A COMPARATIVE ANALYSIS OF THE NON-JUSTICIABILITY CLAUSES OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 AND THE CONSTITUTION OF THE REPUBLIC OF INDIA[1]

Uchenna Eugene Okolocha** Muinat Oluwaseun Mustapha Franklin Chinagorom Ogbu**

Abstract

The doctrine of non-justiciability reflects a constitutional design that limits judicial review in specific domains, particularly socio-economic rights and directive principles of state policy. This paper undertakes a comparative analysis of the non-justiciability clauses under the Constitution of the Federal Republic of Nigeria 1999 and the Constitution of the Republic of India. While both constitutions embody aspirational provisions that guide governance and social justice, they diverge in their approaches to enforceability. In Nigeria, Chapter II of the 1999 Constitution, which contains the Fundamental Objectives and Directive Principles of State Policy, is expressly declared non-justiciable under section 6(6)(c), thereby excluding courts from adjudicating on matters arising therefrom. Conversely, the Indian Constitution, under Part IV, similarly renders its Directive Principles of State Policy non-justiciable; yet, Indian jurisprudence has progressively evolved to harmonize these principles with justiciable fundamental rights, thereby expanding judicial enforcement of socio-economic entitlements. This study critically compares the textual provisions, judicial interpretations, and practical implications of these clauses in both jurisdictions. It argues that while Nigeria's rigid stance forecloses judicial creativity in advancing social justice, India's pragmatic jurisprudence demonstrates a functional reconciliation of non-justiciability with enforceable rights. The paper concludes that Nigeria can draw valuable lessons from India's judicial activism to reinterpret or reform its constitutional framework, ensuring that socio-economic aspirations translate into enforceable rights; expanding the scope of human rights and the frontiers of constitutionalism without undermining the doctrine of separation of powers.

Keywords: Non-justiciability, Constitution/Constitutionalism, Nigeria, India, Comparative Analysis

[1] * **Uchenna Eugene Okolocha** Associate Professor and Head of Public Law Department, Faculty of Law, University of Abuja, Nigeria**.** Email eugene.okolocha@uniabuja.edu.ng , eugeneokolocha@gmail.com , ** **Muinat Oluwaseun Mustapha,** Lecturer 1, Department of Public Law, Faculty of Law, University of Abuja, Nigeria. Email muinat.mustapha@uniabuja.edu.ng , muinatmustapha@gmail.com***
*****Franklin Chinagorom Ogbu,** LLB(Hons), BL, BA, LLM, PhD, Lecturer, Department of Public and International Law, Faculty of Law, University of Abuja, Nigeria. Email: chinagorom.ogbu2014@uniabuja.edu.ng. +2348183497993.

1.0 Introduction

Constitutions across the world embody a blend of enforceable rights and aspirational principles designed to guide the state towards socio-economic justice. In many jurisdictions, however, not all constitutional provisions are intended to be legally enforceable. This is the essence of the doctrine of non-justiciability, which limits the scope of judicial review by declaring certain provisions incapable of enforcement in courts of law. Both Nigeria and India adopt this doctrine in their constitutional frameworks, though they differ in application, interpretation, and impact.

In Nigeria, Chapter II of the *Constitution of the Federal Republic of Nigeria 1999* contains the Fundamental Objectives and Directive Principles of State Policy (FODPSP). This is the focus herein. In other words, certain other provisions of the Nigeria's Constitution that oust the jurisdiction of the courts and not within the scope of this analysis[2]. This chapter, first introduced into Nigeria in 1979, was influenced by the Irish Constitution of 1937 and that of India, 1949. These provisions outline the state's obligations towards social justice, economic welfare, education, and environmental protection. However, section 6(6)(c) of the Constitution explicitly renders them non-justiciable, thereby insulating them from judicial enforcement and leaving their implementation to political will.[3] This has generated extensive debate among scholars, policymakers, and judges regarding whether the Nigerian Constitution merely offers aspirational ideals without enforceable guarantees for social and economic rights.[4]

By contrast, the Indian Constitution under Part IV also contains the **Directive Principles of State Policy (DPSP)**, which are declared non-justiciable by Article 37.[5] Nevertheless, Indian courts have, over time, creatively interpreted these provisions in harmony with the Fundamental Rights enshrined in Part III, thereby transforming socio-economic aspirations into enforceable rights.[6] Through judicial activism, the Indian Supreme Court has gradually blurred the rigid lines of non-justiciability, allowing Directive Principles to inform constitutional interpretation and the progressive realization of justice.[7]

This comparative analysis seeks to examine the textual foundations, judicial interpretations, and practical implications of the non-justiciability clauses in Nigeria and India. It argues that while Nigeria's approach remains rigid and largely conservative, India's jurisprudence demonstrates a

[2] For example, SS. 143(10) and 188(10) which preclude the court from entertaining issues on the removal of the President/Vice President and Governors/Deputy Governors, respectively.

