation of the Directive Principles,[22] when it provides under Article 34 thus:

> Article 34 (1) The Directive Principles of State Policy contained in this Chapter shall guide all Citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, Political Parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decision, the establishment of a just and free society.

Whereas, Article 34(2) is concerned with the realization of the objectives and the directive principles and requires the President to report to Parliament at least once a year all steps taken to ensure the realization of the Policy Objectives contained in the chapter and in particular the realization of basic human rights, a healthy economy, the right to work, the right to good health and right to education.[23] For the avoidance of doubt, section 13, the opening section of Chapter II of the Nigerian Constitution, 1999 as amended, provides as follow: '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'. Section 14 defined the relationship between the government and the people of Nigeria and the composition of the government of the Federation, and its, Agencies to be constituted in such a manner that will reflect the federal character of Nigeria and with respect to States, Local Government Councils or any of its Agencies to be constituted in such a manner as to reflect a recognition of the diversities of the people within its area of authority. The aim was to promote national unity, governmental national loyalty and promote a sense of belonging among all the people of the Federation and do away with the fear of domination by any ethnic or other sectional groups. Unfortunately, this provision has been honoured more in breach than observance especially by the current All Progressive Congress, administration of the President, General Muhamadu Buhari. Apart from the ministerial appointments, there has been hue and cry awash in our media- print, electronic and social that appointments to other key positions in the Federal government and its Agencies are deliberately skewed in favour of the President's ethnic group and religious persuasion, a complaint that has been met with loud silence from the President thereby lending credence to the claim. This is clearly against the spirit, letter and intendment of section 14 of the Constitution; hence the current agitations and ethnic restiveness in Nigeria. Sections 15, 16, 17, 18, 19, 20 and 21 spelt out the political objectives, economic objectives, social objectives, educational objectives, foreign policy objectives, environmental objectives and Directive on Nigerian Cultures respectively. Section 22 deals with the obligation of the mass media, while section 23 embody the National ethics with section 24 containing the Duties of the citizens to abide by the Constitution and other valid laws in force in Nigeria. All these provisions are similar to the provisions of Part IV of the Indian Constitution.

When the ambitious provisions of section 13 is read alone, no doubt, it coveys clearly the notion, that the section imposes a legal duty and responsibility on all authorities and persons, exercising legislative, executive and judicial powers, to conform to, observe and apply the provisions of Chapter II of the Constitution. In otherwords, this section makes it a duty on the part of all persons to conform to, observe and apply the provisions of the Fundamental Objectives and Directive Principles of State Policy.[24] The provisions of section 13 has been interpreted by the Supreme Court of Nigeria in *Attorney General of Ondo State v Attorney General of the Federation and 35 Ors,*[25] to apply to those exercising legislative, executive and judicial powers, and also to private

[19] See for instance, s 6 (6)(c) of 1999 Constitution.
[20] Directive Principles of State Policy contained in Chapter (IX) of Ghana's 1992 Constitution
[21] Eze (n11) 43.
[22] Ibid, Article 43 (1) and (2) of the 1999 Constitution of Ghana.
[23] Eze (n 11) 43.
[24] G.N Okeke, 'Fundamental Objectives and Directive Principles of State Policy: A viable Anti- Corruption Tool in Nigeria' <https://www.abl.infor.> accessed 1 June, 2020.
[25](2002) 27 WLR1

individuals. Regretably section 13 though armed with teeth, but it cannot bite because under the provisions of section 6 (6)(c) of the same Constitution, section 13 has been made toothless by the removal of the imposed legal responsibility that is correlative of the legal duty,[26] because a breach of the provisions of Chapter II of the Constitution are by themselves not justiciable nor enforceable pursuant to the provisions of section 6 (6)(c) thereto. The subsection provides thus:

> The judicial powers vested in accordance with the foregoing provisions of this section.... shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by an 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.

