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AHMAD HUSSEIN FOLORUNSHO*

ABSTRACT

Human rights and Judiciary are two different but interwoven concepts. The interconnectivity of the two concepts is facilitated by the functions of the judiciary which includes interpretation of law that consequently occasioned the protection of human right as part of the functions of the Judiciary. This research work therefore gives the conceptual analysis of human right and judiciary. It briefly states the evolution of human rights vide various international human rights instruments. It further explains the role and general functions of judiciary and specific one that made judiciary the guardian and protector of human rights. The research is concluded by analysing the connecting factors between the judiciary and human rights.

1.0 INTRODUCTION

Judiciary is seen as a sacred institution among the three known arms of government in every democratic society. Human rights, a familiar concept, a fast growing one around the globe, with the intent of making life meaningful to all and sundry in every civil society. Violation of most of the entrenched rights forms an integral part of the human rights discuss around the world. Judiciary therefore is an institution empowered to protect these rights by way of judicial pronouncement and its enforcement. This research work shall focus on the conceptual analysis of the two concepts that form the basis of this work that is, the concepts of human rights and judiciary. The concept shall be succinctly defined, while the evolution and general development of human rights shall be traced. Obviously in the struggle for human rights protection, there are various mechanisms put in place for the enforcement and protection of human rights. Judiciary is the most important institution for the protection of human rights. Thus this chapter will particularly look into the general functions of the judiciary and its specific function as the guardian for human rights. The Chapter shall be concluded with analysis of the relationship and or connectedness between the concepts of human rights and judiciary, focusing on specific function of judiciary with regards to constitutional interpretation in the area of human rights protection.

* LL.B, B.L., LL.M, Lecturer, Department of Islamic Law, Faculty of Law, University of Ilorin, Nigeria; Solicitor and Advocate, Supreme Court of Nigeria:
Folorunsho.ah@unilorin.edu.nig

HUMAN RIGHTS

2.0

Human rights is a two word phrase 'right and human' with separate meanings. Before 'right' is attached to 'human' to connote the intended meaning herein, it is important to note the respective meaning of the two words that make the phrase under discussion. Rights mean different things to different people, depending on the context under which it is used. For the purpose and in the context of the concept of this study, right could be said to mean, what is appropriate or entitlements accordable to people based on some circumstances or due to some reasons. In a related manner, James Griffin sees right in the general connotation as a claim against specific people with regards to their action or omission, which becomes valid when backed up with moral principle or law. While he simply professes human rights as a right which man has simply because he is human being and extended it to cover those rights contained in the regional and international instrument of human rights. Human on the other hand, simply means person other than animal, machine or gods. Human rights in the light of the above can ordinarily be said as those things which human beings are entitled to by virtue of their human nature.

Oxford defines human rights as some of the basic rights of individuals for which duty and obligation are placed upon the government to protect every citizen from any form of cruel or inhuman treatment. Human rights have been looked at from the legal perspective. It has also been defined as set of claims legally granted and guaranteed by the state for the preservation of human dignity. In addition Mark quoted Donnelly who observed as follows:

See P. Sarojini Reddy, "Judicial Review of Fundamental Rights", (New Delhi:

National Publishing House, 1976)

at 2 Where Reddy in examining what rights mean through work of writers quoted Hobhouse as follows, "Rights are what we may expect from others and others from us, and all genuine rights are, conditions of social welfare. Thus the rights any one may claim are partly those which are necessary for the fulfillment of the functions that society expects from him. They are conditioned by correlative to his social responsibilities." As cited in R.N Gilchrist,

"Principle of political Science" (Madras: 1952) 135

James Griffin, "On Human Rights" (New York: Oxford University Press, 2008), at 20

