

# Constitutional Doctrines and The Protection of Human Rights in Nigeria: A Critical Analysis

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*Abstract- This article examines the role of constitutional doctrines in the protection of human rights in Nigeria under the Constitution of the Federal Republic of Nigeria 1999 (as altered). Although the Constitution guarantees a range of fundamental rights, the effectiveness of these rights depends largely on the operation of constitutional doctrines such as constitutional supremacy, federalism, and separation of powers. Using a doctrinal research methodology, the article analyses how these doctrines shape the realisation of human rights in practice. It argues that although the doctrine of constitutional supremacy provides a legal basis for the enforcement of rights, its practical impact is often weakened by institutional inefficiencies and uneven judicial enforcement. Similarly, the federal structure, characterized by significant centralisation of power, has contributed to disparities in the protection of rights across different regions. The doctrine of separation of powers, while intended to prevent arbitrariness and promote accountability, has not always been effectively maintained, thereby enabling instances of executive overreach and legislative interference that undermine human rights protections. The article further highlights the gap between constitutional guarantees and lived realities, demonstrating that the existence of rights provisions is insufficient without strong institutional support and accountability mechanisms. It concludes that for constitutional doctrines to effectively serve as instruments of human rights protection in Nigeria, there is a need for structural reforms, strengthened judicial independence, and greater adherence to the principles of constitutionalism and the rule of law. The article contributes to discourse on constitutional reform by highlighting the need to align constitutional doctrine with effective human rights protection in practice.*

**Keywords:** Constitution, Nigeria, Doctrines, Separation of Powers, Human Rights, Federalism.

## 1. INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999 (as altered) occupies a central position in the protection of human rights, serving not only as the grundnorm of the legal system but also as the primary instrument for the recognition, guarantee, and enforcement of fundamental rights. Chapter IV of the Constitution expressly provides for a range of civil and political rights, reflecting Nigeria's commitment to constitutionalism and the rule of law. However, despite these formal guarantees, the practical realisation of human rights in Nigeria remains filled with challenges.

The effectiveness of constitutional rights protection is determined by the existence of rights provisions as well as the structural and institutional frameworks within which those rights operate. Thus, constitutional doctrines such as the supremacy of the Constitution, federalism, and separation of powers play a key role in shaping the extent to which human rights are respected, protected, and enforced. These doctrines are designed to limit governmental power, prevent arbitrariness and ensure accountability.

Still, the operation of these doctrines has produced mixed outcomes. For instance, while the doctrine of constitutional supremacy provides a legal foundation for challenging rights violations, enforcement remains inconsistent. Similarly, the federal structure, though intended to accommodate diversity and promote inclusiveness, has often resulted in uneven protection of rights across different states, particularly in areas such as resource control, security, and access to justice. Also, the doctrine of separation of powers, which is essential for preventing abuse of authority,

has also been undermined in practice by executive dominance and institutional weaknesses, thereby limiting its effectiveness as a safeguard for human rights.

This article examines the relationship between constitutional doctrines and human rights protection in Nigeria. It analyses how these doctrines function both as enabling frameworks and as potential constraints on the realisation of fundamental rights. By examining the gap between constitutional ideals and reality, the article seeks to demonstrate that effective human rights protection requires not only constitutional recognition but also the proper functioning of the doctrines that sustain constitutional governance. The article concludes by making recommendations aimed at strengthening these doctrines to enhance the protection of human rights in Nigeria.

## II. CONCEPTUAL FRAMEWORK

### a. Human Rights

Human rights have been described as those activities, conditions, and freedoms that all human beings are entitled to enjoy, by virtue of their humanity and regardless of their status.<sup>1</sup> Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.<sup>2</sup> They include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, as well as the right to work and education.<sup>3</sup>

In the context of this study, human rights constitute the core values which the Constitution seeks to protect. Their effective realisation, however, depends not only on their formal recognition but also on the operation of constitutional structures and doctrines that regulate the exercise of state power.

