



JUDICIAL INTERVENTION ON CHILD RIGHTS PROTECTION IN NIGERIA: LESSONS FROM INDIA

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Abstract

This article examines the role of the judiciary in child rights protection in Nigeria with particular reference to the provisions of the Child Rights Act 2003. It appraises the landmark decisions of courts in protecting the rights of children in Nigeria but argues that the judiciary has not achieved its full potentials in protecting the rights of children because of the non-adoption of the CRA 2003 by some states in Nigeria. Doctrinal research methodology was adopted which found among others that the Indian judiciary through the compendium of constitutional and legislative provisions have made innovative and inspiring judgements giving full protection to the rights of children in India against child labour, child trafficking and sexual abuse among others. This article recommends easy access to justice and speedy dispensation of justice which would be beneficial to the children and by extension the Nigerian judiciary to further improve child rights protection in Nigeria.

Keywords- Judiciary, intervention, child, child rights, protection

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Introduction

The role of the Nigerian judiciary and its scope of interpretations has expanded tremendously; this is largely due to numerous growth of statutory intervention in modern times. Courts in Nigeria play a pivotal role in the protection of the rights of children by interpreting the Constitution and other laws and making judicial decisions that affect the lives of children. In recent times, judicial activism emerged as a tool for the protection of the rights of children from sexual exploitation, child labour and child trafficking among other violations. The decisions made by the courts on child rights protection based on the provisions of the Convention on the Rights of the Child (CRC) 1989 ratified by Nigeria and domesticated as the Child Rights Act 2003,¹ which is the primary legislations protecting the rights of children in Nigeria The CRA 2003 provides that no child shall be subjected to the criminal justice system or to criminal sanctions, but a child alleged to have committed an act which could constitute a criminal offence shall be subjected to the child justice system and processes set out in the Act.² Regrettably, since the CRA was passed into law in 2003, only 25 States out of the 36 States in Nigeria have given gubernatorial assent to Child Rights Laws in their States while millions of children in the remaining 11 States are not protected by CRA 2003 because those States have not adopted same as a State law. These States include: Kebbi, Adamawa, Kano, Katsina, Sokoto, Jigawa, Zamfara, Bauchi, Yobe, Gombe, and Borno.

The Child Justice Administration prescribed by the CRA 2003 is aimed at protecting and promoting the rights of children who are in conflict with the laws and advocates for rehabilitation rather than punitive measures. However, the Child Justice Administration is only applicable to States which have adopted the CRA 2003. The CRA 2003 establishes the family court to address issues mainly concerning children in conflict with the law and children who need care and protection.³ Family courts have unlimited jurisdiction to hear both civil and criminal cases involving children in Nigeria. The Courts have made landmark decisions on issues relating to child rights especially in the areas of survival, child abuse, proprietary right of female children, adoption and custody among others. However, constitutional restriction of locus

¹ Child Rights Act 2003[hereinafter referred to as CRA 2003]

²CRA 2003, s. 204.

³ CRA 2003, Part XIII.

standi remains a big challenge to the protection of the rights of children because it allows only persons with vested interest in the matter to institute an action and in this case, the parents, guardian or anyone in locus parentis to the child in the event of violations of the right of the child, unlike in some jurisdictions where the restriction is limited.⁴ India is one of the most populous nations in the world with a lot of socio- economic problems which affect the lives of children.⁵ In response to these challenges, the judiciary through the compendium of constitutional and legislative reforms have made innovative and inspiring judgements giving full protection of the rights of children in line with international instruments ratified by India and also limited constitutional restriction of *locus standi*.

In the light of the above, this paper examines the role of the judiciary in the protection of the rights of children in Nigeria and the challenges of interpretation of applicable laws. The paper also examines who a child is and highlights the legal and institutional framework protecting the rights of children in Nigeria and India. It appraises the role and challenges the judiciary in protection of child's right in Nigeria. The impact of judicial activism of the Indian courts in the protection of children in India will be x-rayed and lessons drawn for the Nigerian judicial approach towards child rights protection in Nigeria.

Who is A Child?

A child has many descriptions and definitions from international and municipal laws. The United Nations Convention on the Rights of the Child (CRC) 1989⁶ and the African Charter on the Rights and Welfare of the Child (ACRWC) 1990⁷ define a child as any human being below the age of eighteen (18) years. However, a clause in the convention states that the age of the child could vary with respect to the national law applicable to the child in the event that maturity is attained at an earlier age. Nwanna and Akpa are of the view that the clause has created a loophole which could be explored by the State to reduce the age of the child and further deprive

⁴Constitution of the Federal Republic of Nigeria 1999 (as amended), s 46 [hereinafter referred to as CFRN 1999] s.46.

⁵P.K Agarwal and A.C Pathak 'A Socio – Economic Analysis of Child Labour in India' [2015] (1) (1) Journal of Science and Management.

