

CULTURE HETEROGENEITY AND THE RIGHT TO FREEDOM OF EMPLOYMENT

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ABSTRACT

The world has become a global village with people from diverse cultural background living and working together. Due to globalization, many companies now operate in more than one countries of the world. This crossing of geographical boundaries by the companies has created a situation for people from diverse cultural and social orientation to have course to relocate from either their places of birth or origin to other places and require sustaining their continuous stay in such environment. This is only possible through either creating employment or getting employed. Where they are lucky to get employed, they not only have to work with employees from different social and cultural orientation, but under principals and employers from different backgrounds. The aim of this paper is to examine cultural pluralism side by side the right to employment of the global citizen, carry out a comparative analysis of multicultural societies in their applications of this right and make recommendation that the global citizen in employment or job seekers should enjoy legal protection whenever it is crystal clear that one has been discriminated against especially when national origin, sex, age, gender related factors, religion and disability are used as parameters as against requirements based on merit.

Keywords: cultural pluralism, human rights, employment right, diversity, religion

I. Introduction:

Globalization has given birth to multicultural economy where employees and job seekers from more than one cultural, religious or sexual orientation are brought together. There is a connection between man's rights and employment opportunities; thus every other fundamental or human rights as provided for by municipal, continental, international laws, charters, treaties and declarations like right to life, movement, peaceful assembly and association, privacy, and human dignity, liberty, property and other classes of human rights will only function well when a person's source of livelihood is unhindered.

Globalization has led to the emergence of more cultural pluralistic societies and the attendant broader issues concerned with the general implications for policy makers of the current ethnic composition of diversified society and the degree to which the acceptance of a substantial measure of cultural diversity can prudently be maintained in the development of the economy.

The term cultural pluralism is used to describe a relationship where smaller or minority groups within a larger society maintain their unique cultural identities, and their values and practices are accepted by the entire society provided they are consistent with the laws and values of the wider society. As a sociological term, the definition and description of cultural pluralism has evolved over time and has been described as not only a fact, but societal goal.¹

¹ en.m. [Wikipedia.org/wiki/Cultural_pluralism](https://en.m.wikipedia.org/wiki/Cultural_pluralism), accessed 7 November 2016.

According to Salmond a right is an interest, respect for which is a duty and the disregard of which is a wrong.² The rights which are recognized and enforced by law are called perfect rights, those that are not enforceable are called imperfect rights. Those which are recognized under the constitution of nations are often termed human rights.³

Like most legal concepts, human right is not amenable to any precise and straightforward definition. It is presumably in appreciation of this fact that most human rights instrument (both at domestic and international levels) hardly contains any express definition of the term “human rights”. For example the Universal Declaration of Human Rights does not contain the definition of the term.⁴

The Black’s Law Dictionary attempts to define the term human rights as the freedom, immunities and benefits that, according to modern values (esp. at an international level), all beings should be able to claim as a matter of right in the society in which they live.⁵

The Universal Declaration of Human Rights simply describes human rights as inherent rights to be enjoyed by all human beings of the global village and not gifts.⁶

In all the above description of the term human rights the common position is that there are certain rights which are possessed by every human being globally. These sets of rights are inalienable to every being and cannot be taken away without consequences. To underscore the importance of these rights, legislation and other legal instruments, treaties and conventions provides for their protection. The constitution which is the grund norm of every sovereign state also provides for and makes provision for the protection of the citizen’s rights. Likewise international charters and treaties like the United Nations Declaration of Human Rights and African Charter on Human and Peoples Rights.

2. Domestic and International Laws on Employment Right:

Section 42 of the Nigerian Constitution⁷ provides that a citizen of Nigeria of a particular community, ethnic group, and place of origin, sex religion, or political association shall not, by reason only that he is such a person.

a) be subjected either expressly by or in practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other ethnic groups, places of origin, sex, religion or political opinions are not made subject; or

b) be accorded expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinion.⁸ Section 16(2) of Nigerian constitution provides that the economic system will not be operated in such a manner as to permit the concentration of wealth or means of

² Salmond, *Jurisprudence* (Granvile Williams, 11th edn.) 261.

³ Kehinde.M. Mowoe , *Constitutional Law in Nigeria* (Malthouse Press Limited, Lagos 2008) 270.

⁴ L. Megwara, *The Law and Practice of Human Rights in Nigeria* (Olive Printing and Publishing House, Lagos 2010) 8

⁵ Bryan Garner (ed.) *Black’s Law Dictionary*, (8th edn. West Publishing Company, USA 2004) 758

⁶ See the preamble of the *UN Declaration of Human Rights, 1948*.

