

# THE RULE OF LAW AS THE LEGAL REMEDY FOR EFFECTIVE LEADERSHIP, ECONOMIC JUSTICE, HUMAN RIGHT OBSERVANCE AND ECONOMIC STABILITY IN NIGERIA

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## Abstract

*Nigeria operates a constitutional democracy; and the basic principles of the rule of law are enshrined in its constitution. However, the manner in which the laws are used in practice are substantially different from the laws in the statute books in Nigeria. This is due to the objectionable degree of tyranny, impunity, injustice, cruelty and corruption due to the arbitrary use of discretionary powers by some state functionaries. This paper examines the application and observance of the basic principles of the rule law under Nigeria's 1999 Constitution, considering, among other things, the salient provisions of the Nigeria's constitution vis-a-vis the basic principles of effective leadership, economic justice and human rights observance. This article assesses the country's compliance with these principles under the military and democratic dispensations, the impediment to and the significance of the observance of these principles alongside clues for pragmatic policies towards economic prosperity and stability. Applying both the doctrinal and the analytical legal research methodologies, it finds that the second generation rights codified under Chapter 2 of the Nigeria's Constitution and its provisions as to independence of the judiciary is questionable. It finally recommends viable panaceas towards the rectification of the observed abnormalities.*

**Keywords:** Rule of Law, Constitutional Law, Human rights, Economic Justice, Policy Reform

## Introduction

Rule of law is a political and legal ideal that postulates that all people and institutions within a country, state or community are accountable to the same laws, including lawmakers, government officials and judges, among others. It is otherwise paraphrastically couched in lay people's parlance as denoting that “*nobody is above the law*” or that “*all persons are equal before the law*”. Therefore, it is an egalitarian norm of governance that fundamentalises respect, equity, fairness, justice and freedom, thereby practically maintaining the supremacy of the prevailing or governing laws of the land over and above any and all leaders, and invariably, the genehrality of their precise *bona fide* followers and/or citizens.<sup>1</sup>

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According to A.V. Dicey, the rule of law engenders the supremacy or predominance of the regular law as opposed to the use of arbitrary power and it excludes the existence of arbitrariness or even of wide discretionary authority on the part of the government.<sup>2</sup> This perspective of Dicey had been aptly reiterated by Bryan A. Garner who expatiated on the meaning of the rule of law in the following language:

*The Rule of Law is the absolute predominance of the ordinary law over every citizen, regardless of their power, ensuring that decisions are made by the application of known principles or laws and not arbitrary discretion.*<sup>3</sup>

In conjunction with the above analytical explorations, it is ample to highlight the fact that the expression “Rule of Law” was originally derived from the French phrase “*La principe de legalite*,” that is to say, “a government based on the principle of law”. The foundation of today’s famous rule of law theory can be traced back to the ancient Romans during the formation of their first republic; nonetheless, it has since been championed by several medieval thinkers in Europe such as Thomas Hobbs, John Locke and Jean Jack Rousseau through their social contract theory.<sup>4</sup> Furthermore, the rule of law has been widely regarded in many quarters to be the bedrock of the Nigerian, Indian and American legal systems to mention but a few. Therefore, in practice, the rule of law exhibits certain inseparable principles that invincibly and practically widen the four walls of every democratic society, Nigeria inclusive.<sup>5</sup> However, the existential dichotomy between the textual provisions of the prevailing law and the law in practice in Nigeria is worthy of exploration.

This paper appraises the principles of the rule of law by examining certain provisions of the Nigerian Constitution, the basic principle of the rule of law embedded therein, the application and observance of these principles nationwide (both under democratic and military dispensations). It also examines the impediments to and the significance of the application of these basic principles under Nigeria’s Constitution vis- a-vis economic justice, human rights observance and economic stability.

## **A Synoptic Overview of the Salient Provisions of Nigeria’s 1999 Constitution**

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<sup>1</sup> <https://scholargoogle.com/sholar?hl=en> - Accessed 28 March, 2025

<sup>2</sup> [https://lc2.du.ac.Inldata/presentation%20on%20rule%20of%20law\\_chintu%20Jain.Pdf](https://lc2.du.ac.Inldata/presentation%20on%20rule%20of%20law_chintu%20Jain.Pdf). \_\_ Accessed 29 March, 2025.

<sup>3</sup> B.A. Garner, *The Black’s Law Dictionary* (7<sup>th</sup> edition, West Group Publishing Co./ St Paul Minn., 1999) 1332.