Oxford Advanced Learner's Dictionary 7th edition (Oxford: Oxford University Press, 2005)

at 729

Ibid., 730

Mark Goodale. "Locating Rights: Envisioning Law between the Global and the Local" in G. Mark, S.E Merry (ed.), "The Practice of Human Rights: Tracking Law between the Global and the Local", (United Kingdom: Cambridge University Press, 2007), at 6. Mark in the introductory part of the work of Alison Brysk in her edited volume Globalization and Human Rights, where the latter expressed the legal approach to human rights as "a set of universal claim to safeguard human dignity from illegal coercion, typically enacted by state agents. These norms are codified in a widely endorsed set of international undertakings: the "International Bill of Human Rights" (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Social and Economic Rights); phenomenon-specific on treaties on war crimes (Geneva Conventions), genocide and torture; and protections for vulnerable groups such as the UN Convention on Rights of the Child and the Convention on the Elimination of Discrimination against Women"

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Human Rights and Judiciary: A Conceptual Analysis

Human rights are equal rights: one either is or not a human being, and therefore has the same human rights as everyone else (or none at all). They are also inalienable rights: one cannot stop being human, no matter how badly one behaves nor how barbarously one is treated. And they are universal rights, in the sense that today we consider all members of the species *Homo sapiens* "human being," and thus holder of human rights.

However, Stone believed that human rights can neither be defined by abstract analysis nor its content can have universal application. Campbell in his own way observed that human rights as a concept in relation to individual rights may be discoursed under the sphere of conceptualism, empiricism, positivism, moralism and philosophism.

The concept of human rights is multidisciplinary, which could be viewed from the philosophical, anthropological, political, historical, rhetorical and legal perspectives. Human rights concept is considered as a moral ideal aiming at ascertaining the minimal social conditions for the maintenance of a stabilized political atmosphere so as to ensure a well conducive human existence. It is an ideology of universal acceptance which has become a legal norm. Human rights otherwise called rights of man are products of the school of natural law whereby it is originally of theistic origins. Here it is believed that some basic rights are divine, whereby the grant and abrogation of which are determinable only by God. For instance, every man is naturally granted the right to life, right to personal liberty and above all every human being is naturally a free born and equal by birth. These inalienable rights accrue to man by virtue of been a human being. With time the concept metamorphosed into natural rights doctrine under which

Ibid., 7

A. stone "introduction" in Tom Campbell, Jeffrey Golgsworthy and Adrienne Stone (ed.), *Protecting Human Rights: Instruments and Institutions*, (New York: Oxford University Press, 2003), at 1. With reference to Tom Campbell's chapter where the latter opined that although human rights might seem to be more important if they were universally applicable, but he does not agree to conceptual analysis which seek a context-free determination of the concept from what are rights and what is to be human, as same will either be under- or over- inclusive

T Campbell, "Human Rights: The Shifting Boundaries", in Tom Campbell, Jeffrey Golgsworthy and Adrienne Stone (ed.), *Protecting Human Rights: Instruments and Institutions*, (New York: Oxford University Press, 2003) at 19 to 29

Saladin Meckled-Garcia, Basak Cali (ed.), "The Legalization if Human Rights: Multidisciplinary perspective on human-rights and human rights law" (London and New York: Routledge, 2006), at 1

Samantha Power, Graham Allison.(ed.), "Realizing Human Rights: Moving from Inspiration to Impact", (New York: St. Martin's Press, 2000), at 43

subjective rights of individual were given recognition. Although fundamental rights and human rights in some areas might connote the same, there is a distinctive demarcation between the two in the sense that "human rights" is supranational, and considered as natural rights accordable to every human being. It is the machinery by which fundamental right are considered. Fundamental rights therefore are those rights conferred upon the citizens by the state, codified in the legal documents and for the protection and enforcement of which judicial and other mechanisms are put in place by the state.

2.1 Evolution and Developments of Human Rights

According to Naturalist, human rights are natural rights given to man by God. Right to life for instance is one of the prominent rights which features in almost all, and strategically positioned in most of the human rights instruments. Thus there are clear indications that the evolution of human rights links to the evolution man. The creation of man in this sense perhaps signifies the grant of right to life, for instance, although unacknowledged. Even the genesis of human rights abuse and its violation is traceable to the early man. The slogan of human rights is basically a western idea, although in some other settlements there were some other practices by which human dignity are preserved vide moral principle but not under the title human rights. Most writers have claimed that it was in the west that institutionalization of personal rights of individuals recognized and respected by the authority first came to the lime light.

