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## CONUNDRUM IN EXERCISE OF RIGHT TO PERSONAL LIBERTY IN NIGERIA: NOT YET VICTORY FOR SUSPECTS

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#### Abstract

The right to personal liberty of persons is a constitutional guaranteed right under section 35 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999. This right include the right of a suspect to be arraigned in court or granted bail within twenty-four or forty-eight hours or more as the case may be. The CFRN 1999 provides that suspects may be detained for more than forty-eight hours without being arraigned in court or granted bail under certain circumstances exclusively reserved for the court to determine. The only caveat is that it must be reasonable to the court to so determine. The Constitution did not clearly define such circumstances, save and except that it must be reasonable to the court. The author therefore attempts to resolve the dilemma as to the adequacy or inadequacy of the said section 35 of the CFRN 1999. In order to achieve this, the paper undertakes a critical examination of section 35 of the CFRN 1999 and inherent interrelatedness with the concept of human right, fundamental rights and human rights' violations. The author maintained that there are certain circumstances that are necessary to be considered in section 35 of the CFRN 1999 in order to improve the provisional potency of the said section, and in order to act as a catalyst in protecting the rights of Nigerian citizens against illegal and prolonged detention. The author therefore assumed the position that section 35 of the CFRN 1999 is inadequate in the overall process of guaranteeing the protection of the rights of Nigerian citizens against prolonged detention.

Keywords: Right, Personal liberty, Constitution, Detention, Bail, Suspects Arraignment.

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#### 1. Introduction

The Constitution of every country including that of Nigeria, make provision for the fundamental rights of its citizens. The Constitution of the Federal Republic of Nigeria (CFRN) 1999 provides for the fundamental rights of Nigerian citizens in its Chapter IV.<sup>1</sup> Among these rights is the right to personal liberty which include the right of a suspect to be brought before a court of competent jurisdiction within a reasonable time.<sup>2</sup> Particularly, section 35(5) of the CFRN 1999 provide that a suspect shall be arraigned in court within a day when the court is within forty kilometres radius and two days or more in any other case as the court considers to be reasonable in the circumstance of the matter.<sup>3</sup> What is reasonable in the said section was not defined in the said section or any other section of the CFRN 1999. This has posed a major challenge in the determination of what is reasonable in the said section as law enforcement officers more often than not rely on this undefined circumstances in denying Nigerian citizens their constitutional right to be brought before a court of competent jurisdiction or granted bail in the alternative within forty-eight hours. This is more so as section 35(5)(b) of the CFRN 1999, clearly provides from its wordings that it is the court that can determine whether or not a circumstance is reasonable in any issue of prolonged detention.

Drawing attention from above, the article undertakes a critical examination of section 35 of the CFRN 1999. It explains the concept of human right, fundamental rights and human rights' violation. Also, it explains the meaning of suspect, bail, capital and non-capital offenses, and arraignment. It examines requisite circumstances that are necessary to be considered in section 35 of the CFRN 1999 in order to improve the provision of the said section in protecting the rights of Nigerian citizens against illegal and prolonged detention. The article settles the argument on the adequacy or inadequacy of the provision of the section 35 of the CFRN 1999 in guaranteeing the rights of suspects against prolong detention. It takes the position that section 35 of the CFRN 1999 is inadequate to protect the rights of Nigerian citizens against prolong detention. It proffers prospects in the process of consideration of bail which if implemented could facilitate the protection of the right of a suspect against prolong detention.

<sup>&</sup>lt;sup>1</sup> CFRN 1999, Chapter IV.

<sup>&</sup>lt;sup>2</sup> *Ibid.*, S. 35(4).

<sup>&</sup>lt;sup>3</sup> *Ibid.*, S. 35(5)(a) & (b).

#### 2. Conceptual Clarification

In order to better understand this article, the following concepts and terms would be explained: human rights, fundamental rights, human rights violations, suspects, bail, capital and non-capital offences, and arraignment.

