

PROTECTION OF THE RIGHT TO LIFE OF MEDICAL DOCTORS DURING PANDEMICS IN NIGERIA: A HERMENEUTIC APPROACH*

Abstract

The Constitution of the federal republic of Nigeria in its chapter 4 made provision for certain rights which were referred to as fundamental rights. In section 33(1) of the Nigerian constitution the right to life of Nigerian citizens was expressly provided which makes this section of the constitution enforceable in courts. This section of the constitution however failed to stipulate specific areas of life it sought to protect. A pandemic is said to occur when a new infectious agent or a reemerging one spreads across multiple continents or even worldwide. During pandemics health workers are generally exposed to infected victims of which medical doctors are inclusive and their lives are usually at stake during pandemics. This study sought to examine whether section 33(1) of the Nigerian constitution could be broadly interpreted to protect the right to life of medical doctors in Nigeria during pandemics. The research methodology adopted in this study was doctrinal and the approach was hermeneutic. The authors relied on primary and secondary sources for this research work. It was found that section 33(1) of the Nigerian constitution did not specify the nature of the right to life it sought to protect. The authors recommended that the section 33(1) of the constitution of the federal republic of Nigeria should be broadly interpreted to protect the right to life of medical doctors in Nigeria.

Keywords: Right to life, Medical Doctors, Pandemics, Hermeneutics

1. Introduction:

The Nigerian constitution in its section 33(1) provided for the protection of life of Nigerian citizens, this section is embedded in chapter 4 of the constitution among the rights recognized as fundamental human rights. It has been decided in several cases that fundamental human rights are rights which stand above the ordinary laws of the land and which is antecedent to the political society itself.¹ It has been further held that fundamental rights are primary conditions to a civilized existence and that what has been done by our constitution since independence up to the present constitution is to have these rights enshrined in the constitution so that these rights would be immutable to the extent of the non-immutability of the constitution itself.² Flowing from the decisions of the honourable courts it is obvious that right to life which is expressly provided for in chapter 4 of the constitution is an immutable right which must not be denied any Nigerian.

Modern definition of pandemic includes extensively epidemic over a wide area and usually affecting a large population and distributed or occurring widely throughout a region, country, continent or globally among others.³ In the 17th and 18th centuries the terms epidemic and pandemic were vaguely and often interchangeably used in various social and medical contexts. The first known use of the word pandemic was in 1666 when it was referred to as a pandemic or endemic or rather a vernacular disease.⁴ In 2003, the top of the WHO preparedness homepage contained the following statement: 'An influenza pandemic occurs when a new influenza virus appears against which the human population has no immunity, resulting in several simultaneous epidemics worldwide with enormous number of deaths and illness. In May 2009, WHO redefined pandemic to mean 'An influenza pandemic which may occur when a new influenza virus appears against which the human population has no immunity.'⁵ There have been a number of significant pandemics recorded in human history including: Small Pox, Cholera, Plague, Dengue, Aids, Influenza, Severe Acute Respiratory Syndrome (SARS), West Nile disease and Tuberculosis.⁶

During pandemic outbreaks medical doctors are usually the first to come in contact with infected victims and most times their lives are not adequately protected. The COVID-19 pandemic which is the recent pandemic that affected the whole world revealed the fact that the life of doctors is vulnerable during pandemics. Dr Li was an Ophthalmologist at Wuhan Center Hospital was the first doctor to come in contact with victims infected with the

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¹ *EFCC v Reini* (2020) 9 NWLR Pt 1730 pg 489 at 512

² *EFCC v Reini* (2020) 9 NWLR (Pt 1730) jg 489 at 512, *Ohufumilayo Ransom-Kuti v A.G Federation* (1985) 2 NWLR (Pt.6) pg 211

³ D. M. Morens, G. K. Folkers, A. S. Fauci, 'What is Pandemic', Office of the Director, National Institute of Allergy and Infectious Disease, National Institute of Health Bethesda, Maryland. <<https://pubmed.ncbi.nlm.nih.gov>> accessed 5th day of October 2023

⁴ *Ibid* p.3

⁵ *Ibid* p.4.