[3] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 6(6)(c).

[4] B. Nwabueze, *Constitutional Law of the Nigerian Republic* (Butterworths 1964) 220.

[5] Constitution of India 1950, art 37.

[6] G. Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 75.

[7] Kesavananda Bharati v State of Kerala (1973) 4 SCC 225; Olga Tellis v Bombay Municipal Corporation (1985) SCC (3) 545.

functional reconciliation between aspirational principles and enforceable rights. The study ultimately contends that Nigeria can draw lessons from India's judicial creativity to reform its

constitutional approach, thereby ensuring that socio-economic rights are not merely declaratory but impactful in practice.

2.0 Conceptual and Theoretical Framework

2.1 Conceptual Clarifications of Key Terms

2.1.1 Justiciability

The concept of justiciability refers to the capacity of a matter to be subjected to legal adjudication by a court of law. A provision or claim is said to be justiciable when it is capable of being enforced through judicial processes, and a court has the jurisdiction, competence, and authority to grant a remedy.[8] In constitutional law, justiciability functions as a gatekeeping principle, distinguishing between normative ideals or political aspirations and legally enforceable obligations.

In the context of socio-economic rights, the issue of justiciability becomes particularly complex. While civil and political rights (such as the right to freedom of expression or the right to a fair trial) are generally considered justiciable, socio-economic rights (such as the right to housing, health care, or education) have traditionally been regarded as non-justiciable in many legal systems.[9] This is largely due to the perception that their realisation depends on policy decisions, budgetary allocations, and progressive implementation—areas typically considered the domain of the political branches rather than the judiciary.

Justiciability is not merely a technical or procedural concept; it also reflects deeper debates about separation of powers**,** judicial legitimacy**,** and the role of courts in governance. In countries like India, the courts have gradually expanded the boundaries of justiciability, especially through the creative interpretation of fundamental rights.[10] In Nigeria, by contrast, the constitutional structure—particularly section 6(6)(c) of the 1999 Constitution—explicitly precludes courts from adjudicating matters arising from Chapter II, thereby rendering socio-economic rights legally unenforceable.[11]

Thus, justiciability serves as both a legal doctrine and a political instrument. It determines not only what can be litigated, but also who gets to decide the scope and implementation of rights in a constitutional democracy.

2.1.2 Socio-economic vs Civil-Political Rights

[8] T. Hutchinson, *Researching and Writing in Law* (4th edn, Thomson Reuters 2018) 34

[9] S Liebenberg, 'Socio-Economic Rights: Adjudication Under a Transformative Constitution' (Juta 2010) 17

[10] *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608

[11] Constitution of the Federal Republic of Nigeria 1999, s 6(6)(c)

Human rights are commonly categorised into two broad classes: **civil and political rights** on one hand, and **economic, social, and cultural rights**—often referred to collectively as **socio-economic**

rights—on the other. This division, though historically rooted, is increasingly viewed as artificial and counterproductive in modern human rights discourse.

Civil and political rights include freedoms such as the right to life, freedom of expression, the right to a fair trial, and protection from torture. These rights are typically **negative in nature,** meaning they require the state to refrain from certain actions.[12] They are also more readily justiciable, as they often involve clear violations and can be adjudicated by courts without the need for complex socio-economic assessments.

Socio-economic rights, on the other hand, encompass rights to health, housing, education, food, work, and social security. These are often **positive rights**, requiring affirmative action by the state to ensure their fulfilment.[13] They are seen as resource-dependent and progressively realizable, and thus more difficult to enforce through judicial means.

However, modern constitutional and international legal theory increasingly recognises the **interdependence and indivisibility** of all human rights.[14] The violation of socio-economic rights can directly undermine the exercise of civil and political rights. For instance, a person without access to education or basic health care is less likely to fully participate in political life or exercise their right to free expression.

India's judiciary has embodied this understanding by integrating socio-economic content into civil and political rights—particularly through **Article 21 of the Indian Constitution**, which guarantees the right to life and personal liberty.[15] In contrast, Nigeria's rigid constitutional demarcation between enforceable rights (in Chapter IV) and non-justiciable socio-economic rights (in Chapter II) has contributed to a more restrictive rights regime.

2.1.3 Directive Principles of State Policy (DPSPs)

The Directive Principles of State Policy (DPSPs) are a set of constitutional guidelines intended to direct the State in formulating and implementing policies aimed at securing social, economic, and political justice. They are prominently featured in Part IV of the Indian Constitution and Chapter II of the Nigerian Constitution**.** In India, the DPSPs were inspired by the Irish Constitution and the ideals of the Indian freedom struggle, and they represent a vision of a **welfare state**.[16] Although

[12] H Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995) 25 *Georgia Journal of International and Comparative Law* 287

[13] Malcolm Langford, 'Justiciability of Social Rights: From Practice to Theory' in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (CUP 2008) 3–45

[14] Vienna Declaration and Programme of Action (1993), UN Doc A/CONF.157/23, Part I, para 5

