Learning from the Indian Judiciary: New Directions for Securing Nigerian Women's Right to Dignity

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Abstract

Nigeria and India are both former British colonies. They are the largest democracies in Africa and Asia respectively. They practise multiple legal systems. Both are third world countries and they also lean strongly to patriarchy and socio-religious mythology. Their women, constituting nearly half of their population, suffer indignity, frequent invasion of sexual independence as well as humiliations, arising typically from patriarchal mindsets, ancient customary practices, castes, as well as beliefs in certain socio-religious mythologies which diminish the self-worth and dignity of women. On the basis of some of these abuses, both countries are ingloriously perceived as dangerous places for women to live in. Further, Nigeria is often ridiculed for being "notorious for violating international agreements"! This paper highlights certain abuses of the right to dignity of women in Nigeria and India (as a mirror of most African and Asian women) and examines the advances in the legal protection to women's dignity, especially the inherent constitutional, judicial and legislative advances in India which hopefully may serve as useful lessons for Nigeria and other developing countries. Wherever necessary, reforms have also been suggested for India. It is sincerely hoped that this assessment will influence a shift to a new order in the protection of the right to dignity of women, especially in Nigeria.

Key words

Women, reform, socio-religious mythology, patriarchy, dignity, sexual independence, legal protection, India, Nigeria.

Introduction

Human dignity is an important concept within the transnational vocabulary of constitutionalism and human rights (V. C. Jackson, 2004). It became an international constitutional concept after World War II and to date, it remains dynamic, with no specific definition but represents a symbol of demand for individual value, freedom, equality and dignity. (Paust, 1984) describes human dignity as "the dignity, honor and value of each person" as defined through time. Human dignity is also perceived as being "grounded in a concept of autonomy that holds at its core a valued moral center that is equal for everyone (men and women)" (Glensy, 2011). But put simply, this paper defines the right to human dignity as the right to be treated honourably and not to be humiliated.

In Nigeria and India, even globally, (Ortabag, Ozdemir, Bebis, & Ceylan, 2014), women suffer varying degrees and patterns of *human indignity*: abuse, discrimination, and humiliations including physical assault and trafficking (Monde-Anumihe, 2013), psychological assault, invasion of sexual independence (Metcalf, 2006), marital rape (Chika, 2011; B. Ghosh, 2013; Onyejekwe, 2013; Ray, 2014) and domestic violence arising from ancient patriarchal mindsets (Makama, 2013) which are usually dominant in the family (B. V. Babu & Kar, 2009) and in social values and structures (Gangoli, 2012), traditional customary practices (Chika & Nneka, 2014) and beliefs in socio-religious mythology (Ojilere, 2008) like wife inheritance and other obnoxious widowhood rites (U. P. Okeke, 2010) as well as caste-related discriminations (B. V. Babu & Kar, 2009; Bob, 2007), which are not so common in Nigeria (Leith-Ross, 1937).

Notably, in India and Nigeria, certain abuses of women's dignity vary according to education, economic, social status or caste similar to the outlawed *Osu*/Outcast system in Eastern Nigeria where certain class of people are still demeaned as descendants of "customary slaves" (Dike, 2002; Ejidike, 1999). Thus, Indian women of backward castes, little or no education, or those engaged in farming or small business and with very low income are more vulnerable to most types of violence. (B. V. Babu & Kar, 2009).

These practices violate the right to dignity of women guaranteed by

section 34 of the Nigerian constitution 1999 and Article 21 of the Indian constitution 1950. Unfortunately, while judicial activism (P. Ghosh, 2013) and other legal measures for protecting the dignity of women in India are advancing (Bhat, 2014), the same cannot be said of Nigeria (Ndulo, 2011) where inherent constitutional inhibitions (Chiroma, 2010), legislative bottlenecks (Dada, 2012) and mixed judicial attitude to fundamental rights enforcement[1] combine to threaten the quest for equality and right to dignity of women (Dada, 2013; Okogbule, 2005). This paper thus examines the basic protections in Nigeria and India and recommends reforms.

The authors' objective is to show that basic constitutional, legislative, and judicial advances necessary to guarantee the protection of women's right to dignity in Nigeria are weak and needs to borrow from the advances in India. The authors however concede that the implementation of these laws in the seemingly unchanging Indian social context remains the bane of these legal advances.