⁶ W. Qiu, S. Rutherford, A. Mao, C. Chu, 'The Pandemic and its Impacts' Health, Culture and Society, <<http://hcs.pitt.edu>> accessed 5th day of October 2023.

corona virus.⁷ In another news reported on 26th day of December it was recorded that not less than 20 Nigerian doctors had died from the effect of Covid-19 and that at June 2020 2, 812 health workers in Nigeria tested positive for COVID-19.⁸ Ameyo Stella Adadevoh, lead consultant and endocrinologist at First Consultants Medical Center in Lagos died during the Ebola pandemic after coming in contact with an infected victim.⁹ The negative effect of pandemic on the life of health workers has makes it expedient for their lives to be adequately protected in Nigeria.

2. Analysing the Rights to Life of Medical Doctors Breached During Pandemics

The WHO amidst the COVID 19 pandemic released a document on the rights, roles and responsibilities of health workers. The document recognized that health workers are at the front line of the COVID-19 outbreak response and as such are exposed to hazards that put their life at risk of infection. The document recognized that health workers are exposed to hazards, long working hours, psychological distress, fatigue, occupational burnout, stigma, physical and psychological violence. The document for the first time recognized certain rights of health workers that must be protected during the COVID 19 pandemic. The rights listed in the document if implemented by state governments will imply protection of right to life of health workers of which medical doctors are inclusive. The rights elucidated in the documents include the following:

Right to be provided with adequate IPC and PPE supplies

The WHO Infection Prevention Control (IPC) practices are measures developed to prevent outbreaks in hospitals. The practices fall under two broad categories: WASH—the presence of water, sanitation, hygiene, health care waste management and environmental cleaning in health facilities and infection prevention and control (IPC). It was argued the rigorous implementation of IPC and WASH (which is needed for effective IPC) prevents transmission of infections in health care settings, keep patients safe and keep health workers from becoming patients themselves.¹⁰ Personal Protective Equipment (PPE) which include masks, gloves, goggles, gowns, hand sanitizer, gowns, respirators and full body suits should be provided in sufficient quantity to medical doctors during pandemic to protect them from being infected.

Right to information, Instruction and Training of Medical Health Practitioners

The WHO document reiterates the right of medical practitioners to be trained on Occupational Safety and Health (OSH) as well as trained on Infection Prevention and Control (IPC). This was considered necessary in order to prevent and minimize the risk of spread of COVID-19 from patients to medical practitioners. Medical Practitioners are to receive training on measures and procedures to control the spread of the virus and to ensure their safety in the course of attending to patients with symptoms of COVID-19. It is expedient for health workers to be properly trained on the WHO IPC measures not only during the pandemic but before the pandemic. A survey of the 1995 Ebola outbreak in the Democratic Republic of the Congo for instance revealed that infections among health workers dropped from 79 cases to one case after IPC measures were introduced.¹¹ In West Africa Ebola outbreak health workers represented 12% of all cases in July 2014 but it dropped to 1% in February 2015 after efforts were made by international and nongovernmental organizations to improve IPC practices.¹² A study carried out in a Wuhan hospital found that health workers who received IPC training significantly lowered COVID-19 infection rates more than those who did not receive the training and WHO data showed that as IPC measures were strengthened and PPE became more readily available, the proportion of COVID-19 infections in health workers in Europe went down fivefold.¹³

Right to a Blame-free Environment and Reporting Mechanism

Medical Practitioners have a right to work freely in a health establishment that is not vindictive. They also should be free to report incidents of exposure without fear of being blamed unjustly for such incidents. This right also

⁷ E. Peterson, D. Hui, A A Hamer L Blumberg, et.al, 'Li Wenliang, a Face to the Frontline Healthcare Worker. the First Doctor to Notify the Emergence of the SARS-CoV-2, (COVID-19), outbreak' *International Journal of Infectious Disease*. 2020 (93) 205-207 <<https://www.ijidonline.com/article/S1201>> accessed 5th November 2023

⁸ A Ajansi, '20 Nigerian Doctors Die in One Week From COVID-19 More Than 1,000 Health Workers Reportedly Tested Positive For Coronavirus' Updated 26.12.2020, <<https://www.aa.com.tr/en/africa/20-nigerian-doctors-die-in-one-week-from-covid-19/2089037#>> accessed 7th November 2023.

⁹ A. Green, 'Obituary, Remembering Health Workers Who Died from Ebola in 2014' <www.thelancet.com> Vol accessed 5th November 2023.