[15] *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645

[16] G. Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 50–65

Article 37 of the Indian Constitution declares that the DPSPs "shall not be enforceable by any court," it also states that "they

are nevertheless fundamental in the governance of the country." Over time, Indian courts have blurred the distinction between DPSPs and fundamental rights by **harmonising the two**, thereby giving practical effect to socio-economic principles without violating constitutional boundaries.[17] In Nigeria, Chapter II of the 1999 Constitution outlines similar objectives under the heading 'Fundamental Objectives and Directive Principles of State Policy', covering matters such as education, health, employment, social welfare, and the environment. However, unlike in India, Section 6(6)(c) categorically denies courts the jurisdiction to adjudicate claims arising from this chapter. As a result, the DPSPs in Nigeria remain political commitments rather than enforceable legal rights.[18]

The role of DPSPs in both countries highlights a key tension in constitutional design: how to reconcile ambitious social goals with the realities of legal enforceability and judicial capacity**.** The divergent trajectories of Nigeria and India in this regard will be explored in more detail in subsequent chapters.

2.2.4 Constitutionalism

This is the political principle of limited government under a written (and even under an unwritten) constitution. Constitutionalism assumes that the sovereign people draw up a constitution by the terms of which a government is created and given powers[19]. In the American, as well as the India and Nigerian systems, the Supreme Court acts as the guardian of the Constitution through is powers to void governmental actions that exceed (constitutional) limitations (judicial review). The judiciary is however able to extend the frontiers of constitutionalism through judicial creativity and activism.

2.2 Theoretical Framework

The theoretical underpinning of this study is grounded in the intersection of constitutional theory, judicial philosophy, and political legal thought. It draws on three major frameworks to guide its analysis: transformative constitutionalism, the philosophical tension between legal realism and legal positivism, and the enduring debate on separation of powers and judicial activism. These theories provide the normative and analytical foundation for evaluating the divergent treatment of socio-economic rights in Nigeria and India, particularly through the lens of justiciability.

2.2.1 Transformative Constitutionalism

The concept of transformative constitutionalism refers to the idea that a constitution is not merely a legal document but a tool for achieving profound social, economic, and political change. It was

[17] *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625

[18] B Aturu, *Law and Practice of the Nigerian Constitution* (2nd edn, BAA Publications 2010) 105–108.

[19] J.C. Plano and M. Greenberg, *The American Political Dictionary*, 6th edn., 1982, CBS College Pub., 6.

first popularised in the South African context, where it served as the intellectual and normative basis for transitioning from an apartheid regime to a democratic, rights-based order.[20] Karl Klare, who coined the term, described transformative constitutionalism as a "long-term project of

constitutional enactment, interpretation, and enforcement committed to transforming a country's political and social institutions and power relationships."[21]

In India, transformative constitutionalism has found expression through judicial interpretations that treat the Constitution as a living document. The Indian judiciary, especially the Supreme Court, has actively redefined fundamental rights to include socio-economic dimensions. For example, in *Unni Krishnan v State of Andhra Pradesh*, the right to education was read into Article 21 (right to life), thereby giving constitutional protection to what was otherwise a non-justiciable directive principle.[22] This approach represents a deliberate move toward realising the egalitarian ideals of the Indian Constitution, consistent with transformative goals.

In Nigeria, however, constitutional interpretation has remained largely textualist and conservative, partly due to the rigid structure of the 1999 Constitution and partly due to judicial restraint[23]. The courts have not embraced a transformative vision of the Constitution, and the socio-economic provisions of Chapter II remain largely aspirational.[24] By contrasting Nigeria's formalist approach with India's transformative model, this study examines how constitutional courts can be agents of social change — or, conversely, maintain the status quo.

2.2.2 Legal Realism vs Positivism

The tension between legal positivism and legal realism is another important theoretical lens for this study. Legal positivism, traditionally associated with scholars like H.L.A. Hart and John Austin, holds that the validity of a law depends on its source, not its moral content. According to this view, a law is valid if it has been properly enacted, regardless of whether it is just or unjust.[25] It is the theory of jurisprudence concerned principally with as it is in its formal man-made normative context rather than as it ought to be in relation a supposedly higher moral ideal[26]. In constitutional adjudication, positivism favours strict adherence to the text and limits judicial discretion.

---

[20] H Klug, *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction* (CUP 2000) 65–70

[21] K Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal on Human Rights* 146.

[22] *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645

[23] On few occasions however, the Supreme Court in Nigeria has risen above strict literal interpretation to what approximates the transformative approach. See SC/CV/343/2024: AGF v AG of the 36 States of Nigeria.

[24] Constitution of the Federal Republic of Nigeria 1999, s 6(6)(c); *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222

[25] H L A Hart, *The Concept of Law* (2nd edn, OUP 1994) 100–102

[26] S. I. Nchi, The Nugerian Law Dictionary, New edn., Greenworld Pub., 2010, 352.

