

**A CRITICAL ANALYSIS OF THE DEROGATION CLAUSES IN  
THE FUNDAMENTAL HUMAN RIGHTS PROVISIONS OF THE  
1999 NIGERIAN CONSTITUTION**

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## **ABSTRACT**

This study examined the extent to which the fundamental human rights guaranteed by the Constitution could be interfered with by the State through its laws and analysed the reasonable justifiability of some laws which derogated from human rights. The study further examined the remedies for infringement of fundamental rights in a democracy and the judicial approach to the interpretation of derogation provisions, with a view to striking balance between the aggregate interests of the state in ensuring security, public order, public morality and public health on the one hand the need to protect the human rights of the citizens on the other hand.

Primary data were collected through the analysis of the provisions of the Constitution of the Federal Republic of Nigeria 1999, the Criminal Code, the Penal Code, the Criminal Procedure Act, Conventions as well as other relevant Statutes and International Legal Instruments on derogation of guaranteed rights. A comparative analysis of the constitutional provisions on derogation from fundamental rights in some common law jurisdictions like the United States of America, the United Kingdom, the Republic of South Africa and some African countries was undertaken. Secondary data were also extracted from books, journal articles, law reports, magazines, newspapers and the Internet. Information obtained from the sources were subject to content analysis.

The study revealed that the derogation provisions in the 1999

Constitution of Nigeria had been couched in general and vague terms which had created opportunities for unwarranted interference with the fundamental rights by the government. The study found that other laws placed the Constitution of the country on a lower pedestal compared to an ordinary legislation. The study also showed that some legislation on security either owed their origins to colonial or military rule, with their attendant repressive effects which were not compatible with democratic rule. The study further revealed that public interest and the interest of those in government were not always coterminous, thus, not all legislative measures could be used to justify every restriction of human rights. The study showed that it was wrong to place the onus of justification of derogation laws on the person whose right had been violated, rather, the onus should be on the authorities which enacted derogation laws. The study also found that laws derogating from human rights on grounds of public morality or public health were not as extensive and contentious as derogation laws on grounds of defence, public safety and public order. The study showed that judicial intervention in disputes on derogation from human rights during peace time was least satisfying because of the adoption of restrained model of construction of statutes by the courts. The study found that in times of emergencies, the extent and scope of rights which could be derogated was very wide. The study further revealed that derogation from human rights has been done with circumspection in the United States and United Kingdom during the peace time and state of emergencies because of the culture of obedience to laws and the Constitution by the rulers and the ruled.

The study found that a more acceptable formula for derogation should be one which made derogation law invalid, unless it was reasonably justifiable in a democratic society and not the existing formula of making the rights subordinate to derogation law.

The study concluded that there would always be need to retain derogation clauses in our Constitution, as practiced in advanced democratic countries, in order to guarantee orderly existence, but the daunting challenge of delicately balancing competing rights of individuals with recognized grounds for derogation was not insurmountable.