¹⁰ J. O OKadiran, O. S. Ilesanmi, A A Fetuga, I Onnoh, A A Afolabi, O. Ogunbode, L. Olagide, A. V Kwaghe, & M S Balogun, 'The experience of Healthcare Workers during the COVID – 19 crises in Lagos, Nigeria; A qualitative study' National Library of Medicine-National Center for Biotechnology Information, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7811855>>, accessed 5th November 2023

¹¹ F Zhou, Li J, Lu M, Ma L, Pan Y, Liu X, et al. Tracing asymptomatic SARS-CoV-2 carriers among 3674 hospital staff: a cross-sectional survey cited in A McClelland, A Kennedy, 'Protecting Health Care Workers A Need for Urgent Action' <<https://preventepidemics.org>. accessed> 5/10/23

¹² Ibid

¹³ Ibid.

presupposes that medical doctors have access to reporting mechanism that encourage them to report incidents of violence against them and which provides needed support to medical doctors who are victims of exposures and violence.

Right to abstain from work without Undue Consequences:

Medical practitioners have the right to report any symptoms and to stay home when ill without being required to a work situation where there is continuing or serious danger to life or health. In cases where there is reasonable justification to believe that the situation at work poses an imminent and serious danger to their life and health, medical practitioners have a right to continue to stay away from work until the employer has taken necessary remedial actions to ensure that concerns to their life and health have been addressed. This right could be applied in circumstances where the medical doctor was not supplied with adequate PPEs to protect himself by his employer. The Medical doctor reserve the right to stop work till all supplied are made available to ensure protection of his life.

Right to appropriate working hours with Breaks

Medical doctors have a right not to be overworked unduly. Their working hours are thus expected to be scheduled in such a way that they are allowed to take needed breaks, as may be necessary.

Right to Compensation, Rehabilitation and Curative Services

Medical doctors who are infected with COVID-19 following exposure in the workplace have a right to compensation and rehabilitation as may be necessary. Such cases are to be treated by employers as occupational exposure and the resulting illness as an occupational disease and all necessary remedies for occupational hazards should be made available to affected medical practitioner. The medical doctor is also entitled to be paid hazard fees especially when they work during pandemics because of the extra work they do. This lack of compensation for medical doctors in Nigeria made a lot of health workers to leave the country in search of greener pastures. It is pertinent to state that as at the year 2020 doctors were still paid a monthly hazard allowance of N5000 (US\$ 14, Central Bank of Nigeria exchange rate of N361 as of 28 April 2020). It is necessary for a medical doctor working during pandemic to be paid higher hazard fees to enable him protect his life and family.

Right to access Mental Health and Counselling Resources

Medical doctors are frontline as frontline workers are considered as high-risk group of persons to contact infections during pandemics. Some identified potential risk factors for mental health among medical practitioners during the COVID-19 pandemic, included the stress of managing the overwhelming numbers of patients with COVID-19, feeling of vulnerability form exposure to the virus to their family members and loved ones. These risk factors make it necessary to ensure that mental health and counselling resources are made available to medical doctors to help them cope with stress inducing situations which they face in the discharge of their life-saving responsibility.

3. Wide Interpretation of Right to Life vis-a-vis Protection of the Right to Life of Medical Doctors

The constitution of the federal republic of Nigeria in its section 33(1) provides that every person has a right to life and no one shall be deprived intentionally of his life save in execution of sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. Section 33 of the constitution however failed to describe the nature of rights it intends to protect. In practice the interpretation given to section 33 of the constitution has always been with reference to criminal cases especially where a person physically assaults another person. It was held in *Abegunde v Ondo State House of Assembly* that while interpreting the constitution the general principles of interpretation must be complied with. The first canon of interpretation is referred to as the broad interpretation or liberal approach or global view. The second canon is that related sections of the constitution ought to be interpreted together so as to produce harmonious result. Thirdly where the words of any section are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with the provisions of the constitution.¹⁴ It is thus the role of the judiciary while interpreting section 33 of the Nigerian constitution as it relates to the right to life of medical doctors during pandemics to give a wide interpretation as it relates to the nature of their job.

