

RIGHT TO SILENCE: THE PERCEPTION OF NIGERIA COURTS*

Abstract

The right to silence refers to the common law principle where a suspect or defendant explores his right to say nothing to interrogations put to him either during pre-trial by the police or during the trial in the court. By extension, juries and magistrates, prosecutors and judges are not encouraged to conclude that a defendant is guilty merely because he has refused to respond to allegations, particularly from the police or has refused to testify in court in his own defence¹. Extraction of confessional statements by security agents through oppressive means from suspects is a fact in Nigeria. Though the Constitution of the Federal Republic of Nigeria 1999 ensures the protection of anyone suspected to have committed a crime through the right to silence, yet this constitutional right is being continuously denied the suspects. It is trite that any uncontrolled power would ultimately lead to abuse. Hence, the purpose of the right to silence is to protect the citizen from torture and coerced confessions from public authorities.² This paper critically examined the statutory provisions of the right to silence in Nigeria as well as some other jurisdictions, namely, England and the US. The paper critically examined the attitude of the courts in Nigeria as it relates to the enforcement of the right to silence. This work found out that Nigeria courts view the admissibility of confessions from the perspective of the Evidence Act and not the stronger constitutional principle of the right to silence as enshrined in the Constitution. The paper recommended that to promote fair trial, due recourse should be given to the enforcement of the right to silence by Nigeria courts as enshrined in the Constitution. The paper adopted the doctrinal approach in its research. This was due to reliance on legislation, Statutes, case law, journals, textbooks and relevant internet resources to arrive at the position of the law on the subject matter.

Keywords: Right to Silence, Nigerian Constitution, Courts, Fundamental Right, Accused

1. Introduction

The right to silence, also known as the right against self – incrimination, is the right of a suspect to say nothing in the face of police questioning³ as well as during trial in court. It has been argued that right to silence is not a single right but consists of a cluster of procedural rules that protect against self-incrimination.⁴ The right to choose whether to respond to questioning or not is guaranteed by the right not to be compelled to testify against oneself or confess guilt. This right is known as the ‘actual’ right to remain silent when questioned or asked to supply information by any person in authority about the occurrence of an offence, the identity of the participants and the roles they played.⁵ The second leg to the right to silent concerns the right not to use the silence of a witness against him at trial⁶ This is because attempt to draw unfavourable inferences from silence are sometimes made at trial as silence is often equated with guilt.⁷ This second leg prevents such inferences from being drawn. The argument is how a defendant who exercises the right to silence could be protected in criminal trial where the consequences of exercising the right to remain silent may be determined by the judge.⁸ The right to silence against self-incrimination is based on the notion of presumption of innocence: it is for the prosecution to prove guilt, and not for an accused to be compelled to incriminate himself by providing information.⁹

2. Origin of Right to Silence

The Latin phrase ‘*nemo tenetur prodere seipsum*’ which means ‘no person should be compelled to betray himself in public, dates back to Roman times as a check on overzealous officials rather than a subjective right of anyone who was accused of a crime. The right to silence was introduced to England in the 16th Century. This occurred around the controversial ecclesiastic courts, the Star Chamber and the High Commission which were unpopular due to their oppressive procedures. The suspect could be punished for refusing to testify and it was said that these courts endorsed the practice of torture during interrogation, even before charges were laid and without the person being informed of his alleged offence. After the abolition of these Courts in 1941, the practice of being represented by lawyers and the emergence of the law of evidence with the privilege against self -incrimination evolved. In 1898, the Criminal Evidence Act was adopted in England, making the accused a competent but not a compellable

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¹ S Greer, ‘The Right to Silence: a Review of the Current Debate’ (1990) 53 *Modern Law Review* 710

² E Onoja, ‘The Relationship between the Constitutional Right to Silence and Confessions in Nigeria’ (2014)

vol 6 : issue 2-3, *African Journal of Legal Studies*, 5

³ A Palmer, *Principles of Evidence* (1998) 160

⁴ J Michael & B Emmerson, ‘Current Topic: The Right to Silence’ (1995)1 *European Human Rights Law Review* 4 and 6

⁵ BA Hocking & LL Manville, ‘What of the Right to Silence: Still Supporting the Presumption of Innocence, or a Growing Legal Fiction?’ *Macquarie Law Journal* (2001) 63 Vol 1, No 1

