

**DEPRIVATION OF LIBERTY AND FORCED LABOUR\***

**Abstract**

*The right to personal liberty and the right not to be forcefully engaged in forced labour have synergy and can safely be said to be interwoven. These rights have formed part of the fundamental right recognized by the Constitution of the Federal Republic of Nigeria have been jealously guarded by not only the Constitution but some other Acts of the National Assembly like the Fundamental Right Enforcement Procedure Rules (FREPE), Labour Act, to mention a few. These rights have also enjoyed backing and enforcement by plethora of Judicial Authorities where the courts have always frowned against its breach by any person in Nigeria notwithstanding the status or position the person possess. This study examines this legal framework and draws a response*

**Keywords:** Deprivation of Liberty, Forced Labour, Constitution of the Federal Republic of Nigeria 1999 (as amended), Human Rights

**1. Introduction**

The right to personal liberty is embedded in section 35 of the Constitution<sup>1</sup> which provides that every person (i.e. citizens of Nigeria) shall be entitled to his personal liberty, and that no person shall be deprived of such liberty except in the cases expressly stated under the section and in accordance with the procedure permitted by law. The section goes further to guarantee that no person shall be deprived from enjoying such liberty except under the circumstances expressly stated under section and unless there is a law in force that allows the breach of the individual's liberty.<sup>2</sup> This right is defined by Lord Denning<sup>3</sup> as 'the freedom of every law-abiding citizen to think what he will, to say what he will on his lawful occasions, without let or hindrance from any other person'

The principle has enjoined both scholarly and judicial interpretations and sanctions. According to A.V. Dicey, personal liberty is defined as 'the right not to be subject to imprisonment, arrest and any other physical coercion in any manner that does not admit of legal justification.'<sup>4</sup> In the case of *Aqua v. Archibong & Ors*,<sup>5</sup> the learned Justice of the Court of Appeal describes personal liberty as:

As a foundation, every citizen of Nigeria has a constitutionally guaranteed right to his personal liberty which cannot be interfered with or violated except as may be permitted by the Constitution itself or a law made pursuant thereto. Section 35(1) of the 1999 Constitution as altered has made the following provisions on the personal liberty of a Nigerian... Section 35 (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law- a) in execution of the sentence or order of a Court in respect of a criminal offence of which he has been found guilty; b) by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law; c) for the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence; d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare; e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community or f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto. Subsections (2) and (3) of the Section provide for further rights of a person even where the law permitted the curtailment of his personal liberty; the right to remain silent and avoid answering questions until after consultation with a legal practitioner or other person of his choice and to be informed in writing, within twenty-four (24) hours of the curtailment of his liberty, of the facts and grounds for it in the language he understands to ensure that the personal liberty of a person was not arbitrarily curtailed or violated. Subsections (4) and (5) make provisions for a person whose personal liberty was curtailed pursuant to subsection 1(c) above to be arraigned before a Court of law within one (1) day, two (2) days or such longer period as may be considered by the Court in the peculiar circumstances of his case, to be reasonable. In case of the infraction of any of the situations provided for in the preceding subsections, subsection (6) of Section 35 provides for the consequences against the authority or person

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<sup>1</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), S35.

<sup>2</sup> Ibid.

<sup>3</sup> Sir Alfred Denning, *Freedom under the Law* [1949] p.5 available at; [http://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/Freedom\\_Under\\_the\\_Law\\_1.pdf](http://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/Freedom_Under_the_Law_1.pdf), accessed on 16 March, 2023.

<sup>4</sup> Cited in the case of *Oba Gabriel Orogie v. A.G. Ondo State* [1982], 3 NCLR, 349 per Justice Orojo

<sup>5</sup> (2012) LPELR – 9293 (CA)

responsible for violation of the personal liberty of a citizen. It provides thus:- 'Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, 'the appropriate authority or person' means an authority or person specified by law.' The essence of the above provisions is that persons, officers or agents of the State who in the ordinary course of the discharge of their official duties or functions for instance the police and other security agencies in the Country, may be involved in the deprivation or curtailment of a citizen's right to personal liberty, must strictly observe and comply with the provisions of subsection (1) - (5) above. Where the ordinary discharge of their duties or functions warrants the arrest or/and detention of a citizen, they are bound to abide by and act in accordance, strictly, with the provisions of the subsections otherwise, the person whose liberty was curtailed or deprived by them, shall be entitled to compensation and public apology from them since the curtailment or deprivation would in the circumstances, be unlawful.<sup>6</sup>