Prior to the Second World War, there had been a good number of international agreements and treaties dealing with humanitarian issues. Preservation and protection of human dignity have also been considered germane and given attention in some cultures before the advent of the prominent UN Charter in 1945, the development which amplified the Western

Scott Davidson, *Human Rights*, (Buckingham: Open University Press, 1993), at 24 and 28
David P. Forsythe, "Human Rights in International Relation" (United Kingdom: Cambridge University Press, 2000), at 3

See article 3 of UDHR, article 1 of UIDHR, article 2 of the Cairo Declaration on Human Rights in Islam and section 33 of the Constitution of the Federal Republic of Nigeria 1999

See Qur'ān, 4: 1 and Qur'ān 5: 27-31. The creation of man as contained in the scriptures especially in the Holy Qur'ān that God created man and gave him life, the violation of which began with the early man as contained in the above referred verses where it is clearly illustrated how man killed his brother for trivial thing but did not know what to do with the corpse. God then sent two birds to demonstrate how the culprit would bury his brother

Forsythe, n. 12 at 31 where reliance are placed on works of Donnelly "Human Rights and Human Dignity: An Analytical Critique of Non-Western Human Rights Conceptions," *American Political Science Review*, 76, 2 (June 1982), 433-499 with particular reference a divergent view of Paul Gordon Lauren, "The Evolution of International Human Rights: Vision Seen" (Philadelphia: University of Pennsylvania Press, 1998)

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proclamation and modern trend of human right especially at the international level. It is worthy of notice that the modern concept of human right got to its foot through the respective English, American and French revolutions. These revolutions no doubt greatly contributed to the development of people's individualized rights otherwise known as civil and political rights. The issuance of Magna Carta in England on 15th June, 1215 mainly served as an authority for the division of power in order to ensure check and balances between the then King John and his ministers. Later as a result of the struggle by the parliament (Glorious revolution) to curtail the arbitrariness of the crown that gave birth to the passage of the Bill of Rights in 1689, in which set the pace of declaring the need for the protection of rights and liberties of individuals. The document also in an attempt to create an assured political atmosphere for the accomplishment of this goal, subjected some vital decisions of the crown to the consent of the parliament. Following this development, other Charters of Liberties passed in England were; the Petition of Right 1628, Act of Settlement of 1701 under which freedom of speech for the members of the parliament was guaranteed. This development served among others two major purposes to wit; it gave rise to the protection of people's rights and liberties against arbitrariness and gave legal efficacy to parliamentary system of government.

Human rights development was further enhanced in 1776 when Thomas Jefferson was detailed to draft the American Declaration of Independence of that year. This was occasioned by the conviction of the American founding Fathers that the British rule was becoming inimical for the colonies due to lack of equality in the treatment of their people and other several infringements on their liberties. Later after the independence, the US adopted the Bill of Rights in 1791 which contained the list of guaranteed rights of individuals that are to be protected.

As earlier been mentioned and in a similar development, the French revolution has some peculiarities with the Glorious revolution of the Britain in the area of abolition of old system of governance for a new system of democratic nature. The theme of the revolution was that

Reddy, n. 1, while tracing the evolution of human rights maintained that the evolution of human rights at the initial stage has some Religious influence of organized Church. After which reference is made to the influence of the famous English, American and French revolutions and subsequent human rights instruments

Davidson, n. 11 at 2

Ibid., 4. After the adoption of the Bill of rights, the US Constitution experienced several amendments for the purpose of improving the number of rights to be accorded adequate protection. The first amendment incorporated freedom of religion, freedom of the press, freedom of expression and the right to assembly; the fourth amendment protected individuals against unreasonable search and seizure; the fifth which established rule against self-incrimination and right to due process of law; and the Thirteenth which forbade the practice of slavery

government for the people was to be by the people themselves. In the pursuit of this goal particularly in 1789, the Declaration of the Rights of Man and the Citizen came into force, an order which gave legitimacy to government as an important mechanism for the protection of individual liberties and other specified rights, such as property, safety and resistance to oppression. The common feature shared by the American and French revolutions is therefore, the legitimization of democratic system of governance for the protection of the natural rights of man, more so limitation to any of the protected rights must be occasioned in accordance with the law.