<sup>4</sup> [https://LC2.Du.Acin/DATA/presentation%20on%20rule%20of%20law\\_chintu%20Jain.pfd](https://LC2.Du.Acin/DATA/presentation%20on%20rule%20of%20law_chintu%20Jain.pfd). > Accessed 29, March, 2025

<sup>5</sup> Ibid

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the organic law in Nigeria. Starting with a concise preamble internalising legitimacy, the constitution contains eight chapters and six schedules, with chapter one containing the general provisions, especially those proclaiming the supremacy and authority of the constitution over all Nigerian citizens and residents; and the structural composition of Nigeria as a federation.<sup>6</sup> Section 1 (1) of the Constitution provides as follows:

*This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout, the Federal Republic of Nigeria.*<sup>7</sup>

Similarly, subsection 3 of the foregoing section of the constitution further emphasises that if any law is inconsistent with the provision of the constitution, the provisions of the constitution shall prevail, and that other law shall to the extent of its inconsistency be void.<sup>8</sup> The case of *Fawehinmi v. Abacha*,<sup>9</sup> affirmed these provisions wherein the Supreme Court clearly declared in that:

*The position of the law is that the African Charter is enforceable in Nigerian courts so long as it is not inconsistent with the provisions of the Nigerian Constitution. That is, where a provision of the charter is not in line with the provision of the constitution, such a provision shall be void based on section 1(3) - the supremacy clause.*

Further, Chapter two exclusively deals with fundamental objectives and directive principles of state policy, hence amply capturing *inter alia* the overall outstanding duties of all organs of government in Nigeria. The chapter contains the second generation rights which include, rights to water, shelter, employment, education, equal opportunities, among others. However, unfortunately, these fundamental freedoms are particularly not made justiciable despite their indispensability to the just, equal, liberal and healthy living of all Nigerians. Similarly, the court did broadly hold in the case of *Muhammed v. Executive Governor of Kano State & others*,<sup>10</sup> that the right to employment is not justiciable in Nigeria and as such the appellant cannot enforce same before any court of law whatsoever or howsoever. Therefore, while chapter three covers citizenship and other related matters.<sup>11</sup> Chapter four aptly captures enforceable fundamental rights of the citizens comprising of right to life, liberty, property, dignity of

<sup>6</sup> See generally Chapter 1 of the Constitution of the Federal Republic of Nigeria 1999.

<sup>7</sup> Section 1(1) of Constitution of the Federal Republic of Nigeria (CFRN) 1999.

<sup>8</sup> Section 1(3) CFRN) 1999.

<sup>9</sup> (2000) 4SC. (pt.11).

<sup>10</sup> (2024) LPELR\_\_62086 (CA).

<sup>11</sup> See generally charter 3 of the CFRN 1999 (as amended)

human person, private and family life, peaceful assembly and association, freedom of expression and the press, religion, fair hearing, movement, freedom from discrimination, among others.<sup>12</sup> Thus, the Supreme Court of Nigeria held in the celebrated case of *Ransome Kuti v. Attorney General of the Federation*<sup>13</sup> that human right is a right which stands above the ordinary law of the land and which in fact is antecedent to political society itself. That is, it is a primary condition for a civilized existence and what has been done by our constitution is to have those rights enshrined in it (i.e. chapter 4 of the constitution) so that the rights could be immutable to the extent of the immutability of the constitution.<sup>14</sup> Furthermore, chapters 5, 6 and 7 respectively and vividly provides for legislative, executive and judicial organs of government in Nigeria vis-à-vis their functions and powers, hence symbolising her federalistic structure and its operation of the system of checks and balances. The last chapter thereof -chapter 8- enshrines general supplementary, miscellaneous and ancillary provisions including but not limited to those relating to the Federal Capital Territory, Abuja, boundary adjustments, among others.<sup>15</sup> Finally, the 1<sup>st</sup> to the 6<sup>th</sup> Schedules to the constitution contains miscellaneous, supplementary and interpretative provisions.<sup>16</sup>

### **Examining the Basic principles of Rule of Law and Socio-economic Justice under Nigeria's 1999 Democratic Constitution**

The rule of law thrives under a democratic system especially in a constitutional democracy where the constitution is supreme and above all the persons and authorities all through the land, community or country in issue or where there are strong conventions supporting the rule of law, such as in the United Kingdom.<sup>17</sup> As such, section 14(1) of Nigeria's 1999 Constitution declares that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice. Specifically, the term rule of law subtly proposes that no one is above the law and governmental decisions must be made only by applying known legal and moral principles. The rule of law is meant to prevent dictatorship and to protect the right of the people, so that in the long run, it could engender economic justice, prosperity and stability.<sup>18</sup> Accordingly, Nigeria's constitutions as well as Dicey postulations present the three basic principles of rule of law which include;

#### **(i) Supremacy of the law**

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<sup>12</sup> See generally charter 4 of the 1999 (as amended)

<sup>13</sup> (1985) 2 NWLR, pt. 6, 211 SC.

<sup>14</sup> Ibid.

<sup>15</sup> See generally charter 5, 6, 7 and 8 of the CFRN 1999.