#### A. The Concept of Human Rights

Human rights are rights inherent in all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.<sup>4</sup> Human rights, include but not limited to the right to life, personal liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work, and so on.<sup>5</sup> Everyone is entitled to these rights, without discrimination.<sup>6</sup>

#### B. The Concept of Fundamental Rights

Abuza notes that rights can either be fundamental or non-fundamental.<sup>7</sup> Fundamental rights are so critical in the lives of every citizen of a country.<sup>8</sup> These rights are called fundamental rights because they are provided for or guaranteed in the fundamental law of the land, that is, the constitution of a country.<sup>9</sup> Fundamental rights are contained in the constitution of a country.<sup>10</sup> They are enforceable rights which are guaranteed to all citizens in the country.<sup>10</sup> They are the essential rights contained in a country's constitution which all citizens enjoy irrespective of caste, creed, place of birth, religion, or gender.<sup>11</sup>

#### C. The Concept of Human Rights' Violations

Human rights are protected when people receive some degree of decent and humane treatment.<sup>12</sup> On the other hand, human rights are violated when fundamental moral

<sup>4</sup> 'Human Rights' <https://www.un.org/en/global-issues/human-rights> accessed 18 March 2024.

<sup>&</sup>lt;sup>5</sup> *Ibid.* 6 *Ibid.* 

<sup>&</sup>lt;sup>6</sup> *Ibid.* 

A. E. Abuza, 'Derogation from Fundamental Rights in Nigeria: A Contemporary Discourse' *East African Journal of Science and Technology* [2017] 7(1) 109.

<sup>&</sup>lt;sup>8</sup> *Ibid*.

<sup>&</sup>lt;sup>9</sup> D. Adu and E. Randle, 'Fundamental Human Rights Under the 1999 Constitution (As Amended)' <a href="https://www.mondaq.com/nigeria/human-rights/1221232/fundamental-human-rights-under-the-1999-constitution-as-amended">https://www.mondaq.com/nigeria/human-rights/1221232/fundamental-human-rights-under-the-1999-constitution-as-amended</a>> accessed 11 June 2024.

<sup>&</sup>lt;sup>10</sup> *Ibid*.

<sup>&</sup>lt;sup>11</sup> Pediaa, <a href="https://pediaa.com/what-is-the-difference-between-human-rights-and-fundamental-rights/">https://pediaa.com/what-is-the-difference-between-human-rights-and-fundamental-rights/</a> accessed 4 June 2024.

<sup>&</sup>lt;sup>12</sup> D. Hubert and G. Thomas, *The Responsibility to Protect: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre, 2001) 144.

entitlements of individuals are denied.<sup>13</sup> It is, in a sense, to treat humans as if they are less than human and undeserving of respect and dignity.<sup>14</sup>

#### D. The Meaning of Suspect

The earliest known use of the word 'suspect' can be traced to as far back to the 1150-1500 period of Middle English. It originated from the Latin word '*suspectus*' which means 'suspected, regarded with suspicion or mistrust'.<sup>15</sup> Generally, it means a person that is suspected to have done something. When used in criminal law, it means a person that is suspected to have committed an offence. A suspect is a person who though has not been found guilty, is believed to have committed a crime.<sup>16</sup> When a suspect is arrested and arraigned in court, he may then be referred to as a defendant, and after such suspect is found guilty and convicted, he would then be referred to as an offender or ex-convict.<sup>17</sup> It therefore means that until a person is arrested, tried, and found guilty to have committed an offence, such a person is presumed innocent, and entitled to certain rights which include but not limited to the right to personal liberty which though may be limited, but cannot be taken away from such a person completely. It is premised on this position of the law that a person who is suspected to have committed a non-capital offense is entitled to be granted bail or arraigned in court within twenty-four or forty-eight hours or more as the case may be.

#### E. The Meaning of Capital and Non-Capital Offenses

Offenses are classified as capital and non-capital. This classification is based majorly on the prescribed nature of punishment of the offence. Under criminal law, every law prohibiting an act has a prescribed punishment. In other words, upon finding a person guilty of committing an offence, the court applies certain punishment which is usually known as sentence. Punishments differ in gravity depending on the gravity of the offence as provided for in the law prohibiting the offence. Some of these punishments include but not limited to payment of fine, forfeiture of property or properties, years of imprisonment, life imprisonment, and death sentence.

Generally, when a law prohibiting an offence provides for fine, forfeiture of property or properties, years of imprisonment, and other minor punishments, such an offence is referred to as a non-capital offence. On the other hand, when a law provide for death sentence for an

<sup>&</sup>lt;sup>13</sup> *Ibid.* 

<sup>&</sup>lt;sup>14</sup> *Ibid.* 

<sup>&</sup>lt;sup>15</sup> 'Origin of Suspect' <a href="https://www.etymonline.com/word/suspect">https://www.etymonline.com/word/suspect</a>> accessed 24 August 2024.