Human rights enjoyed tremendous boost and a landmark improvement in the area of development within the framework of the international law in 1948. Before then, the way and manner in which states treat their citizens was exclusively a domestic affair in which no state can intervene in the domestic affairs of the other in this regard. This can be evident by the heinous treatment meted on the citizens by the then German government. It was this practice and other aftermaths of the Second World War that engineered and awakened the international community especially the mother of all human rights organizations (the United Nations Organization) to the sensitization of other member states in the area of human right protection through the international influence and its mechanisms. The above stated factor among others led to the inauguration of a committee to draft the UN Charter which came into force on the 24th day of October, 1945. Although this document had neither a binding force nor any penal implication on erring member states due some deficiencies in its content and the unclear scope of its wordings, it affirmed the existing individual liberties and rights in the context of the earlier instruments. It was the coming into force of the UN Charter and its effects by way of legally strengthening the authority of the United Nations Organization that influenced the draft of what is in the recent time known as the World's first international human rights document and mother of all human rights instrument, the Universal Declaration of Human Rights (UDHR). Despite its own contextual shortcomings, UDHR has been the cornerstone for the protection of human right world over, so much that it has been described by personalities as 'the Magna Carta of the

Ibid., 5, Article 4 of the Declaration reads; "Liberty consists in been able to do anything that does not harm others: thus the exercise of the natural rights of every man has no bounds other than those ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by the Law"

Angela Hegarty, Siobhan Leonard, "Human Rights: An agenda for the 21st Century", (London: Cavendish Publishing Limited, 1999), at 5. The declaration was adopted on the 10th of December 1948 comprising 30 Articles which can be divided into two parts. The first part, Articles 1-21 guaranteed civil and political rights. While the second part, Article 22-30 guaranteed economic, social and cultural rights

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world.¹ This is no doubt due to its impact in the judicial processes in the adjudication of cases having human rights flavour.

For the effective implementation of the contents of the Articles contained in the UDHR based on the political classification of rights which shall be summarily discussed later, and the technical division of the UDHR into two parts each of which takes care of different categories of rights. The UDHR bifurcated in form of sub instrument into two distinct and separate covenants namely; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights both adopted on 16th of December 1966; the former came into force on 23rd March 1976, while the latter entered into force on 3rd January, of the same year. Apart from the above mentioned instruments, various other regional documents have emerged for the protection human rights as a result of the proclamation of the mother document UDHR.

Among the inspirational effects of the UN struggle in the area of human rights protection which is tantamount to development of human rights in the world history is the establishment of various mechanisms at international regional and state levels for the purpose of giving practical effect to the notion contained in the aforementioned human rights instruments.

Complimenting the governmental efforts in the area of human rights and its protection, the role and contributions of the Non Governmental Organizations (the NGO's) cannot be underscored. The pioneer of which is the said to be the International Committee of Red Cross established in 1863 for various humanitarian missions. Other prominent ones are the International Commission of Jurists, the Amnesty International to mention but few.

Due to different approaches of different region based on the differences in their cultures which have influenced their perception of what constitute human rights differently, human rights have been classified into three different categories known in the history as; the first-generation human rights which is said to have been promoted by the west, the second-generation human

Ibid., 6. Reference to Humphrey and Pope John II description of the UDHR

Examples are various Human rights Commissions such as the European Commission on Human Rights, the European Court of Human Rights, the African Commission on Human and People's Rights and the National Human Rights Commission of Nigeria and the Islamic Human Right System

Davidson, n. 11 at 20

rights found to be the idea of the Communist states, and lastly the third-generation human rights as the title connote is the struggle by the third world countries.

3.0 THE JUDICIARY

Democracy is a constitutional system of government. It is a system of government by the people for themselves. Therefore, it is then not out of context to say that the same system is meant to protect the interest of the people, either politically or economically or socially. People's interests are no doubt encompasses their welfare and other basic fundamental rights and freedom. If the definition of human rights as government granted and government guaranteed holds, it is then incumbent upon the government of the people to ensure adequate protection of those rights it granted and guaranteed to its citizens. In other words, democratic governance is a system of power sharing between the famous three arms of the government (executive, legislator and judiciary), each of whom has a fundamental constitutional role to play in the area of human rights protection.