<sup>16</sup> See generally the 1<sup>st</sup> to the 6<sup>th</sup> schedule of the CFRN 1999.

<sup>17</sup> <https://core.ac.uk/download/pdf/234649539>. Pdf > Accessed 30 march, 2025

<sup>18</sup> Ibid

- (ii) Equality before the law and
- (iii) The general principles of the constitution being the result of judicial decisions determining the rights of private persons in particular cases brought before the courts.<sup>19</sup>

Thus, section 1(1) (2) and (3) of Nigeria's constitution provides for the supremacy of the constitution and equality of Nigeria citizens before the law. For the purpose of emphasis, section 1(3) of the Nigeria's constitution specifically states that:

*If any other law is inconsistent with the provision of this constitution, this constitution shall prevail, and that other law shall, to the extent of the inconsistency be void.*<sup>20</sup>

Besides, section 1(1) thereof as earlier quoted expressly provides that the Constitution of the Federal Republic of Nigeria is supreme and shall have binding effect on all persons and authorities throughout the Federal Republic of Nigeria. But does the constitution of Nigeria really have binding effect on "all persons and authorities" throughout the Federal Republic of Nigeria? Are the citizens of Nigeria really equal? And is the constitution of Nigeria really supreme in action as it is in the book? These questions shall be dealt with in the later parts of this work. But at this level, the authors of this paper submit that precedents and history had always proven that Nigerian lawmakers are lawbreakers and those who live within the corridors of power seem to use the power they hold absolutely, hence doing socio-political, economic and human right-based injustices to those who they purport to democratically govern.

There are plethora of judicial authorities which warned the executives against the violation of the rights of the people. Thus, in the case of *Festus Ogwuche & anor v. Federal Republic of Nigeria*,<sup>21</sup> it was held that a new regulation imposed by the Nigerian government against a human right group barring them was tantamount to censorship and a violation of their freedom of expression. (See also the case of *Fawehinmi v. Abacha*).<sup>22</sup> More so, the Nigerian society had deeply been engrossed in a norm or culture of economic injustice as those who are able to rise to the pinnacle of power exclusively get to have a bite of the political largesse otherwise christened "national cake" in Nigeria.

In the same vein, while section 1 of the Land Use Act of 1978 vests the ownership of all lands within the territory of a state in the governor of that state (there leaving the citizens with mere Right of Occupancy which lasts for only ninety-nine years), section 44(3) of the 1999 constitution again vests ownership and

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<sup>19</sup> [https://lc2.Du.Ac.In/DATA/presentation% 20n% 20Rue%20of%20law\\_chintu%20jain.Pdf](https://lc2.Du.Ac.In/DATA/presentation%20n%20Rue%20of%20law_chintu%20jain.Pdf) \_\_\_\_\_ Accessed 30 March 2025

<sup>20</sup> See section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>21</sup> (2020) LLJR\_SC

<sup>22</sup> (2000) 45c. (pt.11)

control of Nigeria's mineral resources in the Federal Government of Nigeria. By implication, the state governments and the Federal Government of Nigeria wield unfettered power(s) over lands and mineral resources in lands respectively and can as such compulsory acquire any land in that regard and on that basis. These, although, are subject to the payment of compensations to any anyone who holds title on such lands. The questions begging for answers include the followings: Is justice and equity being served by the foregoing constitutional provisions on first settlers on both ordinary virgin lands and lands from which mineral resources are being tapped across Nigeria? Are victims of oil spillage entitled to claim compensational benefits via human rights actions? Are the said compensations, if any, adequate enough to assuage the plight of these affected citizens of Nigeria? If all the above questions are answered in the negative, does that connote economic justice and human right upliftment on the part of the government of Nigeria to her citizens?

The authors of this paper opined that, first customary settlers on lands and/or lands containing mineral resources in Nigeria have been politically and economically displaced by the foregoing constitutional provisions, regarding the powerlessness of such settlers in practice, as the government determines what adequate compensation should be in the circumstance of each particular case except through the execution of right of legal action in a court of competent jurisdiction for redress. Again, while these compensations are usually inadequate, rights of action are often only exercised by the educated and the financially affluent, while other citizens who are victims of the same circumstance are rendered helpless. Similarly, the Nigerian Court of Appeal in the case of *Barr. Ikehukwu OPara & 3 ors v. Shell Petroleum Development Company & 4 Ors* had broadly held that oil pollution complaints do not constitute fundamental human rights issues and therefore fall outside the ambit of matters that are enforceable through the application of Fundamental Right Enforcement Procedure Rules, 2009. The court hence granted the order of prohibition and perpetual injunction restraining the National Human Rights Commission from proceeding with any special investigation into oil spill complaints, although the learned Justices of the Court of Appeal equally recognized the right of victims of oil spillage to institute actions in the Federal High Court under Section 251 of the constitution for the purpose of claiming compensation in this regard. It is the position of the authors of this article that the Court of Appeal erred in arriving at the foregoing decision and that it should have abided by the binding precedent of the Supreme Court of Nigeria in the legendary case of *Centre for Oil Pollution Watch (COPW) v. NNPC*<sup>23</sup>