⁶ CRC adopted by the United Nations General Assembly in 1989

⁷ ACRWC adopted by the African Union in 1990.

them of their fundamental human rights.⁸The Children and Young Persons Act⁹ define a child as a person below the age of fourteen (14) years and a young person above fourteen (14) years but yet to attain the age of seventeen (17) years,¹⁰ but in the Criminal Code Act¹¹ and Penal Code Act,¹² the age of a child is determined by the age of criminal liability. The Administration of Criminal Justice Act¹³ expressly defines a child as a person who is yet to attain the age of 18 years. Customary law also has its own definition of who a child is and it differs according to the number of ethnic groups in Nigeria.¹⁴ Ayua and Okagbue¹⁵ argue that the criteria for determining who a child is vary from one ethnic group to another as it could be the initiation into the age group or financial strength of the individual.¹⁶ The milestone or commencement of puberty could also determine childhood.¹⁷ Under Islamic law, a male child becomes an adult as soon as a that child begins to have ‘wet dreams’ and a female once she starts experiencing menstrual flow. Overall, it is submitted that these definition of a child is not all encompassing and can be subjected to multiple interpretation which may militate against enforcement of the rights of children. It is important to note that in the Nigerian Constitution, a child is not categorically defined, though the constitution states that full age means eighteen years and above.¹⁸ The Electoral Act also stipulates the age of franchise to be eighteen (18) years,¹⁹ it therefore implies that any person below the age of 18 years is considered to be a child.²⁰ This provision of the Electoral Act is in tandem with the CRA 2003 which states that any person under the age of

⁸ C R Nwanna and E N Akpa, *Research Findings of Juvenile Justice Administration in Nigeria* (Lagos: Constitutional Right Project 2003) 9.

⁹ Children and Young Persons Act 1943

¹⁰ *Ibid*, s 2.

¹¹ Criminal Code Act 1916, Cap C38, Laws of the Federation 2004 [hereinafter referred to as CCA].

¹² Penal Code (Northern States) Federal Provision Act, 1960 (as amended) [hereinafter referred to as PCA]

¹³ Administration of Criminal Justice Act 2015 [ACJA]

¹⁴ Nigeria has over 250 ethnic groups and their criteria in defining who a child is differs from one ethnic group to another.

¹⁵ I.A Ayua and I.E Okagbue *‘The Rights of the Child in Nigeria’* (Lagos: Nigeria Institute of Advanced Legal Studies 1996).

¹⁶ Among the Yorubas, Igbos, Edos and the Delta people, initiation into the family shrine as well as farming and fishing competition in the Northern part of Nigeria. All these are method of determining whether or not a person is a child.

¹⁷ G I U Azogu, ‘Women and Children- A Disempowered Group under Customary Law’ in Ayua and Okagbue (n13)

¹⁸ Constitution of the Federal Republic of Nigeria, 1999 (as amended) s. 29 (4) (a).

¹⁹ Electoral Act 2010, s 12(b)

²⁰ *Ibid*, s 12(b)



eighteen(18) years is a child.²¹ However, for the purpose of this paper, the definition of a child in the CRA 2003 will be adopted.

Legal Framework Protecting the Rights Of Children In Nigeria And India

There are plethora of national and international laws protecting the rights of children in Nigeria and India respectively. The international laws include the United Nations Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Convention on the rights of the Child (CRC) 1989 among others. Emphasis in this paper will be on the municipal laws protecting the rights of children in Nigeria and India.

A. Nigeria

In Nigeria, there are several national laws that protect the rights of children. These include the Constitution, Labour Act,²² the Criminal Code Act,²³ the Penal Code Act, the Child Rights Act,²⁴ Children and Young Persons Act.²⁵

i. Constitution of the Federal Republic of Nigeria 1999

The Constitution provides for fundamental rights for all citizens including children in Chapter IV. These include the right to life,²⁶ dignity of human person,²⁷ right to personal liberty,²⁸ right to fair hearing among other rights.²⁹ The Constitution also provides for some rights in Chapter II which form part of socio-political, economic, educational and cultural rights relating to the security and welfare of children.³⁰ For instance, educational rights may be found under the state objectives which include access to free education by all children

²¹CRA 2003, s 227.

²²Labour Act, Cap L1 LFN 2004

²³ Criminal Code Act(1916) Cap C.38 LFN 2004

²⁴ CRA 2003

²⁵Children and Young Persons Act 1943

²⁶ CFRN 1999, s. 33.

²⁷ *Ibid*, s. 34.

²⁸CFRN 1999,s. 35.

²⁹ *Ibid*, s. 36.

³⁰ A.K Ahmed, *The Law and Child Rights in Nigeria* (Lagos: Malthouse Press Ltd 2006)57.

from primary to tertiary level to eradicate illiteracy from Nigeria.³¹ Regrettably, these rights provided in Chapter II of the Constitution are not justiciable and therefore unenforceable.³²

ii. The Labour Act³³

This Act regulate the appointment, contract and protection of children in employment. The Act has several protective provisions for children in that no young child shall be employed in job that is unsafe for his health or immoral in nature³⁴ or a job where he will be unable to return home to his parents/guardian on a daily basis.³⁵ Also, a child below the age of sixteen (16) cannot be employed in underground work or work on a machine or even on public holiday.³⁶ Children cannot be engaged in jobs which require them to lift, move or carry heavy object that may injure or hamper their physical development³⁷ or work in a shipping vessel except it is a school or training vessel which has permission from the Minister and supervision by public officers or department.³⁸ Furthermore, all employers must keep register of all young persons in employment stating their date of birth, nature of employment and the date they will cease to be members of the crew. All these measures are taken to protect minors in employment.

iii. Criminal Code Act³⁹

The Criminal Code Act (CCA) is one of the major criminal laws in Nigeria which apply only to the Southern part of Nigeria. The CCA has special provisions for children and young person's either as offenders or victims. The CCA provide that a child below 7 years is not criminally responsible for an acts or omission and a child under the age of 12 is also not criminally responsible for an act or omission except it can be proven that he had the capacity

³¹CFRN 1999, s.13-18.

³²*Ibid*, s. 6(6) (c).