From the different definitions of personal liberty above, it could be deduced that as a matter of general rule, personal liberty is the freedom a person has to do whatever he wills and/or the freedom from arbitrary or unreasonable restraint and bondage except in accordance with a procedure recognized by a law. The right of a person to his/her personal liberty will therefore be infringed upon where any forms of detention whatsoever are imposed on the person with a view to depriving him/her of their liberty.

## **2. Circumstances where Liberty can be deprived**

It is also discernable from the foregoing that the right to personal liberty is not absolute, and it is as a result of which the Constitution<sup>7</sup> provides for some circumstances where a person's personal liberty may be deprived. For instance, where a court has granted an order of detention or found a Person (i.e Defendant) guilty and sentence him/her to a term of imprisonment in the exercise of powers conferred on it by any written law, the liberty of such person will not be said to have been deprived.<sup>8</sup> Another situation that may justify the deprivation of a person's right to personal liberty is where a person fails to carry out an order of a court against him/her or where the individual has refused to carry out an obligation or a duty that has been imposed on him/her by a law. Restraining the individual will be justified and he/she cannot complain that his/her personal liberty has been deprived.<sup>9</sup> Where an order has been granted to bring any person before a court, or where the person is suspected to have committed an offence or where it is necessary to restrain the person to prevent him/her from committing an offence, restraining the individual will not amount to denial of his/her right to personal liberty.<sup>10</sup> Also, where it is necessary to deprive the personal liberty of a minor who has not attained the age of eighteen years in order to cater for his welfare and education, his liberty will not be said to have been denied.<sup>11</sup> Depriving a person who is suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants for the purpose of care, treating the ailment or protecting the general community from the negative effects of such kind of persons will also not be regarded as deprivation of personal liberty.<sup>12</sup>

Another instance where deprivation of personal liberty will be lawful is where it is for the purpose of preventing a person from gaining unlawful entrance into the country or expelling or deporting an unlawful immigrant from Nigeria or the taking of any proceedings relating to same.<sup>13</sup> Be that as it may, the Constitution has provided that any person who is alleged to have committed an offence or whose detention is necessitated by any of the reasons stated above, such incarceration shall not be perpetual, and in the case of detention as a result of an offence being committed, it shall not exceed the maximum period of imprisonment prescribed as penalty for the offence.<sup>14</sup>

## **3. Effect of Wrongful Deprivation of Personal Liberty**

A person who alleges that any of his fundamental rights contained in chapter 4 of the constitution of the Federal Republic of Nigeria or the African Charter on Human and Peoples' Rights (Ratification and Enforcement) has been, is being, or is likely to be infringed, is at liberty to approach a High Court of a State or any Federal High Court for redress.<sup>15</sup> Any form of attempt or actual breach of the Right of Personal Liberty of an individual which falls within the contemplation of the Constitution will give the victim the right to seek redress before a court of law. In order to seek redress, an Applicant may make an application by any mode of commencement of action accepted by the court without the leave of the court.<sup>16</sup> In support of the application, the Applicant must prepare a statement setting out his/her name and description, the grounds upon which the application is brought, the reliefs sought and an affidavit setting out the facts in support of the application.<sup>17</sup>

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<sup>6</sup> Per Garba, JCA at pp. 16 – 18 paras B –F.

<sup>7</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), S35.

<sup>8</sup> Ibid, S. 35 (1) (a)

<sup>9</sup> Ibid, S. 35 (1) (b)

<sup>10</sup> Ibid, S. 35 (1) (c)

<sup>11</sup> Ibid, S. 35 (1) (d)

<sup>12</sup> Ibid, S. 35 (1) (e)

<sup>13</sup> Ibid, S. 35 (1) (f)

<sup>14</sup> See the proviso to S. 35 (1) (f) *ibid*.

