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Federal Constitutional and Statutory Rights of Teachers

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Abstract

The purpose of this paper was to consider some rights and freedoms of teachers in Nigerian jurisdiction. The study was aimed at observing some basic constitutional rights and freedoms of teachers in Nigeria. Certain statutory provisions covering the rights and freedoms of teachers in Nigeria were also looked into. It was observed that most of the rights and freedoms of teachers were not hitherto separated or distinguished from the basic rights and freedoms of other workers within the jurisdiction. The study went further to also observe some rights and freedoms of teachers in the United States of America, which is a developed nation vis - a - vis Nigeria, which is yet developing. The rights and freedoms of teachers in the US were couched in specific and general provisions of laws in that jurisdiction, and this could be seen to be protected under various constitutional provisions, states and federal statutes, and states and federal regulations. Though the two nations shared some common grounds as far as teachers' rights, privileges, duties and responsibilities were concerned, there were yet some areas of diversity which might be due to various norms, values and policies esteemed by each nation.

Introduction

The roles of teachers in the sustenance of the value system of a society cannot be underestimated. Teachers have taken a care responsibility in the promotion of societal norms, values and beliefs. Their roles in upholding the governmental policies and promotion of education can not also be discountenanced. Teachers can then be said to be contributing immensely to the national development of any virile nation, either directly or indirectly, through their pedagogic skills and abilities. The United States National Council for Social Studies (NCSS) (1991) for instance made a declaration that one of the anticipated outcomes of social studies education, which is one of the teaching subjects at the primary and secondary schools in most jurisdictions, is

“a sense of efficiency in analyzing and predicating in contemporary affairs, public policy matters and global issue” as well as “commitment to democratic values and ethical standards. “The teaching of this subject, for instance, has the potentials of solving the problems of the federal structure of governance in Nigeria (Jekayinfa, 2006: 66). Any nations as rightly opined, which fails to accord teachers their due recognition is digging its own grave (Akinseje-George, 1997:10).

Teachers, for their unfathomable contributions to national development ought to enjoy their basic constitutional and statutory rights developed to protect their interests and the interests of the public at large. It can be said that there are certain rights or benefits that the government should not deprive its citizen and its workers of enjoying. Consequently, there are certain behaviours that under normal circumstances the government may not regulate and certain laws it would not make. These unregulated behaviours can be said to come under the civil rights and liberties of the person concerned which must be recognized by the law. (Imber, M. 2004). Apart from the fundamental protection of rights under the Nigerian Constitution of 1999, there are some rights enjoyed by teachers which are recognized under different statutory enactments, like the Nigerian Labour Act, cap L1 LFN 2004 and Trade Disputes Act cap T8 LFN 2004.

Teachers are regarded as workers since their nature of engagement qualifies them as such, going by the definition of “worker” given under the Labour Act. This remains the major statute regulating contract of employment in Nigeria. It thus defines the term “worker” as follows:

‘worker’ means any person who also entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour.(Labour Act 2004: Section 91).

At this point it is necessary to examine the laws that have to do with the contract of employment of teachers as a category of workers in Nigeria. It is trite that the constitution remains the supreme law in Nigeria and, as such, any law or rule regulating the condition of service of workers which contravenes any of the fundamental rights guaranteed by the constitution shall be null and void. These rights include: 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, right to peaceful assembly and association, right to freedom of movement and right freedom from discrimination. All these rights are considered as fundamental to human existence in a politically free society. As a result, such are given adequate protection by entrenching them in chapter IV of the 1999 Constitution. No government should exercise unfettered controls over those rights on the basis that those concerned are in the employment of the government. Those rights can be exercised by workers within the permitted scope of the law.

In the United States, which is a developed country compared to a developing nation like Nigeria, teachers equally enjoy a number of rights pertaining to their employment. These rights include the recognition of certain freedoms, prohibition against certain forms of discrimination, and some measure of protection against illegal dismissal from their services. These rights are derived from state and federal constitutional provisions, state and federal statutes and state and federal regulations. It should also be said here, as a matter of emphasis, that constitutional provisions in the U.S provide protection for teachers in public schools that are generally not available to teachers in private schools due to the fact that public schools are state entities and constitutional restrictions on state action limit some actions that public schools may take in respect of teachers or other employees. School officials, as representatives of the government, are bound to respect these rights in their dealings with the teachers. Rights that are constitutional in nature include the following:

1. Substantives and procedural due process rights, including the right of a teacher to receive notice of termination of appointment within reasonable time and right to a hearing in certain circumstances.
2. Freedom of expression and association provided by the First Amendment of the Bill of Rights,
3. Academic freedom, a limited concept recognized by courts based on principles of the First Amendment.
4. Protection against unreasonable searches and seizures by school officials of a teacher's personal property provided by the Fourth Amendment.