⁶ A Palmer, n 4, 160

⁷ *ibid*

⁸ *ibid*

⁹ BA Hocking and LL Manville, n 5

witness. This Act allowed judges (but not prosecutors) to comment to the jury where the accused adopts the right to silence. In practice, the comment was a direction to the jury not to assume that the accused was guilty on the basis of his silence at trial.¹⁰

3. Right to Silence in Nigeria Criminal Justice System

Nigeria adopted the constitutional framework of the right to silence in the Constitution of the Federal Republic of Nigeria (CFRN) 1999. Section 36 (11) of the CFRN states that: ‘No person who is tried for a criminal offence shall be compelled to give evidence at the trial’¹¹ Section 35(2) of the CFRN 1999 provides thus: ‘Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice’¹² Therefore, an accused has constitutional right to remain silent and not furnish any evidence either at the police station or during his trial in the court. Onus is on the State to bear the entire burden of proving the guilt of the accused through scientific method of investigation rather than relying on the suspect to do the job. However, the suspect must be informed that the law empowers the courts to make relevant inference from his right to silence. In addition to the constitutional provisions, Section 180 (a) of the Evidence Act says: Section 287 (1) (iii) of the Criminal Procedure Act (C.P.A) says the defendant ‘need say nothing at all, if he so wishes’¹³ in the court for his defence while Section 236 (1) (C) of the Criminal Procedure Code (C.P.C)¹⁴ says : ‘the failure of the accused to give evidence shall not be made the subject of any comment by the prosecution, but the court may draw such inference as it thinks just.’ Section 180(a) of the Evidence Act¹⁵ also gave credence to these as it says that an accused person, even though a competent witness is not a compellable witness¹⁶

Therefore, when accused person exercises his right to silence, the prosecutor cannot comment on the accused person’s failure to give evidence in his defence. The prosecutor may not assert that the refusal of an accused to testify is an admission or evidence of guilt. However, when an accused person exercises his right to silence, the court may draw such inferences as it thinks just.¹⁷ In *Sugh v The State*,¹⁸ the accused was charged with culpable homicide punishable by death. In the course of trial, the defendant was silent on the cause of the death of the deceased and the court commented on it in its judgement. On appeal, it was contended that the court’s comments on the appellant’s failure to make a statement as to the cause of the death of the deceased violated the right of the appellant’s right to silence. The Court of Appeal held:

- i) That the right to silence means that no accused person can be compelled to give evidence at his trial;
- ii) But it does not prevent a trial court from drawing any necessary inference from the evidence before it, the accused person’s failure or refusal to give evidence notwithstanding¹⁹.

4. Why Right to Silence?

There are several reasons why a suspect may be advised to remain silent particularly to some police questions. According to Stephen Greer²⁰, these reasons include: they may be in an emotional and highly suggestible state of mind. They may feel guilty when they are actually innocent of a crime. They may be ignorant of some vital facts which explains away otherwise suspicious circumstances. They may be confused and liable to make mistakes which could be interpreted as deliberate lies at the trial. They may forget important details which would have been to their advantages to have remembered. They may use loose expressions unaware of the possible adverse interpretations which could be placed upon them at trial. They may not have heard or understood what the police interviewer said. Their silence may be an attempt to protect others or a reluctance to admit to having done something discreditable but not illegal.²¹ Nevertheless, some writers opined that right is a strategy, as it is difficult to prove the guilt or innocence of certain offenders involved in bombings and drug offences through this right to silence.²²

¹⁰ E Skinnider & F Gordon, ‘The Right to Silence- International Norms and Domestic Realities’ Sino Canadian International Conference on the Ratification and Implementation of Human Rights Covenants, Beijing 25-16 October 2001, The International Centre for Criminal Law Reform and Criminal Justice Policy P.7-8

¹¹ CFRN (1999) s.36 (11)

¹² *ibid* s.35(2)

¹³ Criminal Procedure Act (CPA), s.287 (1)(iii)

¹⁴ Criminal Procedure Code (CPC) s.236 (1) (c)