This research is doctrinal, qualitative, and based purely on library research covering books, statutes, law reports, and internet sources from renowned databases and websites. To realize the set objective, the authors will highlight certain obvious and salient gaps in the 1999 Nigerian Constitution, the Fundamental Rights (Enforcement Procedure) Rules, the National Gender Policy and the Nigerian Criminal jurisprudence, especially the non-criminalization of marital rape in Section 6 of the Nigerian Criminal Code which defines *unlawful carnal knowledge* as "carnal connection which takes place otherwise between husband and wife," thereby affirming the patriarchal notion of wives being their "husband's property" (Abayomi & Olabode, 2013; Arinze-Umobi, 2008). All these will be assessed vis-à-vis the relevant provisions of the Indian Constitution, the right of access for the enforcement of fundamental rights in India and more particularly the judicial innovation and activism of Indian courts in protecting women's right to dignity according to in-

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[1] For instance, it was held in *Constitutional Rights Project & Ors v Nigeria* (2000) AHRLR 227 (ACHPR 1999) that allowing municipal law to precede International law would defeat the need for treaty making and limit or even erase important rights guaranteed by the charter. But in *Abacha v Fawehnmi* (2000) 6 NWLR (Pt. 660) 228, the Supreme Court insisted that municipal law must continue to precede international law until such international law is domesticated by legislation vide section 12 of the 1999 Nigerian constitution.

ternational law, whereby states recognize, respect and reflect human rights in the national constitutions, legislations and institutions. (Henkin, 1989). The scope of this paper however, does not cover *all* the socio-economic causes of indignity or violence against women in India or Nigeria. This is an area for further study.

This research is premised on previous findings of popular violation of women's dignity in Nigeria (Adefi, 2009; Bassey, 1995; Chegwe, 2009; Coker, 2013; Idowu, 2013; Ojilere, 2008; Ukwueze, 2008), where even the CEDAW is judicially unenforceable because by Section 12 of the Nigerian constitution, international treaties are non-binding until they are domesticated into local legislation by parliament. Nigeria's Representative on the CEDAW Committee regretted that Nigeria is *"notorious for violating international agreements"* (Nwankwo, 2013). Nigeria's Minister of Women Affairs and Social Development, Hajia Zainab Maina, expressed worry that violence against women is on the increase, "yet nothing was being done to alleviate the challenges" (Maina, 2013). Even Nigeria's National Gender Policy, 2006 which has been applauded (Sehinde, 2013) because it takes a cue from CEDAW, is also not implementable for various socio-political reasons (Adesola et al., 2013). The Fundamental Rights (Enforcement Procedure) Rules 2009 which replaced the earlier Enforcement Procedure Rules of 1979 is not even a pure and proper legal document (Duru, 2012; Nwauche, 2010), and these Rules were so "unpleasant" that suggestion was made to adopt "mediation" (a form of alternative dispute resolution) to circumvent the Rules (Nwafor, 2009).

Relevance of the Paper vis-à-vis the Jurisdictions under Review

The relevance of this paper and the choice of jurisdictions are justified thus:

1. The inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ("Universal Declaration of Human Rights," 1948). Also, promoting gender equity and empowering women is item No. 3 of the UN Millennium Development Goals (MDGs) which are declared to be actualised globally by 2015.
2. Nigeria and India are former British colonies. Both possess plural

legal systems and written constitutions with similar framework on fundamental rights and Directive Principles of State Policy. Both countries are multi-religious, multi-cultural, multi-lingual and with similar urban rich/rural poor socioeconomic divides. Both are third world/developing democracies with high female illiteracy. The combined population of women in both countries logically suggests that any positive advancement in their legal protection invariably impacts on most women especially in the common law jurisdictions. More importantly, both countries aspire to uphold human rights and take great pride in upholding and protecting human rights in Asia and Africa respectively.