Article 21 of the Indian constitution is similar to section 33 of the Nigerian 1999 constitution wherein the rights to life of Indian citizens was promoted. Indian Courts has on several occasions widely interpreted Article 21 to give the provision of right to life a wide and encompassing interpretation making the said Article applicable in all spheres of life. In *Maneka Gandhi vs. Union of India*,¹⁵ the court while giving interpretation to Article 21 held that the right to live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. The right to live is not confined to the protection of any limb through which life is enjoyed but it also includes the right to live with human dignity and all that goes along with the bare necessity of life such as adequate nutrition,

¹⁴ *Abegunde v Ondo State House of Assembly* (2015) 8 NWLR (PT 146) PG 314 at 357

¹⁵ *Maneka Gandhi v Union of India* AIR (1978) SC 597

clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human beings. The Supreme Court concluded that it is not just the personal liberty and life that falls under Article 21 but everything that is needed for them to be effectively implemented. In India article 21 which provides for right to life and liberty of person has become the device for requiring the state to provide in effect everything that would make a person's life a life of dignity and fulfillment. According to Arun Shourie¹⁶ the point is about liability and enforceability.

In an Indian case *Rathinam v Sharma*,¹⁷ the supreme court of India held that economic and political rights could be interpreted alongside with civil and political rights. The court held that right of life includes right to livelihood and good health. According Justice A S. Anand any interpretation of a national law or constitution which advances the cause of human rights and seeks to fulfil the purposes of international instruments must be preferred to a sterile alternative.¹⁸ He further argued that it is a proper part of the judicial process and a well-established judicial function for national courts to have regard to the international obligations undertaken by the country in question whether or not these have been incorporated into domestic law for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law. The Indian Supreme Court had used Article 21 to award interim compensation to a victim of rape before the final conviction. In *Bodhisattwa Gautam v Subhira Chakraborty*¹⁹ an interim compensation was awarded to the rape victim pending the criminal case against the offender. The Supreme Court held that women in India had the right to life and liberty to be respected. The Court also stated that rape was a crime not only to women but also to the entire society. As the crime destroyed the entire psychology of a woman and put her in a deep emotional crisis, the offence affected basic human rights and thus, violates the right to life under Article 21 of the Constitution. Additionally, since the right to life means right to live with human dignity, it should include all aspects of life to make life meaningful, complete and worth living. It was also decided that rape was a wrongdoing that violated fundamental rights protected under Art. 21. In *Olga Tellis v Bombay Municipal Corp*²⁰, the Supreme Court of India stated that the right to livelihood was born out of the right to life because no person could live without the means of living. Therefore, to deprive a person of his right to livelihood would deprive him of his life. In *Virendra Gaur & Ors v State of Haryana*²¹ the court held that Article 21 includes right to life with human dignity which encompasses protection and preservation of environment, ecological balance, free from pollution of air, and water and sanitation. The Indian environmental jurisprudence also took into account the importance of ecological maintenance the ecological balance and atmosphere. The Supreme court decided that the term environment in the broad sense include 'hygienic atmosphere and ecological balance. It was held that enjoyment of life, and with human dignity, the environment must be protected and preserved.

The Indian Court in deciding several cases has placed reliance on international instruments to give decisions in *Nilabati Behera v State of Orissa*²² while awarding compensation for infringement of right to life referred to ICCPR. which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. In *Prem Shankar Shukla v Delhi Administration*²³ while dealing with the handcuffing of prisoners and other humiliations inflicted on persons in custody, the Supreme Court of India observed that in discussing the relevant statutory provisions and constitutional requirements court and counsel must never forget the core principle in Article 5 of the Universal Declaration of Human Rights. In *Sunil Batra v Delhi Administration*,²⁴ the Supreme Court took note of Article 10 of the ICCPR which states as that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Court stated that 'the Indian court has from time-to-time injected flesh, blood and vitality into the skeleton of the words used in Article 21 of the Constitution in consonance and harmony with international human rights instruments.

In the South African case, *Treatment Action Campaign and 2 others v Minister of Health and 9 others*,²⁵ the main prayer of the plaintiff to the court was for declaratory order that the respondents (the state) are obliged to provide and dispense Nevirapine to pregnant women with HIV where it is medically indicated. Further, to produce and implement an effective national programme to prevent or reduce mother to child transmission (MTCT) of HIV including the provisions of voluntary counselling and testing (VCT), and where appropriate, nevirapine or other appropriate

¹⁶ A Shourie, 'Courts and their Judgements' (Fifth Edition Rupa Publications Pvt. Ltd. 2011 New Delhi), cited in A. Pandey, 'Wide Interpretation of right to Life, a question of enforceability' <<https://paper.ssrn.com>> accessed 9th May 2024.

