

Chapter 32

Nigeria's Constitutional Provision and Liberal Feminist Theory: Lessons from Rwanda

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Abstract

The Liberal Feminist Theory has gained prominence in the Constitution of most countries of the world, with Nigeria and Rwanda not left out. Liberal feminism states that every individual, regardless of gender and sex, has equal access to opportunities, benefits and privileges. Using a doctrinal approach, this chapter examines the application of the Liberal Feminist Theory, in the Constitution of the Federal Republic of Nigeria (1999). Using the Rwandan Constitution as a case study, the chapter explores the domestication of the Liberal Feminist Theory and lessons that Nigeria can learn. In order to accomplish the set objectives, literatures were reviewed on the existing legal frameworks in both Nigeria and Rwanda. It was revealed that the application of the Liberal Feminist Theory in the Nigerian Constitution is not significant, while the Rwandan Constitution embraces the Liberal Feminist Theory extensively by granting every woman all rights and privileges. The chapter submits that the poor adoption of the Liberal Feminist Theory in the Nigerian Constitution accounts for low women's political participation and representation.

Keywords: Constitution, Feminist Theory (FT), Governance, Human Rights, Women

Introduction

Feminist analysis begins with the principle that objective reality is a myth. It recognises that patriarchal myths are projections of the male psyche (Scales, 1993). The most pernicious of these myths is that the domination of women is a natural right, a mere reflection of the biological family (Smith, 1983). The patriarchal paradigm of the will of the father informs rationality at every historical moment. Smith (1983) points out how that paradigm is centrally driven by the need to subjugate women and all that is womanly. This is violently reflected in the myth of Perseus.

Reacting to the above myth, feminist scholarship strategised amongst discursive practices operating to resist and subvert the commonplace assumptions of the dominant masculine culture (Morrison, 1997). Feminist scholars acknowledge that they must struggle to live and rise as women while existing inside a social world heavily structured and imbued with masculine practices. They claim the right to develop specifically, critical perspectives to affirm and change for the better of the position of women.

Feminists concentrate on addressing three important areas. The first is the concrete reality of oppression repeatedly legitimated by legal regulations; the second is the issue of patriarchy, or the system of male authority; and the third is the question of women's sense of justice (Morrison, 1997). It is with the aim to tackle these three areas that feminists come up with varying ideas.

Aside from these varying ideas about feminism, there are also feminists' theories which address the relations between the two sexes, relations within each sex, and the relations between subjects and objects and between subjects and the world in terms of the differences between the sexes, whether those differences are understood as comparative and measurable and in need of some kind of equalisation (as a mark of the project of so-called difference feminism) (Grosz, 2010).

Feminist Theory (FT) addresses, amongst other things, the conditions for the equality of men and women (historical, political, economic, ontological, and so on). It articulates a belief that Feminist Theory is not only about addressing the rights and wrongs of women, whether in the past or present, it also addresses how these wrongs can be transformed, how to better social structure and how social structure might be brought into a better existence than what is currently available (Grosz, 2010).

Feminist Theory is about addressing new ways of thinking about subjects and objects, about a new way of understanding what is in terms, more relevant to women and their interests than previous models offered. Feminism is a diverse, competing and often opposing collection of social

theories, political movements, and moral philosophies, largely motivated by or, concerning the experiences of women, especially in terms of their social, political and economic inequalities (Smith, 2018). One institutionally predominant type of feminism focuses on limiting or eradicating gender inequality, while another focuses on earning, and establishing equality by and for women.

Hence, as with any ideology, political movement or philosophy, there is no single or universal form of feminism that represents all feminists. Instructively, people who believe in the Feminist Theory have so many different views, which seem to suggest that feminist theories are not uniform theories. Although they differ widely in other respects, these theories share three central commitments. Rhode (1990) opined that

On a political level, Feminists seek to promote equality between men and women. On a substantive level, feminist critical frame work make gender a focus of analysis; their aim is to reconstruct legal practices that have excluded, devalued, or undermined women's concerns. On a methodological level these frame works aspire to design the world in ways that correspond to women's experience.