¹⁵ Evidence Act 2011 s.180

¹⁶ *Ibid*

¹⁷ B Osamor, *Fundamentals of Criminal Procedure Law in Nigeria* (2nd edn 2004, Dee -Sage Nigeria Ltd, 2004)p.257-258

¹⁸ *Sugh v The State* [1988] 2 NWLR (Pt 77) p.475

¹⁹ *ibid*

²⁰ S Greer, n2, p. 727

²¹ *ibid*

²² BA Hocking & LL Manville n 5, p.70

5. Right to Silence in Nigeria Courts

The lack of consistency by Nigerian courts as to whether caution is mandatory before questioning begs for answer. The position of court is that a confession is not inadmissible for lack of caution before the taking of such confession.²³ It also does not affect the admissibility of such confession even if the suspect was held incommunicado.²⁴ However, the absence of caution might determine the weight to be laid on such confession. Trial courts therefore look for words of caution to determine the weight to attach to such confession. However, this position conflicts with section 35(2) of the CFRN 1999 that allows for the right to silence to everyone detained or arrested. It provides thus: ‘Anyone who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice’ With the constitutional protection of the right to silence in Nigeria,²⁵ it behoves the courts and other law enforcement agencies to ensure that suspects are given the option to either adopt or waive the right. Though this right may be waived, but the fact remains that many suspects in Nigeria are not even aware of such a right to silence especially when courts do not make it mandatory to police to inform suspects before interrogating them.²⁶ The right to silence, before and during trial could be seen as fundamental to the integrity of the privilege against incriminating oneself or otherwise exposing oneself to a threat of penalty or liability. It is a common law principle that applies to all stages of litigation.²⁷

We shall consider some Nigeria cases to observe the attitude of Nigeria courts to the rights to silence.

*Igabele v State*²⁸

The Supreme Court in *Igabele v. State* stated the right to silence of the accused but warned that by so doing, the accused runs a risk and will be obliged to make his defence to the charge, if remaining silent will result in his being convicted on the case made against him by the prosecutor.²⁹ In this case, the appellant and the deceased, both employees of PW3, were the driver and conductor respectively of a lorry. They travelled together in the lorry but did not return same day as usual. Instead, PW4, another employer of Pw3, drove back the lorry. Appellant informed Pw4 that he went to eat at a place near Spera in DEO Petrol filling Station, Abakaliki and thereafter visited his brother in town, without saying nothing about the deceased whose body was seen somewhere along Abakaliki -Ogoja Road.³⁰ Katsina-Alu, JSC remarked ‘I think good sense and indeed common sense demands that the appellant should and must put forward some explanation as to what happened to the deceased. But no explanation was forthcoming. In fact, the appellant called no witness in his defence... The only irresistible inference from the circumstances is that the appellant killed the deceased’.³¹ While some scholars are of the view that the right to silence which could necessitate the court to draw adverse inferences against the defendants is just a way of allowing the court to make common sense assessment of all the evidence before it and is not contrary to the right to silence as guaranteed by the constitution.³² Yet, other scholars are of the opinion that any inference from silence operate as a means of compulsion, shifting the burden of proof from prosecution to the accused³³. They argued that the law cannot grant a constitutional right to a person and then penalise the person who chooses to exercise the right.³⁴

*Sugh v The State*³⁵

The accused was charged with culpable homicide punishable by death. In the course of trial, the defendant was silent on the cause of the death of the deceased and the court commented on it in its judgement. On appeal, it was contended that the court’s comments on the appellant’s failure to make a statement as to the cause of the death of the deceased violated the right of the appellant’s right to silence. The Court of Appeal held:

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²³ *Akinmogun v The State* [2006]6 NWLR (Pt 662)608 at 617

²⁴ *Nwali Nnabo v. The State* [1992]2 NWLR (Pt 226)716

²⁵ CFRN 1999 (as amended) Sec 35 (2)

²⁶ E Onoja, ‘The Relationship between the Constitutional Right to Silence and Confessions in Nigeria’ (2014) vol 6: issue 2-3, *African Journal of Legal Studies* p9

²⁷ G Roberts, *Evidence: Proof and Practice* (1998) 183

²⁸ *Igabele v State* [1992] 2 SCNJ (PT.1)183, at194

²⁹ *ibid*

³⁰ *ibid*

³¹ *ibid*

³² J Michael & B Emmerson, ‘Current Topic: The Right to Silence’ (1995)1 *European Human Rights Law Review* 4

³³ *ibid*

³⁴ *ibid*

³⁵ *Sugh v The State* [1988] 2 NWLR (Pt 77) p.475

³⁶ *ibid*

The court has the legal right to draw inferences as it seems right from the silence, this is not contrary to the right to silence, but not to comment on it. In the instant case, the court of Appeal gave recognition to the right to silence.