<sup>&</sup>lt;sup>16</sup> 'Suspect' <https://www.law.cornell.edu/wex/suspect> accessed 24 August 2024.

 $<sup>^{17}</sup>$  Ibid.

offence, such an offence is referred to as a capital offence. It should be noted that life imprisonment is sometimes used as an alternative to death sentence. While capital offences are generally non-bailable, non-capital offence are bailable.

However, it should be noted that in ascertaining if an offence is bailable or non-bailable do not always follow the general position above. This is so because, more often than not, laws prohibiting an offence always state if a suspect arrested for such offence should be granted bail or not. Under the criminal legal system in Nigeria, offences carrying death sentence are clearly stated to be non-bailable offences. However, bail can be granted to such suspects under special circumstances which include but not limited to ill health. This position is premised on the fact that a suspect or defendant can only face his trial while alive, and his death will do no justice to the matter. It therefore follows that bailable offences are offences which persons suspected to have committed are entitled to bail under the law providing for such offences. When an offence is bailable in nature, denial of bail coupled with the refusal to arraign the person suspected of committing such an offence in a court of competent jurisdiction, amounts to the violation of the fundamental right of such a person. This is the main subject of this article.

#### F. The Meaning of Arraignment

Arraignment is the process of formally accusing a person in a law court of committing an offence.<sup>18</sup> Any person accused of an offence in a law court is required to formally respond by stating if he is guilty of such accusation or not.<sup>19</sup> This response is known as 'plea'.

### 3. The importance of Bail

In order to better understand the importance of bail, this heading would resolve some questions under the following sub-headings.

#### 3.1 What is Bail?

Bail is the process whereby persons arrested and detained on the suspicion that they have committed an offence, are released from custody either on self-recognisance or on the undertaking of a surety to appear on a feature date.<sup>20</sup> It is the temporary release of a suspect

 <sup>&</sup>lt;sup>18</sup> Cambridge Dictionary, <<u>https://dictionary.cambridge.org/dictionary/english/arraign> accessed 26</u>
August 2024.

<sup>&</sup>lt;sup>19</sup> *Ibid*.

<sup>&</sup>lt;sup>20</sup> 'Understanding Bail' <a href="https://nigeria.action4justice.org/legal\_areas/detention-and-bail/understanding-bail/">https://nigeria.action4justice.org/legal\_areas/detention-and-bail/understanding-bail/>bail/>accessed 26 August 2024.

from the custody of the detaining authority while investigation of the offence suspected to be committed is still on-going.

#### 3.2 Who is entitled to Bail?

All persons that have been arrested and detained on the suspicion of committing an offence are entitled to bail.<sup>21</sup> Bail is a constitutional right provided for under the following municipal laws in Nigeria:

- i. Section 35(4) and (5) of the CFRN 1999.
- ii. Section 158 of the Administration of Criminal Justice Act of 2015.
- iii. Section 27 of the Police Act.

However, and like already stated, it should be noted that the right to bail is sometimes restricted when the gravity of the offense suspected to be committed is serious or heavy in nature. The Criminal Code Act defines offences into the following categories:

- a. Simple offences: these offences are punishable with less than six months imprisonment.
- b. Misdemeanour offences: these are offences punishable with imprisonment of more than six months but less than three years
- c. Felonious offences: these are offences punishable with a term of imprisonment of three years and above
- d. Capital offences: these are offences punishable by a sentence of death penalty.<sup>22</sup>

When a person is arrested and detained on the suspicion of committing a capital offence, such a person may be denied bail due to the gravity of the capital offence. While for other offences, there is usually a presumption of bail in favour of a suspect.

Generally, bail lies at the discretion of the court. Hence, in exceptional circumstances, a suspect charged with a capital offence punishable with death may still be granted bail by a high court in Southern Nigeria which is governed by the Criminal Code Act.<sup>23</sup> However, this is not the case with Northern Nigeria which is governed by the Penal Code.<sup>24</sup> It therefore

<sup>&</sup>lt;sup>21</sup> *Ibid.* 

<sup>&</sup>lt;sup>22</sup> *Ibid.* 

 <sup>&</sup>lt;sup>23</sup> Nigeria: Criminal Code Act, Cap C38, Law of the Federation of Nigeria (LFN) 2004
<a href="https://www.refworld.org/legal/legislation/natlegbod/1916/en/65684">https://www.refworld.org/legal/legislation/natlegbod/1916/en/65684</a> accessed 27 August 2024.
<sup>24</sup> Penal Code Act Cap C53 LFN 2004.

follows that in an application for bail in a case of capital offence punishable with death in the Southern Nigeria, the onus is on the defendant/applicant to prove special circumstance that exist in justifying why the court should grant him bail. This is usually done with credible affidavit evidence.