³³ The Labour Cap L 1 Laws of the Federation 2004. Please remove 1914. The sub-title above is 1974, the footnote is 1914. Please only cite the law as it is presently cited in the laws of the federation 2004

³⁴*Ibid*, s 59(6).

³⁵*Ibid*, s 59(3).

³⁶*Ibid*, s 59(5).

³⁷*Ibid*, s 59(1) (b).

³⁸ *Ibid*, s. 61.

³⁹ Criminal Code Act Cap C38 Laws of the Federation 2004[hereinafter referred to as CCA].



to know that he ought not to do the act or make that omission.⁴⁰ The law protects the child even from conception because it is a criminal offence to procure an abortion in Nigeria.⁴¹ Furthermore, it is the responsibility of parents, guardian or any person in *loco parentis* to a child to provide necessaries for a child under 14 years for basic survival needs, a default in this obligation is an offence punishable by law.⁴² A child below 13 years is protected from sexual assault in form of rape or indecent and unlawful sexual act, its felony punishable with life imprisonment or inducing a child or an underage young child in sexual act in brothel commits an offence punishable by law.⁴³ The CCA has stern provision to prevent sale and trafficking of children in Nigeria and anyone caught in the act is liable if convicted to 14 years imprisonment.⁴⁴

iv Penal Code Act⁴⁵

The Penal Code Act is applicable to all the States in the Northern part of Nigeria. The Penal Code Act (PCA) has some similar provisions as the CCA applicable in the Southern part of Nigeria in the areas of age of criminal liability. However, the PCA does not have specific penalty for cruelty to children, rather, it has an omnibus provision which punishes cruelty with imprisonment or fine or both. The PCA also extends the age limit to 18 years for chastisement of children without grievous bodily harm.⁴⁶ It is important to note that some States in the northern part of Nigeria have adopted the Sharia Penal Code whose provisions are different from the original PCA.

v Children and Young Persons Act 1943

The Children and Young Persons Act has provisions for the welfare and treatment of young offenders, establishment of juvenile courts in civil and criminal capacity and provision for children in need of protection. As a civil court, it attends to juveniles who are in need of care and protection and those who have grown beyond parental control while in criminal capacity,

⁴⁰CCA, s 30.

⁴¹*Ibid*, s 228.

⁴²*Ibid*, s 301.

⁴³*Ibid*, s 219.

⁴⁴*Ibid*, s. 371.

⁴⁵ Penal Code Act Cap P3, Laws of the Federation 2004 [hereinafter referred to as PCA].

⁴⁶*Ibid*, s 55.

the court deals with children and young persons charged with criminal offences. The Juvenile Court acting in both civil and criminal capacities serves three basic functions: first, as social service, secondly, as guardian of civil liberties of young persons and finally, protecting the general public from unruly and delinquent children.

vi Child Rights Act, 2003

The Child Rights Act, 2003 is the primary and comprehensive legislation on issues affecting children in Nigeria and is a derivative of the United Nations Convention on the Rights of Children of 1989 and the African Charter on the Rights and Welfare of the Child 1990.⁴⁷ The CRA recognises that all the rights accruable to children are fundamental and should be protected and promoted. The Act reiterates that in all issues affecting children, the best interest of the child must be of paramount consideration.⁴⁸ The enactment of the CRA into a State law is solely the responsibilities of respective states in Nigeria because issues concerning children are in the residual legislative lists which only the States has the authority to legislate on. This is the reason why only 25 out of the 36 States in Nigeria have adopted the CRA as a State law.⁴⁹ Umar⁵⁰ argued that the reason why the CRA is yet to be adopted by some States in the North is because some provisions of the CRA are in conflict with Islamic law especially with regards to personal law and family law and so it is in conflict with the spirit and practice of Islamic Law. He therefore submitted that in order to make the rights of children realizable in the North, the CRA 2003 must be compatible with Islamic law. The rights accruable to the child under the CRA include survival rights, protection rights, developmental right and participatory rights. Survival rights include a life free from hunger, poverty, disease, illiteracy among others;⁵¹ Protection rights include protection from corporal punishment and harmful customary practices like female genital mutilation, child marriage,

⁴⁷ M T Ladan, 'An Overview of State Obligation in respect of Children Rights in Nigeria' A Paper presented at the National Assembly Complex, Abuja, March 2003.

⁴⁸ Child Rights Act 2003 (hereinafter referred to as CRA), ss 1 & 2.

⁴⁹ The states that have adopted the Child Rights Act include: Abia, Akwa-Ibom, Bayelsa, Benue, Cross- Rivers, Delta, Edo, Ekiti, Enugu, Imo, Jigawa, Kwara, Kogi, Lagos, Nassarawa, Niger, Ogun, Oyo, Osun, Plateau, Rivers and Taraba.

⁵⁰ A Umar, 'An X-ray of the Conflict between the Child Rights Act 2003 and Islamic Law on Child Marriage and Legitimacy' 3, (2012) *Human Rights Review: An International Human Rights Journal*, 76.