Thus, in *Arch. Bihop Olubunmi Okoigie v The Attorney General, Lagos State,*[27] it was held that:

> The Fundamental Objectives indentify the ultimate objectives of the Nation and Directive Principles lay down the policies which are expected to be pursued in the efforts of the Nation to realize the National ideals. While section 13 of the Constitution makes it a duty and responsibility of the judiciary among other organs of government to conform to and apply the provisions of Chapter II, section 6 (6)(c) of the same Constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformiting with the Fundamental Objectives and Directives Principles of State Policy. It is clear therefore that section 13 has not made Chapter II of the Constitution justiciable.

Consequently the solemn duty to conform, observe and apply the mandate contained in Chapter II imposed by section 13 on all organs of government and all authorities and persons exercising legislative, executive and judicial powers, including private individuals, is taken away by dint of the provisions of section 6 (6)(c) of the same Constitution.[28] Also, that nobody is specially saddled with the responsibility to enforce the provisions of the Chapter[29] is a grave lacuna which is further undermining the application of the provisions of the Chapter.[30]

4. Is the Application of Section 6 (6)(c) to Chapter II of the Constitution Total?

It has been strongly contended by Nwauzi, and we agree, that without prejudice to the attitude of the Courts in the construction of Chapter II in relation to its non justiciability, the provisions of section 6 (6)(c) of the Constitution is neither total nor sacrosanct.[31] Commenting on the issue in *Federal Republic of Nigerian v Anache & Ors; In Re Olafisoye,*[32] Niki Tobi Jsc said*:*

> The non Justiciability of section 6 (6)(c) of the Constitution is neither total no sacrosanct as the sub-section provide a leeway by the use of the words, 'except as otherwise provided in this Constitution'. This means that if the Constitution otherwise provided in another section which makes the section or sections of the Chapter II justiciable, it will be so interpreted by the courts.

Besides, the National Assembly is vested with power and competence under Item 60 (a) of the Second Schedule to Part 1 of the Constitution, to establish and regulate authorities for the Federation or any part thereof to promote and enforce the observance of the Fundamental Objectives and Directive Principles of State Policy contained in this Constitution; *In Re Olafisoye,* the Supreme Court held that section 15(5) of the 1999 Constitution (which mandates the state to abolish all corrupt practices and abuse of power) is justiciable when read with item 60 (a) of the Second Schedule to Part 1 of the1999 Constitution (which empowers the National Assembly to make laws

[26] Okeke (n 24).

[27](1981) 2 NCLR 337, 350. Also, in *Uzoukwu v Ezeonu II* (1991) 6 NWLR (pt 200) 708, 761-762 (CA) it was said that : '[t]here are other rights which may pertain to a person which are neither fundamental nor justiciable in the court. These may include rights given by the Constitution as under the Fundamental Objective principles of state policy under Chapter 2 of the Constitution'.

[28] See generally Onyekachi Duru, 'Jusiticiability of the Fundamental Objectives and Directives Principles of State Policy under Nigerian law', <http;//www.academic.edu> accessed 28 May, 2020. The decision in *Attorney General of Ondo State* is also instructive.

[29]Unlike Chapter (IX), Articles 34 (1) and (2) of the Constitution of Ghana, 1992.

[30] Duru (n 28).

[31]Nwauzi (n 15)

[32](2004) ALLFWLR (pt 186)1106, 1153; (2003) 4 NWLR (pt 864) 380.

with respect to establishment and regulation of national authorities to promote and enforce observance of Chapter II).

5. Circumstances under which provisions of Chapter II of Constitution may be Justiciable

Arising from the above there are four possible situations the provisions of Chapter II may be justiciable and enforceable as follows:-

(a) Where the Constitution makes or contains another provision on any of the subjects in Chapter II, which is justiciable on its own, being outside the provisions of the Chapter.

(b) Where the National Assembly (NASS) enact any legislation making any of the subjects of Chapter II, the subject of such an Act and therefore justiciable, Akande,[33] made an allusion to this point when he stated *inter alia:*

> The provision of the fundamental objectives and directive principles of state policy are not justiciable.....Accordingly, the executive does not necessarily have to comply with any of the provision, 'unless the legislature has enacted specific laws for their enforcement'.[33(a)]

This position of the law on the issue was also emphasized by the Supreme Court in *Attorney General of Ondo State,* in relation to the Independent Corrupt Practices and other Related Offences Act, 2004.

