

NATIONAL DEVELOPMENT: LEGAL EQUALITY AND FEDERAL CHARACTER PRINCIPLE

By Akinpelu Oluwatobi

The role of the law in ensuring the development of the society can not be underestimated. Law has been described as a binding force by which the society is held together as a single unit which ensures growth and development of the people. Law should therefore respond to the yearnings and aspirations of the people at all times.

At the birth of the industrialization era in first world countries, laws were passed to square up with the arising societal and developmental challenges created by industrialization. This definitely has been one of the bait by which first world countries left the third world countries behind to wallow in penury and backwardness. Law as the society is transient, dynamically fundamental to national growth and development; but is law in itself the determinant of national development? No!

Law as a tool for national development cannot be functional until certain principles are religiously upheld and worshipped and to such class belongs “legal equality”. The concept of legal equality has stemmed out from the age long philosophy of liberalism; legal equality advocates that everyone is equal before the law. Anatole France, stated: “in its majestic equality, the law forbids the rich and poor alike to sleep under bridges, beg in the streets, and steal loaves of bread” This principle has received international affirmation in Article 7 of the Universal Declaration of Human Rights (UDHR) which states: “All are equal before the law and are entitled without discrimination to equal protection of law”. Thus, the law should not give regards to anyone on the basis of race, gender, nationality, colour, ethnicity, religion and disability. Legal equality has of necessity involves creation of opportunities for all on merit and not on mediocrity.

This principle definitely forms part of the basis for the creation of government as an institution to cater for all citizenry regardless of their place of birth or even economic status. Adherence to this principle should therefore not be compromised by frivolous provisions of the law, law should rather complement legal equality. Law must never be used as a tool to encourage the creation of inequalities in the society; law must promote equality, which includes but not limited to equal distribution of facilities and amenities, equal access to opportunities and equal treatment of all classes of persons.

Law must be entrenched in legal equality, which in itself is based on merit and not mediocrity. Every society that is seriously interested in her development must ensure the entrenchment of her laws in equality and not promote any form of mediocrity in her developmental plans. First world countries seem to have long understand this age-long principle of equality and as such entrenched their laws in legal equality; putting away all forms of affirmative actions that tend to slow down their national development.

Affirmative actions was in itself designed to promote the attainment of equality of persons who had either been subjugated by other members of the society or had been discriminated against based on extrinsic factors. Affirmative action is the policy of favouring members of a disadvantaged group who had suffered from discrimination within a nation in order to accelerate their integration into the society.

This principle has been applied in different countries across the globe, from America to Europe, to Asia and even down to Africa. The United Nations through her Convention on the Elimination of All Forms of Racial Discrimination (CEAFRD) has given regards to this principle, Article 2.2 stipulates: “States parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing

them the full and equal enjoyment of human rights and fundamental freedoms...”.

This principle would therefore be laudable when applied in the appropriate context and not based on some frivolous pretext of ethnically discrimination. The application of this principle should be corrective; hence once the purpose has been achieved it should be expunged from the laws. A recourse to Article 2.2 CEAFRD, continues by stating “...these measures shall in no case entail as a consequence, the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.

In Nigeria, the principles of affirmative actions can be found in the federal character principle, which has also been enshrined in the constitution. Section 14 (3) Constitution of the Federal Republic of Nigeria, 1999 3rd Alteration states: “The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few state or from a few ethnic or other sectional groups in that Government or in any of its agencies.” In applying the literal rule in interpreting this provision it would seem that the provision was put in place to as a pre-emptive provision against any form of domination by any group of people in Nigeria.

However, the essence of affirmative action is curative and not pre-emptive; such that it is applied in situations where there has been subjugation of another ethnic group within a nation or in cases of gross racial or class discrimination. The purport of the principle is to ensure even development among all classes of citizens in state, after incidence of ethnically subjugation or gross racial discrimination. The provision is not intended to be a lifelong, but temporary has it loses value as soon as that par development has been achieved.

The principles of affirmative actions was never designed to encourage mediocrity has it is been witnessed in Nigeria today at all levels of the society. The composition of public parastatals, appointment into public offices, award of scholarships and even admission into public institutions is now based on the federal character or the quota system. In handing down employment to citizens, people are considered by their state of origin at the federal level or their local tribe at the state level; the federal ministers must be appointed on the basis of state representation Sec. 143(7) CFRN 1999 3rd alteration; award of scholarship is based on geo-political zones of the applying scholars; while admission into universities is now classified into merit, catchment area, educational disadvantaged states. These are few areas where the federal character is manifestly obvious and causing more attendant problems than the intended national integration. These various forms of

affirmative actions are against the provision of Sec. 15(3) CFRN 1999 3rd alteration which declares: “accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.” This provision is in tandem with the age-long tradition of legal equality where there is no basis for any sort of subjugation and discrimination. It is obvious that sec. 14(3) and sec. 15(3) CFRN 1999 3rd alteration are in contravention of each other; sec. 14(3)CFRN 1999 3rd alteration promotes the principles of affirmative actions and the resultant effect is the federal character that has led to high level of mediocrity, bribery, corruption and national disintegration.; on the other hand, sec. 15(3)CFRN 1999 3rd alteration provides for legal equality, a merit based decision-making devoid of all forms of discrimination and extrinsic factors.

Any nation that is serious about her national development must as of necessity arise above mediocrity and ensure that decisions are merit based and not on some frivolous classifications. There has been no incidence in Nigeria that warrants the inclusion of sec. 14(3) into the constitution of Nigeria, no ethnic group has suffered such level of gross discrimination and subjugation that warrants the provision of the federal character into the constitution of Nigeria. In the twenty-first century, this principle of affirmative action is fast becoming obsolete and countries are committing

themselves to a merit system that promotes equality and national development. Therefore if Nigeria must make progress the federal character provisions must be expunged from the constitution, the federal character philosophy must give way and all decisions must be based on merit and consideration of national development. Sec. 15 (3) CFRN 1999 3rd alteration could read as follows: “The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the diversity of Nigeria and promote national unity, and also to command national loyalty, thereby ensuring that all decisions are based strictly on merit, in fairness and in a transparent procedure by the government or in any of its agencies.”