⁵¹ CRA 2003, ss.4, 5, 13 and 15.

child abuse, tattoos and skin marks.⁵² The CRA also protects children from any form of violence and some States in Nigeria have enacted laws against domestic violence to protect children and women from domestic violence.⁵³ The development rights provided in the CRA2003 include the right to rest and leisure, it allows children to engage in sports and other recreational activities appropriate for their age for all round development.⁵⁴ Furthermore, education enhances development, hence the CRA 2003 guarantees the right of every child to free and compulsory basic education and places a responsibility on the government and parents to ensure that all children are educated.⁵⁵ However, those who are unable to have basic education due to individual ability, must be encouraged to learn a trade and adequate necessities shall be provided by the employer.⁵⁶ Every child is entitled to the right to participate in decisions that affect his/ her life either directly or indirectly,⁵⁷ this position is affirmed by the Constitution.⁵⁸ The CRA also establishes a child justice system to address issues relating to children who are in conflict with the law as against the adult criminal justice system. To ensure the effectiveness of the justice system, the CRA 2003 provides that a special Children Police Unit should be established to handle child offenders and such cases are heard in a family court.⁵⁹ A Committee to be set up to monitor the implementation of the provisions of the CRA 2003 at the Federal, States and Local Government areas in Nigeria.⁶⁰

vii Violence Against Persons (Prohibition) Act 2015

The Violence Against Persons (Prohibition) Act (VAPP) 2015 was passed into law as a result of agitation for protection of persons including children against all forms of violence at home, schools and the larger society. There has been an increase in the incidence of domestic

⁵² Ibid, s. 30.

⁵³ Cross-Rivers State adopted the Domestic Violence Law in 2003 while other states Houses of Assembly are in different stages of passing Domestic Violence Prohibition Bill in their states. Violence against Persons Prohibition Act of Rivers State, 2021. See also Federal Ministry of Women Affairs, Periodic Report on the Implementation of the Rights and Welfare of the Child in 2006.

⁵⁴ A. Ahmed (n24) 90.

⁵⁵ CRA 2003, s15.

⁵⁶ Ibid, s.15 (4).

⁵⁷ Ibid, s.3.

⁵⁸ CFRN 1999, s.39.

⁵⁹ CRA 2003, Part XIII.

⁶⁰ Ibid.

violence and the need to protect citizens from violence. The VAPP Act is an improvement on the criminal and penal code in relation to violence; it makes provision for compensation of victims as well as protection of their rights. The Act prohibits all forms of violence in private and public life be it physical, sexual, psychological, domestic, harmful traditional practice as well as discrimination against persons. The VAPP Act also provides maximum protection for victims, remedies for victims and punishment for offenders. The Act prohibits violence against children in the forms of female genital mutilation,⁶¹ abandonment of children,⁶² rape or any form of sexual assault⁶³ and indecent exposure of children.⁶⁴ The Act prescribes the use of Sexual Offenders Record to provide for a register for convicted sexual offenders which shall be made accessible to the public.⁶⁵ Where a person is convicted twice for sexual offence, such person shall be declared by the court as a dangerous sexual offender.⁶⁶ This is a new innovation in our criminal justice system and it is a welcome development, it is believed that if effectively implemented, it may reduce the rate of sexual violations of persons especially children who are highly vulnerable to sexual assault by family members and close friends. However, the perceived drawback of the VAPP Act is its limited application to the Federal Capital Territory, Abuja and States are at liberty to choose whether or not to adopt it as a State law 18 States out of the 36 States have adopted the VAPP Act as a State law. Recently more states are adopting this act as a result of pressure sensitization from the public so as to curb incessant violence across the States. As at November, 2022 the Minister of Women Affairs, Pauline Tallen claimed that about 34 states and the Federal Capital Territory have domesticated the VAPP Act⁶⁷

INDIA

⁶¹ Violence Against Persons (Prohibition) Act 2015, s.6.

⁶² *Ibid*, s. 16

⁶³ *Ibid*, s.1

⁶⁴ *Ibid*, s.26.

⁶⁵ *ibid*,s1(4)

⁶⁶ *Ibid*, s.43 (a).

⁶⁷ Premium Newspaper(22, November 2022) <<https://premiumtimesng.com>

India is a highly populous nation of the world with a population of 1.366 billion out of which 444 million are children, a home to over 21% of the world children.⁶⁸ There are plethora of national and international laws protecting the rights of children in India. The National Laws include; the Constitution of the Federal Republic of India 1950, Prohibition of Child Marriage Act 2006, Children (Pledging of Labour) Act 1933, Employment of Children Act 1938, the Apprentice Act 1961, the Child Labour(Prohibition and Regulation) Act 1986, the Juvenile Justice (Care and Protection)Act 2000 among other laws. These laws will be discussed below.

iConstitution of the Federal Republic of India, 1950

The Constitution of the Federal Republic of India hereinafter referred to as the Indian Constitution recognised the important roles of children as future leaders and the need to protect their rights from exploitation. The following are the provisions of the Indian Constitution relating to children: Part III of the Constitution provides for survival, development and protection of children while Part IV, the Directive Principles of State Policy which deals with provisions related to children but unfortunately, these provisions are not justiceable. Children are entitled to the fundamental rights provided in the Indian Constitution and parents have the mandate to provide opportunities for their children or wards within the ages of six (6) and fourteen (14) years to be educated.⁶⁹The Indian Constitution prohibits trafficking in persons, begging for alms or other forms of child labour and also makes it an offence punishable by law.⁷⁰ Children below the age of 14 years are prohibited from work in factories, mines or any otherhazardous workplace.⁷¹

Prohibition of Child Marriage Act, 2006

The Act defined child marriage as one in which either the girl or boy is underage, this means that the girl is below 18 years and the boy is below 21years. The legal status of child marriage is voidable if so desired by one of the parties, but where the consent for marriage was obtained by

⁶⁸ Children in India- Statistics and Facts<https://www.statista.com>

⁶⁹Indian Constitution of 1950, art 51 A (k).

⁷⁰*Ibid*, art. 23(1).

