

JUDICIAL SOVEREIGNTY, A SINE-QUA-NON TO DEMOCRACRATIC GOVERNANCE: A NIGERIAN PERSPECTIVE

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ABSTRACT

A vibrant Judiciary is an essential ingredient of democracy given its role as the third arm of the government. In an advanced democracy, the judiciary enjoys sovereignty in the discharge of its duties. This is in tandem with the principle of separation of power, checks and balances. Unfortunately, the situation in evolving democracies like Nigeria seems to contravene the tenets of separation of power. This study examined the extent of judicial sovereignty in and its impacts on democratic governance in Nigeria. The Methodology of the paper is both qualitative and descriptive. Relevant data from secondary sources were generated and analysed via contextual-analytic approach. The findings of the paper show that Nigeria Judiciary is not independent from the other arms of government in the discharge of its duties. The scramble between these two big wigs in the country now makes the court seen by the Nigerian public as a toothless bull dog because, the expected is no longer seen from them, rather, they dance to the tune of the drum players which always metamorphose to electoral manipulation and fraud and thus, have negative impact on advancement of democracy in Nigeria. The paper argued that, for democracy to consolidate in Nigeria, the Judiciary must be independent and corrupt free. Thus, the paper recommends some measures to ensure judicial sovereignty and palpable ways to advance democracy.

KEY WORDS: Judiciary, Sovereignty, Judicial Sovereignty, Nigeria and Democratic Governance.

JEL Classification: D72, D73, G38, K10, P37, and P48.

1. INTRODUCTION

The performance of the Nigerian judiciary has become a subject of national debate. It has at different quarters been paraded as a matter of crucial policy agenda for the government and the society over the past three decades. This is why many investigative panels, administrative groups, commissions, committees, panels and bureaux have been set-up to resolve the problems of poor performance and corruption in this organ of government. The need to ensure that the judiciary produces expected results in government with emphasis on rulings and adjudication without bias cannot be wished away. Moreover, the manner of implementation of judicial rulings and orders has more than ever before been brought to the fore. Non-compliance to court orders and rulings by other arms of government have been largely been an affront on the integrity of the court (Dede, 2017).

There have been serious allegations of fraud, professional misconduct and other unethical practices against persons in the judiciary. Recently the Directorate of State Security Services (DSS) and the Economic and Financial Crimes Commission (EFCC) made some arrest and detention of some senior judges of the Federal High Court. This led to suspensions and demotions of some of the errant judges. One begins to ask how responsive and responsible is the judiciary as the last hope of the common with emphasis on the dispensation of justice without fear, intimidation and favour. It cannot be overemphasized that the judiciary is key to the sustenance of any country's democratic experience. Undoubtedly, Nigeria needs a vibrant, fearless and incorruptible judiciary to weather the storms that face our nascent democracy.

It is against this background that the paper attempts to explore the independence of the judiciary, its contribution to democracy in Nigeria as well as how alive this organ of government has been to its constitutional responsibilities. The rest of the paper is divided into four sections.

2. AN OVERVIEW OF THE JUDICIARY

The judiciary arm of the government is the third arm of the government responsible for interpreting the law of the land, while applying it in situations where they are necessary. This makes the job of the judiciary a very critical one. The law of the land constitutes the basis upon which judgements are ruled. It is therefore fundamental that its interpretation and application be carried out with absolute alacrity and meticulousness. The Nigerian judicial system comprises of the "Body of Benchers and the Bar" itself. The body of the benchers is the collection of the highest ranking Legal Practitioners in the country which is headed by the Chief Justice of the Federation. It also has as its members the respective Chief Judges of the states of the federation and certain very reputable lawyers in the

country, whereas, the Bar is the body of all the barristers in the country. These together constitute the Nigerian Legal System (Chambers, 2015).

The Nigerian Judicial System has come a long way, taking its origin from the colonial era. It was saddled with the responsibility of checking the activities of the executive and legislative arms of the government. The judiciary, as a matter of fact, plays a very vital role in the development of the country considering the fact; it is the mechanism that oversees to the usage and management of power in the country. If the power that is vested on the executive and the legislative offices are not checked, the bulk of the citizenry will have lots of troubles and challenges to contend with from National to local level.

The primary responsibility of the Judiciary is to ensure that the executive and the legislative arms of the government function within the ambit of the constitutional provisions made available to them. The judiciary ought to stand isolated while performing its constitutional duties. It does not need interference from the executives and legislatures in carrying out the primary assignment. It operates independently at any external disturbances and functions with the constitutional power used in the office. The Nigerian Judiciary or Judicial System has had lots of challenges to contend with. During the chaotic military era, the Judiciary was subject to abject emasculation to the extent that it lost the substance to its name and only existed as a nomenclatural entity; also, the melodrama in the on-going administration of President Muhammadu Buhari is a related replica of the then situation of the Judiciary coupled with the constant intimidation with DSS, EFCC and verdict on termination and demotion (Dede, 2017). To say at least, “the Judiciary sank into oblivion”, but with the advent of democracy on an organised political façade that accorded the Judiciary its rightful place as the watchdog of the polity; though most subsequent administration abused the arrangement and pocketed the Judiciary.