### b. Constitution

The word “Constitution” is derived from the verb to “constitute.”<sup>4</sup> According to the Shorter Oxford Dictionary, the word “constitute” means among other things to set up, ordain, appoint, frame, form, make up or compose.<sup>5</sup> The term “Constitution” therefore literally means the action of constituting, framing or establishing something.<sup>6</sup> A constitution is an aggregate

of fundamental principles or established precedents that constitute the legal basis of a polity.

The general framework of a Constitution has been elucidated as follows:

In legal terms, a constitution is the fundamental and supreme law of the country. It is the basis from which all laws (conventional laws) derive their validity. It is the basic law from which all laws derive. Therefore any law which conflicts with the constitution has no legal effect. A written constitution is even supreme over the legislature. Accordingly a constitution is regarded as having legal sanctity or being sacred. It deserves the highest respect and obedience from the leaders and the people alike. It follows therefore that a constitution represents the deepest norms and ideals by which the people govern their political life.<sup>7</sup>

Hence, the above distinctive features of a constitution are reflected in the Constitution of the Federal Republic of Nigeria. A constitution can also be defined as “The fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.”<sup>8</sup> In this sense, the Constitution serves as the primary legal instrument for the protection and enforcement of human rights in Nigeria.

### c. Separation of powers

The term separation of powers simply means that there should be a clear distinction of functions between the three organs of the state as well as checks and balances between the three organs. Within the framework of human rights protection, the doctrine of separation of powers is essential in preventing the concentration of authority in any one branch of government. By ensuring accountability and limiting arbitrariness, it serves as a structural safeguard against the abuse of power that may result in violations of fundamental rights.

### d. Federalism

Federalism is the legal relationship, and distribution of powers between the national and regional governments within a federal system of government.<sup>9</sup> Federalism is a system of government of a country

under which exists simultaneously a federal or central government and several states or provincial governments i.e federating units.<sup>10</sup> Both the federal and the state governments derive their powers from the federal constitution with different powers that operate directly on the people.<sup>11</sup>

In Nigeria, federalism plays a significant role in shaping the protection of human rights, as the allocation of powers between the federal and state governments affects the implementation, enforcement, and accessibility of rights. Consequently, the nature of the federal arrangement has direct implications for the uniformity and effectiveness of human rights protection across the country.

### III. NATURE OF THE NIGERIAN CONSTITUTION

A constitution establishes government based on the rule of law and which is limited by law. It thus provides a legal basis for governmental operations and makes constitutional government possible.<sup>12</sup> It therefore prevents anarchy or dictatorial government which knows no legal bounds.<sup>13</sup> A constitution establishes the legislative, executive, and judicial branches of government and details their duties and the separation of powers between the branches and federal and state governments.

Beyond its structural function, the Constitution also serves as a normative instrument for the protection of human rights. According to Justice B. J. Odoki; As it can be seen, a constitution is an indispensable instrument for good governance. A constitution provides a foundation for orderly government and establishes government limited by law and based on the rule of law. It provides a means of solving social conflicts by peaceful means through democratic institutions. As a national socio-political contract or framework, it binds the people together and promotes national unity. It safeguards the basic rights and freedoms of the people. It provides a vision for the future by incorporating ideals and aspirations of the people.<sup>14</sup>

The above quote on the nature of a constitution applies to the Nigerian Constitution as it contains the features

of a democratic constitution. There have been arguments about the truth of the provision of S.14 (2) CFRN 1999 (as altered).<sup>15</sup> It is contended in many quarters that this present constitution was imposed on us by the military government.<sup>16</sup> It is said that in as much as the people did not choose their representatives to fashion out the constitution for them, therefore it is not the people's Constitution.<sup>17</sup> However, on the other side of the divide are those that argue that since the present 1999 Constitution is to a large extent *in pari materia* with the 1979 Constitution, it can be called the people's Constitution.<sup>18</sup> This is because in the formation of the 1979 Constitution, the representatives of the people sat down and fashioned it out. No matter which side of the divide one may be in, the truth remains that the present Constitution has been in use from 1999 till date.