These commitments trigger this present study, wherein the authors juxtapose an instance where Nigeria, through the Constitution of the Federal Republic of Nigeria (CFRN) (Federal Republic of Nigeria, 1999) can recognise the Liberal Feminist Theory (LFT), thereby taking a clue from the Rwandan Constitution (Republic of Rwanda, 2003).

Methodology

The use of a doctrinal research, also known as pure legal research, was employed in the course of this study. The data obtained from this type of research are evidence in words which are obtained in the library. The kind of research that brings forth a systematic exposition of the rules governing or determining a particular legal category, analyses the relationship that exists between rules, explains areas of difficulties and perhaps, predicts future developments, is a doctrinal research. Hence, in order to showcase the idea of Liberal Feminist Theory as evidenced in the Rwandan Constitution, this study took an in-depth analysis of rules and norms associated with liberal feminists', while at the same time identifying areas of compliance with Liberal Feminist Theory within the Constitution of Rwanda. This work employed the use of reviewing extensive literatures having bearing with Liberal Feminist Theory, the Constitutions of Nigeria as well as that of Rwanda.

Conceptualisation of Liberal Feminist Theory (LFT)

The first wave of feminism was of a liberal nature (Morrison, 1997) for it focused on the calling for equality under the law. The first wave of feminism argued for equality of treatment for both men and women. Liberal feminists presented women as autonomous beings naturally endowed with the same basic rights and privileges as men and objected to the structural denial to women of the full array of rights and privileges of citizenship that men experienced. The jurisprudential aim was to attain equal legal subjectivity for women as with male citizens (Morrison, 1997). According to Morrison (1997):

Liberal feminism claims that gender differences are not based in biology and therefore women and men are not all that different. Their common humanity super cedes their procreative differences. To them, if women and men are not so different, then they should not be treated differently under the law. Women should have the same legal rights as men and the same educational and work opportunities. Liberal feminism accepts and works with gender system, with the goal of purging it of its discriminatory effects on women. Today, this goal is termed undoing gender. A parallel current goal is main streaming gender by ensuring that government or organizational policies address women's needs.

Instructively, liberals hold the view that freedom is a fundamental value, and that the just state ensures freedom for its citizens. Liberal feminists share this view and insist on freedom for women.

There is however a disagreement within liberal feminism. This disagreement is between two forms of liberal feminism, in other words, (i) classical liberal or libertarian feminism and, (ii) egalitarian liberal feminism (Stanford Encyclopedia of Philosophy, 2023).

Classical liberal or libertarian feminism conceives of freedom as freedom from coercive interference. It holds that women and men both have a right to such freedom because of their status as self-owners. It holds that coercive state power is justified only to the extent necessary to protect the right to freedom from coercive interference. Egalitarian liberal feminism, on the other hand, conceives of freedom as personal autonomy - living a life of one's own choosing - and political autonomy - being co-author of the conditions under which one lives. Egalitarian liberal feminists hold that the exercise of personal autonomy depends on certain enabling conditions that are insufficiently present in women's lives, or that social arrangements often fail to respect women's personal autonomy and other elements of women's flourishing. They hold that women's needs and interests are insufficiently reflected in the basic conditions under which they live, and that those

conditions lack legitimacy because women are inadequately represented in the process of democratic self-determination.

The recent attempt in Nigeria to recognise the LFT in the CFRN was thwarted by the National Assembly in its rejection of the five gender-sensitive bills that would have enhanced women's representation in governance, lends credit to the above assertions of egalitarian liberal feminism. The five gender-sensitive bills could not sail through because of the inadequate representation of women in the National assembly.

Egalitarian liberal feminists hold that autonomy deficits like these are because of the 'gender system,' or the patriarchal nature of inherited traditions and institutions, and that the women's movement should work to identify and remedy them.