Most of these freedoms and rights highlighted above are also guaranteed under the Nigeria laws which serve as a form of haven for the protection of rights and freedoms of teachers against undue interference by the government that may be power driven to curtail

some of these rights and freedoms. Considering the fact that teachers in Nigeria qualify as “workers”, by the definition of the term given under the Labour Act, it is pertinent to determine what category of worker to which they practically belong. This is necessary in order to know the scope of protection that can actually be offered by the law of the country to cover those within the group or category. It is therefore a matter of necessity to consider the constitutional status of teachers in Nigeria.

The Constitutional Status of Teachers in Nigeria

The constitution as earlier noted is the supreme law of the country and the government as well as the people, in a practical sense, accords some measure of sanctity to the contents or provisions of the constitution. By the provisions of section 318(1) of the 1999 Constitution, the civil service of the federation is defined as follows:

‘Civil service of the federation’ means service of the federation in a civil capacity as staff of the office of the President, the vice President, a ministry or department of the Government of the Federation assigned with responsibility for any business of the Government of the Federation. (The constitution : Section 318 (1))

The section goes further to define the civil service of a state based on the same terms but with proper adaptations to reflect the state government character.

Civil servants can thus be defined as those in the service of the federation or state in any civil capacity as staff of the ministry or department of the Government of the federation or state assigned with the responsibility for any business of the Government of the federation or state (Akinseje-George 1997:11). Promotion and sustainability of education in the country is no doubts one of the businesses of the Government at all levels. Intuitively, teachers fall into the category of civil servants under the above definition as they serve in a civil capacity in sustaining one of the businesses of the Government.

Also by the definition of public service of the federation in section 381 of the constitutions:

‘Public service of the federation’ means the service of the federation in any capacity in respect of the Government of the federation, and includes service as staff of any educational institution established or financed principally by

the Government of the federation (The constitution: Section 318 (1)).

While it gives the definition of public service of a state thus:

'Public service of a state' means the service of the state in any capacity in respect of the Government of the state and includes service as staff of any educational institution established or financed principally by a Government of a state. (The Constitution: Section 381(1)).

The denotative submission from the above provisions of the constitution is that teachers rank as staff of educational institutions established or financed by the federal or state Government. This qualifies them as public servants for the purposes of the constitution and other laws touching on public servants. It should be realized that there are certain restrictions placed on the activities of public servants of the federation and state by the constitutions which by sections 172 and 209 stipulate that public servants of the federation and state respectively must observe and conform to the code of conduct engendered in the Fifth Schedule of the Constitution.

Tenure of Appointment of Teachers

Teachers as civil or public servants are chosen on account of their skills, which are mostly evident in their qualifications and certifications by established statutory bodies recognized for such purposes. It should be reminded that teachers fall into the category of civil servants (workers) whose contracts of engagement in the civil service are regulated by the law, especially the Labour Act, which serves as the major law regulating contracts of employment in Nigeria. The civil service in Nigeria was originally established as part of the machinery of the British Colonial administration and even up till today the ethos and regulations of the service in Nigeria remain substantially patterned after that of Britain (Iheme, 2003).

The civil service in Nigeria, following the British tradition is characterized by permanence, anonymity and neutrality (Emeka Iheme, 2003:1). The issue of permanence means that civil servants are career officers and can be expected to remain in the service for their entire 'working lives'. The termination of the term of the government that appointed a particular civil servant does not bring an end to the service contract between that government and that civil servant. The civil servants in most cases serve for periods that are not only long, but

at the termination of the term of one government they find new masters in elected or unelected rulers who find themselves at the helm of affairs of the country. In other words, civil service in Nigeria is characterized with continuity; hence teachers' contracts of service should not be unduly terminated by the Government.