¹⁷ *Rathinam v Sharma* (1994) 3 SC p.394

¹⁸ J Anand, 'The Domestic Application of International Human Rights Norms' (1998), cited in 'Wide Interpretation of right to Life, a question of enforceability' <<https://paper.ssrn.com>> accessed 9th May 2024

¹⁹ *Bodhisattwa Gautam v Subhira Chakraborty* AIR (1996) SC 922, (1996) 1 SCC 490

²⁰ *Olga Tellis v Bombay Municipal Corp* AIR (1986) SC 180.

²¹ *Virendra Gaur & Ors v State of Haryana* (1995) 2 Supreme Court Cases 577

²² *Nilabati Behera v State of Orissa* 1993 SCRM (2) 581

²³ *Prem Shankar Shukla v Delhi Administration* 1980 3 SCC 526

²⁴ *Sunil Batra v Delhi Administration* (1978) 4 SCC 409

²⁵ *Treatment Action Campaign & 2 ors v Minister of Health & 9 ors* (2002) ZACC 16

medicine as well as infant formula. The High court in recognition of the right to life of the plaintiff ruled that the respondent (government) is obliged to make Nevirapine available to pregnant women with HIV who give birth in public sector and to their babies in public facilities. The court further ordered the respondents to plan further and submit to the court an effective comprehensive national programme to prevent or reduce the mother to child transmission of HIV, including the provision of voluntary testing, which programme must provide for its progressive implementation to the whole of the country and to implement in a reasonable manner. Chapter 2 of the South African constitution²⁶ provided for the right to life in section 11 of the said chapter. Section 35(1) of Chapter 3 of the constitution titled 'Interpretation,' provides that while interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law. Section 39 of Constitution, entitled 'Interpretation of Bill of Rights,' provides: 'When interpreting the Bill of Rights, a court, tribunal or forum- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; (b) must consider international law; and (c) may consider foreign law.'

The African Charter of Human and Peoples rights²⁷ in its Article 4 of the Charter made provision for the right to life. The article particularly stated that every human being is inviolable and shall be entitled to respect for his life and integrity of person. In its General Comment no 3 on the African Charter on right to life²⁸ the African Commission on Human and Peoples' Rights described the right to life as the fulcrum of all other rights. In General Comment No. 3 the Commission clarifies the nature of the right to life as recognized in Article 4 of the African Charter on Human and Peoples' Rights (the Charter) and the extent of the obligation it imposes upon States Parties. According to the General Comment the State is designed to guide the interpretation and application of the right to life under the Charter and to ensure its coherent application to a range of situations, including its implementation at the domestic level. According to the general comment the right to life should not be interpreted narrowly in order to secure a dignified life for all, the right to life requires the realization of all human rights recognized in the Charter including civil, political, economic, social and cultural rights²⁹ According to the general comment States have a responsibility under the Charter to develop and implement a legal and practical framework to respect, protect, promote and fulfil the right to life. States must take steps both to prevent arbitrary deprivations of life and to conduct prompt, impartial, thorough and transparent investigations into any such deprivations that may have occurred, holding those responsible to account and providing for an effective remedy and reparation for the victim or victims, including, where appropriate, their immediate family and dependents. Derogation from the right to life is not permissible in a time of emergency, including a situation of armed conflict, or in response to threats such as terrorism.³⁰

It is obvious that in accordance with the interpretation above it is the duty of the State to develop and implement legal framework to respect, protect and fulfil the right to life of medical doctors specifically during pandemics. The Nigerian government should take step to prevent arbitrary deprivation of right to life of medical doctors during pandemics by ensuring that personal protective instruments are made available to them during pandemics in sufficient quantities. Medical doctors should be given sufficient funds and special allowances to enable them cushion the effects of the pandemic on their own lives. The government should also be involved in thorough and transparent investigation during pandemics to ensure that the lives of medical doctors are well protected at the outbreak of any pandemic. Pandemics are usually periods of emergencies which could adversely affect the lives of medical doctors in Nigeria.