Under the banner of liberal feminism, women won most of their legislative and judicial victories (Turnier et al., 1996). In chiding the suffrage, equal pay benefits access to the suffrage, equal pay benefits access to employment and education (Ackerly, 2001), the right to service as juries and the limited right to choose to terminate a pregnancy. Leading adherents to this school included Wendy Williams, Herma Hill Kay and Nadine Taub. Although its most prominent representative is Justice Ruth Ginsburg, who, with the co-operation of the American Civil Liberties Union (ACLU), participated in a number of law suits that challenged gender-based discrimination in a variety of contexts and gained a considerable set of victories all based on legal liberalism.

For emphasis, in the case of-

Reed v. Reed 404 US 71, 77 (1971), where the court invalidated a statute that preferred men over women as administrators of estates; *Frontiero v. Richardson* 411 US 677 (1973), where the court held that the families of female military officers were entitled to housing and benefits on the same basis as were the families of male offices; and *Weinberger v. Wisenfeld* 420 US 636 (1975) where the court demonstrated a universal approach by striking out portions of the Social Security Act that awarded child care benefits only to mothers and not to fathers caring for minor children.

Given that the notions of legal liberalism are those of neutrality, impartiality and universality, liberal feminists constantly insist that arguments and legislative provisions had to be framed in such a way as not to contradict these ideas.

Nigerian constitution on Liberal Feminism

From the onset, one must recognise the fact that the CFRN reflects several principles, ranging from the common law, customary or ethnic law, as well as the Islamic law principles. All these, including the just emerging ideas of constitutionalism must also come into relevance, as an aspect against which the CFRN must be assessed (Chegwe, 2013).

Feminists' theories, especially those of liberal feminism, have been shaped to reflect on the political, socio-economic and legal status of women; that is, how women's status can be raised politically, socially and economically. This theory is aimed at the rejection of all categories of women's subjugation and oppression, as well as the marginalisation of women in every area of social and political life (Tong & Botts, 2017).

The question then arises: how has the CFRN been able to apply this theory?

The legal framework for women's rights in Nigeria is primarily based on the CFRN (Federal Republic of Nigeria, 1999), although there are some other legal foundations, like international treaties based on women's rights which are ratified by Nigeria.

The CFRN provided, inter alia, that every citizen of Nigeria shall be free from all forms of discrimination whether as to sex, religion, ethnic group, place of origin or political affiliation or opinion (Section 42, CFRN, 1999).

It would have been expected that women in Nigeria should be accorded the full benefit of the above-quoted section of the CFRN in Nigeria, and thus, enjoying all the advantages provided by the LFT. It is unconstitutional that women in Nigeria are discriminated against despite the provisions of the CFRN and the principles of liberal feminism. In elective and appointive political positions, women's participation in Nigerian politics is less than 7%, which is below the 22.5% of the global average and 23.4% of regional average (Oluyemi, 2016).

The CFRN is expected to form the basis and backbone of the rights inherent in every citizen of Nigeria. These inherent rights have been granted by Sections 33 to 44 of the CFRN. Furthermore, in the application of international laws as well as treaties relating or having bearings with the human rights of women in Nigeria, the CFRN is the forerunner and primary source of law, because it is the ground norm from which every other kind of law derives its validity. Hence, any law seen as inconsistent with the CFRN shall always be void to the extent of its inconsistency (Section 1(1), CFRN, 1999).

The CFRN, as the supreme law of the land, permits a system where every international law and treaty is ratified into law by parliament, to become part of the accepted law of the land (Section 44, CFRN, 1999). Thus, all international laws and treaties related to promoting women's rights are seen to be part of Nigerian law, as long as they are ratified. Problems with the application of this, however, occur in Nigeria because of the refusal of many states in the Federation to adopt most of the treaties ratified by the Nigerian government (AU, 2009).

The Federal Government, on its own part, is yet to domesticate some of these international laws and treaties that have been ratified. However, the CFRN has empowered the National Industrial Court of Nigeria to make use of ratified treaties in ensuring that Nigeria meets with the standard of international labour practices as far as matters relating to labour are concerned (Section 254(1)(f)(g)(h), Section 254(2), CFRN, 1999).