*Fatai Olayinka v State*³⁷

The opportunity for the Supreme Court in Nigeria to give a constitutional flavour to the right to silence came up in the instant case. In this case, the appellant was tried and convicted on a three- count charge of armed robbery. The appellant contended that the confession he made during interrogation to the police while he was in police custody was contrary to the provisions of Section 35(2) of the 1999 Constitution which provides thus: ‘Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice’ Unfortunately, the lead judgement did not refer to this issue raised neither did it react to the argument that court should invoke the decision of the U.S Supreme Court decision in *Miranda v Arizona*.³⁸ Rather, the supporting judgement of Tobi JSC, which referred to the argument, commented that the issue had been overtaken by events.³⁹ Thus the opportunity to have a constitutional declaration from the highest Court in Nigeria was lost. This shows that the constitutional guarantee to right to silence plays second fiddle in order of importance. In as much as the cases above show the negative attitude of the Courts in Nigeria in enforcing the right to silent, yet defendants sometimes contribute to trading blame through incessant delay. We could deduce this from a recent Supreme Court case of *Mathew Nwokocha v AG Imo State*⁴⁰ in which the appellant insisted on the production of a non -existing statement (a statement he alleged to have earlier made to the police in 1998) to be given him before he would testify in his armed robbery case. The Court held that the implication is where the prosecution had proved his case beyond reasonable doubt against the appellant, and where the appellant exercised his constitutional right not to testify in his defence,...where the prosecution had laid sufficient evidence that calls for rebuttal and such response is not forthcoming, the court will be entitled to rely on the uncontroverted evidence of the prosecution witnesses in finding the accused person guilty. The evidence of several adjournments at the instance of the appellant was seen as a clear strategy of an intention to frustrate the hearing of the case.

It is therefore the view of this writer that though the spirit behind this right is to protect suspects and litigants from self -incrimination, the right could be abused by litigants in cases where it is being explored to frustrate the legal determination of the matter or to employ it as a clog in the wheel of justice.

6. Right to Silence in Some Other Jurisdictions

6.1. United Kingdom

The English approach to silence has been described as ‘a formalised system’⁴¹ which aims at allowing ‘common sense implications to play an open role in the assessment of evidence.’⁴² In the UK, various reviews had come up on whether to abolish, retain or modify the right to silence by different Committees and Royal Commissions. The justification for modification was that it was necessary to respond to terrorist suspects, trained in counter interrogation techniques who exploited the right to silence when questioned by police and raised ambush defences at trial.⁴³ The law relating to right of silence in the UK was substantially modified in Northern Ireland by the Criminal Evidence (Northern Ireland) Order 1988 and in England and Wales by the Criminal Justice and Public Order Act 1994. These laws allow the jury to draw adverse inference from the exercise of the right to silence when questioned by police, or at trial, to allow the trial judge direct the jury accordingly.⁴⁴

Critics are of the view that the law of England and Wales has shifted to a position that permits silence to be considered as positive evidence of guilt⁴⁵ and as an item of evidence in support of the prosecution case.⁴⁶ The view came from the fact that even though the law has not institutionalised compulsion, and there is still no directly enforceable duty on the defendant, in reality, the changes amount to an ‘indirect obligation to give evidence’.⁴⁷

³⁷ *Fatai Olayinka v State* [2007] 9 NWLR (Pt 1040)561

³⁸ *Miranda v Arizona* [1966] 384 U.S.436

³⁹ *Fatai Olayinka's case* n 21

⁴⁰ *Mathew Nwokocha v AG Imo state* [2016] All FWLR (Pt835)274 SC

⁴¹ *Murray v United Kingdom* (1996)22 *European Human Rights Research* (EHRR)29,63