It should be realized that the Nigeria's legal system is based on the English common law which continues to apply within the country subject to modifications by local enactments. Furthermore, all labour laws or statutes in Nigeria, including the Labour Act and the Trade Dispute Act, apply only to those considered as "employees" at common law (i.e. those employed under a "contract of service" rather than a "contract for service"). It should also be noted that the two Acts apply to those employees who are "workers". There is no gain saying that teachers come under contracts of service because there is an employer and employee relationship between them and the Government. Contracts of employment in Nigeria can either be contracts for indefinite periods or for a fixed term or fixed amount of work. The contracts of employment of teachers in Nigeria are mainly for a fixed term. Currently at the federal level the contracts of employment of primary and secondary school teachers are mainly for thirty years or where the concerned teachers have reached the age of sixty years they are due for retirement from service (whichever of the two conditions of termination is earlier in time). Same goes for teachers in the employment of state government. These may also vary depending on the mutability of the federal or state policies in considerable circumstances. Ordinary, contracts for a fixed term a fixed amount of work expire according to their terms. This represents the common law position and it is codified in section 9(7)(a) of the Labour Act. This position has not been changed by local enactments nor are there further statutory regulations of fixed term contracts (I.L.O 2007).

The principle that he who hires can fire at will does not apply to the federal civil servants who are entitled to the security of their tenure provided they did not run foul of the necessary provisions of the law, their contractual terms with their employer (the government), rules, regulations and the ethical demands of their profession. In the case of *B.A Shitta-Bey v Federal Public Service Commission (1981) I.S.C. 40*. The supreme court of Nigeria held that public servants in this country are invested with "legal status" by the provisions of the Civil Service Rules and cannot be removed at the "pleasure of the crown (state)" but only by applying the provisions of the Civil Service Rules. The court went further to state that in appropriate cases the court will issue mandamus

to compel a public authority to reinstate a servant who has been improperly dismissed or removed from office (See also *Olaniyan and Ors v UNILAG* (1985) 2 N.W.L.R Pt.9, 599).

In view of the foregoing, the Government cannot terminate teachers' appointment at will but must follow the provisions of the necessary enacted laws, rules and regulations guiding such exercise. In other words, tenures of service of appointed civil servants in general and teachers in particular should not be subject to the whims and caprices of the government. Otherwise, contracts of employment of civil servants or republic servants, and particularly teachers, should be made subject to the common law which demands that such a contracts can be terminated by:

1. Mutual agreement, either by an agreement as to the term of the contract or an agreement that the employment should end;
2. Frustration by supervening events;
3. The employee resigning by giving the requisite notice; and
4. The death of the employee (I.L.O 2007).

The first, third and fourth conditions are codified in section 9(7) of the Labour Act. The foregoing therefore has a combined effect under the common law and Nigeria legislation in protecting and giving assurance of tenure of teachers in Nigeria. One should not also discountenance the fact that probational periods are possible in the employment of service as civil servants or public servants, the relevant statutes regulating such employment do not exclude probationary employees from their scopes, therefore statutory notice periods entrenched in section 11 of the Labour Act also apply to probationary employees.

Dismissal of Teachers

There are many factors that may call for the dismissal of employees by the employers of labour which may be justified under the law. The Labour Act in section 11(5) recognizes the power of the employer to summarily dismiss an employee for serious misconduct. It is also provided under section 20 of the same Act that in the event of redundancy of the employees the employer shall have power to dismiss such employees. Sub section (3) of that section gives the meaning of redundancy as an involuntary and permanent loss of employment caused by an excess of man power. In this event the employer is to give consideration to the principle of "last in, first out"

in the discharge of the particular category of worker affected subject to all factors of relative merits, including skill, ability and reliability, (section 20 (1) (b) L.A). By the provision of section 20 (1) (c) and (2) the redundant workers are to be paid their redundancy benefits in the shortest possible time by the employers laying them off. These same statutory provisions apply to teachers in the employment of the federal and state governments, and these seek to protect the vested interests of the teachers in their jobs, which interests must not be jeopardized by the caprices of the government.