⁷ Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap. C23 Laws of the Federation of Nigeria 2004(hereinafter referred to as the 1999 Constitution).

⁸ The 1999 Constitution, S. 42 (b), also see S. 15(2) of the same constitution which provide that “national integration shall be actively encouraged whilst discrimination on grounds of place of origin; sex and religion, states, ethnic or linguistic association or ties shall be prohibited.



production and exchange in the hands of few individuals or of a group; section 17, provides, that the state social order is founded on ideals of freedom, equality and justice. Subsection (3) of the same section provides that the state shall direct its policy towards, ensuring that all citizens have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. Very vital to these provisions is S. 17 (3) (e), which provides that there is equal pay for equal work without discrimination on account of sex or no any other ground whatsoever. This has been enacted into law in the Nigerian Labour Act.

Though this position under the Nigerian constitution falls under the fundamental objectives and directive principles of state policy, the position of the law is clear that where there is correlative or incidental provisions in the chapter four (fundamental human rights) of the Nigerian constitution, the question of justiciability (legal term meaning whether a person can approach court for redress) is settled.⁹ It is clear that sections 15, 16 and 17 cited fall under chapter II of the Nigerian constitution which is classified by virtue of section 6(6)(c) of the same constitution as non-justiciable rights. Thus, the provision of section 42 under chapter IV is enough to cover all these anti discriminatory provisions.

The People's Republic of China in its constitution provides for the protection of the minority in the country and this is captured thus: All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops a relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any act which undermines the unity of the nationalities or instigates division is prohibited. The state assists areas inhabited by minority nationalities accelerating their economic and cultural development according to the characteristics and needs of the various minority nationalities¹⁰. Article 42 of the said constitution further provides that the people of china have the right as well as duty to work. That Work is the glorious duty of every able-bodied citizen and the state creates conditions for employment, enhances occupational safety and health, improves working conditions and, on the basis of expanded production, increases remuneration for work and welfare benefits.¹¹

Under the American law, the Civil Rights Act of 1964 prohibits discrimination based on race, colour, sex, religion or national origin. The US Supreme Court in *Mc Donald v. Santa Fe Trail Transportation*¹², reprimanded an African American employee which was allowed to keep his job while the white employee was fired. The facts showed that both employees had stolen property from their employer. The court stated that "Title VII prohibits racial discrimination against white petitioners...

The Constitution of India has several provisions which grant certain fundamental rights to its citizen, which includes right to equality before the law.¹³ The constitution further prohibits state from discrimination on the grounds of religion, race, caste, sex and place of

⁹ AG Ondo v. AG Federation (2002)9 NWLR (Pt 772,) 22, Okogie v. Lagos State Government (1981)1 NCLR,281

¹⁰ The Constitution of the People's Republic of China 1982 (as amended) art. 4 (hereinafter referred to as the 1982 Constitution of China.

¹¹ Ibid. art.42

¹² 96 S.ct 25 74.

¹³ Constitution of India 1978 (as amended) art.14 (hereinafter referred as the1978 Constitution of India)

birth¹⁴. While Article 16 empowers the state to make reservations with respect to appointment for posts in favour of backward classes of citizens if in the opinion of state such classes are under-privileged.¹⁵

The South African government to protect the rights of minorities in the republic and prohibit discrimination, enacted the Promotion of Equality and Prevention of Unfair Discrimination No. 4, 2000 in its preamble is aimed at to give effect to section 9 read with item 23(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, so as to prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination.

Section 9 of the Constitution provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality; This implies the advancement, by special legal and other measures, of historically disadvantaged individuals, communities and social groups who were dispossessed of their land and resources, deprived of their human dignity and who continue to endure the consequences;¹⁶

At the global level Universal Declaration of Human Rights 1948 offers protection against discrimination. Foremost among the international bodies is the International Labour Organization (ILO) a United Nations agency based in Geneva. The ILO was created in 1919 in the aftermath of the First World War with the aims of alleviating misery and maintaining peace, reflecting the view that there could be not lasting peace. More recent ILO conventions recognize broader notions of citizenship at work, particularly those dealing with termination of employment and equal pay.

The European regional instruments protecting workers from discrimination include Council of Europe's European Social Charter which directly complements the European Convention on Human Rights, EC charter of the Fundamental Social Rights of Workers was signed in 1961 and coming into force in 1965, purports to guarantee the right to work,¹⁷ ; right to fair remuneration¹⁸ and the right of employed women to maternity and other forms of protection.¹⁹

At the African level, the African charter has made provisions that prohibit discrimination in one form or the other. Suffice to say that discrimination is antidevelopment, and anti-social in all ramifications. It has been noted that apart from slavery, discrimination is the most comprehensive systematic and severe deprivation of human rights.