⁷¹*Ibid*, art.24

fraud or deceit or for the purpose of using the child for trafficking or other immoral purpose, the marriage would be void. The law prescribes punishment for any person, a male adult above 18 years who is getting married to a child⁷² or group of persons permitting or promoting child marriage with two (2) years imprisonment with payment of fine which may extend to one lakh rupees or more.⁷³ The Act also provides for the appointment of Child Marriage Prohibition Officer whose duty is to prevent child marriage and sensitize the public about the dangers of child marriage and the punishment prescribed by the law for offenders.

iii Children (Pledging of Labour) Act, 1933

The main objective of this Act is to eradicate the evil practice of pledging of labour of young children to settle the financial debt of parents or guardians. The Act nullifies any agreement be it oral or written entered to pledge the labour of children by parents or guardians in return for payment or any form of benefits.⁷⁴ However, the law permits agreement made without detriment to a child with reasonable wages to be paid for the child's services and terminable at not more than one week notice.⁷⁵ But a person who enters into any form of pledging of labour of a child be it parents, guardian or an employer who knowingly employs such a child is liable to a fine of 20,000 rupees, this is to protect children against forced labour.

iv Employment of Children Act, 1938

The Act prohibits the employment of children in hazardous employment and other unhealthy occupations. Children below 15 years are prohibited from engaging in occupation involving transport of passengers, goods, mails by railways port authority,⁷⁶ however, children employed as apprentices or trainees are exempted. But where children between 15- 17 years are employed in such occupation, they must be allowed to rest for 12 hours in between work interval and such

⁷² Prohibition of Child Marriage Act, 2006, s. 9

⁷³ One Lakh rupee means 100,000 Indian Rupee which is equivalent to 551,414.26 Nigerian currency.

⁷⁴ Children (Pledging of Labour) Act 1933, s.3.

⁷⁵ Children (Pledging of Labour) Act 1933 s.2.

⁷⁶ Employment of Children Act 1933, s. 12(a), 13(e).

rest hours must include 10.00pm and 7.00am.⁷⁷The Act protects children below 14years of age to work in employment involving carpet weaving, cement manufacturing and bagging of cement, cloth dyeing, printing and weaving, manufacturing of matches, explosives and fireworks among all other hazardous jobs.⁷⁸but this provision is not applicable to family members or schools established and recognised by government for training of students.⁷⁹The Act mandates every employer of children to maintain a register of children under 17 years employed and available for inspection by an inspector at all times.⁸⁰A breach of the provision attracts a term not less than 3 months imprisonment and may extend to 1 year or fine of 500- 2,000rupees or both.⁸¹

viThe Child Labour (Prohibition and Regulation) Act, 1986

India has plethora of laws preventing child labour, yet the incidence of child labour is on the increase. The main aim of the Act is to identify more hazardous industries and ban the employment of children in such industries and also regulate the conditions of children working in non- hazardous occupations. The objectives of the Act include: to ensure uniformity in the definition of the child in other related laws; to ban the employment of children in hazardous industries; to regulate the condition of work of children who are allowed to work and prescribe deterrent punishment for violators. The Act defines a child as a person who is yet to complete his fourteenth birthday, this therefore implies that children aged 14 years and less than 18 years could be employed to work but with some restrictions to protect them and prevent harm to their mental and physical development.

Sections 23, 24, 25 and 26 of the Act amended some child related laws like the Minimum Wages Act, 1948, Plantation Labour Act, 1951, the Merchant Shipping Act, 1958 and the Motor Transport Workers Act, 1961 by substituting the word “fourteen” for the word “fifteen” in the age of the child. The Act also prohibits the employment of children as domestic workers or servants, or in roadside eateries, restaurants hotels, motels tea shops or other recreational

⁷⁷Employment of Children Act 1933, s. 13(1).

⁷⁸*Ibid.*, s. 3(3).

⁷⁹*Ibid.*, s. 14(3).

⁸⁰*Ibid.*, s. 3(d).

⁸¹*Ibid.*, s. 6(1) (2). A fine of between 5,000- 11,000-Naira equivalents is grossly inadequate for such an offence hence the incidence of child labour is on the increase in India.

centres.⁸²The Act penalizes violators with an imprisonment term of 3 months and a maximum of 1 year with or without a fine of 10,000 -20,000 rupees.

vii The Juvenile Justice (Care and Protection of Children) Act 2000

This Act was enacted to consolidate and amend laws relating to juveniles in conflict with the laws and children in need of care and protection. The Act adopts a child friendly approach in the adjudication and disposition of matters in the best interest of the child. India adopts the standards set by the Convention on the Rights of the Child, the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and all other international instruments relating to children which India is a signatory. The Act defines a juvenile as a person who has not completed 18 years of age and a juvenile in conflict with the law as one who is alleged to have committed an offence and has not completed his 18 years of age as on the date of commission of such offence, with no distinction in age between a male or female juvenile.⁸³

Judicial Intervention On Child Rights Protection in Nigeria

The courts have made landmark judgements protecting the rights of children in Nigeria especially in the areas of the right to education, custody of children, sexual violations and girl child right to properties, among all others. For instance, the right of children to education is a socio-economic right which is not justiceable because of the Constitutional bar provided by Section 6 (6) (c), a position also affirmed in the case of *Arch Bishop Olubunmi Okojie & Ors v A.G Lagos State*.⁸⁴ The Court itself has been lukewarm in its judicial activities to expand the jurisprudential scope for the justiceability of Chapter II of the Constitution.⁸⁵ However, the case of *Adebiyi Olafisoye v Federal Republic of Nigeria*⁸⁶ is also instructive in the sense that the Supreme Court ruled that the non-justiceability of provisions in Chapter II of the constitution affirmed by section 6(6) © is neither total nor sacrosanct. Interestingly, , a ray of hope to the actualization of the right to education of the child was made visible by the ECOWAS Court in

⁸² The Child Labour (Prohibition and Regulation) Act 1986, s. 3.