#### 3.3 How can Bail be granted?

Generally, there are two types of bail. Bail on self-recognisance, and bail on undertaking by a surety. Bail on self-recognisance is when bail is granted to a suspect based on his personality. When a suspect is assessed to be responsible, well-known, and prominent in the society, bail may be granted to such suspect without requiring him to provide a person that will guarantee his appearance on a feature date. Such a suspect must also be assessed as one who is not motivated to jump bail. It should be noted that this kind of bail is rarely granted. The most common kind of bail is that granted under an undertaking by a surety.

On the other hand, bail granted on undertaking by a surety is when a person guarantees the appearance of a suspect on a future date. Such a person must be one that is assessed to be responsible, well-known, prominent, and capable of producing the suspect on a future date.

#### 3.4 What are the types of Bail?

Generally, there are two types of bail. Administrative bail and court bail. Bail is said to be administrative when the security agencies who are vested with the power to investigate the commission of an offence, and who is the custodian of a suspect, grants bail to such suspect pending the completion of the investigation of an alleged offence. On the other hand, court bail is when the court grants bail to a defendant or applicant upon an application for bail by such defendant or applicant. It should be noted that bail can also be granted by the court *suo muto* when the offence is bailable, and defendant is not represented by a legal practitioner.

#### 3.5 What is the Purpose of Bail?

The main purpose of bail is to secure the appearance of a suspect on a future date. Since the law provides that every person is presumed innocent until proven guilty, the prolonged detention of a suspect therefore amounts to the violation of the constitutionally guaranteed right to personal liberty of such suspect. Hence, the only way to prevent such violation is to grant bail to such suspect. It therefore follows that bail is granted to suspects in order to avoid the wrongful detention of a suspect pending the completion of investigation or trial. In the

case of *Shagari v Commissioner of Police*,<sup>25</sup> the Court of Appeal held that the arrest and continuous detention of the accused for more than forty-eight hours amounted to the gross violation of his fundamental right to personal liberty.

In a similar vein, the Honourable apex court in the case of *Sanjay Chandra v CBI*<sup>26</sup> held that:

The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.<sup>27</sup>

## 4. The Right of a Suspect to be arraigned in Court or Granted Bail within Forty-Eight Hours of Arrest: Issues

The CFRN 1999 provides for fundamental rights of Nigerian citizens.<sup>28</sup> These fundamental rights are collectively-intended to protect the rights of Nigerian citizens. Among these rights is the right to personal liberty,<sup>29</sup> which include the right of a person to be arraigned in court or granted bail within twenty-four or forty-eight hours or more of the person's arrest, depending on the circumstance of the case.<sup>30</sup> For the purpose of clarity, section 35(1) of the CFRN 1999 provides thus:

- (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -
- (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- (b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

<sup>&</sup>lt;sup>25</sup> Shagari v Commissioner of Police [2007] 5 NWLR (Pt 1027) 257, 299, CA, Nigeria.

<sup>&</sup>lt;sup>26</sup> Sanjay Chandra v CBI (2012) 1 SCC 40.

<sup>&</sup>lt;sup>27</sup> *Ibid*.

<sup>&</sup>lt;sup>28</sup> CFRN 1999, Ss. 33-46.

<sup>&</sup>lt;sup>29</sup> *Ibid.*, S. 35.

<sup>&</sup>lt;sup>30</sup> *Ibid.*, S. 35(4).

- (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;
- (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or
- (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto: Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a longer than the maximum period period of imprisonment prescribed for the offence.<sup>31</sup>

While the exceptions to the right to personal liberty above is understandable, the addendum in section 35(5) of the CFRN 1999 that a suspect may be detained for more than forty-eight hours depending on the circumstances of the case as to be determined by the court, appears to be vague and verbose. Again, for the purpose of clarity, the provision of section 35(4) and (5) is herein reproduced hereunder:

- (4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of –
- (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
- (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

- (5) In subsection (4) of this section, the expression "a reasonable time" means -
- (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and
- (b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