3. Elements of Breach of Right to Employment:

Despite the various municipal and international legal enactments to provide and protect the right to employment, this is often in the breach of the minority in most societies. The minorities in most African and third world societies often fall within religious, cultural,

¹⁴ Ibid art.15

¹⁵ Ibid

¹⁶ Constitution of the Republic of South Africa, 1996

¹⁷ ibid.art. 1.

¹⁸ ibid. art.4.

¹⁹ ibid. art. 8

gender, disability categories, and while in America and other parts of Europe, religion, race and sexual orientation are keys to distinguishing the minorities in the society.

As defined in the introductory part of this work, cultural pluralism entails the minority in a society keeping their unique cultural identities, and their values and practices are accepted by the entire society provided they are consistent with the laws and values of the wider society.²⁰ The identities could be influenced by tribe/ nationality, religious belief, race or even sexual orientation.

In an attempt to balance the scale between cultural pluralism and right to employment, we shall x-ray the elements that lead limit the exercise of this right in some jurisdictions.

i. Tribe / National Origin.

This is one factor that limits the exercise of the right to employment in a cultural pluralistic society. While there are plethora of legal enactment to protect citizen's right to employment, the fundamental question remains how effective is the implementation of these laws when in Nigeria for example, an ibo man cannot get employed into the civil service in Osun state for instance, no matter how qualified he is. The only perimeter that is used in judging qualification in such instance is the tribe of origin and not merit inspite of the constitutional provisions.

During the Nigerian Military Regime, one Patrick Wilmot a South African academic and also an extra talented intellectual according to Akin Ibidapo Obe,²¹ was deported. The Nigerian Military Government accused him of spying for South Africa, though some Nigerians which include Prof. Itse Sagay, Festus Iyayi, Segun Osoba had their appointments terminated, however the fact remains that if Wilmot had been a citizen, he would have stayed back and challenged his termination of employment and deportation the way Prof. Itse Sagay and others challenged theirs.

Since the fall of apartheid regime in South Africa, the issue of xenophobia was been a reoccurring stain on the image of the country. Nationals of other countries, especially Africans like Nigerians are seen as threats by the indigenous South Africans who believe that they come to compete for employment with them. To this extent, beyond the denial of employment right in the country, they become victims of attacks by the indigenes.

In Britain today, the various ethnic minority communities now account for an estimated 2.5 to 2.75 million people, representing around 4.5 per cent of the population as a whole. There are thought to be over a million Muslims living here, and Judaism, Hinduism and Sikhism can probably each claim about 300,000 adherents.²² Britain though a cultural pluralistic society with the equality before the law provision, yet when it comes to employment, this becomes untenable as nationality becomes a factor. Is often difficult for cultural minorities like Jews, Muslims, Hindus, African immigrants to get gainful employment with equal pay. Most often these set of people have to resort to menial jobs for survival.

In a survey conducted by Bertrand and Mullainathan (2004) in America, it was discovered that resumes of applicants were already disadvantaged if their names suggested

²⁰ Wikipedia (n.1)

²¹ Akin Ibidapo-Obe (2008)(In the Public Interest: A study of legal intervention of Femi Felana, pg. 64.

²² Cultural Pluralism and its Limits: A Legal Perspective by Sebastian Poulter

they were Black. When same resumes with similar qualifications were sent out using name perceived as White, such as Greg Baker or name perceived as Black such as Jamal James; it revealed that 50% of the White sounding names were likely to receive a call back than applicants with Black sounding names.²³ In such instance, the determinant in access employment is not merit, rather race and nationality.

ii. Religion.

Religion is another area that limits the exercise of the right to employment. Since religion is an integral part of culture, it comes up in the daily life of every member of the society. The truth of the matter is that, most forms filled by applicants when seeking jobs must have indicated in a column where the applicant fills-in his/her religion. Most employees who have fundamentalists approach to issues may not invite such applicant for an interview let alone giving him/her a job. For instance in Nigeria today, though there is the claim of secularity, religion is a determining factor where faith based organizations are involved in businesses. In the educational sector, academic institutions that are established and being ran by religions groups hardly employ members of other religious beliefs to work with them. No matter how qualified a Muslim may be, he may not be given the opportunity to work in an institution that is run by a Christian organization.

4. Balancing the Scale:

To balance the scale between cultural pluralism and right to employment, the laws regulating such right must be strictly enforced by the courts using their inherent powers to order employers who may be in breach of such right to reinstate victims with pay, promote employees and award damages where it s proven there is a breach.