It should be pointed out that the teachers as employees under the Act are liable to dismissal in cases of gross misconducts. It can be quickly added here that the common law rule states that for employers who, with full knowledge of the employee's conduct, condone such conduct, cannot later on rely on that conduct to justify a summary dismissal of that employee. This was the decision reached in *ECN v NICOL* (1968) All NLR 201. In *Clouston v Corry* [1906] A.C 122, it was also stated that under the common law rule misconduct of an employee discovered after dismissal may justify the employer later in the future. There are no statutory requirements as to the procedure for dismissal under the Labour Act or under any local enactment in case of misconduct by the employee; although a breach of any contractual procedure may constitute a cause of action for the employee, against the employer (I.L.O 2007).

It is expedient at this juncture to take a look at the tenure and dismissal of teachers in the U.S.A., which is a developed country and has a vast body of laws regulating contracts of employment. Most states in the U.S. protect teachers in public schools from arbitrary dismissal through tenure statutes. Under these tenure statutes, once a teacher attains tenure his or her contract renews automatically each year. Tenured teachers may be dismissed by school district only by a showing of cause, after following such procedural requirements as serving the required notice on the teacher, specifying the charges against the teacher, and giving the teacher opportunity to be heard. Most tenure statutes require that teachers should remain employed during a probationary period for a certain number of years. (Shirelle Phelps 2006). In some states, at the termination of this probationary period teachers earn tenure automatically while in some other states the local schools board must take certain actions to grant tenure to the teacher after putting the performance of the teacher during the probationary period into consideration. Tenure under this system also

provides some forms of protection for teachers against demotion, salary reductions, and other disciplinary actions.

It should however be noted that tenure does not give an assurance that a teacher may retain a particular position or post, such as a coaching position or choral mistress, nor does it provide indefinite employment. One very important aspect of contract of employment of teachers in the U.S is that probationary teacher may be dismissed at the discretion of the school district prior to the attainment of tenure. However, this is made subjects to contractual and constitutional restrictions. One clear difference between the law of the U.S. governing dismissal of probationary teacher who has not attained tenure and the law in Nigeria concerning a probationary appointee is the same with the law governing a fully appointed employee. While in the U.S law other than those governing tenured appointee are applied in determining whether a discharge of a probationary teacher is wrongful. It should be further noted that if a probationary teacher's dismissal does not involve discrimination or does not violate terms of the teacher's contract the school district in the U.S most likely does not need to provide notice, summary of charges or a hearing to the teacher (Shirelle Phelps, 2006). A teacher may still attain *de facto* tenure rights if the customs or circumstances of employment demonstrate that a teacher has a legitimate claim of entitlement for job tenure in the absence of a state tenure statute (Shirelle Phelps, 2006).

A teacher who has attained tenure status may be dismissed in the U.S by the school, but the school must show cause for dismissing him. Some causes for dismissal may include immoral conduct, incompetence, negligence of duty, substantive non-compliance with school laws, conviction for a crime insubordination, fraud or misrepresentation (Shirelle Phelps, 2006). It is provided in the U.S Due Process Clause of the Fourth Amendment that no state may deprive any person of life, liberty, or property without due process of law. This clause is being extended to public school districts and prescribes the minimum procedural requirements that each public school district must observe before dismissing a teacher who attained tenure. Note however that the Due process clause does not prescribe the reasons why a teacher may be dismissed but the procedure to be followed in dismissing him. Most statutory provisions for dismissing however exceed these minimum requirements provided under the Due process clause.

Teacher's Freedoms and Rights

There are certain freedoms and rights that are guaranteed to the people and the citizens of Nigeria by the constitution which by no means subjugate the rights and freedoms of teachers by virtue of their employment under the Government. Some of these rights and freedoms are now going to be treated without prejudice to other rights that can be enjoyed by teachers.

Right to Freedom from Discrimination

Section 42 of the Nigeria 1999 Constitution provides that a citizen of Nigeria of a particular community, ethnic group, place or origin, sex, religion or political opinion shall not, by reason only that he is such a person be discriminated against in any shape or form. The teachers in Nigeria are equally beneficiaries of this right, and should not be discriminated against in the course of their employment based on their origin, sex, religion, political opinion, ethnic group or community. A breach of this constitutional right gives the teacher a right of action against the government as the employer so far he can establish from proof of evidence that he has been unduly discriminated against on any of the above mentioned grounds.