<sup>15</sup> Fundamental Right Enforcement Procedure (FREPE) Rules, Order II Rule 1

<sup>16</sup> *University of Calabar v Esiaga* (1997) 4 NWLR (PT. 502) 719.

<sup>17</sup> FREPE Rules, Order II Rules 2 and 3

After being served with the application for enforcement of fundamental rights, the Respondent is required to within five days of service, file a written address and a counter affidavit if any against the said application.<sup>18</sup> The suit is expected to be heard expeditiously, and judgment entered either in favour or against the Applicant. Where the judgment is in favour of the Applicant, the court may order that the Applicant be released and/or awarded damages or order the Respondent to make a public apology to the Applicant.<sup>19</sup>

#### **4. Definition of Forced Labour**

Forced labour has been defined by the International Labour Organisation as ‘... all work or service which is exacted from any person under the threat of a penalty and for which the said person has not offered himself voluntarily. The term forced labour includes slavery and practices similar to slavery as well as bonded labour or debt bondage.’<sup>20</sup>

From the above definition, three elements can be identified as constituting forced labour namely:

- i) **Work or Service:** This refers to all types of work occurring in any activity, industry or sector including private, public, formal or informal sector or economy.
- ii) **Menace of any penalty:** This refers to a wide range of penalties which can be used to compel someone to work
- iii) **Involuntariness:** This refers to a situation where a person is being co-opted to do things or take actions over which he/she has no control. The term ‘offered voluntarily’ refers to the free and informed consent of a worker to take a job and his or her freedom to leave at any time he so chooses. However, this is not the case with ‘involuntariness of an act’ which will occur where an employer or a recruiter makes false promises to coerce a worker to take up a job which he/she would not otherwise have accepted.<sup>21</sup>

By the provisions of section 34 (1) of the Constitution, the dignity of human person of all the citizens of Nigeria has been jealously guaranteed. This provision goes further to prohibit any person from engaging another in forced or compulsory labour.<sup>22</sup>

From the definition above, it could be deduced that the definition is applicable to both individuals in government services and private establishments who suffers threats or actual physical harm from their employers or agent, unjustified withholding of salaries or wages, restriction of movement and so on.

#### **5. Exceptions to the Forced Labour Definition**

As earlier stated Section 34 (1) (c) of the Constitution of the Federal Republic of Nigeria 1999 as amended provides that ‘no person shall be required to perform forced or compulsory labour. Furthermore, Section 34 (2) of the Constitution provides that ‘for the purposes of subsection (1) (c) ‘forced or compulsory labour’ does not include the following namely:

- (a) Any labour required in consequence of the sentence or order of a court;
- (b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
- (c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;
- (d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
- (e) any labour or service that forms part of:
  - (i) Normal communal or other civic obligations of the well-being of the community;
  - (ii) Such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly; or
  - (iii) Such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.<sup>23</sup>

#### **6. Prohibition of Forced Labour**

The Labour Act did not define forced labour, however it provides for the prohibition of forced labour and in so doing described the instances that will be referred to as forced labour thus:

Any person who requires any other person, or permits any other person to be required, to perform forced labour contrary to section 34 (1) (c) of the Constitution of the Federal Republic of Nigeria 1999, shall be

<sup>18</sup> Ibid, Order II Rule 5, 6 & 7

<sup>19</sup> *Udo v. Robinson & Ors.* (2018) LPELR-45183 (CS)

<sup>20</sup> International Labour Organisation (ILO), Forced Labour Convention 29, 1930: Art. 2(1) available at [https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms\\_346435.pdf](https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms_346435.pdf), last visited on 25/03/2023.

<sup>21</sup> International Labour Organization <https://www.ilo.org> accessed on 27/4/2023 at 11.32pm

<sup>22</sup> Constitution, S, 34 (1) (c).