Legal realism, by contrast, argues that law cannot be understood in isolation from its social and political context. Legal realists maintain that judges do not simply apply the law; they interpret it, and their interpretations are shaped by societal needs, moral reasoning, and policy considerations.[27]

India's judiciary, particularly from the post-Emergency period onward, has demonstrated a legal realist orientation, especially in socio-economic rights cases. Courts have creatively interpreted constitutional provisions to advance social justice, often invoking morality, equity, and public interest.[28] In contrast, the Nigerian judiciary has generally leaned toward legal positivism, especially in its approach to Chapter II and section 6(6)(c). The courts have often refrained from enforcing socio-economic rights, citing constitutional limitations, regardless of the moral or societal urgency of such claims.[29]

This study uses the debate between legal realism and positivism to explain the judicial behaviour observed in both jurisdictions, and to question whether strict adherence to positivism undermines the transformative potential of constitutions in developing democracies.

2.2.3 The theory of Separation of Powers and Judicial Activism

The principle of separation of powers is central to constitutional governance, and its interpretation significantly influences judicial engagement with socio-economic rights. Rooted in the political philosophy of Montesquieu, the doctrine holds that governmental powers should be divided among the legislative, executive, and judicial branches to prevent tyranny and ensure accountability.[30] However, modern constitutional practice reveals that a rigid separation is neither always feasible nor desirable, especially in systems committed to rights-based governance.

Judicial activism emerges as a necessary counterbalance when other branches fail to realise constitutional promises, particularly socio-economic rights. In India, the judiciary has embraced a form of constructive activism, justified on the basis of constitutional morality, democratic deficit, and the state's failure to implement Directive Principles. Through Public Interest Litigation (PIL) and expanded standing rules, the courts have positioned themselves as protectors of the marginalised.[31]

In Nigeria, however, separation of powers has been interpreted more restrictively, and the courts have largely deferred to the legislature and executive on matters involving socio-economic policy. This has led to judicial passivity, particularly regarding Chapter II of the Constitution.[32] Nigerian

[27] Jerome Frank, *Law and the Modern Mind* (6th edn, Anchor Books 1963) 39–44

[28] Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 147

[29] *Okogie v Attorney-General of Lagos State* (1981) 1 NCLR 113.

[30] B. Montesquieu, *The Spirit of the Laws* (Cambridge University Press 1989) bk XI, ch 6

[31] *People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235; Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India* (Cambridge University Press 2017) 12–17

[32] E. E. Osaghae, 'The Nigerian Judicial System: Problems and Prospects' (2001) *NIALS Occasional Paper Series* No 4, 18

courts often cite section 6(6)(c) as a constitutional bar to any form of judicial intervention in policy matters, even where basic rights and human dignity are at stake.[33]

This study employs the framework of separation of powers and judicial activism to interrogate whether the judiciary can or should play a more assertive role in enforcing socio-economic rights. It argues that while respect for institutional boundaries is important, courts in transitional and developing democracies have a constitutional duty to advance justice, especially where other branches are inactive or ineffective.

3.0 Legal and Institutional Framework
3.1 Nigeria

Chapter II of the 1999 Constitution

Chapter II of the Constitution of the Federal Republic of Nigeria, titled *Fundamental Objectives and Directive Principles of State Policy*, outlines the socio-economic rights and policy goals that the Nigerian state is expected to pursue.[34] These provisions reflect aspirations aimed at fostering social justice, economic development, and the welfare of citizens. They include rights to education, health care, employment, adequate food and water, housing, and environmental protection.[35]

However, unlike the enforceable fundamental rights enshrined in Chapter IV, the provisions of Chapter II are explicitly **non-justiciable** and serve primarily as guiding principles for government policy.[36] The framers of the 1999 Constitution consciously adopted this distinction, mirroring a common practice in many Commonwealth constitutions influenced by the Westminster model.[37] This non-justiciability reflects the political reality of Nigeria's constitutional evolution and concerns about judicial overreach in socio-economic policymaking.

Despite the aspirational language of Chapter II, the practical impact of these provisions has been limited. The lack of judicial enforcement mechanisms has often resulted in governmental neglect and inadequate protection of socio-economic rights, with citizens left reliant on the goodwill and political will of the executive and legislature.[38]

Section 6(6)(c) and Judicial Pronouncements

[33] *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222, 234

[34] Constitution of the Federal Republic of Nigeria 1999, Chapter II.