Similarly, the Equal Protection Clause of the Fourteenth Amendment to the U.S Constitution specifically provides protection for teachers at public schools against discrimination based on race, sex and national origin (Imber 2004:341). This protection is also reiterated in the one enactment of Title VII of the Civil Right Act of 1964 which was amended in 1972 to include educational institutions. It is provided under this latter law that it is an unlawful employment practice for any employer to discriminate against an individual based on the race, color, religion, sex, or national origin of the individual. One spectacular thing about the US law is that the protection against discrimination is extended to teachers of other nationalities aside US citizens, but this kind of protection is only accorded the citizens of Nigeria going by the words of section 42 of the constitution. But in practice, equal treatments are meted out to all teachers without giving undue consideration to nationality in Nigeria.

Academic Freedom

A very wide range of academic freedom is guaranteed to teachers in Nigerian public schools. They are free to draw analogies from situations in their environment, both near and remote, in order to make

inferences on their subjects of discourse and in a bid to draw home their points. They enjoy the liberty of making examples and analogies outside their curriculum of study and also to hold political opinions which they can bring to bear in the classroom. Teachers in Nigeria public schools apparently enjoy unfettered academic freedoms in the classroom which I can call academic frolics, but they must teach within the scope of the curriculum of study.

Conversely, public teachers in the U.S have limited freedoms in the classroom to teach without undue restrictions on the contents or subject for discussion. In other words, the concept of academic freedom is quite limited. The content taught by the teachers in the classroom must be relevant and consistent with the curriculum of study and the teacher's responsibilities. The teacher has no freedom to promote a personal or political agenda in the classroom. Teacher freedoms in the classroom are based on rights to freedom of expression under the First Amendment of the Bill of Rights. No court has ever recognized the constitutional right of a teacher to control basic course content or instructional methodology (Imber, 2004:351). The decision in *Cary v Board of Education of Adams Arapahoe School District* 28.J 598 F.2d 535 (10th Cir. 1979) reiterated the above position. However, factors such as the age, experience, and grade level of students affect the latitude in which a court will recognize the academic freedom of teachers.

Right to Freedom of Expression

Section 39 of the 1999 Constitution of Nigeria provides that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. Teachers, alike are entitled to this freedom. They have a right to form an opinion about anything that is of public concern and especially, they can hold political opinions. They may also express their views concerning any administrative laxity, perhaps in a constructive way, on the part of the government, or even as their employer. They therefore have a right to profess their opinion publicly and even in the classroom. This freedom is however well pronounced in the civilian administration under which most of the fundamental rights entrenched in the constitution are well recognized and protected.

Under the U.S jurisdiction freedom of expression of teachers, especially concerning issues of public importance must not be unduly undermined. This freedom is guaranteed under the First Amendment to the constitution. The leading case in this area is *Pickering v Board of*

Education 391 U.S 563 (1968). In this case a teacher's job was terminated when he wrote to a local newspaper an editorial critical of the teacher's employer. The Supreme Court held that the school had unconstitutionally restricted the First Amendment rights of the teacher to speak on issues of public importance. The justice of the Supreme Court in giving the judgment stated that the interest of the school administration in limiting teacher's opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public. Based on this judgment and the decisions reached in some other cases, teachers in general term enjoy rights to freedom of expressions but not without certain restrictions. For instance, it is for teachers forbidden to materially disrupt the educational interests of the school distinct, nor must teachers undermine authority nor adversely affect working relationship at the school. This clause is also applicable to or public schools in Nigeria for teachers should not unduly undermine academic activities in the school nor sow nor seed of discord that may affect working relationship in the school, because this may not conform with the ethical standard expected of the teachers.

Right to Freedom of Association

The Nigeria constitution provides that every person shall be entitled to assemble freely and associate with other persons and may form or belong to any political party, trade union or other association for protection of his interests. Apart from this provision, it should also be noted that Nigeria has ratified two international Labour Organization Conventions Nos. 87 and 98 (1960:524) which deal with the Freedom of Association and the Protection of the rights of organization and collective bargaining. In Nigeria, a teacher has a right to belong to the teachers' national trade union in order to protect His interests and for the purpose of collective bargaining. The national umbrella body of teacher in Nigeria is the Nigerian Union of Teachers. Without regard to the constitutional provision on the right to belong to any political party it has been said that trade union should not belong to any political party as this will deprive it of the much needed independence and non-partnership which may be of advantage to the Union while presenting its requests before the authorities (Akinseje-George 1997:13). Note therefore that there are specific statutory prohibitions against dismissal on the grounds of union membership and activities in section 9 (6) (b) of the Labour Act.