(c) Where the breach of any of the provisions of Chapter II also constitute a breach of any of the provisions of Chapter IV of the Constitution (or any other constitutional provisions), it is justiciable on its own. In *Adewole v Alhaji Jakande,*[34] it was held that the right to freedom of expression encompasses the right to establish schools in keeping with the provisions of Chapter II on the eradication of illiteracy. This approach is at times referred to as the indirect approach to justiciability.

(d) Where reliance can be placed on the provisions of the African Charter on Human and Peoples' Rights, provisions of Chapter II could be justiciable. The African Charter on Human and Peoples' Rights has since been ratified and domesticated as part of Nigerian laws as far back as 1983.[35] In *Ogugo v The State,*[36] and *Fawehinmi v Abacha,*[37] it was held that the African Charter by process of incorporation, and its historical and international character assumed a status of a law that equally, like Chapter IV of the 1979 (now 1999) Constitution regulates the freedoms and liberties of Nigerians.

It is strongly contended that those rights in the African Charter in form of economic, social and cultural rights, similar to the provisions of Chapter II of the Constitution, which are made justiciable by virtue of Article 45 of the African Charter, could in appropriate cases be enforced in Nigeria. Such provisions are contained in articles 15, 16, 17, 18, 22and 24 of the Charter, which includes the right to equal pay for equal work, right to health, right to education, right to economic, social and cultural development, right family life and right to satisfactory environment. In this regard, in *Socio-Economic Right Accountability Project (SERAP) v President of Nigeria and Universal Basic Education Commission,*[38] it was held that every Nigerian has a right to education which can be enforced by the Court as guaranteed by African Charter. In *Social and Economic Action Rights v Nigerian,*[39] the African Human Rights Commission, in a land mark decision held *inter alia:* 'that the right to food is in separably linked to the dignity of human beings and therefore essential for the enjoyment and fulfillment of such other rights such as health, education, work and political participation'. It is expected that more persons will in future exploit the provisions of the African Chapter in our Courts where similar provisions are contained in Chapter II of the Constitution thereby making such provisions indirectly justiciable by virtue of the provisions of the African

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[33] J O Akande, 'Fundamental Objectives and Directive Principles of State Policy within the Framwork of Liberal Economy: A Note in I A Ayua, DA Guobadia and A O Adewole (eds) *Nigeria: Issues in the 1999 Constitution* (Nigeria Institute of Advanced Legal Studies, 2002)222

[33(a)] The emphasis is mine.

[34] (1981)INCLR 262.

[35] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004

[36] (1994) 4 NWLR (pt 366) 1.

[37] (1996) NWLR 710

[38] Suit No ECW/CCJ/APP/08/05, ruling delivered 27th October, 2009 <www.courtecowas.org> accessed 20th May, 2020.

[39] (ACPHPR) Comm/0144/1; see also *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights v Nigeria,* 2001 AHRLR 60 Comm. No 155/96/2011 <www.Comm.edu/Africa.com.cases> accessed 26th May, 2020.

Charter. Be that as it may, it is the view of this writer that the available situations where the provisions of Chapter II of the Constitution could be justiciable is two limited and too restricted. Judicial proactiveness in the interpretation of the provision of Chapter II may be one of the panaceas required to make the said provisions justiciable and enforceable. This is especially so when it is realized that it is now almost trite that civil and political rights can hardly be enjoyed effectively and adequately without a corresponding enjoyment of socio-economic rights. Needless to add that the circumstances in which the provisions of Chapter II of Nigerian Constitution could be justiciable discussed above are at best cosmetic, they do not go far enough to make the rights in Chapter II a guarantee.