Despite the provision of the CFRN regarding the prohibition of all forms of discrimination on the grounds of sex, ethnicity, religion and political affiliation or opinion, reality has revealed that the provision has not been followed to the letter. It also shows that the ideals of LFT have no firm root in Nigeria. This can be seen in the number of female representations in the Nigerian parliament, which has led to the rejection of five gender-sensitive bills in 2020. These rejected bills would have put more political power in the hands of Nigerian women, thereby creating an avenue for the propagation of the LFT in Nigeria.

Hence, the creation of an enabling environment for LFT legally has the potential of strengthening the five bills into law, gender quotas in Nigerian legislative houses, which should be enforced by the Constitution, will enhance the successful passages of gender sensitive bills.

Rwandan constitution on Liberal Feminism

The unique nature of liberal feminism in Rwanda has continued to attract global attention. With the view of securing meaningful political power, women in Rwanda have, within the span of nineteen years, rewritten feminism in the liberal way and form. In terms of unity, integrity, love and dedication towards themselves, the women in Rwanda have become a reference point for women's inclusion in political participation (Shubhra, 2013).

Beginning in 2003, when women accounted for 48.75% of the representation in the Rwandan lower house of parliament, Rwanda became the country with the highest number of women in parliament globally (Wallace et al., 2008). Even across other levels of government, the women in

Rwanda are seen as visible stakeholders, because these women agitated for a strong gender equality in the political agenda.

The question that comes to mind here is: - how did the Rwandan women achieve this great feat?

Rwanda is a small landlocked country in the Great Lakes region of East Africa. Regarding gender balance, 52% of the population are female (Powley, 2006). Rwanda is mostly popular all over the world, mainly because of the 1994 genocide which left the whole country war-torn. More than 20 years after, the country has grown to become a force to be reckoned with, both in terms of reconciliation as well as women's rights (Tripp, 2015). The war in Rwanda, that is, genocide, can be said to be a change catalyst, which has set up a brand new and unique era for the country.

After the 1994 genocide, Rwanda experienced an increase in the feminist movement which was largely because of the fact that: (i) after the war, 56% of men were reported dead (De Walque & Verwimp, 2010), while 80% of women were displaced. This created a gender imbalance in the country, leading to a vacuum in the area of male representation (Rwanda National Census Services, 2003); (ii) because of the loss of many men in the course of the war, women now assume the role of men in the labour force, prompting an immediate reconceptualisation of the way and manner that women are being viewed in the country. About 80% of displaced women, who are now responsible for male-dominated activities, and living in refugee camps, gradually became accessible to international aid in terms of financial aid and grants (Ho & Palvish, 2011). This economic power was to become the reason for the re-conceptualisation of gender laws and economic access for women; and (iii) after the war, ethnic division of the country was eradicated, and subsequently, women were seen as peaceful and progressive actors of post-war Rwanda.

The President of Rwanda, Paul Kagame, was determined to bring forth a united, democratic and an all-inclusive Rwanda, without discrimination amongst its citizens. This was captured in the President's Vision 2020 (Nimusina et al., 2018). In the main, and in relation to this research, the Vision 2020 aimed at, amongst others, gender equality. In relation to gender equality therefore, Rwanda has reached an admirable feat with 64% of female representation in parliament in 2013.

Since 2003, Rwanda has continuously had a gender-sensitive Constitution, with women enjoying equal inheritance rights. Besides the Constitution, Rwanda has also striven to include gender institutions, leading to the creation of the Ministry of Gender and the Promotion of Family. This

ministry has taken it upon itself to ensure that gender is always considered in the entire developmental process of the country (Holvoet & Inberg, 2010).