Judiciary in the light of the above therefore as an essential arm of government, is a constitutional institution, a creation of law, working machine of which are the courts under the functional attitudes of the managers (judges). Oxford described the word judiciary as an early 19th century word, carved out of the Latin word *judiciarius* from the word *judicium* meaning judgment. It further defines it as the combination of judges of a state or a nation when considered as a group. From a similar perspective, judiciary has been described as judges of the courts with a standardized system of law, a branch of government vested with judicial power. For the sustainability and preservation of both the rule of law and the value of the constitution, among the above mentioned arms of government, judiciary is considered as the sacred cow, for this it has been observed as follows:

There is no better test of excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen than his sense that he can rely on the certain and prompt administration of justice. Law is respected and supported when it is trusted as the

Hegarty, Leonard, n. 20 at 9. On the third-generation human rights reference was substantially made to several paragraphs of part 1 and 2 of the Vienna Declaration 1993

Oxford, n. 3

Encyclopaedia Britannica, (2009), student and home edition

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shield of innocence and the impartial guardian of every private civil right...if the law be dishonestly administered, the salt has lost its flavor, if it be weakly or fitfully enforced, the guarantees of order fail for it is more by the certainty than by the severity of punishment that offences are repressed. If the lamp of justice goes out in darkness how great is that darkness

From the constitutional law perspective, democratic governance, segment of which is the judiciary and human rights have gained legitimacy through the constitution world over, as both have been domesticated in the constitutions of various states. In order to uphold the constitutionalism of human rights, judiciary has been placed in a strategic position and vested with a very fundamental role by the constitution especially with a view to protecting those constitutionally guaranteed rights. As a sentinel of fundamental human rights, the constitution in particular and the law in general, judiciary is expected to possess and maintain certain qualities which should neither be overridden by any force nor mortgaged for any reason, namely integrity, personal independence and institutional autonomy.

3.1 Integrity and Personal Independence

Integrity simply connotes gaining and maintaining public trust and confidence, this is obtainable through high level of ethical standard, free, fair and transparent decisions. This is expected to be the virtue of the judiciary as an institution in the state and personal quality of the judges of various courts as individuals. This is the ability of a judge to make an impartial judgment at all times without any fear of intimidation, oppression, and without the intent to favour/influence or prejudice to the interest of any of the parties whose their positions in the society notwithstanding. This quality found in the judiciary, re-ensure the hope of common man who ordinarily believes that court is his last hope in seeking redress and protection against oppression. It has been observed that integrity and personal independence of a judge could be maintained vide three factors, namely: security of tenure; good condition of service; and immunity from civil liability in the cause of official duty.

Reddy, n. 1 at 17, where she quotes James Bryce, in "Modern Democracy" (London, 1921), 11, 421

See Irving Kaufman, "Chilling Judicial Independence" (1979) 88 Yale Law Journal 681

Sam Rugege, "Judicial Independence and Legal Infrastructure: Essential Partners for Economic Development: Judicial Independence in Rwanda," (2007) 19 Pacific McGeorge Global Business & Development Law Journal 2

3.2

Institutional Autonomy/Independence

The institutional autonomy is derived from the principle of power separation, which is one of the features of democratic governance. Independence in this regard is the freedom of judiciary to organize its own activities and make its decisions in accordance with the provisions of law without interference of any kind actual or apparent, or being politically influenced by any force particularly the other arms of government. This is another crucial yardstick with which expedient discharge of its function is measured. Judiciary is prone to pressures and influence from other arms of government because of its fundamental role in determining the constitutionality or otherwise of some the activities of the executive and the legislature through its judicial power. It is noteworthy that, there is a view to say that there is no absolute independence for the judiciary since the court only makes its judicial pronouncement, while the enforcement of which lies with other branches of government. More so that the executive and the legislature have determining roles to play in the appointment of judges, the budgetary allocation of the judiciary which will consequently have an impact on the resources with which it operates and the financial position of judges in terms of remuneration and other entitlements.