3. Fundamental legal protections for the guarantee of women's right to dignity and fundamental rights generally is advanced in India (Basu, 2002) due to the judicial activism and several innovations of its Supreme Court and the likes of Justice P. N. Bhagwati. These include the Epistolary jurisdiction dictum, Public Interest litigation (PIL), Class Action Litigation (CAL), Legal Aid, the *Vishaka Guidelines*, the *Rule in Sheela Barse*, the broad interpretation of Article 21 (Right to life and liberty), The Three-step Test of Constitutional Proportionality in the event of any state-desired legislative or executive limitation of fundamental rights, as well as liberal interpretations which connect and imply directive principles of state policy as fundamental rights in the Indian constitution, among others (Mahajan, 2013). The right of access to the Supreme Court to enforce Fundamental Rights is itself a Fundamental Right under Article 32 of the Indian Constitution (Guruswamy & Aspatwar, 2013).
4. Nigeria is short on progressive constitutional guarantees (Erhum, 2013), statutory provisions (Coker, 2013; Ojilere, 2012), judicial activism, policy implementation (Sehinde, 2013) and legislative pro-activity common in India.[2] For instance, in ("Akinnubi v.

[2] The Criminal Law (Amendment) Act 2013) amends the Protection of Children from Sexual Offences Act 2012 thereby setting new minimum sentences for rape and gang rape, creating new sexual offences of "stalking" and "voyeurism", and "disrobing" of a person below 18 years, redefining sexual harassment and exploitation, and resetting the rules relating to onus of proof of rape in India, all in a bid to secure greater protection for the dignity of women.

Akinnubi", 1997) the Nigerian Supreme Court endorsed the validity of a Yoruba customary law which denied women the right to obtain Letters of Administration or be appointed as co-administrators of the estate of their deceased husbands. But in ("Mojekwu v. Mojekwu", 1997; "Nnayelugo v. Nnayelugo", 2008) where similar issues arose, the Court of Appeal rightly gave varied judgments which have been applauded as locus classicus. Nonetheless, Nigeria stands to learn much from India.

5. Weak legislation and human rights violations are incompatible with standard democratic norms and principles.

Common Forms of Abuse of Women's Dignity

Most acts which violate women's dignity in Nigeria and India are rooted in ancient patriarchal mindsets, customary law and socio-religious mythology (P. E. Okeke, 2000).

While Indian women suffer discrimination and humiliation associated with caste, Nigerian women live in a "man's world" where native culture requires them only to be seen and not heard. For instance, marriage or close social affinity is forbidden between a person of lower caste and one of higher caste in India. And among the *Ibos* in Eastern Nigeria, it is socio-culturally forbidden taboo for a *Freeborn* to marry an *Osu*/Outcast. Women cannot inherit or alienate land under Ibo customary law (P. E. Okeke, 2000). In Nigeria, it is also a permissible socio-religious practice for a Muslim man to confine his wife to *purdah* (house imprisonment) to shield her from the public (Omvedt, 1986).

Among the Hindus of India the ancient suicidal practice of *Sati*, that is, self-immolation (an archaic Hindu custom which coerced Hindu widows to set themselves ablaze upon the death of their husbands by jumping into their husbands' funeral pyre) (Omvedt, 1986) has been outlawed, except for die-hard adherents who still practice *Sati* as a voluntary act. Historically, this practice also prevailed among Egyptians, Greeks, Goths and Scythians, who buried wives, mistresses, servants and possessions with dead family members so that they could continue to serve them in the next life.

Sex selection and son preference, which often leads to the abuse/killing of girls or the abortion of female foetuses, sexual violence, rape,[3]

bonded/forced labour ("Maid in India: Young Dalit Women Continue to Suffer Exploitative Conditions in India's Garment Industry", 2012), and dowry-related violence/murder which may ensue if a woman's in-laws consider the "groom's price" paid by her family as inadequate (Standish, 2014) have also been officially outlawed, dire attachment to ancient status quo still threaten the implementation of laws against dowry and sex selective abortions in India. Similar die-hard social beliefs also undermine the law on non-discrimination against the *Osu*/Outcasts in Eastern Nigeria.

However, making short-term quick gains is difficult in vast country like India, particularly in rural areas where most people are ignorant, illiterate and conservative. For these people, various multi-dimensional approach including education and public awareness campaigns will take time to bear results. Understandably, in the field of public law, the struggle for the rule of law is long and arduous but one must not give up on these people. Patience and perseverance are key tools for tackling this kind of problem.

In Nigeria the commonest indignities include widowhood rites, wife beating, wife confinement, wife donation, widow inheritance (Durojaye, 2013: Essien & Ukpong, 2013), female genital mutilation, forced child marriages, son preference (Nnadi, 2013) − which often lay the foundation for psychological violence, mental torture, marital rape, polygamy and wife abandonment − denial of inheritance and proprietary rights, and the *chattelization* of women and girls (arising from the mandatory "bride price" for customary law marriages and practically, for statutory marriages too).