Redrafting the 2003 Constitution of Rwanda took into cognisance the entire Vision 2020. In the 2003 Constitution, legislative power was divided into two organs: the chambers of the deputies with 80 seats, and the senate, having 26 seats (Republic of Rwanda, 2003). This Constitution made provision for at least 30% minimum representation of women in every decision-making body in all governmental institutions (Burnet, 2008). According to several scholars around the world, this Constitution was tagged the 'Gender Sensitive Constitution'. The 2003 Constitution of Rwanda can be said to be the real transformation which saw to the transitional process from the aftermath of the 1994 genocide. The 2003 Rwandan Constitution became a reference point in terms of equalitarian feminism worldwide. This Constitution saw to the establishment of gender quotas in all governmental organs and public administration.

Aside from the minimum 30% constitutional mark in terms of women's representation in all decision-making bodies, the Constitution of Rwanda also makes provision for representation in the chamber of deputies, where 53 seats are directly elected according to the proportional closed party list, 27 seats are indirectly elected, with 24 seats reserved for women elected by district-level women's councils.

Hence, in Rwanda, the genocide had an economic, social, as well as psychological impact on women, which can be seen in the number of women in representative positions, household heads, as well as the emergence of self-help groups leading to the formation of more than 15,000 women's organisations (Newbury & Baldwin, 2000).

Lessons from Rwanda's constitution

Without mincing words, the representation of women in Rwanda's parliament is premised on the genuine commitment of the government to gender equality, empowerment of women and promoting women's rights (Newbury & Baldwin, 2000). Gender issues in Rwanda are advocated at the highest level with the president advocating for gender equality in his 'Vision 2020' in the 'HeForShe' initiative (Redifer et al., 2020; UN Women Africa, 2015).

In Rwanda, gender equality is a key issue as far as Rwanda's policymaking is concerned. Gender equality is visible in all policy strategies and areas. The National Gender Policy (Republic of Rwanda, 2021) becomes the guiding principle for every public policy choice, enabling the interpretation of gender issues within their respective socio-cultural,

economic and political programmes and plans (Redifer et al., 2020). Within the government's development framework, gender equality and women's empowerment have been mainstreamed as important issues. The 'Vision 2050' (Republic of Rwanda, 2020), which is the government's long-term plan is aimed at achieving upper-middle-income status by the year 2035, with equity, including gender equality, as one of the key issues (Redifer et al., 2020). Furthermore, the National Transformation Strategies (NTS) (2017-2024) (Republic of Rwanda, 2017), which portrays the seven years' mandate where the president made special recognition of gender as a key issue and upholds that gender inclusion, women's empowerment as well as family promotion shall be sustained (Redifer et al., 2020). Gender budgeting is another strong tool employed by policymakers in Rwanda to see to the operation of the gender agenda. Thus, the fiscal budget assists in the evaluation of how the fiscal policies affected men, as against women (Redifer et al., 2020). Another important area where Rwanda is tackling the issue of gender equality is in the area of social protection, where protection strategies have been put in place in order to reduce poverty and inequality. This is also in line with the 'Vision 2020' (Republic of Rwanda, 2012; Redifer et al., 2020).

Rwanda's legal framework must be commended for creating a solid foundation in order to ensure the eradication of gender inequality. The legal framework, through the commitment of the president, has provided equal treatment for women, and has laid down solid goals in order to achieve this (Redifer et al., 2020). The 2003 Constitution, as revised in 2015, has enshrined fundamental principles of gender equality and has further provided a platform for gender inclusion in every sector of the economy (Redifer et al., 2020).

Besides these, several institutions and departments were established in order to see to the smooth running of the gender agenda of Rwanda. Some of these institutions are:

- Ministry of Gender and Family Promotion (MGFP), which is solely responsible for the coordination and management of every policy relating to the implementation of gender, family, women's empowerment and children's issue.
- Gender Monitoring Office (GMO), which has the mandate to monitor trends relating to gender-based violence in the public sector, the private sector, or in civil and religious society. This office liaises with the Rwanda National Institute of Statistics; National Women's Council (NWC), which has the mandate to build capacity in terms of gender advocacy. It represents women's interests at all levels of government.
- Forum for Rwandan Women Parliamentarians (FRWP), which oversees and advocates for gender-sensitive laws.

