

## The Right to Vote: A Consequence of the Right not to Vote

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### ABSTRACT

*In most states where the party system holds, election is characterized, nay, master-minded and attenuated through a political selected few called - the candidate. The result is that the right to vote is a mirage where the candidate is not the people's choice. But who talks about the right not to vote? No one! Is it practicable that the entire nation joins a political party? At the primaries, does the nation have a say? If not, why should a selected few determine the right of the majority to vote? Does it count when the majority say's no we want another Mr. A? This article examines the jurisprudence of the right to vote and the extrapolation or consequence of that right – which is the right not to vote, thereby voting out any unwanted person or godfatherism!*

### Keywords:

Right to vote; Right not to vote; election 2015; Nigeria election; Human rights; Emmanuel Okonkwo articles

### Introduction

Most Countries have enshrined in their constitution the right to vote. However, the right not to vote is silenced. Whether such silence will be interpreted as a consequential enthymeme of the premise 'to vote', therein lies the problem. Infact some countries, like India in 2014 enacted for the Gujurat, a law compelling mandatory vote.<sup>1</sup> This raises the fundamental question whether the right to vote is a *duty* or a *right*?

In Nigeria, the silence is equally witnessed. Infact, the media campaign and national orientation of the right to vote has been so overblown from ages that the right not to

vote is alien in the peoples mind. But does Nigerians prefer the present politicking and brouhaha? Surely no! The average Nigerian, nay, even the elites, continue to resign to the cyclic flux of political bedlam. From Independence till present day, we continue to vote the same old military juntas or disguised civilians in the Juntas oriented parties.

The truth is that where the party system holds, election is characterized, nay, master-minded and attenuated through a political selected few called - the candidate. The result is that the right to vote is either grossly limited or becomes a mirage where the candidate is not the people's choice. But who talks about the right not to vote? No one! Is it practicable that the entire nation joins a political party? At the primaries, does the nation have a say? If not, why should a selected few determine the right of the majority to vote? Does it count when the majority say's *no we want another Mr. A*? Is the right to vote truly a duty or right? If we subscribe to some scholastic opinion that it is a duty, is it not also a duty of every citizen to exercise the right not to vote as a means of voting out unwanted candidates? Should we be tied to party's choice where we don't trust either of the candidates?

Using Nigeria as a case study, we shall now objectively plunge into the jurisprudential issues raised.

### Voting: A Duty or Right?

Among the rights enumerated by Law and decided by the Courts, Voting has been held to be a Right. Since the law has cleared the

air, there would be no need raising the dust again.

On the other hand, whether voting is a duty, we will need to recall Holfield's analysis of legal concepts. A duty is one whose breach will necessitate the victim to enforce performance. In extreme form, if A has a right then B has a duty to respect it. If A is entitled to that right and it is within B's power, then B has a duty to allow the enjoyment of that right.

Now, in Nigeria Law, the citizen's has a right to vote without prejudice to the criteria enumerated by the Constitution. If the Electoral Commission deprives any entitled citizen from such right, the citizen can apply to compel the Commission within fundamental right actions. Infact irregularities and corrupt practices is one of the grounds for declaring an election void (unfortunately only a candidate or his party can bring such actions).<sup>2</sup> But the Commission nor the Government cannot compel any person by law to vote. It therefore means that Voting is a right not a duty within the parlance of law.

On ethical grounds, it would be the case that citizens should see it as a duty to vote so that participation and co-relation should be maintained. Even so, it would be ethical too for citizens to shun off depraved and corrupt practices by saying no to voting the bad eggs.

### Is There a Right not to Vote?

There is a principle of law which stipulates that the express mention of one thing is to the exclusion of any other. There is another principle of law which states that the mention of a particular class necessarily includes other things of the same class. The logical question is – which of these rules best applies?

The Nigerian Jurisprudence seems to admit only of the right to vote like the Constitution of many Countries. Writers like H. Lardy have opined that '*There may be convincing arguments against compulsory voting, but the suggestion that there is a right not to vote is not one of them*'.<sup>3</sup> Fortunately, we must look deeper into the spirit and letters of the Constitution to understand the intendment of the Draftsman.