⁴² *ibid*

⁴³ Scrutiny of Acts and Regulations Committee, Parliament of Victoria, ‘The Right to Silence: An Examination of the Issues Chapter 6 -The Right to Silence in the United Kingdom www.parliament.vic.gov.au accessed 1st October 2019

⁴⁴ E Skinner and F Gordon n20, p19

⁴⁵ S Nash, Silence as Evidence: A Common-sense Development or A Violation of a Basic Right’ (1997) 21 *Criminal Law Journal* 145,148

⁴⁶ *Ibid*

⁴⁷ *Ibid*

Furthermore, the Act places an obligation on the accused to mention facts when being questioned or charged if they intend to rely on them later in defence,⁴⁸ and unless accused's physical or mental condition is such that is undesirable for him or her to give evidence, at the conclusion of the prosecution case, the court will ensure that the accused is aware of his option to give evidence and to explain the effect of failure to do so.⁴⁹ Where the accused still goes ahead to choose the option of silence, or after being sworn, refuses to answer any question, the court or jury may draw such inferences as appear proper.⁵⁰ Hence Critics are of the view that the Act 'introduces the general principle of allowing the drawing of adverse inferences from the silence of the accused thereby putting him in jeopardy.'⁵¹

However, others in support of modification and or outright abolition of the right to silence are of the view that professional criminals often tactically employ the right to silence to evade conviction. Studies reveal that cases where most pressure was placed on right to silence were more of cases including bombings and drug offences. These require the charge of conspiracy (which facilitate questioning about associations) and major surveillance operations.⁵² According to Hannah Quirk, those who advocate the restrictions on the rights of silence draw on unfavourable rhetoric against unpopular groups such as terrorists who would manipulate justice system. According to the scholar, this policy debate was led by populist arguments which emphasized how minimal safeguards should be provide for 'worthy' suspects and that the innocent would have nothing to hide⁵³. But Quirk examined how the legislation that followed these arguments subsequently ignored most of safeguards of the suspects and puts the vulnerable at most risk.⁵⁴ Research also has it that the greatest advocate of changes to the right to silence in the United Kingdom is the police. A scholar stated that the demand for an end to the right to silence without incurring the penalty of adverse inferences has 'become a simplistic cliché of police rhetoric'.⁵⁵ According to this view, police tend to object to the right to silence because they see it as a hindrance to criminal investigations. Police argue that they should be able to confront, contradict, trick, undermine and at times pressure suspects.⁵⁶ But Quirk was of a contrary opinion and stated that the police felt threatened by the right when facing a silent suspect due to their presumption that suspects were obliged to cooperate in their investigation. Quirk persuasively argued that the Criminal Justice and Public Order Act (CJPOA)⁵⁷ provisions have been used to demarcate deserving defendants from undeserving defendants, and that the provisions have unjustly turned the police interview into a part of the trial without protecting the suspect.⁵⁸ However, proponents of the right to silence like Professors Jackson and Leng are of the opinion that curtailing the right to silence has little or no apparent effect in terms of securing convictions of the guilty. They quarried whether the right to silence had allowed the cunning professional and hardened criminal go free.

Some English Cases

*Weissensteiner v R*⁵⁹

The accused took a job as a deckhand with a Danish couple and sailed off with them on their yacht. When the deckhand reappeared with the renamed yacht in New Guinea, the Danish couple were missing. When the yacht was located, the victims belonging were still on board. The accused was charged with murder and theft. He exercised his right to remain silent and no evidence was called on his behalf. The trial court held that the accused did not have to give evidence and guilt could not be inferred because the accused chose not to give evidence. However, the judge stated that the result of accused failure to give evidence was that there was no evidence from him to refute the prosecution case. While upholding the decision of the trial court, the Appellate court said an inference of guilt may be more safely drawn from the proven facts when an accused person elects not to give evidence of relevant facts which can be easily perceived must be within his knowledge.⁶⁰ Given the view expressed

⁴⁸ Criminal Justice and Public Order Act 1994 (UK) (CJPOA)S.34

⁴⁹ Ibid, S.35

⁵⁰ Ibid, S 35 (3)

⁵¹ D Wolchover & A Heaton-Armstrong, 'Labour's Victory and the Right to Silence' (1997) *New Law Journal* 1382

⁵² B Hocking and L Manville, 'What of the Right to Silence: Still Supporting the Presumption of Innocence, or a Growing Legal Fiction?'(2001) 1 *Macquarie Law Journal* 70 vol 1

⁵³ H. Quirk, '*The Rise and Fall of the Right of Silence*' New York: Routledge, 2017. p33

⁵⁴ Ibid

⁵⁵ P O'Mahony, 'The Ethics of Police Interrogation and the Garda Siochana' (1997) 6, *Irish Criminal Law Journal* 46, 43.