The typical Nigerian society recognizes a man's *headship,* which includes authority to dominate, threaten, own, beat up or even rape his wife because she is *his property* for which he paid *bride price* and more

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[3] BBC News India of 29 May 2014 reported the case of two teenage girls found hanging from a tree in a village in Uttar Pradesh after being gang raped. This is in spite of the increased scrutiny of sexual violence in India since the 2012 gang rape and murder of a student on a Delhi bus and the international outcry in response to which India amended its criminal jurisprudence under the Criminal Law (Amendment) Act 2013 [2 April, 2013] to create new sexual offences, widen the scope and definition of previous ones and increase punishment for sexual violence. http://www.bbc.com/news/world-asia-india-27615590 (2/6/2014)

so, marital rape is not criminalised because Section 6, of the Criminal Code (applicable in Southern Nigeria) defines "unlawful carnal knowledge" as carnal connection which takes place *otherwise than between husband and wife*. However, it is a taboo for a woman to stand up to or beat her husband for whatever good reason (Adefi, 2009). The Nigerian man is society's-acknowledged Breadwinner and God-made head of the family, even if he is an economic liability and his woman's income actually runs the family (Adefi, 2009) because by patriarchal presumption, the man owns the woman and everything she owns since she is incapable of an independent personality (Omonubi-McDonnell, 2003). She also has no right of succession to her deceased husband's or father's estate because customary law considers her a part of the estate to be inherited by the males. (Omonubi-McDonnell, 2003).

In parts of Cross River State, Nigeria, custom requires a woman who has a still birth to trek to any evil forest where her hair and pubic area must be cleanly shaved as sacrifice to appease the gods and cleanse her sacrilege (Bassey, 1995). Certain Nigerian mythologies consider women as unclean and subordinate and therefore must not eat chicken rump, or take yam tubers off the stakes in the yam barn, or even shake hands with a man but rather to stoop down or kneel down to greet him (Ojilere, 2008). Women do not lead prayers in mosques. Indignity may be by verbal and emotional torture or the use of abusive and humiliating language, or innuendoes on a woman by her husband, mother in-law and even extended family members, especially if she is childless or bore only female children (Ojilere, 2009; Ojilere & Chukwumaeze, 2010).

(Idowu, 2013) therefore posits that Nigerian women have become a vulnerable group just like aliens, ethnic and religious minorities, persons born out of wedlock, children and the mentally retarded, all of whom are susceptible to abuse and denial of basic rights. This is unlike the situation in India where women have come to possess same legal status as men.

Assessing the Scope of Legal Protection in Nigeria and India

The analytical evaluation of the legal framework for protecting women's right to dignity in Nigeria and India entails the examination of available fundamental rights guarantees and allied constitutional provi-

sions, including access to justice for enforcement of fundamental rights, relevant legislations, and legislative pro-activity or otherwise as well as the independence and activism of their judiciary.

The Right to Dignity of Women and the Impact of Judicial Activism

The right to dignity of women in Nigeria is protected by the "right to human dignity" in section 34 of the 1999 Constitution, and in India, under the "right to life and personal liberty" in Article 21 of its Constitution of 1950.

Section 34 of the Nigerian Constitution provides that: "Every person is entitled to the dignity of his/her person and no one shall be subjected to torture, inhuman or degrading treatment" while Article 21 of the Indian Constitution provides that: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Although both provisions seek to protect women's right to dignity, the authors will show how judicial activism in the definition and application of Article 21 offers greater protection for the dignity of women than section 34.

Generally, the sustainable enjoyment of fundamental rights including the right to life and dignity depends on the guarantee of all other economic, social, cultural, and environmental rights (Agbakwa, 2002; Chegwe, 2009), including effective monitoring of the implementation process by women movements, rights activists and other stakeholders. But in the Nigerian Constitution, apart from the first generation civil and political rights, all others are considered as negative rights, that is, mere *fundamental objectives and directive principles of state policy*, which are declared non-justiciable by Section 6(6)(c), albeit they contain other bundle of rights which would make human dignity more meaningful. The Nigerian Supreme Court describes the *fundamental objectives and Directive principles of state policy* as mere declarations which are legally unenforceable unless the National Assembly enacts specific legislation for their enforcement ("Attorney General (Ondo State) v Attorney General (Federation)," 2002). It is however, most humbly, considered fallacious that the Constitution, which is supposed to be the fundamental law superior to all other laws, would itself declare its own provision unenforceable with-

out "green light" from the National Assembly or other legislation outside of itself (G. N. Okeke & Okeke, 2013).