- National Gender Cluster (NGC), which comprises Rwandan government, development partners and civil society. This is where gender policies are first discussed.

It is not surprising therefore, that having in place all these numerous institutions, coupled with a sound and strong gender-sensitive Constitution, and genuine commitment regarding gender equality, Rwanda, as a country regarding gender equality, is setting the stage for numerous countries of the world to follow, Nigeria in particular.

Conclusion and recommendations

The important role that women play in the development of policies cannot be overemphasised. Investing in females, therefore, enhances economic development by increasing productivity and the promotion of more efficient use of resources. It can also bring about significant social returns and improve child development and survival (Ging-Dwan Boyd, 2016).

There is the argument that when women are educated, human capital is enhanced. It should however be noted that gender inequality is an economic matter, and can always be resolved through market forces (Ging-Dwan Boyd, 2016). Hence, gender equality is reduced to women's opportunity and empowerment. Also, it should be noted that these women's opportunities are always limited to market opportunities and empowerment is constricted to economic empowerment which has bearing with individual human capital development and job attainment (Ging-Dwan Boyd, 2016).

Thus, in the Rwandan feminists' polity, whenever economic goals enter into competition with the gender equality agenda, there is always a preference for the former as seen in the reduction of maternity leave payment from 12 weeks to 6 weeks, despite the number of women in parliament.

Firstly, because, women are in abundance in Nigeria, just like they are in Rwanda. Not allowing women to participate fully in governance is tantamount to a waste of human resources. Rwanda has taken the bull by the horns by not allowing this to happen. Secondly, just like what obtains in Rwanda, the government of Nigeria should identify gender equality in terms of women's opportunity and empowerment. because as seen in Rwanda, several women in their parliament were not able to stop the reduction of maternity leave payment from 12 weeks to 6 weeks. This is mainly so because, gender inequality was reduced to an economic matter, which was resolved through market forces (Ging-Dwan Boyd, 2016).

Rwanda is a proactive nation, armed with brilliant initiatives and ideas which has, in the long run, minimised the gender gaps. Thus, Rwanda

emerged as a world leader in the gender agenda leading to it, being an enviable global leader when it comes to gender equality. The gender agenda in Rwanda has led to visible profits for growth and development.

These researchers, having a strong belief in the present dispensation of Nigeria, are of the opinion that the gender agenda in Rwanda, through President Paul Kagame using the Rwandan Constitution, can as well be replicated in Nigeria through President Bola Ahmed Tinubu's gender agenda using the CFRN as a soft landing. To achieve this, however, the president of Nigeria must be prepared to, first and foremost, develop a genuine commitment towards gender equality in every sphere of the Nigerian polity. This is the very foundation that will culminate into the inclusion as well as recognition of the LFT within the CFRN. As seen in the Rwandan example, President Paul Kagame was determined to bring forth a united, democratic and an all-inclusive Rwanda without discrimination amongst its citizens.

The CFRN needs to be worked upon to include women's participation and representation in governance as well as in all areas where decisions are made, at least, to take an insight from Rwanda. President Bola Ahmed Tinubu is implored to look into this as well. It is pertinent to note that the CFRN should provide for the creation of more ministries and departments in Nigeria that will be responsible for gender issues. This will further inculcate the spirit of LFT within our Constitution.

The CFRN should, in line with LFT, adopt the equalitarian feminist mode, just like Rwanda, by establishing some sort of gender quotas in all governmental organs and public administration. This has become very necessary, because the advancement of women is very critical to good governance, social and economic development and an active civil society (Carlson & Randell, 2013).

Considering that the Liberal Feminist Theory advocates for the equality of all persons, regardless of sex, colour, race or gender, the Nigerian Constitution supports the Liberal Feminist Theory. However, the authors posit that the main issue stems from the implementation of this constitutional standing in ensuring gender equality.

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