Suffices to say that, one of the great expectations of the people is that judiciary is the custodian of justice and it shall dispense the same without fear or favour, sentiment or ill will, especially in cases involving other arms of government where liberties of the people are in issue. Ensuring that justice is seen done protects the integrity of the judiciary and the same re-enforce the people's hope and assurance of the protection of their rights under the law. The integrity and independence of the judiciary can also be noticeably assured when it exercises its judicial power of adjudication against the government in favour of the people as a group or on individual bases when their rights need being protected. The level of political civilization of a society is determined by extent to which its citizen feel protected and secured from arbitrariness and

Sir Guy Green, "The Rationale and Some Aspect of Judicial Independence," (1985) 59 *Australian Law Journal* 135, Where he defined judicial independence as "the capacity of the courts to perform their constitutional function free from actual or apparent interference by, and to the extent that it is constitutionally possible, free from actual or apparent dependence upon, any person or institutions, including, in particular, the executive arm of government, over which they do not exercise direct control"

Rugege, n. 30 This is meant to express the situation where the judiciary discharges its function by declaring some actions of the government officials unconstitutional, unlawful and by declaring laws passed by the legislature to be unconstitutional and of no binding force whatsoever

Ernest A. Finney, Jr., "Interbranch Accountability in State Governments and the constitutional Requirement of Judicial Independence: Comment," 61 *Law and Contemporary Problems*, (1998): 55

H. Kwasi Prempeh, "Marbury in Africa: judicial Review and the Challenge of Constitutionalism in Contemporary Africa" 80 *Tulane Law Review*, (2006):25

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violation on their rights, judiciary thus plays a vital role in the accomplishment of this notion, this view is apposite to and evident by the position of Henry Sidgwick where he was reported to have said:

In determining a nation's rank in political civilization, no test is more decisive than the degree in which justice as defined by the law is actually realized in its judicial administration, as between one private citizen and another and as between private citizen and members of the Government.

4.0 FUNCTIONS AND ROLES OF JUDICIARY

The general functions of the institutions of law, judiciary inclusive is to ensure a stable, peaceful and just society notwithstanding the differences among the citizens. This could be achieved through the effective discharge of their respective functions as assigned by the law, the institutions of law under reference at times serve as mechanisms for dispute resolution; they guide in the light of the existing laws towards the appropriate steps to be taken at a particular point in time as the circumstances may demand; they facilitate the enforceability of some undertakings such as the fundamental rights as might have been enshrined in the constitution; and distinguish between good and bad conducts in the society. Judiciary as earlier being described as an institution vested with multifarious functions for the sustenance of constitutional governance and human rights protection is in position to defend safeguard and preserve the value of the constitution in this regard. In view of the above and in the light of the law which vests in it the judicial power, basic functions of the judiciary can be formulated as follows:

4.1 Interpretation of Laws and Constitution

Constitutionally, law making power is vested in the legislators through the law making process of bill passing and accent of the presidency. However, interpretation and practical application of any law passed by the legislative body is the duty of the judiciary. In most civilized countries, to determine the intent of the law-maker with regards any legislation, the courts have a vital constitutional role to play, this is not only in the interpretation of the constitution but the

Reddy, n. 1 at 30

Tim Dare, "The Role of Law and the Role of Lawyers" in Tom Campbell, Jeffrey Goldsworthy, "Judicial Power, Democracy and Legal Positivism", (USA: Ashgate, 2002), at 372

See Chapter V, Part I and II of the Constitution of the Federal Republic of Nigeria 1999
Ibid Chapter VII Part I, II, III and IV

general law. Hence any law declared valid by the court assigned with such responsibility becomes a binding law while any law nullified consequently becomes void and inapplicable. Judiciary as the upholder of the constitution and enforcer of constitutional commands, the interpretation of the constitutional provisions by the court is for the protection of human rights in particular and to safeguard people's liberties. The judicial decisions also serve as practical way of protecting human rights provisions in the constitution. One of the goals to be achieved through this essential duty of the judiciary in the area of application and interpretation of the law is to prevent retrospective legislations which are normally meant to violate people's rights. The judiciary in discharging this enormous function stands as protector of the fundamental rights of the people against infringement.