6. Judicial Activism, an Imperative: the example of Indian Judiciary

Judicial activism is a judicial philosophy which motivates judges to depart from strict adherence to judicial precedents in favour of progressive and new social policies which are not always consistent with restraint expected of Appellate judges. It is commonly marked by decisions calling for social engineering and occasionally these decisions represent intrusions into legislative and executive matters.[40] Although, judicial activism has been criticized that it could lead to a lot of uncertainties in the law,[41] yet its benefit in the absence of clear legislative interventions cannot be over emphasized. As stated earlier, the Indian Constitution, like the Nigerian Constitution, classifies various rights into two groups-rights which are civil and political and are fundamental and justiciable contained in Part III, and rights which are socio-economic and cultural, but are non fundamental and non-justiciable contained in Part IV in the nature of Directive Principles of State Policy.[42] These correspond with Chapters IV and II respectively of the 1999 Constitution of Nigeria. However, unlike Nigeria, through judicial activism, the Indian judiciary has by expansive interpretation been able to put life into the Directive Principles of State Policy provisions in Part IV of their Constitution, by way of a broad reading of fundamental rights, among other techniques.[43] The expansive interpretation involves construing the civil and political rights contained in Part III of the Constitution in such a way as to incorporate socio-economic rights in Part IV as an integral part of the bundle of rights under the said Constitution. Thus, in *Kasavananda v State of Kerala*,[44] the Indian Supreme Court observed that Part III and IV of Indian Constitution touch and modify each other. They do not run parallel to each other. That is, Part III and VI of the Indian Constitution were not mutually exclusive. Rather, one complements the other. In *Samatha v State of A P.*,[45] it was observed that Fundamental Rights and Directive Principles of State Policy in Indian Constitution, are 'two wheels of chariot' to achieve the establishment of an egalitarian social order through the rule of law, which is the core of the basic structure of Indian Constitution. In the same vein, in *S.S. Bola v B.D. Sardana*,[46] it was held that fundamental rights are the means and the directive principles are the essential ends in a welfare state. This intergration is healthy as it is bound to address the economic, social and political empowerment of the citizens of India for a more adequate and a more effective enjoyment of their rights under the Constitution. Furthermore, in *Minerva Mills Ltd. v Union of India*,[47] the question was whether the directive principles of state policy could have supremacy over fundamental rights. Majority of the court led by Chandrachud C.J. emphasized that the Indian Constitution is founded on the bedrock of the balance between Parts III and IV, and that to give absolute primacy to one over the other is to disturb the harmony of the Constitution. Specifically, the Supreme Court held that the goals set out in Part IV have to be achieved without the abrogation of the means provided for by Part III. Hence, Parts III and IV together constitute the core of India Constitution and combined to form its conscience. This is in fact a clear shift from some earlier decisions like *Madra v Champakan Dorairejan*[48] and in *Re Kerala Education Bill*,[49] which supported the primacy of fundamental rights over directive principles in the event of a direct conflict between the two, which position no longer represent the law. Consequent upon the shift, civil and political rights have been interpreted broadly and expansively to accommodate socio-economic and cultural rights. Thus, in *Maneka Gandhi v Union*,[50] the Supreme Court gave an expansive meaning and interpretation to the word; life, where it held that, 'the right to life does not mean, mere animal existence alone but also includes every aspect that makes life meaningful and liveable'. In *Coralie v Union*

[40] *Black's Law Dictionary,* (6th ed. St Paul Minn West Publishing Co 1990) 847.
[41] C J Chukwura, 'Judical Activism in the Administration of Justice according to Law', in *Ibadan Law Journal,* August 2003, vol 2 No 1, 22, 25
[42] Govidgee (n 16).
[43] Govindjee, and Taiwo (n 9)
[44] AIR (1973) SC 1461. Also see *State of Kerala v Thmas* AIR 1976 SC 490.
[45] (1997) 8 SCC 191; AIR 1997 SC 3297.
[46] (1997) 8 SCC 522.
[47] 1980 SC 1789
[48] AIR 1951 SC. 226, 1951 SCJ 33
[49] 1958 S.O. 956, 1959 SCR 995
[50] (1978)1 SCC248

of India,[51] the Court held that the right to life includes the right to live with human dignity and all that goes along with it, namely, 'the basic necessities of life such as adequate nutrition, clothing and shelter'. Similarly, in *Shantistar Builders v Naraydu Khimaleh Totame,*[52] right to shelter, clothing, decent environment and decent accommodation was held to be part of life.