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<sup>23</sup> (2019) 5 NWLR (pt.1666) 518.

where the apex court affirmed that the right to clean and healthy environment of the applicants therein are enforceable rights under Article 24 of the African Charter on Human and Peoples' Rights as domesticated in Nigeria by the African Charter Act, Cap A9 LFN, 2004, as this would have further breathed greater lives into the souls of economic justice and human rights observance for the benefit of all Nigerians. It is therefore the conclusive opinion of the authors of this article on these heads and notes that the situation in Nigeria (like in many other constitutional democracies alike), does not portend human right upliftment and/or economic justice on the part of the government of Nigeria to her citizens.

Furthermore, section 36 (8) of the Constitution of Nigeria prohibits retrospective legislations, while subsection 12 thereof requires every offence and the punishment thereof to be in written form before same can have the force of law before any court of Justice within the boundaries of Nigeria.<sup>24</sup> However, in the opinion of these authors, the extortionist and bribe-demanding tendencies of law enforcement agencies in Nigeria (especially the Nigerian Police) seem to render the essence of these constitutional provisions nugatory. This is much so as the police manning our highways in Nigeria selectively extorts the downtrodden citizens even when indeed no visible offence has been committed by the latter. Another puzzle similar to this anomaly is the money for bail that is usually and persistently demanded by the same police when bail is indeed free under our organic law. It is no gainsaying that the only citizens of Nigeria who escape this form of extortion are the learned, the highly educated and the politically powerful who can bravely stand upon their own pedestals of justice and freedom.

According to A.V. Dicey, the third and the last principle of rule of law is the general principle of the constitution and/or individuals, rights to personal freedom.<sup>25</sup> This third principle thereof had vigorously and especially been enshrined under chapter 4 of the Constitution of the Federal Republic of Nigeria. Therefore, categorically and without mincing words, Section 46(1) of the constitution generally confers original jurisdiction in human rights cases on (both the Federal and state) high courts in each state in Nigeria for redress.<sup>26</sup> In that pragmatic nexus, the Supreme Court of Nigeria rightly declared in the highly notorious case of *SSS v. Agbakoba*<sup>27</sup> that the forceful seizure of the applicant's passport by agents of the state security service (SSS) was glaringly a violation inter alia of his right to personal liberty and freedom of movement under the constitution of the Federal Republic of Nigeria 1999 (as amended) and ordered

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<sup>24</sup> See sections 36 (8) and 36 (12) of the CFRN 1999 (as amended)

<sup>25</sup> [https://lc2.du.ac.in/DATA/presentation%20n%20Rule%20of%20law\\_chintu%20Jain.Pdf](https://lc2.du.ac.in/DATA/presentation%20n%20Rule%20of%20law_chintu%20Jain.Pdf) \_\_\_\_ Accessed 30 March, 2025

<sup>26</sup> See section 46 of the CFRN 1999 (as amended)

<sup>27</sup> (1999) 3 NWLR (Pt.598)

the release of the applicant's passport forthwith. The Supreme Court equally did hold in the case of *Bello v. Attorney General of Oyo State*<sup>28</sup> that the execution of the deceased by the state while his appeal was still pending against conviction for armed robbery before the Court of Appeal was illegal and an infringement of the deceased's fundamental right to life.

### **An Assessment of the Practical Application and Observance of the Basic Principles of Rule of Law vis-à-vis the Fundamental Rights of Citizens under Nigeria's Democratic Governance**

The rule of law would not be deemed to be pragmatic if and when same remains merely as statue in the in book. Unfortunately, the particular status of this fundamental assertion negatively diverges under the Nigerian democracy as the laws in the books here tactically differ from the laws in action. Some popular and particular live inferences exist in proof of this holistic declaration:

First and foremost, the Nigerian Courts in the notorious cases of *Sambo Dasuki v. Federal Republic of Nigeria*<sup>29</sup> and *Nnamdi Kalu v. Federal Republic of Nigeria*,<sup>30</sup> ordered the release and the restoration of the personal liberty of Mr. Dasuki and Mr. Kalu but these judicial orders were flagrantly flouted by the Federal Government of Nigeria; who failed to comply thereby putting into question the essence of the laws that fail to have effect and which vigorously undermines the principle of supremacy of the law as amply enshrined under section 1(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Similarly, the basic principle of equality before the law had been rendered nugatory in Nigeria. Deeply apposite is the famous case of *James Ibori v. Federal Republic of Nigeria*,<sup>31</sup> wherein Ibori, (a former governor of Delta state) who was found wanting in a corruption case escape from punishment out of Nigeria, until he was retried and convicted outside Nigeria.<sup>32</sup> In the same vein, the recent legal face-off between the duo of Dele Farotimi and Afe Babalola which led into handcuffing, humiliation and chastisement of the former who was the defendant in that direction really revealed how highly classical and selective the country (Nigeria) can be in the treatment of ordinary alleged criminal offenders as opposed to highly placed offender politicians. And this concrete point gives credence to the