<sup>23</sup> See generally S. 34(2) (a) – (e) of the 1999 Constitution as amended.

guilty of an offence and on conviction shall be liable to a fine not exceeding N1,000 or to imprisonment for a term not exceeding two years, or to both.<sup>24</sup>

Any person who, being a public officer, puts any constraint upon the population under his charge or upon any members thereof to work for any private individual, association or company shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N200 or to imprisonment for a term not exceeding six months, or to both.<sup>25</sup>

What the draftsmen of Labour Act have done is to provide a guide for employers in both public and private organizations on the proper way to deal with their employees, failure of which there will be sanction. A perusal of the Act shows that the remuneration of an employee must be made in a legal tender acceptable in Nigeria.<sup>26</sup> Paying an employee with an illegal legal tender is 'illegal, null and void'.<sup>27</sup> The Act also allows the employer to provide food, dwelling place or any other allowance as part of the employee's remuneration in accordance with the law but prohibits the giving of intoxicating liquor or noxious drug to the employee as part of his/her remuneration.<sup>28</sup> The Act also prohibits the transfer of employee from one employer to another without the consent of the employee first sought and granted.<sup>29</sup> An employee is at liberty to quit his/her employment and may also decide to change from one employer to another subject to adequate notice to the employer.<sup>30</sup> In the absence of any written agreement on the notice required to be served for the purpose of quitting an employment, the required notice for a contract spanning a period of three months or less is one day, while for a contract spanning a period of two years but more than three months is one week. For a contract spanning a period of five years but more than two years is two weeks and a month notice is required for a contract that has continued for a period of five years or more.<sup>31</sup>

The Labour Act also makes provision to the effect that the hours an employee is expected to work is as agreed in the contract of employment or subject to collective bargaining within the organization in question or in the absence of a collective bargaining, an industrial wages board will be charged with the responsibility of deciding the working hours of the employee(s).<sup>32</sup> Except in an unforeseen circumstance, the employee who has stayed at work for six hours or more shall be entitled to one or more suitable spaced rest where the employee is allowed to take a rest and detach himself/herself from the work for a time which shall not be less than one hour.<sup>33</sup> The employee is also entitled to at least twenty-four consecutive hours rest in every period of seven days at work, failure of which the employee shall be entitled to corresponding time-off or wages in lieu thereof.<sup>34</sup> Every employee shall be entitled to at least six days or in the case of an employee under the age of sixteen, twelve days annual holiday after a continuous service for a period of twelve calendar months.<sup>35</sup> Subject to the agreement between the parties to a contract, the annual holiday may be deferred as long as the holiday earning period is not extended beyond twenty-four calendar months of continuous service.<sup>36</sup> The Labour Act prohibits the engagement of a child in any form of work or employment except the employer is a family member and the nature of the work is light, Horticulture or domestic character approved by the minister. A child shall not be subjected to a work that will require him to lift anything heavy that may cause injury to his physical body.<sup>37</sup>

### **7. The Court with Jurisdiction over Cases relating to Forced Labour**

The National Industrial Court is empowered with the requisite jurisdiction to entertain and adjudicate on matters of labour and employment including but not restricted to trade dispute, labour practices, Labour Act, work place<sup>38</sup> or any other enactment replacing the Act or Law.<sup>39</sup> Where a person is alleging that he has been subjected to forced labour, he is at liberty to approach the National Industrial Court for redress which will include a claim for any damages suffered as a result thereof.

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<sup>24</sup> Labour Act, Cap L1 Laws of Federation of Nigeria (LFN), 2004, Section 73 (1)

<sup>25</sup> Ibid, Section 73 (2)

<sup>26</sup> Ibid, Section 1 (1) (a)

<sup>27</sup> Ibid, Section 1 (1) (b)

<sup>28</sup> Ibid, section 1 (2)

<sup>29</sup> Ibid, Section 10

<sup>30</sup> Ibid, section 11

<sup>31</sup> Ibid, section 11 (2)

<sup>32</sup> Ibid, section 13 (1)

<sup>33</sup> Ibid, section 13 (3)

<sup>34</sup> Ibid, section 13 (7)

<sup>35</sup> Ibid, section 18 (1)

<sup>36</sup> Ibid, section 18 (2)

<sup>37</sup> Ibid, section 59 (1)

<sup>38</sup> See generally S. 254 (c) of the 1999 Constitution as amended.