⁸³ Juvenile Justice (Care and Protection) Act, 2015 s.2(35).

⁸⁴ [1981] 2 NCLR 337. See also *Adewole v Jakande* [1981] NCLR 264; *Olagbeji v A.G Ondo State* [1963] 2 FNR 6.

⁸⁵ CFRN 1999, Chapter II.

⁸⁶ [2004] 4 NWLR (Pt 864) 580



the case of *Registered Trustees of Socio- Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission*⁸⁷ the ECOWAS Court held that by virtue of Article 17 of the African Charter on Human and Peoples' Rights 1981, every child has a fundamental right to free and compulsory basic education in Nigeria. Also, in *Legal Defence and Assistant Project (LEDAP) v Federal Ministry of Education*,⁸⁸ LEDAP armed with the judgement of the ECOWAS Court on the right to free basic education approached the Federal High Court in Abuja for the declaration that section 18(3) (a) of the Constitution is an enforceable right by virtue of the Compulsory Free Universal Basic Education Act 2004. The Court held that the combined effect of sections 18(3) (a) of the Constitution and section 2(1) of the Compulsory Free Universal Basic Education Act 2004, the right to compulsory universal basic primary education and free junior secondary education for all Nigerian citizen is enforceable in Nigeria.

Furthermore, the Constitution imposes an obligation on the government to ensure that children are protected from exploitation, moral and material neglect,⁸⁹ in response to this stated provision, the court has made some landmark decisions concerning custody and maintenance of children in Nigeria. The Court may grant the custody of a child to the natural legal parents or appoint other persons or guardians where the natural legal parents are incapable of providing for their children. Custody order can only be made in favour of a child below 16 years, but such order lapses as soon as the child attains the age of 16 years as decided in the case of *Febisola Okwueze v Paul Okwueze*.⁹⁰ Custody of a child could be shared by both parents as decided in the case of *Williams v Williams*⁹¹ where the court stated unequivocally that custody of a child essentially concerns not only the control of the child but also involves the preservation and care of the child's physical, mental and moral wellbeing. In the custody of children, the court has always upheld the Principle of Best Interest and Welfare of the Child as elucidated in *Buwanhot v Buwanhot*⁹² where the court stated that the welfare of a child in a marriage includes peace of mind, happiness,

⁸⁷ [Suit No ECW/CCJ/APP/12/07] Judgement No ECW/CCJ/JUD/07/10 delivered in Abuja Nigeria on the 30th of November, 2010.

⁸⁸ [Unreported Suit No FHC/ABJ/CS/1978/15].

⁸⁹ CFRN 1999, s.17 (3) (f).

⁹⁰ [1989] 3 NWLR (Pt 109) 321.

⁹¹ [1981] Q.L.R.N (Pt 127) 122.

⁹² [2011] FWLR (Pt 566) 552 at 553 para A.

education and that these requirements are necessary to grant custody of a child to parents or guardian. Similarly, in *Odusote v Odusote*⁹³ the court stated that the interest of the child includes education, security, welfare and all-round development. It is also germane to note that the best interest and welfare of the child takes precedence over any law, customs and beliefs as it concerns the custody of a child. The court may grant the custody of a child to a third party wherein its opinion, both parents are incapable of giving the best care to the child. This was the position of the court in *Okwueze v Okwueze*⁹⁴ where the custody of the child was given to a guardian. In that case, the court dealing with the right to custody of children in a dissolved marriage conducted under customary law explained that under customary law in Nigeria, the father has an absolute right of custody but such right cannot be exercised where it is detrimental to the interest of the child, hence the custody of the children were given to responsible guardian because either parents is capable of giving the best care to the children..

Similarly, in *Henrietta Nwuba v Cyprain Nwuba*⁹⁵ where Mrs Rosemary Inyama, the grandmother of three (3) children was granted custody based on the best interest of the children because the children's mother had re-married and their father was unstable financially. Where custody is granted to a third party, the court may allow the parents reasonable access to the child. The Court also ensures proper maintenance of children through child support, an obligation which is borne by husbands under statutory and customary marriages in Nigeria. Under Customary law, custody of a child resides with the father unless the child is of a tender age and in need of motherly care and attention, then the mother takes custody until the child can be safely separated from her and returned to the father. However, under Statutory Marriage, the exclusive custodial right of a father over the child is not applicable. The Patrichial tendency on the part of the court is seen in the case of *Oyewole v Oyewole*⁹⁶ where the court granted custody of 2 male children to their father even though the children had lived with their mother for two (2) years after separation of their parents.

It is important to note that the court does not award custody of a child as a result of good conduct nor lack of custody as a punishment to the guilty party. But where there is persistent misconduct

⁹³[2012] 3 NWLR (Pt1288) 478 at 457.

⁹⁴[1989] 3 NWLR (Pt109) 321.

⁹⁵[1971] Lagos Judicial Division, Suit No WD/37/72.

⁹⁶[1987] 2 NWLR (Pt 56) 239.

or moral decadence of a party which makes that person unfit and improper to take custody of a child as was decided by the court in *Lafun v Lafun*,⁹⁷ where the court refused to grant custody to a child's mother and also refused access to visit the child as it will not be in the best interest of the child in his formative years as he could be easily influenced by her misconduct. The court therefore ensures that custody of children whether shared by one or both parents or by a third party, it must be in the overall interest and welfare of the child.