According to the general comment State governments should build blocks of a proper State system for the protection of the right to life that will include the enactment of appropriate domestic laws that protect the right to life and define any limitations on the right in accordance with international standards, a law enforcement system with the necessary equipment and training and a competent, independent and impartial judiciary and legal profession based on the rule of law. States should continuously update their laws and practices to comply with international standards. According the general comment, States should take steps to raise awareness of the human rights implications of the applicable legal framework through professional training and other measures.³¹ It is obvious that in accordance to this comment it is not just enough for the Nigerian Government to make a general provision in its constitution for the rights of Nigerian citizens to life but should make specific laws for the protection of right to life of medical doctors. As part of

²⁶ Constitution of the Republic of South Africa, 1996

²⁷ African Charter of Human and Peoples rights 1981

²⁸ General Comment No.3 on the African Charter on Human and Peoples' Rights , the Right to life (article 4), adopted during the 57th ordinary session of the African Commission of Human and Peoples' Rights held from 4th to 18th November 2015 in Banjul Gambia, <<https://policehumanrightsresources.org/content/uploads/2015/01/General-Comment-3-On-The-African-Charter-On-Human-And-Peoples%E2%80%99-Rights.-The-Right-To-Life-Article-4.>>

²⁹ See paragraph 5 of the general comment no 3

³⁰ See paragraph 6 of the general comment no 3

³¹ See paragraph 10 of the general comment

their broader duty to secure the conditions for dignified life, States have a particular responsibility to protect the human rights, including the right to life, of individuals or groups who are frequently targeted or particularly at risk.³²

The right to life is also recognized in various international instruments. Section 9 of the Human Right Act recognized the right of everyone to life and no one should be arbitrarily deprived of this right. The Act specifically recognized that everyone is entitled to this right from the time of his birth. Article 6 of the International Covenant on Civil and Political Rights ICCPR also affirms the right to life as inherent in everyone and no one shall be deprived of this right. The European Convention for the Protection of human right and fundamental freedoms (ECHR) in its Article 2 affirmed that everyone's right to life shall be protected by law and no-one shall be deprived of his life intentionally. According to the drafters of ICCPR right to life is the most fundamental of all rights,³³ the Human rights committee affirming this also stated that the right to life is the supreme right from which no derogation is permitted even in time of public emergency. The Human right committee also noted that the right to life is basic to all human rights and that state parties are obligated to protect the lives of their citizens. States in protection of right to life of their citizens must adopt positive measure to protect the rights to life of their citizens.³⁴ The Human right committee in their general comment stated that right to life should not be interpreted narrowly since right cannot be understood properly in a restrictive manner. It also requires the State to take appropriate steps to protect the life of those within its jurisdiction. In its widest sense, the obligation to take appropriate steps means that the State must, as its primary duty establish a framework of laws, procedures and enforcement mechanisms that will, as far as reasonably practicable protect life. Having regard to the fundamental nature of the right to life, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.³⁵

According to the Human Right Committee, the obligation to protect persons at risk of harm extends to life-threatening situations such as environmental hazards that are known or ought to be known to public authorities. In such circumstances, the authorities have a duty to warn persons who are likely to be at risk from the danger.³⁶ In *Kilinc v Turkey*³⁷ the European Court held that there had been a violation of the right to life when a conscript diagnosed with depression was declared fit for military service and subsequently took his own life when on duty. The Court found that the relevant authorities had not done everything in their power to protect against the risk which was 'known as it was avoidable'. Significantly the relevant domestic laws on conscription lacked clear guidance for the supervision of those whose fitness to perform military service was in doubt. In particular, they did not spell out the responsibilities of superiors required to deal with mentally ill conscripts. The Court considered the defective regulatory context to be a decisive factor in giving rise to the violation of the right to life.

There is not specific law in Nigeria designated for the protection of the right to life of medical doctors, emphasis has always been on their responsibility towards the preservation of the lives of their patients. According to International Code of Medical Ethics 'A physician shall owe his/her patient complete loyalty and all scientific resources available to him/her.'³⁸ A medical doctor owe the patient a duty to treat the patient with care while being mindful of the patient's rights and ensuring that such rights are respected, failure to do so makes the him liable to negligence.³⁹ In *Guilmet v Campbell*⁴⁰ the supreme court imposed liability on a physician who promised to cure a bleeding ulcer, not because he was negligent but because he failed to provide the cure he promised. In the Nigerian case of *Akintade v Chairman Medical and Dental Practitioners Disciplinary Tribunal*, a doctor was charged for (a) failure to attend to the patient promptly, (b) incompetence in the assessment of the patient by failing to diagnose her as a diabetic and failing to realize that the patient had post operations complications of faecal peritonitis, (c) deficient treatment arising from inadequate pre-operative investigations, deficient operative procedure and poor and faulty post-operative management. The second charge consist of (a) admission of the patient in the doctor's private hospital when he knew or ought to have known that the facilities therein were inadequate for required treatment and (c) failure to refer the patient on time especially when the post-operative complications set in. The Court of Appeal set aside the 2nd charge but convicted the doctor of offences listed in the 1st charge. He was therefore sentenced to suspension from practice

³² See paragraph 11 of the general comment.