The Indian Constitution has no specific provision by the terminology of "right to human dignity." However, by elaborate judicial interpretation of Article 21, *human dignity* is guaranteed and protected further to the right to life and personal liberty which according to the Supreme Court, goes beyond mere animal existence, but includes "the right to live with human dignity" and all other benefits and privileges that make life worth living. ("Bandhua Mukti Morcha v. Union of India," 1984; "Francis Coralie Mullin v. UT of Delhi," 1981)

By this innovative judicial interpretation, certain important rights contained in the directive principles of state policy and also non-justiciable by virtue of Article 37 became connected to the rights to *dignity* and *life* and were accordingly declared enforceable as *implied* fundamental rights. To date, the right to human dignity in India is considered as part of a constitutional culture which upholds individual worth and value and every act which impairs human dignity would constitute deprivation of the right to life, unless it is reasonable, fair and just under Articles 14 and 19 of the constitution. It must also stand the 3-step test of proportionality in matters of fundamental rights

The relationship between dignity and life in India was underscored when the Supreme Court queried itself thus: "If dignity or honour vanishes what remains of life?" ("Khedat Majdoor Chetna Sanghat v. State of M.P.," 1995)

Access to Justice for the Enforcement of Fundamental Rights

The overall mechanism for the guarantee of access to justice for the enforcement of fundamental rights in India is several light years ahead of Nigeria's where the mechanism for the enforcement of fundamental rights, namely, the Fundamental Rights (Enforcement Procedure) Rules 1979 (now replaced by the 2009 Rules) is "fraught with many unpleasant procedural complications which hinder access to justice" (Nwafor, 2009). The rationale for this contention is hereunder discussed.

Emphatically, the pressures and motivations by women's movements in India played a decisive role in the years of struggle prior to and after the legal advances made later for the protection of their general funda-

mental rights (Mageli, 2014; Thane, 2014), just like their counterparts in Thailand (Mills, 2005) and Uganda (Tripp, 2004). The modus operandi of these movements may have been "authoritarian" or "democratic" and they usually applied three different forms of collective action, namely, "independent", "associative" and "directed" (Molyneux, 1998) but in whatever manner, their struggles have generally paid off (John, 1996) and amidst daunting challenges, they continue to monitor the implementation of these progressive laws and legal processes as a sine qua non for the sustainable guarantee of human rights generally. (Unnithan & Heitmeyer, 2014).

Some women's rights groups, activists and NGOs in Nigeria have also been working along this line, but so far their struggles have not necessitated fundamental legislative, procedural, or judicial progress like in India. Feminist activists and scholars from Uganda, Ghana, Mozambique, and South Africa have also taken steps to confront patriarchal structures, sexism, discrimination, and inequalities which threaten improved social and legal conditions of women and society (S. Jackson, 2014; Tripp, 2004).

Jurisdiction of the Courts in the Enforcement of Fundamental Rights

Section 46 (1) of the Nigerian constitution confers original jurisdiction on the High Courts of the states for the commencement of action for a breach, perceived breach or threatened breach of a fundamental right. But where the perpetrator is the government or any of its agents, such action can only be commenced at Federal High Court, vide Section 251 of the constitution. For the purpose of commencement of action, Order 1 Rule 1(2) of the Fundamental Rights (Enforcement Procedure) Rules, 2009 defines a "Court" to include the Federal High Court or the High Court of a state. This invariably limits access to justice because most of states in Nigeria do not have Federal High Courts and most local governments areas (LGAs) also do not have High Courts. In some cases people are constrained to travel long distances with their witnesses and counsel seeking mere "access" thereby rendering the process slow, discouraging, and expensive. Meantime, there is no pending legislative amendment to empower magistrates to hear fundamental rights cases (Nwafor, 2009). It suffices that access to justice is not considered an

imperative tool for the enforcement of human rights in Nigeria even though it should be the "touchstone" (Zhu, 2013).