It is obvious from all the above that, through legal reasoning and judicial activism, the directive principles of state policy in India Constitution have been elevated to the status of inalienable rights in certain cases.[53] Hence, in *Air India Statutory Corporation v United Labour Union,*[54] the full Court held unequivocally that the directive principles in the Constitution were actually fore-runner conventions on the Right to Development as an inalienable human right and that all people are entitled to participate and contribute to the economic, social, cultural and political development in which all human rights and fundamental freedoms would be fully realized. This principle, according to the court, has become embedded as an integral part of the Constitution and, as such, now stood elevated to the status of inalienable fundamental human rights. The court then concluded that social and economic democracy is the foundation for stable political democracy and confirmed that the directive principles could be justiciable by themselves without having to be read into fundamental rights. The significance of this position to the poor and the vulnerable in the society is not farfetched. This is especially so when it is viewed against the backdrop of the provisions of fundamental objectives and directive principles of state policy in Chapter II of Nigeria Constitution. They include, right to suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions and unemployment, sick benefits and welfare of the disabled,[55] promotion of science and technology, eradication of illiteracy by providing free, compulsory and universal primary education, free secondary education, free university education and free adult literacy programme.[56] These are matters which have direct bearing on the ability of the poor and the needy to enjoy unfettered and holistic rights where they are justiciable. It is instructive to note that the influence of the progressive stance of India Courts in the interpretation of its Constitution which has favoured access to justice in no small measure appear to have since gone beyond Asia to Africa. This could be gathered from the 1993 decision of a Tanzania High Court in Dadoma, in the case of *Mtikila v Attorney General.*[57]

7. Conclusion and Recommendations

The said pronouncement or decision of the Supreme Court in *Attorney General of Ondo State*, though commendable, did not go far enough. Having come to the realization that the effective and adequate enjoyment of the rights under Chapter IV to a large extent are dependent on the corresponding enjoyment of those rights contained in Chapter II, the courts ought to be more proactive by employing very liberal and expansive construction of the provisions of Chapter II of the Constitution, to make them justiciable. Such proactive and pragmatic approach or decisions, would serve as a credible impetus and a catalyst for the government to strive in addressing the socio-economic development deficits in Nigeria. Afterall, civil and political rights with socio-economic and cultural rights are generally mutually inclusive. Moreover, since the provisions of our Chapter II are similar to those of Part IV of the Indian Constitution[58] and the World, now constitutes a global village, our courts should be influenced by the Construction of the provisions of Part IV of Indian Constitution (our own Chapter II) by the Courts in India as persuasive authority. This is because, in Indian, even though, its Part IV is also not expressly justiciable like our Chapter II, through judicial proactiveness, its judiciary has been able to put life into the non-justiciable rights in the Constitution, thereby making them justiciable, and more practically relevant to the citizens of that country. This broad and expansive interpretation has integrated the socio-economic rights into the civil and political rights in Indian. Thus, as stated earlier, in *Kesavananda v State of Kerala*,[59] the Indian Supreme Court observed that Part III (which deals with civil and political rights) and IV (which deals with socio-economic rights) of the Indian Constitution touch and modify each other and do not run parallel or contrary