[35] Ibid, ss 17, 18, 19, 20, 21

[36] Ibid, s 6(6)(c)

[37] Adewale Akinyemi, 'The Directive Principles of State Policy and Socio-Economic Rights in Nigeria' (2015) 3 *Nigerian Journal of Constitutional Law* 45, 47

[38] C. Odinkalu, *The Judiciary, the Rule of Law and the Protection of Socio-Economic Rights in Nigeria* (Human Rights Watch 2006) 21

This provision acts as a **constitutional bar** to the justiciability of socio-economic rights in Nigeria. Nigerian courts have consistently interpreted section 6(6)(c) to preclude judicial review of government actions or inactions regarding Chapter II rights.[39] For instance, in *Okogie v Attorney-*

General of Lagos State, the court held that the rights contained in Chapter II were "not enforceable by any court" and that judicial intervention was barred.[40]

Further judicial decisions have reinforced this stance, maintaining a strict separation between justiciable fundamental rights and the policy-oriented provisions of Chapter II.[41] Critics argue that this approach undermines the protection of socio-economic rights and entrenches inequality by denying citizens judicial remedies where state obligations remain unfulfilled.[42]

Legislative Attempts at Reform

Recognising the limitations posed by section 6(6)(c) and the broader non-justiciability of Chapter II, there have been **periodic legislative and civil society efforts** to amend the Constitution to make certain socio-economic rights enforceable.[43] However, these efforts have largely been unsuccessful due to political resistance, constitutional rigidity, and competing interests.

Notably, proposed constitutional amendments have sought to either remove or modify section 6(6)(c) to permit judicial review of socio-economic rights and to elevate some of the directive principles to enforceable fundamental rights status.[44] Civil society organisations and human rights advocates have also campaigned for the incorporation of socio-economic rights into Chapter IV, arguing that justiciability is essential for accountability and social justice.[45]

Nevertheless, the political will necessary for such reforms has remained weak, with the executive and legislative branches often reluctant to expose socio-economic policies to judicial scrutiny.[46] The continued absence of enforceable socio-economic rights in the Constitution highlights the challenges of balancing judicial activism, separation of powers, and socio-political realities in Nigeria's constitutional democracy.

3.2 India

Part IV of the Indian Constitution (Directive Principles)

[39] B. Aturu, *Law and Practice of the Nigerian Constitution* (2nd edn, BAA Publications 2010) 105

[40] *Okogie v Attorney-General of Lagos State* (1981) 1 NCLR 113, 118

[41] *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222, 234

[42] Ibid; Chidi Odinkalu (n 33) 30–31

[43] Human Rights Law Service, 'Constitutional Reform and the Enforcement of Socio-Economic Rights in Nigeria' (2010) 2 *African Human Rights Law Journal* 150, 155

[44] Nigerian Constitution Amendment Bill 2018 (Private Member's Bill), clauses 5 and 6 (unpublished draft)

[45] Amnesty International Nigeria, 'Submission to the National Assembly on the Need for Constitutional Reform' (2019) 8.

[46] Human Rights Watch, 'Nigeria: Weak Enforcement of Socio-Economic Rights' (Report, 2016) 12

Part IV of the Constitution of India, titled *Directive Principles of State Policy*, outlines socio-economic goals intended to guide the legislature and executive in governance.[47] These principles embody the vision of a welfare state, directing the state to promote social justice, economic

equality, and improved living standards for all citizens.[48] The directives include provisions on securing adequate livelihood, equitable distribution of resources, protection of health and education, and promotion of just working conditions.[49]

Unlike fundamental rights under Part III, the Directive Principles are expressly Human Rights Watch, 'Nigeria: Weak Enforcement of Socio-Economic Rights', meaning they cannot be directly enforced by courts.[50] However, the Indian Constitution requires that the state apply these principles

in making laws, thereby obligating the government to align policy with these ideals.[51] The inclusion of socio-economic rights in Directive Principles reflects the framers' desire to balance individual freedoms with collective social welfare.

Interplay with Fundamental Rights in Part III

The relationship between the Directive Principles and Fundamental Rights is dynamic and has evolved significantly through judicial interpretation.[52] Early post-independence jurisprudence often treated these two parts as distinct, with courts prioritising fundamental rights due to their enforceability.[53] However, as socio-economic challenges deepened, the judiciary began interpreting fundamental rights in a manner consistent with Directive Principles, effectively expanding the scope of enforceable rights.

A landmark development was the judicial recognition of the right to education as an implicit fundamental right under Article 21 (right to life and personal liberty), influenced by Directive Principles related to education.[54] This fusion marked a turning point, where courts took a purposive approach, harmonising enforceable rights with policy goals.[55]

Subsequent rulings have further blurred the boundaries, with courts increasingly invoking Directive Principles to read socio-economic rights into fundamental rights, thereby giving them a degree of

[47] Constitution of India 1950, Part IV

[48] G. Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1999) 134–140.

[49] Constitution of India 1950, arts 39, 41, 42, 45

[50] Ibid, art 37

[51] Ibid, art directive principles of state policy; Article 37 states these principles are fundamental in the governance of the country but are not enforceable by any court

[52] M. P. Jain, *Indian Constitutional Law* (7th edn, LexisNexis 2016) 150–155

[53] *A.K. Gopalan v State of Madras* AIR 1950 SC 27.