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<sup>28</sup> (1986) CLR 12(B)(so)

<sup>29</sup> (2018) LPELR\_43897 (SC)

<sup>30</sup> CA/ ABJ/CR/652/2022

<sup>31</sup> (2014) 38 E-WRN/37 (CA)

<sup>32</sup> (2008) LLJR\_\_ CA



saying of George Orwell in his book *Animal Farm* that “All animals are equal but some animals are more equal than the others.”<sup>33</sup>

Alluded to the foregoing analysis, the recent legal tussle between the duo of Natasha Akpoti-Uduaghan and Senate President Godswill Akpabio of the tenth Assembly is a crucial reference point. In this scenario, a court of competent jurisdiction sitting in Abuja legally bars the Nigerian senate under any guise from conducting any disciplinary legislative proceeding against Senator Natasha, the Senator representing Kogi central at the 10th Assembly. Unfortunately, this said valid court order was treated with contempt by the Nigerian senate which still went ahead and conducted the prohibited legislative proceeding leading to the illegal suspension of Natasha for six full months from the Nigerian senate. This utter contempt does not only pose Nigeria to be displayed in bad light but equally sends signals across borders that supremacy of the law is only a lifeless phrase in the Nigerian constitutional document as some individuals residing within the corridors of power had always overly claimed in their actions to be more equal than the other citizens of Nigeria<sup>34</sup>.

Moreover, the nature of treatment meted on freedom advocates and activists such as Chief Gani Fawehinmi (SAN), Ken Sarowiwa and Fela Anikulapo during the military regime in Nigeria is still obviously alive from the end of the government to the citizens, and the proof of this is broadly visible in how “End bad Governance” peaceful protesters were tear-gassed, humiliated and arrested in October 2024 in violation of their rights to freedom of expression as well as peaceful assembly and association under the Nigeria constitution.<sup>35</sup> Equally, minors and students of tertiary institutions who protested peacefully against an unreasonable increment in their school fees that same year were treated the same way, thereby further showcasing the intolerance of the Nigerian democracy to the fundamental rights and liberties of the common citizens of Nigeria. On a final note, to glaringly and overtly signify the lawlessness of the Nigerian government vis-a-vis this issue of human rights and fundamental freedoms and their erosion from the reach of the ordinary citizens of Nigeria, the infamous bloody “End-SARS” protest in Nigeria in which loads of lives were reportedly killed/massacred<sup>36</sup> is still fresh in our minds, and this can be said equally of victims of jungle justice across the country who at one time or the other had got murdered by those who put the law of the land unto their hands, thereby undermining the right to fair hearing, the right to peaceful assembly and association and the right to life of numerous citizens of Nigeria.

### **Rule of Law, Economic Justice and Human Rights Observance under the Erstwhile Military Governments in Nigeria**

<sup>33</sup> George Orwell, *Animal farm* (1945: Secieer And War Burg Publishing Can, (London England)

<sup>34</sup> <https://www.bbc.com/news/ce3nd8n255wo> > Accessed March 10, 2025

<sup>35</sup> <https://www.amnesty.org/en/document/afr44/8780/2024/en/> > Accessed March 10, 2025

<sup>36</sup> <https://www.Africannews.Com/amp/2023/07/24/Nigeria-mass-burial-for-103-vitions-of-the-endsarsmorement/> Accessed March, 2025.

One the negative features of the erstwhile military government in Nigeria was the enactment of retrospective decrees by reason of which citizens were made liable for offences which were not wrongs as at the time they were committed. In this precise context, worthy of reference is the Decree No.20 of 1984 which introduced drastic penalties to various acts among which was dealing with cocaine. This decree was deemed to have effect from the time the act was not an offence.<sup>37</sup> Likewise, without minding the erosion of the principles of rule of law, the military government was ever characterised by the suspension of certain germane (especially the liberal) provisions of the constitution, abuse of human rights, dismissal of democratic institutions (including executive and legislature), though leaving the judiciary to restriction of jurisdiction by decrees. Thus the military dictators deemed themselves to be above the law and the fundamental principle of equality was largely banished. Might then was right and the indispensable principles of rule of law were practically in abeyance coupled with the fact that the judiciary was not pragmatically independent just like we still regrettably have it today under Nigeria civilian dispensation.<sup>38</sup>

To buttress the tyranny of the military rulers, the senseless killing of Ken Sarowiwa and eight other Ogoni people for civil disturbances still tragically comes to mind.<sup>39</sup> Rather, these ordinary Nigerian citizens were executed for civil unrest by reason of their liberal protest against the violation of their environmental right and following a Kangaroo trial during the Abacha military era of governance. More so, the apex court of the land had course to speak out against the military government in the famous case of *Military Governor of Lagos State v. Ojukwu*,<sup>40</sup> while describing the forceful ejection of the applicant from his premises as an act of executive lawlessness, that “the essence of rule of law is that it should never operate under the rule of force or fear.