In addition to the judicial power of interpretation of the constitution and law in general as stated above, the judiciary in some jurisdiction through the mechanism of the court makes law. For example in the Common Law Jurisdiction, the court makes law based on the prior or existing case law especially in the areas of law where the legislature has not made any or sufficient enactment. Good example of this situation is in the area of Law of Tort particularly Tort of Negligence, the development of this area of law is basically and substantially premised on case law and not the statute. In some other jurisdiction however, such as the Civil Law Jurisdiction, courts can only interpret the law but not empowered to create law.

Prempeh, n. 34 at 5 and 6

Reddy, n. 1 at 31

Ibid., 25 In a contradistinctive manner to the positions of Nigerian and Ghana Supreme courts as stated above, Reddy highlighted the function of court in the interpretation of a provision of the Government of India Act, 1935 or Orders-in-Council made there under, the court in doing this revealed how the law safeguarded the fundamental liberties of the citizens despite the fact that no list of fundamental rights was incorporated into the said law. Example of relevant cases such as Niharendu Datt Mazumdar v. The King Emperor (A.I.R. 1942 F.C 22) where the Appellant was convicted for sedition, on Appeal however, the court examining whether the statement of the Appellant amounted to sedition held that the appellant only expressed his opinion about the Government an opinion which was true and that he was entitled to do so in his political capacity and he did not exceed the legal limit by so doing. Also in the case of Keshav Talpade v. King Emperor (F.L.J. India, 1937-38, VI, 28), where the court on appeal declared invalid, Rule 26 of the Defence of India Act under which the appellant was detained charged and convicted. In Emperor v. Benoari Lall Sarma (F.L.J. India, 1937-8, VI, 79) the summary of this case is that the law ousting the supervisory and appellate jurisdiction of the High court over the so called special magistrate court decision was nullified, ouster which jeopardized the rights of an accused person to appeal against his conviction from the lower court. These decisions and many others were seen as the judicial power of protecting the liberties of the citizens' particularly fundamental rights to fair trial, freedom of speech etc, through the court's role of interpretation of law

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Functions of Judiciary: <http://en.wikipedia.org/wiki/judiciary> (accessed on 4th July,

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4.2 Adjudication and Dispute Resolution

In the legal parlance, justice is not only to be done but to be seen done. Justice is a thing every individual yearns for in the society. Thus people will seek the protection of their rights against infringements and redress in respect of breach of duty or obligation in the judiciary. For justice to be seen done therefore, the judiciary provides mechanism for dispute resolution be it between individual and the state or individual citizens among themselves. The court as the judicial mechanism for adjudication, administers laws in different areas of human endeavour. For example where the law is presumed to have been violated, the court administers the criminal law accordingly, while it applies the civil law whenever dispute arises between parties in respect of rights, duties, responsibilities and obligations. Justice is the ultimate expectation of the litigants and the society at large in any dispute resolution process, thus impartial decision of the court in this regard is the only wheel that can drive successfully towards achieving the anticipated justice.

Apart from the above stated basic functions of judiciary, it also performs the monitoring and enlightenment functions. The judicial power of courts through legal proceedings manifests misconducts and alerts people to identify law-breakers. The misbehaviour of government is also noticeable through court's nullification and declaration of some governmental conduct *ultra vires* or unconstitutional.