Despite its limitations, the 1999 Constitution represents Nigeria's longest period of sustained constitutional governance. However, its effectiveness in practice must ultimately be assessed by the extent to which it protects and promotes human rights. In this sense, the true nature of the Constitution lies not only in its formal provisions but also in its capacity to serve as a living instrument for the realisation of fundamental rights.

### IV. CONSTITUTION MAKING, PARTICIPATION AND HUMAN RIGHTS

The process of constitution-making is closely linked to the legitimacy and effectiveness of human rights protection within a constitutional system. A constitution that reflects the will and participation of the people is more likely to command acceptance and ensure the protection of fundamental rights. On the other hand, where a constitution is perceived as imposed or lacking in popular participation, its capacity to serve as a credible instrument for human rights protection may be undermined.

In democratic systems, public participation in law-making and constitution-making is increasingly recognised as a fundamental component of constitutionalism. This principle was underscored in *Doctors for Life International v Speaker of the National Assembly*,<sup>19</sup> where the Court held that

legislatures have a duty to facilitate meaningful public involvement in the law-making process. Such participation enhances transparency, accountability, and inclusiveness, all of which are essential for the protection of human rights.

In Nigeria context, debates surrounding the origin of the 1999 Constitution raise important questions about popular legitimacy and ownership. These concerns have implications for human rights protection, as the effectiveness of constitutional guarantees is often tied to the extent to which citizens perceive the Constitution as reflecting their collective will and aspirations.

## V. CONSTITUTIONAL DOCTRINES

### 5.1 Supremacy of the Constitution

In every constitutional democracy, the Constitution occupies a position of supreme authority within the legal system. The Constitution has expressly entrenched and codified the doctrine of constitutional sovereignty or supremacy.<sup>20</sup> Furthermore, the provisions of the Constitution of Federal Republic of Nigeria 1999 declaring the supremacy clause are not hidden or ambiguous.<sup>21</sup> The draftsmen employed the use of simple, direct, plain and unambiguous words to express the doctrine which has nearly universal approval particularly by countries that practice and have adopted constitutional democracy.<sup>22</sup>

Section 1(1),<sup>23</sup> (2) and 1(3)<sup>24</sup> of the Constitution establish the supremacy of the Nigerian Constitution. In other words, the Constitution of the Federal Republic of Nigeria 1999 is supreme, and any law inconsistent with its provisions shall be void to the extent of its inconsistency. From a human rights perspective, the supremacy of the Constitution serves as a critical mechanism for the protection and enforcement of fundamental rights. It provides the legal basis for judicial review and enables courts to invalidate laws and actions that infringe on constitutionally guaranteed rights. This is evident in *Inspector General of Police v ANPP*,<sup>25</sup> where the Court of Appeal struck down provisions of the Public Order Act requiring permits for public assembly, on the ground that they violated the rights to freedom of

expression and association guaranteed under sections 39 and 40 of the Constitution.

Similarly, in *A.G. Bendel State v A.G. Federation Ors.*<sup>26</sup> and *A.G. Lagos State v AG Federation*,<sup>27</sup> the courts reaffirmed the binding force of the Constitution on all authorities, declaring actions inconsistent with its provisions unconstitutional. Also, in *Inakoju v Adeleke*<sup>28</sup> the Supreme Court invalidated the purported removal of a state governor for failure to comply with constitutional procedures, further reinforcing the principle that all exercises of power must conform to constitutional requirements.

These decisions demonstrate that the doctrine of constitutional supremacy is central to preventing arbitrariness and safeguarding human rights. However, its effectiveness ultimately depends on the willingness and capacity of the judiciary to enforce constitutional provisions and hold public authorities accountable.