Without much ardour, apart from the suspension of the fundamental human rights of the citizens of Nigeria, it is vividly glaring that economic justice was equally not done to the citizens of Nigeria during the military regime (especially in respect of lands), as both the 1963 and 1979 constitutions that were back then consecutively operative were more or less the same in substance as the 1999 constitution of the Federal Republic of Nigeria which grants exclusive powers over lands and all mineral resources in land to the government of Nigeria.<sup>41</sup> Again, like we still have it under our democratic regime, the socio-economic and cultural rights captured under the chapter 2 of the 1979 of the Federal Republic of Nigeria were generally not legally enforceable, thereby placing a heavy load of deprivation in respect of these fundamental freedoms upon the citizens of Nigeria. Finally, the erstwhile military governments in Nigeria lacked obedience for the rule of law, socio-economic justice and human rights as might was right and they deemed themselves to be above the law.

<sup>37</sup> <https://core.ac.uk/download/pdf/234649539>. Pdf ?> Accessed March 31, 2025

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> (1986) INWLR (Pt.18),621

<sup>41</sup> See section 1 of the Land Use Act and Section 44(3) of the CFRN, 1999.

## Impediments to a Full Operation of the Basic Principles of Rule of Law, Socio-Economic Justice and Human Rights Under Nigeria's 1999 Constitution

Provisions of the Nigeria's 1999 Constitution are legion that impede the full operation of all the basic principle of law under Nigeria's 1999 democratic constitution. These ample impediments generally comprise of but not limited to the followings;

(a) *Constitutional Immunities*: Section 308 (1) (a) confers absolute immunity on the president or vice president, Governor or deputy Governor from civil and /or criminal trials/proceedings during the subsistence of their tenure of office.<sup>42</sup> For the sake of general clarity, section 308 (1) (a) provides thus verbatim:

*Notwithstanding anything to the contrary in this constitution but subject to subsection (2) of this section no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office.*<sup>43</sup>

While subsection 2 of this section only allows suits where the immuned persons are mere nominal parties, subsection three thereof enumerates the persons to whom this section applies to consist of the persons holding the offices of the president or vice president and governor or deputy-governor<sup>44</sup>. By implication the principle of equality before the law would not inure against these persons during the subsistence of their period of office.

(b) *Non-justiciability of second Generation Rights*: Second generation rights such as right to housing, water, employment, healthcare,<sup>45</sup> among others, which are captured under Chapter 2 of the Nigeria's constitution are non-justiciable and hence cannot reprehensibly be fought for in Nigerian courts. This, without doubt, deeply constitutes a setback to the full realization of the human rights and economic justice for the citizens of Nigeria.

(c) *Age Qualification*: Rights to vote or contest in an election in Nigeria, among others, are age-bound. Consequently, for instance, a person under the age of eighteen years cannot constitutionally exercise his/her right of franchise in Nigeria. This principle, which is in practice under section 117 (3) of the constitution of Nigeria is, again, pragmatically at divergence with the basic principle of equality before the law<sup>46</sup>.

(d) *International customs such as consular and diplomatic Immunities*: Consuls and diplomats are deemed to be above the law in their host countries and hence cannot be subjected to trial for an offence.

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<sup>42</sup> Section 308, CFRN 1999 (as amended).

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> See generally chapter 2 of the CFRN 1999 (as amended)

<sup>46</sup> Ibid, section 117 (2) thereof

This particularly is antithetical to the principle of supremacy of the law which is one of the fundamental backbones of the existential principles of rule of law.<sup>47</sup>

(e) **Statutory Restrictions:** Section 1 of the Land Use Act of 1978 and section 44(3) of the constitution of the Federal Republic of Nigeria had expressly and respectively vested all lands and mineral resources in lands within the territory of a state in the state governor and the government of the federation. Accordingly, this, without an iota of prevarication, amounts to the restriction of the erstwhile power of communal and customary ownership possessed by the citizens of Nigeria in this respect in the past.