Akpoghome⁹⁸ argued that sexual violations of children is a global pandemic which involve all children irrespective of classes, races, ethnic and religious background. Ironically, cases of sexual violation are grossly unreported and this is as a result of social stigma, relationship between the perpetrators and the abused and the consequences of disclosure. Incidence of sexual violations among male children are likely to be less reported because of the mindset of male dominance and the means of addressing the challenges by themselves.⁹⁹ The Nigerian Courts have been proactive in responding to child rights protection with regards to sexual violations. In Lagos State, the court delivered judgement on 122 sexual offences against children in 2020 as stated by Mrs Yinka Adeyemi,¹⁰⁰ during a Webinar with a theme on 'Crime of Defilement; The Role of Parents, Teachers and Caregivers in ending the Scourge.' Also, NAPTIP reported 200 cases of sexual violence against children in the form of recruitment of underage female children (below 18 years) for prostitution out of which 46 cases were investigated and only 26 cases were convicted between 2016 and 2020.¹⁰¹ In *AGF v Effiong Effiong*¹⁰² where the accused procured a 16years old female child for prostitution, the accused was convicted and sentenced to 2 years imprisonment without an option of fine. Also, in *AGF v Elele Biloko, Joshua Eboro & Helen Oni*¹⁰³ where the 3 accused persons procured underage girls for prostitution. The accused persons abducted the victim from the lawful custody of her guardian and forcefully kept her in a brothel.

⁹⁷[1967] NMLR 401.

⁹⁸ J U Akpoghome, T.C Nwano 'Examining the Incidence of Sexual Defilement of Children in Nigeria'[2016] (2) (1) *Donnish Journal of Law and Conflict Resolution*

⁹⁹*Ibid.*

¹⁰⁰Director, Lagos State Directorate of Public Prosecution in January to August.2020<<https://www.vanguardngr.com>>accessed 20 January 2022.

¹⁰¹Cases of Sexual Violence reported by NAPTIP from 2016 to 2020.<<https://www.icirnigeria.org/cases-of-sexual-violence-reported-at-naptip>> accessed 20 January 22.

¹⁰²[2009] 7 NWLR (Pt 2720 189 at 218.

¹⁰³[2007] 6 NNWLR (Pt 834) 232.

The accused persons were arraigned before a Federal High Court in Lagos and were convicted and sentenced to 2 years imprisonment without an option of fine. Similarly, in *AGF v Ganiyu Ishola*,¹⁰⁴ an herbalist abducted a 13-year-old girl and kept her in captivity for 40 days while sexually abusing her and she became pregnant. The accused was arraigned before a High Court in Ilorin and was convicted and sentenced to 2 years imprisonment without an option of fine. It is imperative to note that very few cases of sexual violations of children eventually come before the court compared to the very high rates of sexual violence occurring on a daily basis against children. It is therefore necessary to educate the public about the need to report all cases of sexual violation of children to the appropriate authorities for prompt investigation and prosecution of offenders to act as deterrent to others and further protect children from all forms of sexual violence in Nigeria. The Court has also been very active in responding to the protection of the rights of the girl child to inheritance of properties from their father's estate especially in ethnic groups where this practice holds sway. Land mark decisions by the Supreme Court empowering female children to inherit from their father's estate as decided in the case of *Ukeje v Ukeje*¹⁰⁵ *Mojekwu v Mojekwu*¹⁰⁶ this decision is a welcome development for female children especially in Igboland to partake in their fathers' estates. In spite of this pronouncement by the apex court in Nigeria, the challenge faced is the failure of enforcement of the decision by the stakeholders in the community. More sensitization needs to be carried out and stiff penalties prescribed for failure to implement and enforce the decision of the court.

Judicial Activism Towards Child Rights Protection in India

The judiciary through the compendium of constitutional and legislative provisions have made innovative and inspiring judgements giving full protection of the rights of children in India in line with international instruments ratified by India. However, child labour and exploitation of children remain a great challenge for children in India. It has become practically impossible to eradicate child labour because of the prevailing socio-economic condition in India and in a bid to earn extra money, parents engage their children in labour to augment their meagre family

¹⁰⁴[2011] 11 NLR 47.

¹⁰⁵[2014] 11 NWLR (Pt1418) 384 at 414.

¹⁰⁶[2005]5 NWLR (Pt 652)402.



earnings. The practice of child labour encourages illiteracy and large drop out of children from school. The Supreme Court has mandated that child labour must be regulated. In *Sathyavan Kottarakkara v State*,¹⁰⁷ the court threw more light on the exploitation of children when it held as follows:

Exploitation of children in any form which has the tendency to exploit them either physically, mentally or otherwise is objectionable. Any attempt in this direction should be put to an end to achieve the goals enshrined by the Indian Constitution makers which are reflected in the various provisions of the Constitution namely Articles 21, 39, 41, 45 and 46...

The judiciary has also responded to the problems of engaging children in hazardous employment. The Supreme Court in *People's Union for Democratic Rights v Union of India*¹⁰⁸ gave a liberal interpretation to the term "hazardous employment" and stated that hazardous employment is wide enough to include employment of children in construction work and directed that the Schedule to the Employment of Children Act, 1938 should be amended to include construction industry..