The provision of section 35(5)(b) of the CFRN 1999 above to the effect that a suspect may be detained without being arraigned in court or granted bail for 'such a longer period as in the circumstances may be considered by the court to be reasonable', has more often than not been ignored by legal practitioners, writers and commentators. The general conception is that a suspect must be granted bail or arraigned in court within twenty-four hours or at most forty-eight hours of his arrest when the distance of the court exceeds forty kilometres radius. Much attention has not been paid to the addendum that a suspect may be detained without being arraigned in court or granted bail for more than forty-eight hours. Could it mean that the said addendum in section 35(5)(b) is not to be interpreted and applied along the general provision of section 35 of the CFRN 1999? If this the case, then it is a victory for suspects. If this is not, then it is not yet victory for suspects. The author is of the firm position that it is not the case, and as such, not yet victory for suspect. This position of the author is premised on the position of the law that statutes are not to be read and interpreted in isolation. This position of the law was quoted by K.G. Balakrishnan and B.N. Srikrishna., JJ thus:

However, it is well recognised that, when a rule or a section is a part of an integral scheme, it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of a provision leads to the risk of some other inter-related provision becoming otiose or devoid of meaning.<sup>32</sup>

In relying on the position of the law as quoted above, one can conveniently conclude that the provision of CFRN 1999 cannot be read nor interpreted in part but in whole. And if this is the case, then it is not yet victory for suspect.

In addition to the above, the fact that the CFRN 1999 is the *funs et origo*<sup>33</sup> of all laws makes its provisions supreme above every other law in Nigeria. The supremacy of the CFRN 1999 is provided for in section 1 particularly section 1(3) thus:

- (1) This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.
- (2) The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.
- (3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.<sup>34</sup>

The implication of the forgoing is that the CFRN 1999 has not guaranteed the right of a suspect from prolonged detention absolutely as the addendum in section 35(5)(b) had envisaged circumstances that may warrant detaining a suspect of a non-capital offence for more than forty-eight hours without being arraigned in court or granted bail. The fact that the said section 35(5)(b) gives the court the power to determine the circumstance that may warrant detaining a suspect of non-capital offence for more than forty-eight hours, is another challenge to the enforcement of the fundamental right to personal liberty. The implication of this addendum is that law enforcement agencies have been permitted to bring an application for the detention of a suspect for more than forty-eight hours notwithstanding whether or not the offence is a non-capital offence. In fact, the said section has given the law enforcement agencies wide-discretion in bringing an application that may violate the right of a suspect to his personal liberty. More worrisome is the fact that the said section has not provided for instances that may warrant such prolonged detention or application. When public officers are trusted with wide-discretional powers of this nature, it is more often than not misused. This fact poses a serious challenge to the enjoyment of the right to personal liberty of a suspect.

# 5. Requisite Circumstances to be considered in Section 35 of the CFRN 1999

The inadequate provision of law is always a set-back to the realisation of the full-intention of the makers of every enactment. The CFRN 1999 is not an exception. Under this heading, this

<sup>&</sup>lt;sup>33</sup> It means the source and origin. Collins Dictionary

<sup>&</sup>lt;sup>34</sup> <a href="https://www.collinsdictionary.com/dictionary/english/fons-et-origo">https://www.collinsdictionary.com/dictionary/english/fons-et-origo</a> accessed 28 August 2024. CFRN 1999, S. 1.

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article would discuss some circumstances that were not envisaged by the National Assembly of Nigeria while drafting section 35 of the CFRN 1999 as it relates to the right of a suspect to be granted bail or arraigned in court within forty-eight hours or more as the case may be. This is important as these circumstances appear to defeat the full-realisation of the said section and the Constitution as the case may be.

#### 5.1 Weekends and Public Holidays

While the CFRN 1999 provides for the right of a suspect to be granted bail or arraigned in court within twenty-four or forty-eight hours or more as the case may be, the Constitution did not consider the fact that Saturdays and Sundays which are usually non-working days could defeat the purpose of the said section. This is so because the Nigerian courts do not sit on a non-working day unless on agreement of parties in special circumstances. Therefore, persons who are arrested and detained on Fridays and Saturdays may find it difficult in enforcing their right against prolonged detention as provided for in section 35(5) CFRN 1999. This is so because the twenty-four or forty-hours of a suspect in custody may elapse on a Saturday or Sunday which are non-working days. When this is the case, the Police and other law enforcement authorities as custodian of a suspect may refuse bail and insist on waiting till the next working day to arraign such suspect to court. This is also the case with public holidays. The Police and other law enforcement agencies may refuse bail during public holidays and insist on waiting till the next working day to arraign a suspect in court. Each and every time the Police and other law enforcement agencies rely on weekends and public holidays to detain suspects for more than twenty-four or forty-hours, the fundamental right to personal liberty of such suspects are violated. This problem is as a result of the fact that the CFRN 1999 is silent on how a suspect should be treated during weekends and public holidays. This inadequacy needs to be urgently addressed in order to ensure that the right to personal liberty of all Nigerians is fully-protected.