<sup>39</sup> National Industrial Court Act (NICA), 2006 Section 7 (1); Constitution (Third Alteration) Amendment Act 2010, Section 254 (c) (1) and (2)

## **8. Sanctions for Forced Labour**

The provisions of the Labour Act is to the effect that, any person found guilty of forcing another person into forced labour contrary to section 34 (1) (c) of the constitution shall be liable upon conviction to a fine not exceeding ₦1,000 (One Thousand Naira) or to imprisonment for a term not exceeding two years, or to both.<sup>40</sup> In the case of a public officer who is guilty of putting constraint on the general population under his charge or forcefully engaging another person or group of persons to work in a private, association or company shall be guilty and upon conviction liable to a fine not exceeding ₦200 (Two Hundred Naira) or to imprisonment for a term not exceeding six months, or to both.

## **9. Relationship between Deprivation of Liberty and Forced Labour**

Given all the discussions above, the next issue that calls for discussion is whether or not there is a synergy between deprivation of liberty and forced labour, and our answer is in the positive. A careful perusal of the discussion above will reveal that a person who is forced to do a job he/she doesn't want to do voluntarily or who is being threatened to work is under a form of restraint which deprives him/her of his/her personal liberty because his/her freedom would have been taken away. Some of the synergy can be seen in the following situations:

1. Servitude: The use of domestic helps both at the national and the international level wherein the movement of the victim known as help is being restricted or his/her travel documents is seized to restrict his/her mixing with other individuals or depriving him/her the right to education. Is a form of deprivation of liberty.
2. Human trafficking for slavery or sexual purpose: Slavery is a situation whereby a person actually owns you like a piece of property. There is a thin line of difference between servitude and slavery. A situation whereby the victim lives on the premises of his employer and is unable to leave the premises at his own will is no different from deprivation of liberty.

## **10. Ways to Curb Forced Labour and Deprivation of Liberty**

Both Forced Labour and Deprivation of Liberty in today's world seem to make headlines on daily basis but has not been given the necessary attention required by the necessary authorities to curb the menace. The following are some of the ways forced labour and deprivation of liberty may be curbed:

1. The first is to raise awareness at all levels of the society and provide a well-informed description of forced labour/deprivation of liberty to the society and the possible hindrance the practice of forced labour/ deprivation of liberty will have on individuals and the community at large. The information may include the ways of circumventing or curbing and the necessary steps to take to tackle forced labour// deprivation of liberty in the society. It is therefore important to understand the risk an individual or a society stands to suffer by allowing forced labour/ deprivation of liberty to prevail in the society. Moreover, understanding forced labour/ deprivation of liberty will go a long way in helping a will be victim from avoiding or falling a victim.
2. A lot of employers are working under threat to either their lives or that of their loved ones. Some are working under a subtle means such as accumulated debt, retention of their travel documents or identity papers or threat of denunciation to immigration authorities. The victim in this circumstance can take the bold step to quit the job and report the employer to the necessary authority for necessary action against him/her.
3. An institution should be established at all levels of the society for the purpose of overseeing the activities of employers and employees of both the private and public sectors. They should also be saddled with the responsibility of receiving complaint from employees or any victim of forced labour / deprivation of liberty.
4. The provisions of the laws prescribing the punishment for these offences should be amended to carry stringent punishment.
5. Publicizing of the conviction and sentence of any individual or sector found guilty of the offence of forced labour / deprivation of liberty on daily newspapers and other national media forums to serve as a warning and to deter would be offenders.

## **11. Conclusion**

The right to personal liberty and the right not to be forcefully engaged in forced labour have synergy and can safely be said to be interwoven. These rights have formed part of the fundamental right recognized by the Constitution of the Federal Republic of Nigeria have been jealously guarded by not only the Constitution but some other Acts of the National Assembly like the Fundamental Right Enforcement Procedure Rules (FREPE), Labour Act, to mention a few. These rights have also enjoyed backing and enforcement by plethora of Judicial Authorities where the courts have always frowned against its breach by any person in Nigeria notwithstanding the status or position the person possess. The FREPE rules has made the application for the enforcement of the right easy before Courts of competent jurisdiction. This it has achieved through the removal of the time limit within which to file these types of suits.

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<sup>40</sup> Labour Act, Section 73 (1).