The U.S public school teachers enjoy rights to freedom of association based on the First Amendment's provision that grants citizens the right to peaceful assembly. The right generally allows public school teachers to join professional, labour, or similar organizations. The teachers' participation in these activities shall not in any way affect their responsibilities to the school.

Right to Participate in Politics

This can be regarded as a subset of the right of freedom of Associate. As stated previously in this work, one of the nature or characteristics of a civil servant is neutrality, which means that civil servants are prohibited from having political ties or affiliations. They are expected to be faithful and impartial in serving any government in power. In other words, civil servants should remain politically neutral. This position is reiterated in the editorial comment of 'The Guardian' (February 17, 2003), as follows: "politicians come and go. But the civil service remains to provide stability." A careful perusal of section 40 of the Nigeria constitution of 1999 will seem to give an unrestricted right to civil servants to belong to the political parties they choose to, but it has been otherwise argued that there is nothing unique about circumscribing the freedom of association of individuals in certain types of employment (Iheme, 2003), which argument finds succor in the tested principle of public administration and in the principle of international human rights law, and even in international human rights instruments.

Recognition of such a right has some platforms for derogation. For instance, though freedom of peaceful assembly and association is recognized in Article 11 of the European Human Rights Convention, a proviso to it allows the introduction of lawful restrictions on the exercise of these rights by members of the armed forces, the police or the administration of the state. Likewise, the position of this convention has been maintained under the Human Rights Act 1998 of Britain which preserves the right of the state to enact laws derogating from this right in permitted circumstances. Also in the U.S, the Supreme Court has decided that it may sometimes be necessary to restrict the right of federal employees to full political participation, though by the First Amendment's provision public school teachers enjoy rights to freedom of Association, rights to join professional, labour or similar organization and run for public office. It is submitted therefore, that civil or public servants, including teachers in the public schools in Nigeria, are prevented by federal law from belonging to a

political party or participate in partisan politics, or be actively involved in politics or vie for any public office unless they resign, withdraw or retire from such employment.

Right to Freedom of Religion

Freedom of thought conscience and religion is guaranteed under section 38 of the 1999 Constitution F.R.N. This includes the freedom of every person to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. Teachers in Nigeria have a right to profess any religion, either publicly or privately, and they should not be discriminated against based on their religions. It is trite that the two major religions in Nigeria are Christian and Islamic religions, which have form parts of the curriculum of studies in schools. In other words, we have the two religions being taught as subjects in Nigerian schools. But the fact remains that no pupil or student should be forced to take any religion subject contrary to his religious belief or creed. This position is represented by section 38 (2) of the Nigerian Constitution of 1999.

In the U.S teachers may exercise their religious rights, but this is not without certain restrictions which are particularly relevant to the public school teachers. By the Establishment clause of the First Amendment public schools are restricted from teaching religion, though protection of teachers against religious discrimination by school districts is provided for in the First Amendment and Title VII of the Civil Rights Act of 1964. Nigerian law is very liberal concerning religious practices of teachers of public schools compared to the U.S. The Nigerian Government has some motives or aims to achieve in encouraging the teaching of religious studies in government schools. The Federal Ministry of Education (1985) gave the general aims and objectives of teaching religions studies to include *inter alia*, providing opportunities for the Nigerian youth to learn more about God and thereby developed their faith in God. This may also help in brazing up the moral standard of the Nigerian youth.

Right to Inflict Corporal Punishment in School

It is not unusual that pupils or students may exhibit some acts in school which may be contrary to the rules and regulations of the school, or which may run foul of the norms, moral standard and etiquettes of the society at large. Sometimes the use of corporal punishment serves as a correctional measure adopted in the homes and

schools in many societies, and even by government of some nations to correct or punish for criminal activities of social miscreants. The question now is whether school teachers have a right to inflict corporal punishment on the persons of the pupils or students under their charge. According to Benjamin (1946-47):

There is an undoubted right in a school master to punish his pupils, a right so well established that justices are entitled to refuse to state a case on the point.