#### 5.2 **Strike action by Judiciary Workers**

Strike action also known as labour strike or industrial action is the process of work stoppage by mass employees who refuse to work.<sup>35</sup> When workers are aggrieved, they sometimes express their grievances by embarking on a strike.<sup>36</sup> It is a means by which employees express their unresolved dissatisfaction and labour dispute. Judiciary workers are civil servants who aid judges in courts in carrying-out the judicial functions of the court. Rightly or wrongly,

<sup>35</sup> A. Bamidele, 'Industrial Action in Nigeria: Legality, Causes and Consequences' Idosr Journal of Current Issues in Social Sciences [2020] 6(1) 1-8. Ibid.

<sup>36</sup> 

judiciary workers do embark on labour strike or industrial strike. Each time they do this, the court house is locked as the judiciary workers are the officials that carry-out all other functions except that of the judge. These functions include but not limited to opening and closing the court premises, cleaning court rooms and premises, keeping records of cases and other official documents for the court, filing of court processes, calling of cases in open court, and so on. It is therefore clear that without the judiciary workers, the court cannot function.

From the forgoing, if the court cannot function during the period of labour strike of judiciary workers, what then is the fate of suspects during this period of the strike? Would they be kept in custody continuously till whenever the strike is called off? The CFRN 1999 has not made any provision relating to this circumstance. This is another challenge to the full-realisation of the right to personal liberty of persons. It should be addressed urgently in order to ensure the right to personal liberty of persons is protected and guaranteed in Nigeria.

### 6. **Prospects in the Process of consideration of Bail**

The bane of laws is inadequate provisions in laws.<sup>37</sup> The CFRN 1999 is no exception. A critical recommendation that is worthy of note is that the inadequate provision of section 35 of the CFRN 1999 should be seriously and urgently addressed by the National Assembly of Nigeria. This is necessary, so as not to create the impression that the Nigeria government itself is not serious with the protection of the fundamental right to personal liberty of Nigerian citizens. Other critical recommendations that are worthy of note includes the following:

- I. The CFRN 1999 should be amended in its section 35(5) to delete the addendum 'or such longer period as in the circumstances may be considered by the court to be reasonable'. Alternatively, the CFRN 1999 should be amended in the said section by way of expanding the section to define and or outline circumstances that may be considered to be reasonable by the court as stated in the said section.
- II. The CFRN 1999 should be amended in its section 35 to make provisions for how a suspect would be treated during the weekends, public holidays, and the duration of judiciary workers strikes as it relates to the right of the suspect against prolonged detention. This article suggest that because fundamental rights of Nigerian citizens are paramount and constitutional, the federal government of Nigeria should establish a special court that sits on weekends, public holidays, and during the period of labour

<sup>&</sup>lt;sup>37</sup> O. Imoni-Ogbe, 'Establishing the Legal and Regulatory Framework on Education in Nigeria' *The KB Law Scholars Journal* [2024] 1(3) 85-95.<https://kblsp.org.ng>

strikes of Judiciary workers. This will no doubt eliminate the excuses of law enforcement agencies relying on weekends, public holidays, and strike of judiciary workers to detain suspects beyond the constitutional allowed period.

#### 7. Conclusion

From the forgoing, it is clear that the provisions of section 35(5) of the CFRN 1999 has not absolutely prohibited the detention of a suspect for more than forty-eight hours without being arraigned in court or granted bail. The wordings of section 35(5)(b) suggest that the law allows for circumstances in which case a suspect may be detained for more than forty-eight hours, and such detention may not amount to the violation of the right to personal liberty of such suspect. The author takes the stance that the provisions of section 35 of the CFRN 1999 is inadequate in tackling the challenges associated with the realisation of the right to personal liberty of Nigerian citizens. The author has demonstrated prospects in the process of consideration of bail which if implemented would ensure the full-realisation of the right to personal liberty of Nigerian citizens and all persons living in Nigeria.