[54] *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645

[55] U. Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 185–190

justiciability and enforcement.[56] This evolving interplay underscores the Indian judiciary's transformative constitutionalism and reflects a judicial willingness to advance social justice within constitutional parameters.

Some Locus Classici (Key Cases):
The Indian Supreme Court has played a pivotal role in expanding socio-economic rights through a series of influential judgments: **Unni Krishnan v State of Andhra Pradesh (1993)**: Recognized the right to education as intrinsic to the right to life under Article 21, thereby making it justiciable despite its origin in Directive Principles.[57] **People's Union for Democratic Rights v Union of India (1982)**: Affirmed that fundamental rights and Directive Principles are complementary, and socio-economic rights should inform judicial interpretation.[58] **Olga Tellis v Bombay Municipal**

Corporation (1985): Expanded Article 21 to protect the right to livelihood, reinforcing socio-economic protections within the fundamental rights framework.[59] **Right to Food Cases (2001 onwards)**: The Supreme Court enforced government obligations related to food security under the National Food Security Act, often referring to Directive Principles to guide state policy.[60]

These cases demonstrate judicial activism that actively integrates socio-economic rights into constitutional jurisprudence, holding the state accountable for implementing welfare obligations.

4.0 Comparative Analysis
4.1 Nature and Intent of the Clauses
The non-justiciability clauses in both the Nigerian and Indian constitutions reflect distinct constitutional philosophies regarding socio-economic rights and the role of the judiciary. In Nigeria, section 6(6)(c) of the 1999 Constitution serves as an explicit constitutional bar preventing courts from enforcing the Directive Principles of State Policy enshrined in Chapter II.[61] This clause signals a deliberate limitation on judicial power, rooted in a political and legal tradition wary of judicial interference in socio-economic policymaking. The drafters intended to shield the legislature and executive from judicial scrutiny in areas traditionally considered within the purview of policy discretion, reflecting concerns about judicial activism overstepping constitutional boundaries.[62]

[56] *People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235
[57] *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645
[58] *People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235
[59] *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.
[60] *PUCL v Union of India* (2001) 10 SCC 667; National Food Security Act 2013
[61] Constitution of the Federal Republic of Nigeria 1999, s 6(6)(c).
[62] B. Aturu, *Law and Practice of the Nigerian Constitution* (2nd edn, BAA Publications 2010) 105–110

Conversely, the Indian Constitution's non-justiciability clause in Article 37 adopts a softer approach.[63] Although Directive Principles are formally non-enforceable by courts, the Indian judiciary has embraced a purposive interpretation that progressively integrates these socio-economic ideals into the enforceable framework of Fundamental Rights.[64] This approach reveals

an intent to balance respect for legislative authority with judicial oversight, allowing courts to protect socio-economic rights indirectly through creative interpretation.[65]

The divergent nature of these clauses stems from differing constitutional contexts: Nigeria's post-military, fragile democracy prioritises institutional stability and separation of powers, whereas India's mature constitutional democracy, enriched by a robust judicial tradition, prioritises social justice and rights realisation.[66] These differences underpin the varying degrees of judicial engagement observed in the two countries.

4.2 Judicial Attitudes: Passive (Nigeria) vs Activist (India)

The contrasting judicial attitudes toward the non-justiciability clauses are stark and illuminate broader jurisprudential and political dynamics.

In Nigeria, the judiciary has largely adopted a passive stance, adhering strictly to section 6(6)(c) and refraining from entertaining claims related to socio-economic rights. Nigerian courts have consistently held that Chapter II provisions are policy guidelines beyond judicial scrutiny.[67] This passivity reflects judicial respect for constitutional limits and concerns over separation of powers, but it has also drawn criticism for failing to protect vulnerable populations and perpetuating socio-economic inequities.[68] Critics argue that this judicial restraint allows the executive and legislature to neglect constitutional obligations without accountability.[69]

In stark contrast, the Indian judiciary has been activist in its approach, particularly since the 1970s and post-Emergency era. The Supreme Court has proactively interpreted fundamental rights expansively to incorporate socio-economic rights, often citing Directive Principles to justify its

[63] Constitution of India 1950, art 37

[64] *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645; Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 185–190

[65] G. Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1999) 134–140

[66] C. Odinkalu, 'Judicial Activism and the Protection of Socio-Economic Rights in Nigeria and India' (2010) 4 *African Human Rights Law Journal* 101, 107

[67] *Okogie v Attorney-General of Lagos State* (1981) 1 NCLR 113; *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222

[68] Odinkalu (n 62) 110–112

[69] Human Rights Watch, 'Nigeria: Weak Enforcement of Socio-Economic Rights' (Report, 2016) 12

interventions.[70] Through Public Interest Litigation and expansive standing rules, the courts have held the state accountable for delivering basic rights such as education, health, and livelihood.[71] This activism reflects a constitutional philosophy that views the judiciary as a co-equal branch with a mandate to ensure social justice and uphold constitutional morality.[72]

The activist stance in India has empowered marginalized groups and driven policy reforms, yet it has also raised debates about judicial overreach and the limits of separation of powers.[73] Meanwhile, Nigeria's passive approach preserves institutional boundaries but arguably undermines constitutional promises of socio-economic welfare.