⁵⁶ ibid

⁵⁷ Criminal Justice and Public Order Act 1994

⁵⁸ H. Quirk, n43. p.157

⁵⁹ *Weissensteiner v R* [1993]178 CLR 217

⁶⁰ Ibid

by some legal commentators that the innocent normally talk,⁶¹ the outlook for the right of silence at trial seems very precarious.⁶²

*Condron v UK*⁶³

Condron and his wife, both heroin addicts, were charged and convicted of supplying heroin and possession with intent to supply. At the interview, they both remained silent on the advice of their solicitor who, despite medical advice to the contrary, considered that their drug withdrawal symptoms rendered them unfit to be interviewed. At trial, they offered explanation as to why certain objects were seen to be exchanged at their balcony and that they did not answer the police questions at the advice of their solicitor. The trial court referring to s.34 of CJPOA gave the jury the option of drawing adverse inference from their silence during their interview with the police. The applicants were found guilty and convicted. The Appellate court held that legal advice could not prevent an adverse inference being drawn, as this would render s.34 of CJPOA wholly nugatory.⁶⁴ The court of Appeal however noted that it would have been desirable for the trial court to give some direction to the jury about drawing adverse inferences. However, the convictions of Condron was upheld because of the ‘substantial, almost overwhelming evidence’⁶⁵ But at European Court of Human Rights (ECHR), the court found fault with the judge’s charge to the jury, saying that the balance to be struck between the right to silence and the circumstances in which an adverse inference could be drawn from silence was not reflected in the instant case. ECHR held that the decision of the trial court violated its provision in article 6.⁶⁶

6.2. United States of America

While the right to silence has been in England since 16th century, this right was only introduced to the United States by the Fifth Amendment⁶⁷ which states that ‘No person shall be compelled in any criminal case to witness against himself’. The US case law recognises two constitutional bases for the requirement that only voluntary confessions will be admitted. The first is the Fifth Amendment while the second is the Due Process Clause of the Fourteenth Amendment which states that the voluntariness test is controlled by the Fifth Amendment. The United State Supreme Court, with whom Nigeria shares fundamental constitutional principles, has confronted the constitutional implication of of the right to silence and right to counsel in the context of police interrogation. In *Haynes v Washington*,⁶⁸ the US Supreme Court held that ,under a totality of circumstances, where it is proved that the accuse was alone in the hands of the police ,with no one to advise or aid him, and he had no ‘reason not to believe that the police had ample power to carry out their threats,...to continue , for a much longer period if need be, the incommunicado detention...negatives the existence and effectiveness of the coercive tactics used in securing the written confession introduced at trial.’⁶⁹ In *Miranda v Arizona*⁷⁰ , the accused was questioned by police while in police custody. He was not given a full and effective warning of his rights at the outset of the interrogation process. He signed a confessional document which was admissible at his trial and was subsequently convicted. According to the court, the prosecution must not use statements, whether exculpatory or inculpatory, rising from questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of freedom in any significant way, unless it demonstrates the Fifth Amendment’s privilege against self-incrimination. The Court held that the admissibility of statements obtained from an accused in custody raises a constitutional issue and prosecution may not use confessional statements ‘stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.’⁷¹ The Supreme Court stated that the privilege against self- incrimination is the essential mainstay of the adversarial system which guarantees the individual the ‘right to remain silent unless he chooses to speak in the unfettered exercise of his own will. The person in custody must, prior to investigation be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court. He must be cleared told that he has the right to consult with a lawyer and to have the lawyer with him during interrogation and that if he is indigent, a lawyer will be appointed to represent him.’⁷²