Now, what is the rationale behind voting? To elect trusted and capable hands that will ensure continuity and good governance of the community. Who is to ensure this and by what means? The people through election. How can one emerge for an election? Through a political party. Are the entire citizens expected to be in a political party? No. Who can the people elect to trust and handle the governance of the country? The candidate selected by the political party. Do the citizens partake in the selection of the primaries/candidate? No. How then can they control this anomaly if the candidate is not trustworthy or capable? **By not voting for him.** Should the answer be different if there are two candidates both of which are not capable or trustworthy?

If we follow the first principle of Law above which favours H. Lardy's argument, then there would be grave consequences which militates against the right to vote. Surely, the draftsman couldn't have intended to place the party against the people. Less the Constitution will be a bulk of lies starting from the preamble which reads '*we the people...*'

It follows therefore that the best interpretation which also conforms to the golden, mischief and purposive rules, is the second. The right to vote includes the right not to vote. Like the other school of taught, one may worry about the state of anarchy that would be. But it doesn't follow. A sort of government must have been in existence before election and so is the judiciary. The

people have a right to say they want an independent person not selected by the party. Or even a non-party member if the interpretation of the Constitution so allows. According to Azinge, it is a democratic principle that the people not the few, should decide.<sup>4</sup>

### **Nigerians Electoral Altitude: A Contributory Negligence**

Dr. Sharma did a spectacular examination of the Plebians in Shakespeare's *Julius Ceaser* where he exposed the fleeting altitude of the citizens. Unfortunately, the Nigerians are not much different. By 1964, most Nigerians had become disenchanted with the political leadership of the first republic according to Agbanusi.<sup>5</sup> Doubts were expressed, others simply hoped and waited. The Election was between two coalition parties which are but coalitions of previous failed parties. The United Progressive Grand Alliance (coalition of NCNC) and AG, NNA (coalition of NPC) etc.

The Nigeria political parties are but replicas of the old idea and godfather's which bedevils our dreamed progress. It is worrisome to observe that Nigerians know what the outcome would be and yet goes to elect these persons because they are scared it is a civic duty instead of a right, or they are scared that the government may hinder their peaceful progress by bringing out measures like Electoral Identity Card for recognition etc.

Presently, the country prepares for the 2015 elections. Two major political parties of the large population are bringing out candidate for election. The candidate include the outgoing president from PDP whom many have ascribed failure to, and a past head of state whom many are scared of his religious and tribal inclinations, not to talk of his being among the military juntas or his alleged relation with the Boko Haram sect upon which Nigeria crumbled. The fundamental question is this – Do Nigerians prefer this two? No. Rather we are now forced to thinker which of the two bad scenarios is less evil. This is the Nigerian altitude that clogs the wheel of progress.

The point is that it doesn't have to be so. The Nigeria community can decide not to vote. Better still; the people can say we are not voting until this political party brings out our preferred candidate! The truth is that many have muttered a lot about the best possible president which is ascribed to either the Governor of Lagos State, Fashola. Why did the APC not bring him out? Why should the people's choice or even if it were to be some few persons, why should their say not count in a democracy? Why must we choose between two evils if we have one good? No, Achebe would be wrong within current time to say Nigeria's problem lies in Leadership. I think it lies in Followership. A few cannot be greater than many. Something must be deficiently wrong with the many. Until Nigerians within the Law, begins to exhaust their rights, and lawyers and Judges becomes radical and pro-active, we will continue to live in a cyclic regression. What

woe lays there my countrymen!

### **REFERENCE**

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<sup>2</sup> Section 137 (1) and 138, Electoral Act 2010.

<sup>3</sup> *Oxford J Legal Studies (SUMMER) 24 (2): 303-321. doi: 10.1093/ojls/24.2.303*

<sup>4</sup> E. Azinge, 'The Right to Vote in Nigeria: A Critical Commentary on the Open Ballot System' *Journal of African Law*, Vol. 38, No. 2 (1994), pp. 173-180 Published by: [Cambridge University Press](http://www.cambridge.org/9780521875210)

<sup>5</sup> A, Agbanusi, 'The History of Top-Power Shift in Nigeria and the Philosophy of the Nigerian State' in N. Okediadi, et al (eds), *Themes In Nigerain Peoples And Cultures'* (Awka: General Studies N.A.U, 2010) p. 111