But in India, a writ petition for the enforcement of fundamental rights may be presented directly before the Supreme Court under Article 32 or the High Courts under Article 226. Additionally, the rights to legal aid and to speedy trial are linked to right to life by judicial innovation. These are useful lessons for Nigeria.

The Doctrine of Locus Standi versus Public Interest Litigation (PIL)

Locus Standi is a pertinent issue for consideration with regards to access to justice. Elementarily, the right to initiate action for the enforcement of fundamental rights is *personal* and lies ONLY with the person whose right has been, is being, or is likely to be contravened.

Section 46(1) of the Nigerian constitution empowers "any person" who alleges the threat or violation of any of *his* constitutionally guaranteed fundamental right to seek legal redress.

This is to establish the petitioner's *personal* capacity to sue under the doctrine of *locus standi.* This was the archaic recognition of *private interest litigation,* even in India,[4] which constituted a lacuna in the enforcement of fundamental rights in Nigeria too.[5] In the English case of *Attorney-General Ex Rel. McWhirter v. Independent Broadcasting Authority,*[6] Lord Denning M. R emphasised the need for the liberalization of *locus standi,* especially in the event of a breach by public authority or govern-

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[4] While differentiating Private interest Litigation from Public Interest Litigation in *Janatan Dal v. H.S. Chowdhry* [AIR 1993 SC 392] the Supreme Court explained thus: "In a private action, the litigation is bipolar: two opposed parties are locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike in public action. In contrast, the strict rule of *locus standi* applicable to private litigation is relaxed in public interest litigation (PIL) and a broad rule is evolved which gives the right of *locus standi* to any member of the public acting *bona fide* and having sufficient interest in instituting an action for redressal of public wrong or public injury but who is not a mere busy body or a meddlesome interloper, since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the cause of community or disadvantaged groups and individuals or public interest …"

[5] Adesanya v. the President, 1981) 2 NCLR 358; Chief Thomas v. Rev. Olufosoye (1986) 1 NWLR, pt. 18, p.669,

[6] (1973) 2 WLR 344 at 375.

ment when he said thus:

> I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way that offends or injures thousands of Her Majesty's subjects, then in the last resort any of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced…

Following from this, and even moving a step higher to guarantee an elaborately liberalized access to justice, especially for the weak and vulnerable, the Indian judiciary introduced and developed "Public interest litigation" (PIL) and "Class action litigation" (CAL) as the strategic arm of the legal aid movement.

Thus, in *S. P. Gupta v. Union of India*[7] Justice Bhagawati stated that "any member of the public or social action group acting bona fide" can invoke the Writ Jurisdiction of the High Courts or the Supreme Court seeking remedy against violation of the legal or constitutional rights of persons who for whatever reason or disability cannot approach the Court by themselves. This means that a person may institute an action to remedy the breach or protect the rights of not even one, but many or all persons of a particular class or community who cannot possibly act for themselves.

Public Interest Litigation (PIL) in India thus diluted the doctrine of *locus standi* to the least possible point for the liberal enforcement of fundamental rights, as a rare form of judicial activism (Li, 2013).

The Epistolary Jurisdiction of the Courts

The frustration inherent in Nigeria's Fundamental Rights (Enforcement Procedure) Rules is expressed thus:

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[7] AIR 1982 SC 149.

> The procedure for the enforcement of fundamental rights in the High Court requires the obtaining of leave of court by filing a motion *ex-parte* supported by an affidavit, the statement of material facts and verifying affidavit within twelve months of the occurrence of the event complained against. When leave is granted, a motion on notice is filed in the same manner as the motion *ex parte* and served on the party complained against (respondent). The party served must have at least eight days to respond, before the hearing, which must be within fourteen days of the granting of leave. These demanding procedures will certainly task the ingenuity of a lawyer. Many a lawyer has commenced proceedings only to have them struck drown for non-compliance with these procedural requirements…The meaning of these rules is certainly beyond the comprehension of laymen. (Nwafor, 2009)

The author even suggested that the Rules be abandoned or replaced with an unorthodox process of alternative dispute resolution with more flexibility and less stress.

But in India, the Supreme Court, by its activism, eliminated procedural hiccups by developing one of the greatest procedural remedies for the enforcement of fundamental rights. This is known as the dictum of epistolary jurisdiction of courts. This dictum broadens the latitude of public interest litigation by eliminating any inherent procedure which may obstruct access to justice for the enforcement of fundamental rights. The Encarta Dictionary defines *Epistolary* as "associated with correspondence by letter" and "in the form of a letter or letters."