4.3 Fusion of Directive Principles of State Policy (DPSP) with Fundamental Rights in India

One of the most significant features of the Indian constitutional experience is the gradual fusion of Directive Principles of State Policy (DPSP) with Fundamental Rights. While DPSPs remain non-justiciable in theory, the judiciary has employed creative constitutional interpretation to incorporate socio-economic rights within the enforceable framework of Part III.[74] This fusion is exemplified in judicial decisions recognizing rights such as education, livelihood, and health as essential components of the right to life guaranteed under Article 21.[75]

This judicial approach is grounded in the view that the Constitution is a living document, intended to adapt to evolving social realities and uphold constitutional morality.[76] By interpreting fundamental rights in harmony with DPSPs, the Supreme Court has effectively expanded the scope of enforceable rights, thereby narrowing the gap between aspirations and legal obligations.[77]

4.4 Implications for Human Rights and Development

The fusion has profound implications for the protection of human rights and socio-economic development in India. It enables the judiciary to act as a catalyst for social transformation by holding the state accountable for delivering socio-economic goods and services.[78] This has

[70] *People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235; Anuj Bhuwania, *Courting the People* (CUP 2017) 45–50

[71] Ibid.

[72] K. Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal on Human Rights* 146

[73] M. P. Jain, *Indian Constitutional Law* (7th edn, LexisNexis 2016) 300–305

[74] *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645; Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 185–190

[75] *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545; *People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235

[76] G. Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1999) 134–140

[77] A. Bhuwania, *Courting the People* (CUP 2017) 45–50

[78] U. Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 37 *International Journal of Comparative Sociology* 249

translated into expanded access to education, improved labor protections, and strengthened welfare policies.[79]

Moreover, the Indian model underscores the indivisibility and interdependence of civil-political and socio-economic rights, fostering a holistic approach to human rights protection.[80] The judiciary's activism has prompted legislative and administrative reforms, contributing to poverty

reduction and enhanced social justice.[81] However, challenges remain, including resource constraints and occasional judicial overreach, which sometimes blur the separation of powers.[82]

4.5 Critical Assessment of Effectiveness

Despite judicial activism, the enforcement of socio-economic rights in India faces limitations. Implementation gaps, inadequate state capacity, and political resistance can undermine judicial pronouncements.[83] Furthermore, judicial interventions sometimes raise questions about legitimacy and the appropriate roles of courts versus elected bodies.[84] Nevertheless, the Indian experience demonstrates that judicial innovation—through purposive interpretation and public interest litigation—can significantly advance socio-economic rights, even

within constitutional constraints.[85] This suggests that the non-justiciability of DPSPs need not be an insurmountable barrier to rights realisation if the judiciary embraces a transformative mandate.[86]

5.0 Lessons for Nigeria: Judicial Innovation, Constitutional Interpretation, and Policy Reform

Nigeria's experience with the non-justiciability clause has been marked by judicial passivity, which has arguably constrained the enforcement of socio-economic rights and limited accountability.[87] The Indian model offers valuable lessons in judicial innovation and constitutional interpretation that could inspire reforms in Nigeria.

---

[79] National Human Rights Commission (India), 'Annual Report 2022' (NHRC India, 2023) 23–28.

[80] Vienna Declaration and Programme of Action 1993, para 5; M P Jain, *Indian Constitutional Law* (7th edn, LexisNexis 2016) 200–205

[81] Human Rights Law Service, 'Constitutional Reform and the Enforcement of Socio-Economic Rights in Nigeria' (2010) 2 *African Human Rights Law Journal* 150, 155

[82] Jain (n 69) 300–305

[83] Bhuwania (n 73) 60–65

[84] Karl Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal on Human Rights* 146

[85] *Ibid*

[86] *Ibid*

[87] C. Odinkalu, 'Judicial Activism and the Protection of Socio-Economic Rights in Nigeria and India' (2010) 4 *African Human Rights Law Journal* 101, 110–112

First, Nigerian courts could explore purposive interpretations of fundamental rights to incorporate socio-economic protections, much like the Indian Supreme Court's approach to Article 21.[88] This would require a shift from strict textualism towards a more dynamic, transformative constitutionalism.[89]

Second, legislative reform aimed at modifying or removing section 6(6)(c) to allow for judicial review of socio-economic rights could enhance enforcement and accountability.[90] Third, stronger

collaboration between judiciary, legislature, and institutions such as human rights commissions could foster a more effective framework for rights realisation.[91]

Ultimately, embracing judicial activism within constitutional limits, supported by progressive policy reforms, can strengthen Nigeria's democratic governance and promote social justice, echoing the developmental aspirations embedded in its Constitution.[92]