### **An Evaluation of the Practical Observance of the Principles of the Rule of Law, Economic Justice and Human Rights under the American Constitution**

The rule of law is a normative order of the United States of America since the birth of the Republic, and remains so today. The rule of law sets the standard against which the Americans measure the progress of their law and government. This commitment to the rule of law was observed in the Fifth Amendment to the U.S. Constitution, which promises that no person shall “be deprived of life, liberty, or property, without due process of law.” The Fourteenth Amendment added that “No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.” Similar guarantees already existed in the constitutions of each of the separate States. The Declaration of Rights of the Inhabitants of the Commonwealth of Massachusetts (1780) further puts this shared commitment simply and clearly when it embraced the universal right to enjoy “a government of laws and not of men.” As such, the citizens of America enjoy fundamental freedoms that include the second generation rights, though powers over mineral resources in lands are also exclusively wielded by the government of America. Albeit, in the history of evolution of the American democracy inequality, racism, discriminatory practices and human rights abuses are altogether evident. It therefore took an ample time for the country to arrive at where it is today. In 1883, for example, in the case of *Pace v. Alabama*<sup>48</sup> the justices upheld a law forbidding sexual intercourse and marriage between blacks and whites. They said the law was constitutional because the statute applied equally to both blacks and whites. Thirteen years later the Court equally decided in the case of *Plessey v. Ferguson*<sup>49</sup> that “separate but equal” facilities for blacks and whites in public transportation and other facilities, including public education, met the standard of equal protection. However, later in 1954, in the case of

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<sup>47</sup> [https://www.state.gov/wp\\_content/uploads/2019/07/2018Jipconlmm\\_v5\\_\\_web.Pdf](https://www.state.gov/wp_content/uploads/2019/07/2018Jipconlmm_v5__web.Pdf). > Accessed 1, April, 2025

<sup>48</sup> 106 U.S. 583 (1883)

<sup>49</sup> 163 U.S. 537 (1896)

*Brown vs. Board of Education*,<sup>50</sup> the US Supreme Court abandoned the idea that racial segregation in public schools and other facilities could offer equal protection of the laws. During the same era the Court did much to protect the rights of women, minorities, and defendants in criminal cases. In this effort the Court saw itself as an active force in moving the community toward a fuller realization of its basic rights and principles. Finally, today's America went through critical phases before coming into realisation of being a model of rule of law and democratic freedom that it is, and even at that, America still has her own peculiar nature of inequality and deficiencies, most especially as to the imbalance of treatment between black and white Americans that she still struggles to overcome till this modern day.

### **An Assessment of the Practical Observance of the Principles of Rule of Law, Economic Justice and Human Rights under the Indian Constitution**

The preamble to the constitution of India clearly sets out the principles of the rule of law emphasizing justice, equity and freedom. Article 14 of the Constitution assures the equality before the law and equal protection of the law. Fundamental rights, as mentioned in Articles 13, 14, 15, 19, 21, 22, 25, 28 and 31A thereof are available to every citizen of India. If these rights are violated, individuals can seek redress by proceeding to the High Court under Articles 32 and 226 of the Constitution<sup>51</sup>. Moreover, any law passed by the central or state government must be in accordance with the Constitution of India. If a law violates the provision of the Constitution, it will be declared null and void. Article 32 empowers the Supreme Court to issue various writs such as *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. This power, known as judicial review, allows the Supreme Court of India to ensure the preservation of the rule of law and prevent the misapplication of law. The rule of law in India is therefore a fundamental principle in compliance with the Constitution of India<sup>52</sup>. In the case of *State of Bihar v. Sonawati Kumari*<sup>53</sup>, the court held as per the concept of rule of law that all the authorities operating within the state including executive government is bound to obey the rules. In another case of *Union of India v. Raghubir Singh*<sup>54</sup>, the court held that the principle of rule of law is a considerable degree which governs the lives of the people and regulates the functions of the state from the decision of the superior courts.

In India, abuses of power by governmental authorities are being subjected to control by the judiciary and the rule of law principles are more manifest in practical application and observance

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<sup>50</sup> 347 U.S. 483 (1954)

<sup>51</sup> See generally the constitution of India, 1950

<sup>52</sup> *ibid*

<sup>53</sup> AIR 1961 SC 221

<sup>54</sup> 1989 (2 SCC 754

than what we have in Nigeria, albeit control over land as well as mines and minerals in India is equally altogether a matter of national concern.<sup>55</sup>

In synopsis, respect for the principles of equality and human liberties are fundamentally in action up to a reasonable extent in India without prejudice to the reality that minimal violations are still inevitable in spite of the vibrant regulatory mechanisms put in place to truncate same.