Epistolary jurisdiction dictum is thus a form of access jurisprudence whereby a mere personal letter addressed to a judge or court is received and heard as a proper and formal writ petition. In *Mrs. Veena Sethi v. State of Bihar and Ors*,[8] an NGO known as the Free Legal Aid Committee Hazaribagh addressed a letter dated 15th January 1982 to

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[8] AIR 1983 SC 339.

Justice Bhagwati intimating him of the illegal detention of certain prisoners in the Hazaribagh Central Jail for twenty to thirty years. The court treated this letter as a writ petition and issued notice to the State of Bihar to verify the allegation, insisting that the Court had a duty to protect and uphold the human rights of the weakest of the weak in society.

Thus, even newspaper reports have been treated as Writ Petitions in India ("Keshavananda Bharati v State of Kerala," 1973). Also, following media report that 13 men in West Bengal gang-raped a 20-year old tribal woman on the orders of village elders, as punishment for having a relationship with a man from a different caste, the Indian Supreme Court, on January 24, 2014 took *suo motu* notice of the media outrage over the incident, and directed the district judge to visit the crime site and file a report. Chief Justice P. Sathasivam, later ordered the West Bengal government to pay exemplary financial compensation to the rape survivor for its failure to "adequately protect her fundamental rights" (Desk, 2014).

This process is expeditious, informal and effective, especially as the rights to legal aid and speedy trial carry equal force as the right to life in India (Khan, 2001).

Above all, the Indian Supreme Court has also held that in all instances, a fundamental right cannot be waived by the vulnerable party as that would be contrary to public policy ("Nar Singh Pal," 2000). This judgement answers the argument in Nigeria that because fundamental rights are "personal rights", the person entitled to benefit from them "may decide to litigate it, compromise it, or abandon it" (Nwafor, 2009).

By these innovations, one can safely argue that the process of enforcement of fundamental rights in India is classical and by no means less than those of other activist judicial systems, and may therefore be reasonably applied to set an agenda for change in Nigeria.

Closing Legislative Gaps in Enforcing Women's Right to Dignity

Generally, the traditional role of the judiciary in a democracy is to *interpret* the law. The Nigerian courts have held strongly to this old tenet. Nigerian courts still maintain the "positivist" ideology of law as it is "written", that is, law "as it is" and not "as it ought to be" and invariably affect the interpretation, delivery and enforcement of human

rights in Nigeria. Thus, in Nigeria, unlike in India, the courts still uphold the "non-justiciability" provision of Section 6 (6) (C) of the constitution, whereby economic, social, cultural, and environmental rights necessary to guarantee life with dignity remain judicially unenforceable because they are *mere* "fundamental objectives and directive principles of state policy." This is a serious setback to the protection women's right to dignity in Nigeria (Dada, 2012). And unlike in India, the Nigerian courts do not exhibit the activism of defining the right to human dignity as an extension of the right to life in order to make it sacrosanct.

Again, the non-domestication provision in Section 12 of the 1999 Nigerian constitution under which courts are not bound to follow the principles of international law constitute an affront to the protection of dignity of women. The Nigerian National Gender Policy fashioned pursuant to the CEDAW cannot be implemented (Sehinde, 2013). Due to this constitutional lacuna, the CEDAW has also remained a mere wish in Nigeria. But in most countries including India "the issue of human rights in the recent past, has penetrated the international dialogue, become an active ingredient in interstate relations and has burst the sacred bounds of national sovereignty" (Dada, 2012).[9] Thus, in the *Vishaka* case, Justice Verma observed that a strict or "positivist" application of municipal law will diminish the intended scope of human rights protection in international law. Also, India's Criminal Law (Amendment) Act, 2013 amends much of the Indian criminal jurisprudence both in form, procedure and evidence, and even fills the gap for "proper laws to deal specifically with child sexual abuse" (K. Singh & Kapur, 2001).

These legislative advances further set India ahead of Nigeria on the enforcement of the right to dignity of women and fundamental rights generally.