6.0 Findings and Recommendations

6.1 Findings

This study reveals several critical insights into the treatment and impact of the non-justiciability clauses within the Nigerian and Indian constitutional frameworks. Firstly, the nature and intent of Nigeria's section 6(6)(c) reflect a constitutional design that prioritises strict separation of powers and limits judicial intervention in socio-economic rights enforcement. This has resulted in a predominantly passive judiciary, which respects constitutional boundaries but consequently leaves socio-economic rights underprotected.[93]

Conversely, the Indian Constitution, while similarly categorising Directive Principles as non-justiciable, provides space for judicial innovation. The Indian Supreme Court's dynamic interpretation of fundamental rights to incorporate socio-economic dimensions has created a hybrid enforcement model. This has expanded access to justice and fostered socio-economic development through judicial activism and progressive jurisprudence.[94] The fusion of DPSPs and fundamental rights in India highlights a constitutional evolution that promotes the indivisibility of rights and strengthens the human rights framework. This fusion has, however, not been without challenges,

[88] *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645

[89] Karl Klare (n 97) 160

[90] Nigerian Constitution Amendment Bill 2018 (Private Member's Bill), clauses 5 and 6 (unpublished draft)

[91] Human Rights Watch, 'Nigeria: Weak Enforcement of Socio-Economic Rights' (Report, 2016) 12

[92] Chidi Odinkalu (n 112) 115–120

[93] Constitution of the Federal Republic of Nigeria 1999, s 6(6)(c); Chidi Odinkalu, 'Judicial Activism and the Protection of Socio-Economic Rights in Nigeria and India' (2010) 4 *African Human Rights Law Journal* 101

[94] *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645; Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980) 185–190

including concerns over judicial overreach and implementation gaps.[95]Lastly, the Nigerian experience underscores the limitations of rigid non-justiciability, pointing to the need for constitutional and institutional reforms to enhance accountability and socio-economic rights realisation.[96]

7.0 Conclusion

This comparative analysis underscores the profound influence of constitutional design and judicial attitudes on the realisation of socio-economic rights. The Indian experience demonstrates that non-justiciability need not equate to non-enforceability, as judicial innovation can transform abstract directives into tangible rights. Chapter II of Nigeria's Constitution was largely influenced by Part

IV the Indian Constitution. Although it was made non-justiciable by Art. 37 of the Constitution, India has since moved ahead. 47 years after, Nigeria should catch up. For Nigeria, the challenge lies in balancing respect for constitutional limits with the urgent need to protect socio-economic rights through judicial and legislative reforms, and policy initiatives. Embracing a transformative constitutionalism approach could enable Nigeria to close the gap between constitutional ideals and practical realities, fostering inclusive development and social justice.

Ultimately, the study affirms that constitutional provisions, judicial activism, and institutional frameworks must work synergistically to uphold the dignity and welfare of all citizens, ensuring that socio-economic rights become a living reality rather than mere constitutional aspirations.

6.2 Recommendations

In light of these findings, the following recommendations are proposed:

1. **Constitutional Reform**: Nigeria should consider amending section 6(6)(c) to allow judicial review of socio-economic rights[97], thereby aligning with international human rights standards and facilitating enforcement.[98]
2. **Judicial Capacity Building**: Nigerian judiciary training programs should emphasize transformative constitutionalism, equipping judges to engage creatively with socio-economic rights while respecting separation of powers.[99]
3. **Legislative and Policy Action**: The legislature should enact clear laws that operationalize socio-economic rights, supported by adequate budgetary allocations and robust monitoring

[95] Karl Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal on Human Rights* 146

[96] Human Rights Watch, 'Nigeria: Weak Enforcement of Socio-Economic Rights' (Report, 2016) 12

[97] Some African countries like South Africa and Ghana are already leading this vanguard.

[98] Nigerian Constitution Amendment Bill 2018 (Private Member's Bill), clauses 5 and 6 (unpublished draft)

[99] Chidi Odinkalu (n 118) 110

mechanisms.[100]Policy actions and administrative enforcement would also compliment the new course of direction, and would be in sync with international best practices.

4. **Institutional Collaboration**: Strengthening the roles of independent institutions such as the National Human Rights Commission to complement judicial efforts in promoting socio-economic rights enforcement.[101] In this regard, such legal instruments as the African Charter on Human
5. **Role of International Law**: Nigeria's place and role in the international arena, especially on the African continent, demands that her fundamental law and policy accord with global trends[102].

6. **Public Awareness and Advocacy**: Civil society should intensify efforts to educate citizens on their socio-economic rights and the avenues available for redress, fostering a rights-conscious population that can demand accountability.[103]

[100] Ibid 115

[101] Protection of Human Rights Act 1993 (India), s 12; National Human Rights Commission (India), 'Annual Report 2022' (NHRC India, 2023) 23–28

[102] The African Charter on Human and Peoples' Rights is instructive in this regard.

[103] Human Rights Watch (n 121) 20