In the same vein, the Supreme Court in *M.C Mehta v State of Tamil Nadu*¹⁰⁹ highlighted the problems associated with employment of children in match factories in Sivakasi, Kamaraj District of Tamil Nadu. There are judicial notice of frequent accidents occurring in match factories and hazards involved in employment of children in such factories. The employment of children in such factories violates Article 39(f) of the Indian Constitution which provides that State should direct its policy to ensure that children are given opportunities and facilities to develop in a healthy manner and be protected against exploitation, moral and material abandonment. Furthermore, in *Bandhua Mukti Morcha v Union of India*¹¹⁰ a public interest litigation was filed alleging employment of children below the age of 14 years in the carpet industry in the State of U.P. Reports of the Commissioner and Committee appointed by Supreme Court confirmed forced employment of a large number of children. The Supreme Court

¹⁰⁷ AIR 1997 Ker 133.

¹⁰⁸ (1982) 3 SCC 235; 1982 SCC (L&S) 275. See also *Salal Hydro Project v State of Jammu and Kashmir and others* AIR 1984 SC 117.

¹⁰⁹ AIR 1991 SC 417; AIR 1997 SC 699.

¹¹⁰ (1997) 10 SCC 549.

held that the State owes every child a duty to render socio-economic justice and provide facilities and opportunities for proper development of his/her personality. Therefore, child labour must be eradicated through well planned and focused poverty alleviation programme and imposition of trade sanctions on employment of children.

In line with the fundamental rights to education of children in India, the court has made some landmark decisions to affirm that education is the most valuable and sacred rights of every child. For example, in *Bapuji Educational Association v State*,¹¹¹ the court held that the right of a person to have education is the most valuable and sacred rights and that among various types of personal liberties, the right to education is certainly the foremost. Also affirming the decision of the court on the right of children to education, in *Mohini Jain v State of Karnataka*¹¹² and *Unni Krishnan, J.P v State of A.P*¹¹³ the Supreme Court held that the right to education is tantamount to fundamental right and that without education, the fundamental freedom in Article 19 cannot be fully enjoyed nor can the dignity of the individual under Article 21 of the Indian Constitution be assured. The Supreme Court further stated that education of a child brings excellence, it enriches the mind and illuminates the spirit of the child thereby liberating the child from ignorance, superstitions and prejudices which ultimately unfolds vision and truth. The Supreme Court stated that fundamental rights and directive principles are supplementary to each other and that directive principles supply life and blood to fundamental rights.

Furthermore, in *Peoples' Union for Civil Liberties v Union of India and Others*¹¹⁴ a public interest petition was made under Article 32 on the report given by a non-governmental organization called "Campaign against Child Labour" to bring to the limelight the plight of children of poor parents being trafficked from Tamil Nadu for employment and are forced into bonded labour. The Supreme Court directed the State Government of Tamil Nadu to pay compensation to the parents of those children for the violation of their fundamental rights to liberty guaranteed by the Indian Constitution. The Court in the case of *Bachpan Bachao Andolan v Union of India and Others*¹¹⁵ brought to the limelight issues of serious violations and abuse of

¹¹¹ AIR 1986 Kant 119

¹¹²(1992) 3 SCC 666; AIR 1992 SC 1858.

¹¹³(1993) 1 SC 645; AIR 1993 SC 2178.

¹¹⁴(1998) 8SCC 485.

¹¹⁵AIR 2011 SC 3361.



children who were detained forcefully in circuses under extreme inhuman conditions without access to their respective families. There were instances of sexual and physical abuse on the children and were also deprived of food and water, they were confined to the circus arena and deprived of their fundamental right to liberty. The Supreme Court directed the Central Government to issue a notification prohibiting employment of children in circuses and ensure the liberation of children working in circuses and also rehabilitate children rescued from circuses.

The role of the judiciary has been very remarkable in protecting and promoting the rights of children in India. Several landmark decisions have been made by the courts especially the Supreme Court which has affirmed the protection of children from exploitation especially in the areas of child labour, sexual abuse and child trafficking. The apex court argued that due to poverty and India being a third world country, it may not be easy to completely eradicate child labour but it shall strive to eliminate worse forms of child labour in India. Legislations relating to children have been defined, repealed or amended based on the decisions of the Supreme Court in India. The right to education of every child in India has also been affirmed by the Supreme Court that the government shall provide education for children and that the right to education is a fundamental right as decided in the *M.C Mehta's case*.¹¹⁶

Lessons from India

The Constitution of India has special protective provisions for children which are similar to that of the Nigerian Constitution, unfortunately, these rights are not justiciable because those rights are situated under the Fundamental Objectives and Directive Principles of State Policy. However, it is germane to state here that the judicial activism and pronouncement by the courts have greatly assisted in the protection and promotion of the rights of children in India. The Nigerian judiciary could emulate the courts in India especially in the areas of easy access to court, the removal of the barrier of *locus standi*, speedy dispensation of justice and landmark judicial pronouncements which would further protect, enforce and promote the rights of children in Nigeria.

¹¹⁶ Supra



Conclusion

Courts in Nigeria play a pivotal role in the protection of the rights of children by interpreting the Constitution and other laws and making judicial decisions that affect the lives of children. In recent times, judicial activism emerged as a tool for the protection of the rights of children including protection from sexual exploitation, child labour and child trafficking among other violations. However, the judiciary had not achieved its full potentials in protecting the rights of children in Nigeria because of poor access to justice and delay in the dispensation of justice as well as the non- adoption of the CRA 2003 by some States in Nigeria. The courts in Nigeria should take a cue from judicial activism of the Indian courts where there is no constitutional restriction of locus standi, easy access to courts and speedy dispensation of justice and landmark pronouncement made especially in issues affecting children such as child labour, child trafficking and sexual abuse among other violations. All these are geared towards child rights protection and would be beneficial to children in Nigeria.