5.0 INTERCONNECTEDNESS OF THE TWO CONCEPTS

5.1 Law and human Rights

Bearing in mind the evolution and historical development of human right as enumerated above, one of the sections of this chapter, especially the natural law position about the concept, inference could be drawn to the effect that human right was initially a concept without any legal sanctity. The romance of this concept with law could as well be said to have begun with the legal flavour it enjoyed when the Magna Carta of England was issued in 1215. Due to civilization and gradual changes in people's perception, the concept of human right no doubt in the present time not only has legal backing but has duly metamorphosed into law itself. Of course out of the

Politics: Judicial Branch <http://www.answers.com/topic/judiciary-1> (accessed on 4th July, 2009)

David S. Law, "A Theory of Judicial Power and Judicial Review" 97 *Georgetown Law Journal* (2009), at 13

Power, Allison, n. 10

Reddy, n. 1

numerous areas of law, human rights has been distinguished for all intent and purposes as one of the fastest growing and most active area of law world over. This is influenced by the significance role its adequate protection plays in people's life. Its activeness cannot be over emphasized for it's a universally enforceable law for which mechanisms are being put in place and monitoring institutions alike are established by every civilized society for the purpose of ascertaining its protection to a reasonably noticeable extent.

Judiciary on the other hand is a law created institution primary assignment of which is no other thing that dealing with the law. It is created by the law to uphold the rule of law, safeguard and protect the value of the constitution. Giving legal efficacy, constitutionality and enforceability to laws is the major function of the judiciary. Pertinently in view of the above, law could be considered to be the first and main connecting factor between human rights as a concept and judiciary.

5.2 Justice as Connecting Factor

Justice can simply be referred to as giving every person what is due to him without any hindrance, fear or favour. Human rights from the modern perspective is akin to treatment of persons, hence to a greater extent human rights connote justice. Therefore, if upholding the course of justice, maintaining and protecting the same as well as ensuring that justice is been seen done are fundamental functions of the judiciary, protection of human rights is then undoubtedly a course of justice. Being just is the greatest attribute expected of the judiciary by the populace, while the latter is the last hope of common man. In view of the above therefore, it is not out of context to hold that justice is an essential connecting factor between the two concepts (human rights and judiciary).

In addition, it is noteworthy from the historical background of human rights that, before the concept came to gain the recognition and protection under the law, especially prior to the issuance of the English Magna Carta in 1215, there were acts of oppression tantamount to what is today known as human rights violation. But due to the perception of the people, such acts of

This refers to the establishment of various institutions most of which cater for the monitoring, protection and enforcement of human rights such as human rights courts, special tribunals and the like

Davidson, n. 11

Prempeh, n. 34

Francis J Ludes, (ed.), et al. "Corpus Juris Secundum", (St Paul, Minnesota: West Publishing Co., 1965) vol. 30. at 752

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Oppression were accepted and considered as part of normal life. Neither preventive nor protective measures were thought of, not to talk of putting in place any mechanism to check same. With the trend of civilization and modern exposure, which has tremendously changed the perception of the people, awareness about different classes and categories of rights has now pervaded the globe so much that in the nearest future the judiciary would be overwhelmed with numerous categories of rights to be protected it.

6.0 CONCLUSION

The discussion about the concepts of human rights and judiciary in this chapter has been basically viewed from the western perspective. Looking at the voluminous literatures available on this subject and from this direction, it could be noted that the role and functions of judiciary is vital in the vanguard of human rights protection. It is also observed from the above discussion that human rights no matter how beautifully coached in black and white, it cannot ordinarily come to force, be implemented, enforced or protected unless with the assistance of other mechanisms of with judiciary is a key player. Although judiciary and human rights are two separate concepts but the life, the effective protection and efficient implementation of one is hinged on the other. In the light of the above therefore, the relationship between the judiciary and human rights cannot be over emphasised. This is due the discovery of some connecting factors as enumerated in the body of this research work. It is noteworthy therefore that the general function of the judiciary and the specific one in the area of interpretation of law and the constitution, particularly for the purpose of human rights protection as a connecting factor between the two concepts make them inseparable.

Under the umbrella of the classification of rights as incorporated in the two main instruments which are the segments of the UDHR (International Covenant on Civil and Political Rights ICCPR and International Covenant on Economic, Social and Cultural Rights) and other subsequent similar International Instruments, many subsidiary rights have sprang up protection of which the claimers are agitating for. Examples are the agitated third generation rights which were considered as important as other classes of rights especially the rights to development. See Vienna Declaration and Programme of Action UN Doc A/49/668 (1993), Pt 1, paragraph 5, adopted on 25 June 1993