

Fundamental rights of prisoners: A perspective

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Legal Opinion

THE Black's Law Dictionary (fifth Edition) at P.1075 defines. "Prison" and "Prisoner" as follows:

Prison: "A public building or other place for the confinement of persons, whether as a punishment imposed by the law or otherwise in the course of the administration of justice. The words "prison" and "penitentiary" are used synonymously to designate institutions for the imprisonment of persons convicted of the more serious crimes, as distinguished from reformatories and county or city jails".

Prisoner: "One who is deprived of his liberty. One who is against his will kept in confinement or custody in a prison, penitentiary, or jail as a result of conviction of a crime".

From the above definition of the 'Black's Law Dictionary the following can be seen:

Deprivation of liberty against one's will as a result of a crime. This in effect means that one who commits a crime and is found guilty will end up in prison by force of law, deprived of certain liberties.

The same Black's Law Dictionary fifth Edition defines Liberty thus: "freedom, exemption from extraneous control. Freedom from all restraints, except such as are justly imposed by law. Freedom from restraint, under conditions essential to the equal enjoyment of the 'same rights by others; freedom regulated by law. The absence' of arbitrary restraint, not immunity from reasonable regulations and prohibition imposed in the interest of the community".

The power of the will to follow the dictates of its unrestricted choice, and to direct the external acts of the individual without restraint, coercion or control' from other persons. The word liberty" includes and comprehends all personal rights and their enjoyment"

The learned authors went on further to state that the word "Liberty" as used in constitutions means more than freedom from arrest or restraint and includes freedom of action, freedom to own, control and use property, freedom to pursue any lawful' trade, business in and freedom to make all proper contracts in relation thereto.

However, in the present day society, not only those convicted of one crime or another: end up in prisons. There abound cases of citizens who have ended up in prisons for years while the law still presumes them innocent.

Further, there are cases of those who could be termed 'political prisoners', especially in countries without full observance of the rule of law, where due process does not always

prevail, Such arbitrariness, when challenged or resisted often result in such individuals being imprisoned by force.

In the case of those who are still presumed innocent, mention here is being made of 'awaiting trial' cases who have been denied bail in the law courts due to reasons of the gravity of their offences, the likelihood of their escaping justice if admitted to bail, or who are likely to interfere with witnesses or due process or who may likely commit other or similar offences in course of having their trial. Such are often denied bail. The courts of law in Nigeria are very reluctant especially in cases where capital punishment is involved such as Armed Robbery or Murder. There are also cases of those 'who were granted bail and could not meet the conditions imposed by the court.

All these categories of citizens ultimately find themselves ending up in prison. However, one, must hasten to point out that ultimately, not all these categories of citizens end up being referred to as convicted felons as some will ultimately be set free, maybe on extra-judicial pardon as may happen in the case of 'awaiting trials' who had stayed longer than the period for which they could have been sentenced if found guilty. Chief Judges, State Governors, or the President of the Country may choose to exercise their rights of amnesty.

Some accused persons may eventually be tried and exonerated of charges brought against them. In certain cases, Governments might change overnight resulting in the release of those categorized as "political prisoners" and granted total pardon by the new government. An example that readily comes to mind is that reported by the Amnesty International in 1983 of a situation in Nigeria. The report at P 63 is quoted as follows" Amnesty International was concerned about the detention without trial of suspected supporters of a religious leader, Alhaji Mohammed Marwa also known as Maitatsine. All, were released in October 1, 1982. It was also concerned about the death penalty. On 31 August, Nigeria signed the African Charter on Human and Peoples Rights. More that 900 alleged supporters of the late Alhaji Mohammed Marwa were detained without trial following rioting in December 1980 which was reported to have resulted in more than 4,000 deaths in Kano State. Of those detained on suspicion of involvement in the riots, more than 900 were reported to have been held without trial until October 1982 when President Shagari ordered their release. It was not known whether they included any prisoners of conscience."

The essence of the above exercise is to enable one have a clear picture, (especially in the Nigerian context) of circumstances under which citizens become 'Prisoners' of some sort.

Nigeria has had a number of Constitutions before and after it became a Republic. The original conception of a Constitution was that of a body of fundamental principles according to which a state is organized and structured. This emphasizes its character as essentially a political character of government, consisting largely of declaration of objectives and a description of the organs of government in terms that input no legal restraints. The Constitution also guarantees certain fundamental rights to its citizens, such as the following:

- Right to Life.
- Right to dignity of human person.
- Right to personal liberty.
- Right to fair-hearing.
- Right to private and family life.
- Right to freedom of expression and the press.
- Right to peaceful assembly and association.
- Right to freedom of movement.
- Right to freedom from discrimination.
- Right to acquire and own immovable property anywhere in Nigeria.