### 5.2 Federalism and Human Rights Protection

Nigeria operates a federal system of government as provided under sections 2 and 3 of the 1999 Constitution, comprising a central government, states, and local government structures. Federalism is generally adopted to accommodate diversity and protect the interests of different groups within a state. However, the Nigerian federal arrangement has been widely criticised for excessive centralisation of power. The concentration of authority at the federal level has significant implications for human rights protection, particularly in areas such as resource control, policing, and governance. For instance, the constitutional framework vests control over natural resources in the federal government, while limiting the fiscal autonomy of states. This has generated persistent grievances, especially among oil-producing communities, raising concerns about equity and distributive justice.

These structural features have led to increasing calls for constitutional restructuring and decentralisation.<sup>29</sup> From a human rights perspective, a federal system that does not adequately reflect autonomy and responsiveness at the State level may contribute to uneven protection of rights across the federation.

## VI. FINDINGS

### 5.3 Separation of Powers and Safeguards for Human Rights

The doctrine of separation of powers commonly associated with Montesquieu,<sup>30</sup> underpins the allocation of governmental authority among the legislative, executive, and judicial branches. Its primary objective is to prevent the concentration of power and to safeguard individual liberty.

Under the Nigerian Constitution, governmental powers are divided among the three branches as well as between federal and state governments. Each arm is assigned distinct functions: the legislature enacts laws, the executive implements them, and the judiciary interprets them. This structure is complemented by the principle of checks and balances, which enables each branch to restrain excesses by the others.<sup>31</sup>

In the context of human rights protection, the doctrine serves as an essential safeguard against abuse of power. An independent judiciary, in particular, plays a crucial role in enforcing fundamental rights and reviewing the actions of the executive and legislature. Judicial pronouncements underscore the importance of maintaining institutional boundaries and preventing encroachment among the branches. In *A.G. Abia State v A.G Federation*,<sup>32</sup> Ogundare JSC held as follows:

Section 25 subsection (1) seeks to limit the period within which any judicial proceedings must be concluded. This infringes on the principle of separation of powers as entrenched in the Constitution. The National Assembly has no power to dictate to the Judiciary how to conduct its affairs, just as the Judiciary cannot fix a time limit for the proceedings in the National Assembly.

Notwithstanding these constitutional provision and pronouncements, the practical operation of the doctrine in Nigeria has been subject to criticism. Instances of executive interference, legislative overreach, and institutional weakness have undermined the effectiveness of checks and balances. Such developments weaken accountability mechanisms and may result in violations of fundamental rights.

This study finds that although the Constitution of the Federal Republic of Nigeria 1999 (as altered) provides a comprehensive framework for governance and guarantees fundamental human rights, the effectiveness of these guarantees is significantly shaped by the operation of key constitutional doctrines as follows:

- a. The doctrine of constitutional supremacy provides a strong legal basis for the protection and enforcement of human rights through judicial review. However, its practical effectiveness is constrained by weak enforcement mechanisms, institutional limitations, and delays in the administration of justice.
- b. Federalism is designed to accommodate diversity and promote inclusiveness. However, the Nigerian federal structure is characterised by significant centralisation of power. This has resulted in governance imbalances and uneven protection of human rights across states, particularly in areas such as resource control and internal security.
- c. The doctrine of separation of powers, which is essential for preventing arbitrariness and safeguarding individual liberty, has not been fully realised in practice. Executive dominance and weak institutional oversight have undermined effective checks and balances, thereby limiting accountability and the protection of human rights.
- d. There exists a gap between constitutional guarantees and the lived realities of citizens, largely due to limited public participation, weak institutional accountability, and insufficient commitment to the practical enforcement of rights.

## VII. RECOMMENDATIONS

The following recommendations are made:

- a. To address the limitations in the practical operation of constitutional supremacy, there is a need to

strengthen enforcement mechanisms through timely adjudication, strict compliance with court orders, and improved institutional capacity within the justice system.

b. In response to the challenges posed by centralisation, aspects of Nigeria's federal arrangement should be reformed to promote decentralisation, particularly in areas such as policing and resource control, in order to enhance equitable and effective human rights protection across all states.

c. To give meaningful effect to the doctrine of separation of powers, the legislature and judiciary must more effectively exercise oversight over the executive, while institutional safeguards should be reinforced to prevent abuse of power.

d. To bridge the gap between constitutional guarantees and reality, greater public participation in governance processes should be encouraged, alongside stronger accountability mechanisms to ensure that government actions reflect the rights and interests of the people.