Ordinarily in Nigeria, parents have a right to inflict moderate and reasonable corporal punishment on their young children, of which they are not to be civilly or criminally liable. This right is also extended to the guardians in administering equal punishment on their wards. The parents' and guardians' right to correct their young ones is recognized in section 295 of the Nigerian Criminal Code (2004). It is provided under subsection (4) of that section thus:

A father or mother or guardian, or a person acting as a guardian, may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward all his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; and such delegation shall be presumed, except in so far as it may be expressly withheld, in case of a school master or a person acting as a school master, in respect of a child or ward.
(Criminal code 2004: Section 295 (4))

The provisions of this sub section put the teacher in a position of *loco parentis* (i.e. to stand in place of a child's parent) by the "delegation" of such authority by the parent of that child to the teacher. Such a delegation of authority is also recognized under the common law. See for examples, the cases of *R.V Newport (Salop) Justices and Other Expert Wright* (1929) 2.K.B 416 and *Ryan V Fildes* (1938)3 All E.R 517. Note also that this authority need not be expressly made it can be presumed.

However, in the United States of America teacher's source of authority to administer corporal punishment is based on "necessary". The parent need not put the teacher in *loco parentis* but the teacher assumes this status by virtue of his position as a teacher. In the American case of *Suits V Glover*, 71 so 2nd 49 (cited in Chianu 1995), Simpson, J. of the Alabama Supreme Court said:

A school master is regarded as standing in loco parentis and has the authority to administer moderate correction to pupils under his care.

Derived from this view therefore is that delegation does not arise in case of school teachers as a teacher should be equipped in school, as parent or guardian is at home, so as to bring up the child in a decent and morally upright manner for the interest of the public, (Osaretin, 1997:21).

The statutory right of a teacher to inflict corporal punishment by delegation under section 295(4) of the Nigerian Criminal Code (2004) can be subdelegated to a fit and proper person. This authority to subdelegate this right is recognised in section 295(5) of the Criminal Code. According to Benjamin (1946-47) such rights can be subdelegated to a monitor or prefect who may come under the meaning of the term 'any fit person'. It has been rightly opined by Osaretin (1997:23) that a teacher who delegates such authority must take the risk of any injury resulting from any unreasonable punishment inflicted by the monitor or prefect. In addition, under the common law rules the scope of the delegation of authority to the teacher for corporal punishment of a child covers the acts done by the child outside the four walls of the school. See for examples the decision in (*Cleary V. Booth* (1993) 1Q.B 415; *R.V Newport (Salop) Justice and Others, Expert Wright* (1929) 2.K.B 416.

Conclusion

Various rights of teachers have been carefully examined in this paper. Some of these rights are guaranteed under the Nigeria constitution and other federal enactments. Though the rights examined in this work are by no means exhaustive, there are some other rights that teachers enjoy in the country, either as provided by the Constitution or other Federal enactments or statutes. Teachers in Nigeria belong to the categories of civil and public servants and are therefore subject to the some measure of treatment accorded those in these categories. The rights and duties expected of those within these genera also accrue to teachers in Nigeria. In Nigeria, the teachers as workers are also to be treated the same way other workers are treated by the law. Teaching job has been observed as a public duty in most jurisdictions and therefore must be treated with the required standard of reverence. Thus, the teachers should not be considered as being given blanket powers or rights to do

what they wish to, hence the necessity for restrictions on some of their activities. This may include checks on the turpitudes and other unbecoming behaviours of teachers in the public school that may hinder the progress of the school or thwart the expected aims of educational institutions and government as their employer. Activities of this nature may constitute grounds for dismissal of such erring teachers after the observance of the necessary provisions of the law and terms of employment.

Rights of teachers have also been observed in the United States of America which is a developed nation, and we have seen some areas of similarities and diversities between the Nigeria law and that of the U.S. Laws of each jurisdiction reflect the policies of the government of that jurisdiction which normally take their roots from the value system of the people of that jurisdiction. This calls for the similarities and the dissimilarities in the laws of different jurisdiction.

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