Furthermore, Indian courts have been innovative and uncommon by not just performing the constitutional role of *interpreting the law*, but by also performing the social function of *making or giving the law* so as to meet the broad aspirations of the people (Mate, 2013), irrespective of the defect or non-existence of proper legislative or constitutional

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[9] Dada was quoting Thomas W. Wilson, Jr., *A Bedrock Consensus of Human Rights, in* HUMAN DIGNITY: THE INTERNATIONALIZATION OF HUMAN RIGHTS 47, 47 (Alice H. Henkin ed., 1979).

provision. Thus, in *Vishaka & Ors v. State of Rajasthan & Ors,*[10] the Supreme Court of India formulated the *Vishaka Guidelines* to fill a yawning gap in the enforcement and protection of the dignity of women against sexual harassment at their work places at a time when there was no legislation on that subject. These guidelines were to endure effectively and mandatorily as relevant law from 1997 until the promulgation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Medha Kotwal Lele and Others v. Union of India and Others", 2013).

Similarly, in *Sheela Barse v. Union of India*,[11] the Supreme Court formulated what became known as the *Rule in Sheela Barse* which set out principles for the protection of the dignity of women who were held in custody, directing inter alia, that female inmates must be kept in separate lock-ups under the supervision of female officers only, must also be interrogated in the presence of female Police officers, and also to be searched decently by women officers only, thus justifying the judiciary as the touchstone of India's political economy and democracy (S. R. Babu, 2013).

Nigerian courts have not been consistent in upholding the right to dignity of women but some judges have stood their ground as *lawgivers* in cases of abuse of a woman's dignity especially with respect to property inheritance ("Mojekwu v. Mojekwu ", 1997; "Nnayelugo v. Nnayelugo", 2008).

Conclusion

Nigeria is a signatory to a number of regional and International Treaties including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the African Charter on Human and Peoples Rights (and invariably, the 2000 Women Protocol to the African Charter) and the International Covenant on Economic, Social and Cultural Rights, all of which guarantee the right to dignity of women.

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[10] AIR 1997 SC 3011

[11] AIR 1987 (1) 153.

Unfortunately, most patriarchal and socio-cultural practices violate the right to dignity of women and contravene these instruments. For instance, Paragraph 11 of CEDAW General Recommendation 19 of 1992 provides inter alia that *traditional attitudes by which women are regarded as subordinate to men perpetuate widespread practices involving violence or coercion* which deprive women of equal enjoyment of human rights and fundamental freedoms (Ojilere & Gan, 2015).

The authors hold the view that the guarantee and protection of the right to dignity of women in Nigeria or elsewhere is so important that its breach or abuse on account of patriarchy, customary law, or socio-religious mythology is beyond reasonable excuse. Nigeria should therefore respond consciously to new constitutional approaches, pro-active legislating as well as judicial innovations and activism for the enforcement of fundamental rights which are already common in India. The elaborate approaches for the right of access to justice, including the liberalisation of *locus standi* which are common in India should also be adopted by Nigeria.

However, both countries should make clear and unequivocal prohibitions of marital rape (Chika, 2011; Ola & Ajayi, 2013; Onyejekwe, 2013; Ozo-Eson, 2013; Ray, 2014; A. Singh, 2013), even though marital rape in India is now indirectly covered under the Domestic Violence Act, 2005.

There is also need for India to codify the current implied rights contained in its directive principles of state policy into positive fundamental rights in its Constitution, just as in the case of the Bill of Rights in South Africa. However, fear has been expressed that the legal framework, although important, still appears to be grossly inadequate, and that "mere passing of laws has failed to guarantee any reduction in the number of violence against women and girl children...in the Indian context." (B. Ghosh, 2013; Ray, 2014).

But whether the language of the law is sufficient or not, Nigeria and India must strive to reinforce all other sections of their polity to guarantee sustainable protection of women's dignity and human rights generally. According to Justice Bhagwati:

> The language of human rights carries great rhetorical force of

> uncertain practical significance. At the level of rhetoric, human rights have an image which is both morally compelling and attractively uncompromising. But what is necessary is that the highly general statements of human rights which ideally use the language of universality, inalienability and indefeasibility should be transformed into more particular formulations, if the rhetoric of human rights is to have major impact on the resolution of social and economic problems in a country. (Unit, 1988)

These formulations will include political courage and sensitivity, civic education, public enlightenment, as well as the monitoring of implementation of laws and policies by various stakeholders including civil society groups, women rights activists, and feminist scholars.

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