## VIII. CONCLUSION

The Constitution of the Federal Republic of Nigeria 1999 (as altered) remains the supreme legal framework and the primary instrument for the protection of human rights in Nigeria. It embodies the fundamental values of constitutionalism, the rule of law, and the recognition of basic rights and freedoms. However, as this study has demonstrated, the mere existence of constitutional guarantees is insufficient to ensure effective rights protection in practice. As discussed above, the operation of constitutional doctrines play a decisive role in shaping human rights outcomes in Nigeria.

While these doctrines are designed to limit governmental power and safeguard individual liberty, their practical application has produced mixed results. Constitutional supremacy provides a strong foundation for the enforcement of rights through judicial review, yet its effectiveness is often undermined by challenges in enforcement and institutional capacity. Similarly, the federal structure, though intended to accommodate diversity, has been

marked by significant centralisation, thereby affecting the equitable protection of rights across different parts of the federation. The doctrine of separation of powers, which is essential for preventing arbitrariness, has also been weakened in practice by executive dominance and insufficient institutional checks, with direct implications for accountability and human rights protection.

These challenges reveal a broader structural concern: the persistent gap between constitutional ideals and the lived realities of citizens. This gap underscores the fact that constitutional provisions alone cannot guarantee the protection of human rights without corresponding political will and functional institutions. Also, the effectiveness of the Constitution must be assessed by both its text and its impact on the lives of individuals.

For Nigeria's constitutional framework to function as an effective instrument of human rights protection there must be a renewed commitment to strengthening institutional capacity, ensuring accountability, and promoting adherence to the principles of constitutionalism and the rule of law. This includes reinforcing judicial independence, re-evaluating aspects of the federal structure, and ensuring that the doctrine of separation of powers operates as a genuine system of checks and balances. Equally important is the need to promote participatory governance and enhance access to justice, so that citizens are not only beneficiaries of rights but active stakeholders in their realization.

Ultimately, meaningful human rights protection in Nigeria requires more than constitutional recognition; it demands the consistent and faithful implementation of constitutional principles in both law and practice. Only through such sustained efforts can the gap between constitutional ideals and practical realities be effectively bridged, and the Constitution made to serve as a truly transformative instrument for the protection of human rights.

## FOOTNOTES

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- [3] Ibid
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- [5] Ibid.
- [6] Ibid.
- [7] Ibid.
- [8] Ibid.
- [9] Bryan A. Garner (ed), *Black's Law Dictionary*, 9th Edition, Thomas Reuters (2009) 687.
- [10] Olawale Rufus Olu & Ogboye Lateef Ayoola, n 1.
- [11] Ibid
- [12] B. J. Odoki, (n 4).
- [13] Ibid
- [14] Ibid. 19.
- [15] This section establishes that sovereignty belongs to the people, security and welfare are the primary purposes of government, and popular participation must be ensured.
- [16] Ben Nwabueze, *How President Obasanjo Subverted Nigeria's Federalism* ( Gold Press, 2007)3.
- [17] Yemi Akinseye-George, *The Nigerian Constitution: History, Development and Prospects* (Princeton, 2013), 41.
- [18] J. Isawa Elaigwu, *The Politics of Federalism in Nigeria* (Jos: AHA Publishing, 2005), 222.
- [19] [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC). Decided by the Constitutional Court of South Africa on August 17, 2006.
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- [21] Salihu Jimoh, The Supremacy of the Constitution of the Federal Republic of Nigeria 1999 (as amended): A Myth or Reality? <https://doi.org/10.53982/alj.2021.0901.06j>> accessed 27th March, 2026.
- [22] Ibid. 94
- [23] The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.
- [24] This section provides if any other law is inconsistent with the provisions of this Constitution, the Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.
- [25] (2007) 18 NWLR (Pt. 1066) 457 C.A
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