These rights as guaranteed by the Constitution also form part of the basis of rights guaranteed by the African Charter on Human and Peoples' Rights to which Nigeria is a signatory.

However, all the freedom guaranteed can however be subject to restriction according to the other laws of the land such as the Criminal Code, the Penal Code and other laws that are enacted to ensure peaceful co-existence, protection of rights of citizens. Apart from those citizens categorized as political prisoners or prisoners-of-conscience, anyone who runs foul of those laws will most likely be sent to prison.

Prisons in Nigeria are regulated by the Prisons Act, Laws of the Federation of Nigeria 1990. A careful study of the Prisons Act LFN 1990, revealed that no section specifically deals with denial of conjugal rights to prisoners. However, s.15 provides for separation of prisoners thus:

S.15. "Male and Female prisoners shall be confined in separate parts of the prison".

Section 42 of the same Act' provides that "Convicted prisoners shall be allowed to receive a visit from friends in the presence of a prison officer, and to write and receive a letter at the discretion of the Superintendent.' "

S. 48 provides for offences against Prison Discipline only

SA8 (c) contains a "provision on "indecent or disorderly behaviour".

From the foregoing provisions, only can safely assume that exercising conjugal rights is impossible. If prisoners of different sexes are kept separate and none can receive visitors privately or acts of indecent nature are prohibited, that is the only reasonable conclusion to be drawn.

The most important question for consideration at this stage is whether prisoners can exercise certain fundamental rights including conjugal rights, and if not, are these rights suspended as soon as a citizen goes to prison?

In answering "the question, I have earlier on referred to the provisions of the Constitution on fundamental rights, the African Charter on Human and People's Rights and the Prison Act, it is also desirable to examine case law in order to have a complete picture of the position of law on this matter. I must quickly indicate that case law as regards the issue of general and fundamental rights of prisoners are very rare. This is probably due to the fact that except the cases of Criminal Appeals, and bail applications pending trial or appeal, prisoners rarely apply to court to enforce their rights regarding inhuman treatment under the law. The few cases that readily come to mind have nothing to do with the issue of conjugal rights.

These are:

- i) *Nemi v Attorney General, Lagos State* (1996) 6 NWLR PT 452 P.42
- ii) *Baruwa v. The State* (1996) 7 NWLR PT 460 p. 302.

While the case of *Nemi v. Attorney General, Lagos State* is on rights of a condemned prisoner to seek redress against inhuman treatment, *Baruwa v. The State* is on that of citizen who was unduly punished.

There is no doubt that a prisoner 'who has the means can be represented by counsel to enforce his fundamental rights, it is for the courts to decide one way or other. Of all the rights enumerated as provided for under the 1999 Nigerian Constitution and the African Charter on Human and People's Rights, none is as explicit as to have touched on the issue of conjugal rights of prisoners, it would therefore be an uphill task for any prisoner to enforce such rights, particularly considering the restrictions placed by the Prison Act L.F.N 1990. Since there is no provision of the law or precedent to back up the enforcement of conjugal rights; it is my humble view that it cannot be unconstitutional to disallow a prisoner from exercising conjugal rights.

The write up will be incomplete without considering the extra" legal reasons why the law did not favour such.

Prison environment are not conducive to such, especially in Nigeria where the environment of our prisons are far from what the standard should be. As

correctional facilities the inhuman and degrading environment are terrible. The attendant health risk to both parties who would be involved in such can best be imagined. . Prisons are known as the center of transmission of the deadliest deceases one can think of, including HIV. It would therefore be downright dangerous either to encourage prisoner enjoy such rights between themselves or allowing their visitors to indulge in such acts with them.

Secondly and also important is the issue of supply of necessities such as food and drugs. In the event that female prisoners become pregnant and eventually have such babies, apart from the inherent health danger, what about the stigma? Although women prisoners with children under eighteen months and who are still breast feeding are allowed to keep such children with them under prisons regulations, in most cases the children end up with less than the desirable attention in terms of health care and other amenities.

What would be the psychological state of children permitted to grow up in prison environment? What about children from women who are already condemned prisoners. Though the law forseees and gives room for pregnant women not to be executed immediately, if the sentence is eventually carried out what would become the fate of such children, assuming the mother became pregnant while in prison?

Therefore, from the social point of view it is far better and necessary for the curtailment of conjugal rights of prisoners.

Finally, the security aspect must also be considered. Will a prisoner be allowed to go out of the prison to exercise conjugal rights? The security implication is best imagined.

In conclusion therefore, having regards to the above it is submitted humbly that the denial of conjugal rights to prisoners is not unconstitutional.

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