⁶¹ CR Williams, ‘Silence in Australia: Probative Force and Rights in the Law of Evidence’ (1994) 110 LQR 629 at640

⁶² M Bagaric, ‘The Diminishing Right of Silence’(1997) vol 19:3 *Sydney Law Review* 366-384

⁶³ *Condron v UK* [1997] 1 Cr. App. R185

⁶⁴ Condron’s case *supra*

⁶⁵Ibid

⁶⁶European Court of Human Rights (ECHR)Art 6

⁶⁷ The Fifth Amendment to the United States Constitution addresses criminal procedure and other aspects of the Constitution

⁶⁸ *Hayes v Washington* 373 U.S.503 (1963)

⁶⁹ Ibid

⁷⁰ *Miranda v Arizona* [1966]384 US 436 (United State Supreme Court) (USSC)

⁷¹ Ibid

⁷² Ibid

In *Dickerson v State*,⁷³ the defendant, Dickerson confessed to being the driver of a getaway car involved in a series of bank robberies. At trial, the court suppressed his confession because it found that that the accused made the statement in police custody and without the necessary Miranda warnings. On appeal, the appellate court held that the admissibility of the confession was governed by the 1968 Crime Control Act which provides that a confession is admissible if it is voluntarily given and not by the judicially created Miranda rule response to police interrogation Supreme Court reaffirmed the Miranda decision and held that Miranda ‘being a constitutional decision of the court, may not be in effect overruled by an Act of Congress’⁷⁴

7. Conclusion and Recommendations

The history of the right to silence as enshrined in sections 36 (11) and 35(2) of the CFRN 1999 will provide a clear understanding of the topic. In order to put an end to the extraction of confessions from suspects under torture by security agents in Nigeria, who are eager to procure short-cut confessions from suspects by hook or crook, Courts need to give more attention to the constitutional right to silence of suspects when determining the admissibility of confessions or assessing the weight to be attached to admitted confessions. Though some scholars are of the view that the right to silence can provide a shield behind which both the guilty and the innocent can hide⁷⁵, but the willingness to subject suspects to the cruel trilemma of self-accusation, perjury and contempt, as well as the preference for an accusatorial rather than inquisitorial system of criminal judgement, is condemnable.⁷⁶ The right to silence should rather be seen as ‘a protection to the innocent’⁷⁷ and not often ‘a shelter to the guilty’.⁷⁸ Nigeria adopted the constitutional framework of the United States in the CFRN 1999 but unfortunately, Courts in Nigeria have not adopted and adapted the reasoning of the US Supreme Court in *Haynes v Washington* and *Miranda v Arizona* to address local issues. The reasoning in the aforementioned cases accord fair constitutional narrative to the admissibility of confessions and project the importance of the constitutional right to silence as well as freedom from compelled testimony. Rules of admissibility of confessions that ignore the evidential character of the right to silence and freedom from compelled self-incrimination are charters for torturers.⁷⁹ Nigeria Courts should regard the denial of access to a solicitor, or frustration of lawyers from interacting with clients in private or hindering his presence during the clients’ interrogation by the police, as absurd and unacceptable. Though the rules of admissibility of confessions in the Evidence Act 2011 are important, yet legislators and Courts should always be mindful of the fact that the rules and constitutional right to silence drive their force from man’s subjugation of the oppressive arrogation and abuse of governmental powers. Finally, this paper also recommends that better awareness should be created to this constitutional right to silence. This is because even though many individuals waive the right, many people are still not aware of such a right to silence. This awareness can begin by the courts insisting that the police should inform the suspects of the option to remain silent at the pre-trial stage as well in trial stage before the court

⁷³ *Dickerson v state* (2000) USSC

⁷⁴ *Ibid*

⁷⁵ S Green, ‘The Right to Silence: A Review of the Current Debate’(1990) 53 *Modern Law Review*, vol 53, no.6,p730

⁷⁶ Per J.Goldberg : *Murphy v Waterfront Commission of New York Harbor* 378 U.S 53,55

⁷⁷ *Ibid*

⁷⁸*Ibid*

⁷⁹E Onoja, ‘The Relationship between the Constitutional Right to Silence and Confessions in Nigeria’ (2014) vol 6: issue 2-3, *African Journal of Legal Studies*, p16