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19/LAW01/041

GST 122

THE RIGHT TO FREEDOM OF MOVEMENT: ABSOLUTE OR FUNDAMENTAL?

To produce an insightful essay on this topic, we must first give a distinct definition of an absolute right. “An absolute right is a legally enforceable right to take some action or to refrain from acting at the sole discretion of the person having the right”. It is a right that cannot and should not be restricted or limited under any circumstances.

On the other hand, a fundamental right is a basic or foundational right, derived from natural law. It is a right deemed by the supreme court to receive the highest level of constitutional protection against government interference.

The right to freedom of movement as guaranteed by the 1999 constitution of the Federal Republic of Nigeria states: “Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom”. This gives citizens liberty to go wherever at whatever time they wish throughout Nigeria. This right is so fundamental that the court in Nigeria have awarded damages in favor of the citizens where this particular right has been infringed upon. The basic attributes of the right to freedom of movement are (1)The right to move freely in any part of Nigeria (2) The Right to reside in any part of Nigeria (3) The right not to be expelled from any part of Nigeria or refused entry into and exit therefrom. The right to freedom of movement is however, not an absolute right as there are instances by which this right is restricted or limited as stated in the 1999 constitution of the Federal Republic of Nigeria:

“41(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

(a) Imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) Providing for the removal of any person from Nigeria to any other country to-

(i) be tried outside Nigeria for any criminal offence, or

(ii) Undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.”

The above suggests that there are no limits to which the right to freedom of movement can be enjoyed by citizens provided he is not in the category of persons referred to in this sub section.

The Supreme Court while interpreting section 38 of the 1979 Constitution of Nigeria which is the same as section 41 of the 1999 Constitution of Nigeria in the case of DIRECTOR SSS v. AGBAKOBA put the position of the law briefly thus:

“The right to freedom of movement guaranteed by the section 38(1) By the constitution of the Federal Republic of Nigeria 1979 (as amended) in section 38(1) thereof every citizen of Nigeria is entitled to move freely and reside freely in any part of Nigeria and no citizen of Nigeria should be expelled from the country or prevented from leaving the country. These provisions of section 38(1) (supra) look absolute but for qualification by section 41(1) of the same constitution which provides 41(1) Nothing in section 34, 35, 36 , as amended ,37 and 38 are of this constitution shall invalidate any law that is reasonably justifiable in a democratic society”-

(a) in the interest of defense, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons.

Thus, the provisions of section 38(1) are not absolute.

Section 35, indicating the right to personal liberty also applies as such:

“(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law-

(a) In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;

(c) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence.”

If a person commits a crime and is found guilty or is reasonably suspected of committing a crime, he is arrested to avoid him fleeing. As in the case of AZUH V. UBN PLC, where the supreme court held that “Where criminal charges are pending against an accused person his right to freedom of movement pending the determination of the case may be curtailed by the court seized of the matter or by a higher court, depending on the nature of the offence.

(d) “In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare.”

A child under the age of eighteen is supervised by a parent or legal guardian with full right to supervise the movements of such a child; thereby depriving the child of his right to freedom of movement as a human being. There are also restrictions on the type of places where such a child is allowed to go.

(e)In the case of persons suffering from infections or contagious diseases, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community.

A person’s right to freedom of movement can be curtailed if they are of unsound mind or are drug addicts as they can pose a threat to other citizens and even to themselves.

In the case of people suffering from contagious diseases, restriction is placed on their movement for their well-being and for the well-being of others around. An instance of such restriction is the recent regulation in accordance with the Quarantine Act, by the president on the COVID-19 pandemic in Nigeria. In Nigeria and all over the world, a restriction of movement has been placed to prevent the spread of the deadly virus. Also, coronavirus patients have been isolated in order to avoid others from contacting the virus thus limiting the movement of people. ​

From the statutes and cases mentioned above, it is clear that the right to freedom as stated in section 41 of the 1999 constitution of the Federal Republic of Nigeria is a fundamental right but not an absolute right.