[51] (1981)AIR SC 746
[52] (1990)1 SC. 520
[53] Govindjee and Taiwo *(n 9)*
[54] *AIR* 1997 SC. 645
[55] See section 16(2)(d) of the 1999 Constitution of Nigeria.
[56] Section 18 of the 1999 Constitution.
[57] CW case No.5 of 1993
[58]M A Ajomo., 'The Development of Individual Rights in Nigeria's Constitutional History', in M A Ajomo and B Owasanoye, (eds) *Individual Rights under the 1989 Constitution (*Nigerian Institute of Advanced Legal Studies, Lagos, 1993) 10. See also Akande J, O. *op. cit*.
[59]AIR 1973 SC 1461 (Paras 12, 13, 105 9). See also State of *Kerala v N. M. Thmas A. R.* 1976 SC 490 para 42, *Samatha v State of A.P.* (1997) 8 SCC 191, para 79: *AIR* SC 3297, para 80 and *Minerva Mills Ltd., v Union India, AIR* 1980 SC 1789, para 61, 62 and 118.

to each other. And in *S. S. Bola v B. D. Sardon,*[60] Fundamental Rights were regarded as the means while the Directive Principles constitutes the essential ends in a welfare state. Hence, it is correct to say that the Indian Judiciary has taken the lead in common law jurisdictions in its approach of giving expansive interpretation to civil and political rights to accommodate economic, social and cultural rights,[61] to the benefit of its citizens. The Directive Principles of State Policy has since been elevated to the status of inalienable fundamental rights in India, as emphatically held by the court in *Air Indian Statutory Corporation v United Labour Union,*[62] that the directive principles in Indian Constitution are actually fore-runners of fundamental human rights. The Indian example of the construction of the provisions of the Part IV to aid the realization of Part III of their Constitution is salutary and commendable. This kind of decision is, however, capable of disturbing the socio-economic and political order in a country where the necessary infrastructure and conducive socio-economic development/environment is lacking. It is therefore suggested that adopting the Indian courts approach should be gradual. As socio-engineers, our judges must ensure that their decisions in such matters keep pace with the socio-economic growth in Nigeria. So that the means of enforcement will be available and enforcement will made be possible. After all, it is a cardinal principle of law that a court should not give an order in vain or *vacuo*. It is hoped that as the economy of Nigeria improves, the judges will imbibe judicial activism and then make favourable pronouncement that can impact on the socio-economic rights of Nigerians which will in turn enlarge the enjoyment of all the constitutional rights and their capacity to avail themselves of the right in appropriate cases.

Alternatively, our Constitution should be amended by expressly making the provisions of Chapter II of the Constitution justiciable or by expressly deleting the provisions of section 6 (6)(c) of the Constitution. Or the amendment of our Constitution should be made to follow the South African model,[63] where the rights, both civil and political rights on the one hand and economic, social andcultural rights on the other are contained in a single justiciable Bill of Rights under Chapter Two of its 1996 Constitution. The justiciability of the Bill of Rights in the South African Constitution was confirmed and affirmed by the Constitutional Court in *Government of the Republic of South Africa v Grootboom,*[64] where it was held *inter alia*; 'our Constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bills of Rights are inter-related and mutually supporting'. Hence, the South African Constitution is seen not only as transformative but also its socio-economic rights provisions and jurispendence have been celebrated internationally.[65] The fusing of civil and political rights and the socio-economic rights in one justiciable Bill of Rights is a clear testimony to the indivisibility, inter dependence and inter relatedness of human rights generally. This should be encouraged in Nigeria for the over-all interest of her citizens, and especially, for the poor and the disadvantaged.

[60] (1997) 8SCC 572 (Indian Court).
[61] Govindjee and Taiwo (n 9) 65
[62]AIR (1997) SC 645. See also *Caroline v Union of India* (1981) AIQ 3C 746, where it was held that the right to Life includes the right to live with human dignity and all that goes along with it such as the basic necessities of life, adequate nutrition, clothing and shelter.
[63] Constitution of the Republic of South Africa, Act 108 of 1996.
[64] 200 (11) BCLR 116 (CC). See also Minister of Health and others v Treatment Action Campaign and Others 2002(5) SA703 (CC): Khosa v Minister of Social Development 2004 (6) SA 505 (CC).
[65] M S Kende, *Constitutional Rights in Two Worlds: South Africa and the United States* (Cambridge University Press, 2009) 244.