³³ M Bossuyt, 'Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights' (Martinus Nijhoff Publishers, 1987), p.115

³⁴ Human Rights Committee, General Comment No 6 (1982), para 5.

³⁵ Human Right and Discrimination Commissioner Act Human Rights Commission.

³⁶ *LCB v United Kingdom* (1998) 27 EHRR 212

³⁷ *Kilinc v Turkey* 2001 33 EHRR 1357/2000 ECHR 22492/93

³⁸ Adopted by the 3rd General Assembly of the World Medical Association, London, England cited in Y. Olomjobi, *Medical and Health Law* (2019, Princeton & Associates Publishing Co. Ltd). p.143

³⁹ O.O Olusegun, O. A. Adejumo, *Legal Prescriptions for Medical Practitioners, a handbook of medico legal issues and rights protection in Nigeria* (2023, Krafts Books Limited)

⁴⁰ *Guilmet v Campbell* (1971) 385 Mich 57,188 N.2d 601

for three months.⁴¹ According to Lord Hewart C.J in the case of *R v Bateman*⁴² ‘if a person holds himself out as possessing special skills and knowledge and he is consulted as possessing such skills and knowledge by or on behalf of a patient, he owns the duty to the patient to use due caution in undertaking the treatment and the patient submits to his discretion and treatment accordingly, he owes the duty to the Patient....’

In the light of the cases, it is no doubt that medical doctors have greater has a great role to play in ensuring the rights of patients are protected even to the detriment of their own lives. It is therefore necessary to their own lives to be secured as well especially during pandemics. Constitution is a living instrument; it must be read contemporaneously in line with the modern trend and national aspiration. Life is essential to human survival, once it is lost it could not be replaced. Thus recognizing life as part of fundamental human right is one of the best way to protect.⁴³ Since constitution is not static its provisions on fundamental rights, must be construed according to the contemporaneous needs. The right to life is recognized in the Nigerian constitution under the fundamental human right but the constitution did not make express provision on the ambit of right it sought to protect. In *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited (Shell & Nigeria National Petroleum Corporation (NNPC))*⁴⁴, the plaintiff Mr. Gbemre of Iweherekan Community Delta State Nigeria sued Shell Nigeria, NNPC and the A.G. of the Federation on the following claims: A declaration that the constitutionally guaranteed fundamental rights to life and dignity of human person provided in sections 33(i) and 34(i) of the Constitution of Federal Republic of Nigeria 1999... inevitably includes the right to clean, poison free, pollution free and healthy environment. The court declared that the actions of the 1st and 2nd respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicant community was a violation of their fundamental right to life (including healthy environment) and dignity of human person guaranteed by the constitution and the African Charter. The court further declared that the 1st and 2nd respondents i.e Shell and NNPC were to be restrained from further flaring of gas in the applicant’s community and were to take immediate steps to stop the further flaring of gas in the plaintiffs’ community. The decision of the Court in *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited (Shell & Nigeria National Petroleum Corporation (NNPC))* depicts judicial activism by the learned trial judge. It is obvious that in the context of this research the rights to life of medical doctors should be protected by widely interpreting our constitution to during pandemics.

4. Conclusion and Recommendation

It is obvious from this research that there is need for the right to life of medical doctors to be protected before and during pandemics. It is against this backdrop that we make the following recommendations: There is need for training of Judges to recognize modern trends while making interpretation of section 33(1) of the Constitution. There is also the need to incorporate in the Nigerian constitution specific definitions of the nature of rights to life section 33(1) of the constitution sought to protect. The courts should equally recognize international legislative instruments ratified by Nigeria and customary international laws while making interpretation of the sections of the constitution.

⁴¹ *Akintade v C.M.D.P.D.T.* (2005) 9 NWLR (PT.930) 338 CA

⁴² *R v Bateman* (1925) 19 CR App R.8

⁴³ N Hashim, ‘The need for a dynamic Jurisprudence of Right to Life under Article 5(1) of the Right to life under Article 5(1) of the Federal Constitution’ *Procedia- Social and Behavioral Science* 101(2013) 299-306, <www.seciencedirect.com>

⁴⁴ *Gbemre v shell petroleum development coy and ors* (2006) 16 NWLR (Pt.1004), (2006) 7 S.C (Pt II) 27