### **The Significance of the Application of the Principles of Rule of Law, Economic Justice and Human Rights in Nigeria**

Applying the basic principles of rule of law, economic justice and human rights is capable of birthing diverse significance to the nation Nigeria. Some of these fundamental significance are vigorously outlined below:

- (a) *Safeguard against Tyranny, Injustice, Impunity, Corruption and Cruelty:* vigorous compliance with the basic principles of rule of law and economic justice would have the instant effect of wading off these set of anomalies in any nation within the globe, Nigeria inclusive.<sup>56</sup>
- (b) *Promotion of sustainable peace, progress and development within the society:* A rule of law compliant nation witnesses in the long run steady peace, progressive growth and outstanding development across periods and seasons.<sup>57</sup>
- (c) *Protection of each citizen's fundamental rights and freedoms.* The third principle of rule of law is meant to guard human right and fundamental freedoms of each and every citizen in a constitutional democracy like Nigeria. Therefore, accurate compliance with the principles gives way for the protection of the overall liberties of the citizens,
- (d) *A Booster of Industrialization:* many impactful foreign investors would dominantly be attracted to Nigeria if and when the basic principles of the rule of law, human rights and economic justice prevails now and here, and the reverse is also true.
- (e) *A Trigger for Economic Stability:* It is without doubt that where economic justice and human rights are being observed, especially via the instrumentality of true federalism, there would naturally be economic stability. However, economic injustices are currently rampant under the current nature of federalism that is in existence in Nigeria wherein powers are “unitarily centralized” in the Federal government of Nigeria.

### **Summary of Findings**

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<sup>55</sup> See generally the 7<sup>th</sup> Schedule to the Indian constitution.

<sup>56</sup> [https://www.state.gov/wp.content/uploads/2019/07/2018Jipconlmm v5\\_\\_web. Pdf.](https://www.state.gov/wp.content/uploads/2019/07/2018Jipconlmm v5__web. Pdf.) \_\_ Accessed 1, April, 2025

<sup>57</sup> Ibid

This article finds that:

- (a) The principles of rule of law and economic justice are substantially entrenched and enshrined in the Nigerian Constitution but, the laws in the books are largely different from the laws in action.
- (b) The lack of respect for the rule of law is practically retarding the socio-economical, industrial and political progress of Nigeria.
- (c) Only fundamental human rights captured in Chapter 4 of the Nigerian Constitution are legally justiciable, to the exclusion of second generation rights covered under Chapter 2 of the same constitution. This may be considered as economic injustice by some Nigerians, especially those with limited means.
- (d) True federalism is not in existence in Nigeria. What we have in operation is a “unitary federalism” whereby governmental powers are centralized in the federal government as against its devolution among regions.
- (e) Immunities, age disqualification and the likes generally constitute limitations to the full realisation of the principles of rule law and socio-economic justice in Nigeria, thereby retarding economic stability in the long run.
- (f) Based on the foregoing, Nigeria can best be described as a “neo-military territory” even in the present democratic dispensation.

### **Conclusion**

In conclusion, the rule of law, economic justice and human rights observance are the most important feature of good governance in every democratic polity. It preserves the independence of the judiciary and promotes equality, civil liberties, checks and balances and economic stability. These attributes are self evident a democratic setting rather than in a military dispensation. This article revealed the observed socio-economic, political and human right-related anomalies in the Nigerian system and compares the situation to selected democratic climes with the goal of fetching inspirations from the latter. The article finds inequity, corruption and tyranny as a major setback to the economic prosperity and stability of Nigeria. It finally recommends viable panaceas that are capable of promoting socio-economic justice, human rights observance and good governance throughout the Federal Republic of Nigeria.

### **Recommendations**

In the light of the above analysis, this paper recommends the followings:

- (a) The second generation rights contained under Chapter 2 of the Nigerian Constitution, 1999 should be transferred to Chapter 4 thereof so that they could be justiciable in Nigeria. This would go a long way in strengthening human rights observance, economic justice and stability across the Federal Republic of Nigeria.

- (b) Constitutional immunity granted certain government functionaries should be reviewed and amended so as to grant immunity against only criminal proceedings and cancel immunity against civil proceedings hence enhancing the basic principle of equality before the law in Nigeria.
- (c) The Constitution of the Federal Republic of Nigeria, 1999 should be amended as to give life to true federalism wherein the economic resources in each region of the country are controlled by regional governments subject to the remittal of certain percentage of funds for the maintenance of government at the federal level.
- (d) The independence of the judiciary should be revisited so as to give effect to it in practice rather than being merely in the books. This would go a long way in enhancing judicial purity, thereby strengthening human rights observance and socio-economic justice in Nigeria.
- (e) Acquisition of lands as well as mining licenses should be affordable for the first settlers and indigenes of each locality in Nigeria. Similarly, the determination of adequate compensation in cases of compulsory acquisition should be made the exclusive reserve of the affected citizens subject to review by a neutral arbiter created by an Act of the National Assembly of Nigeria.
- (f) Tyranny, injustice, impunity, corruption and cruelty should be eliminated through the review of our laws by awarding aggravated compensation to victims and enhancing the punishments of wrongdoers.