At the international level, an aggrieved person whose right (employment right) has been violated can approach African commission; the only impediment to this is that his action can only be brought before the commission by a group and with permission of the nation-state that is a member of the African union or a state that has agreed to be bound by such international treaty.

The introduction of affirmative action will also aid the cause of promoting employment right. An affirmative action programme is a deliberate effort by an employer to remedy discriminatory practices in training, hiring and promotion of protected class members when a particular class is underrepresented in the employer's work force.²⁴ Judicial interpretation of statutes that prohibit breach of any kind will bring reformation. Thus, right to life and property will only be of utmost advantage to humanity when the main source of sustainability which is employment has not been hindered.

5. Conclusion:

The right to employment is the right of every citizen, however, in a cultural pluralistic society; it is difficult to enforce this right as certain factors militate it. The need to ensure that

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²⁴ See section 14 of Nigerian Constitution 1999 on federal character; see also Executive Order (1246 of the United States, which provides that the government has the authority to determine certain conditions for government business that are issued in executive orders by the president, referred to as government contractors, business must abide by the executive orders when they contract with government

this right is respect is fundamental as failure is a fundamental breach of the right of equality as enshrined in the in the municipal laws of several countries and international charters and treaties.

The full weight of the law should be brought against employers who deny citizens of this right and government should ensure that the employment right of every citizen irrespective of tribe, nationality, religion or creed is respected by both employers in the organized private and public sectors.

Victims whose rights are breached should also not hesitate to seek legal redress in courts of competent jurisdiction and get their right enforced. Where it is the government that is guilty of such breach, the particular classes of person can approach the international commissions where such country is signatory to and seek justice.

Recommendations

- 1. Legislative Safeguards for Equal Employment Rights:** It is important that governments and policymakers strengthen anti-discrimination laws to ensure individuals from culturally diverse backgrounds have equal access to employment opportunities. Existing legal frameworks, such as labor laws and human rights legislation, should be reviewed and updated to address cultural biases and promote inclusivity.
- 2. Promotion of Inclusive Work Environments:** Employers should implement policies that encourage cultural inclusiveness in the workplace. This includes adopting recruitment practices that are free from cultural or ethnic biases, offering cultural competence training for employees, and fostering diversity as an organizational strength.
- 3. Awareness and Education Programs:** Public and private institutions should engage in awareness campaigns that promote the understanding of cultural heterogeneity and its positive impact on social and economic development. Educational curricula at all levels should emphasize respect for cultural diversity and its role in fostering fairness in employment opportunities.
- 4. International Collaboration and Standards:** Countries should collaborate under international frameworks such as the United Nations' Universal Declaration of Human Rights and the International Labour Organization's (ILO) conventions to ensure that freedom of employment is protected globally, irrespective of cultural, ethnic, or religious backgrounds.
- 5. Enforcement of Anti-Discriminatory Policies:** Institutions, including governmental and private sectors, must develop mechanisms for monitoring and enforcing policies against cultural discrimination in hiring, promotion, and workplace treatment. Employment tribunals and legal redress systems should be made accessible to victims of cultural discrimination.
- 6. Promotion of Merit-Based Employment Systems:** Employers and labor market stakeholders should emphasize the principles of meritocracy to ensure that



employment decisions are based on individual skills, qualifications, and performance rather than cultural or ethnic affiliations.

7. **Support for Minority and Marginalized Groups:** Governments and non-governmental organizations (NGOs) should provide targeted support to culturally marginalized or underrepresented groups through skills development, mentorship programs, and economic empowerment initiatives to improve their employability and access to job markets.
8. **Research and Data Collection on Employment Diversity:** There is a need for comprehensive, data-driven research on cultural heterogeneity and its impact on employment freedom. Governments and academic institutions should prioritize collecting statistical data on employment discrimination to inform policies and practices.
9. **Role of Civil Society and Advocacy Groups:** Civil society organizations and advocacy groups should continue to play a critical role in promoting cultural diversity and equality in employment by holding institutions accountable and advocating for marginalized communities' employment rights.
10. **Cultural Integration Strategies:** Companies should adopt integration strategies to create synergy between employees of different cultural backgrounds. Programs such as intercultural exchange sessions, mentoring between diverse groups, and inclusive team-building activities should be encouraged to foster understanding and cooperation.
11. **Judicial and Quasi-Judicial Remedies:** Strengthening access to justice for victims of cultural employment discrimination through effective judicial mechanisms, ombudsman systems, and mediation services is essential to ensuring rights are protected and violators are held accountable.