The importance of the judiciary in any political cannot be over emphasized, hence the constitution provides for its absolute independence to enable it perform its sacred constitutional functions without sentiments and biasness (Akpuru-Aja, 1999).

Invariably, personal problems constitute by far, the most daunting challenge facing the judiciary and it is the single most important problem threatening the sanctity of the Judiciary as the bastion of justice. The judiciary comprise of judicial officers who are human beings and therefore subject to the vagaries of human nature in its insidious form. While there are good, intellectually sound and upright judicial officers of impeccable character and integrity in Nigeria, it is sad to say that a sizeable percentage of judicial officers in Nigeria fall below the standard expected of judicial officers in the area of intellectual capability, uprightness, character and integrity and this reflects in the poor quality of judgements delivered by the various courts in Nigeria and the growing problem

of conflicting judgement and the attendant confusion it brings in the legal system in Nigeria (Osuji, 2012).

The judicial system in Nigeria is beset with several weaknesses in its procedural set procedural set up that makes it very difficult to obtain justice and quick resolutions of disputes in courts, most of the procedural rules of the various courts in Nigeria are in dire need of reforms and reviews to make it accord with the need to discard technicalities and upload substantive justice. A situation where many cases in Nigeria take many years to be resolved does not bode well for the judicial system and encourages resorts to seek help by disgruntled litigants.

SPECIFICATION OF NIGERIAN JUDICIAL SYSTEM

The Federal judicial power is exercised by the federal courts, which adjudicates in disputes arising between the individuals, government and corporate entities in their inter-relationship with one another within or outside the country in accordance with the law. In that regard, the functions, powers and the responsibility of the various courts forming the Federal Judicature is discussed below

1. The Supreme Court

This is the highest court in Nigeria. It is the last stop on all appeal matters. It consists of the Chief Justice of the Federation and such members of justices of the supreme courts as may be prescribed by an act of the National Assembly.

2. The Court of Appeal

The Court of Appeal consists of the president and the justices of the court of appeal among which at least three must be learned in Islamic law and three in customary law. It has exclusive Jurisdiction to hear and determine appeals from the Federal High Court, High Court of the Federal Capital Territory, State High Court of Appeal, National Industrial Court, a Court-Martial or other tribunal prescribed by an Act of the National Assembly.

3. The Constitutional Court

The court is made up of its president and law may prescribe such members of justice of the Constitutional Court (at least 20) as it has original jurisdiction in respect of matters relating to the interpretation and enforcement of the constitution among other duties.

4. The Federal High Court.

The Federal High Court has exclusive Jurisdiction in civil cases and matters relating to the revenue of the government of the federation such as taxation, custom and excise duties, banking, copyright, admiralty, citizenship, etc.

5. The High Court of the Federal Capital Territory

This consists of a Judge and such number of Judges as may be prescribed by the law to all intent and purposes. It has the same unlimited Jurisdiction as the state high court.

Other Courts of the Federal Capital Territory

In the Federal Capital Territory, there are the Sharia Court of Appeal and Customary Court of Appeal. The Grand Khadi and the Khadis preside over the Sharia Court while, the president of the customary court and other judges preside over the customary court of appeal. The Sharia Court of Appeal exercise appellate and supervisory jurisdiction in civil proceedings on Islamic Law. The Customary Court of Appeal exercise appellate and supervisory jurisdiction in civil Customary Law.

The High Court of a State

Every state has its own high court headed by a Chief Judge and supported by such members of judges as may be prescribed by law of the state. The high court has instituted jurisdiction to hear and determine any civil and criminal proceedings under any law of the state.

State Sharia Court of Appeal and State Court of Appeal

This depends on the state that require any of the above

Electoral Tribunals and Election Appeal Tribunal

This is instituted in each state of the federation.

3. THEORETICAL FRAMEWORK.

In this study, we adopted the theory of the separation of power. It is undebatable that in a democratic system, separation of power is sacrosanct and a sine-qua-non for good governance and government. This is why painstaking constitutional safeguards are provided to ensure that the executives, legislatives and judicial organs of government exist with sovereign authority and function.

The rationale for proposing the doctrine of separation of powers is to fragment government power in such a way as to defend liberty and keep tyranny at bay. This is because of humans and the assumption that if unrestrained by external checks, any given individual or group of persons in power will go beyond the limit of their authority, in order to establish a political system where no individual or group dominates the other or assume the status of a lord (Mbah, 2007:187).

The rationale here is to create an atmosphere in which absolute powers which corrupt absolutely are put on check. This is done with the view to eclipsing the thought of tyranny and dictatorship. This theory can be traced to political theory of the classical Greeks. It dates back to ancient Greece when Aristotle favoured mixed government composed of monarchy, aristocracy and democracy since he saw that none was ideal (Mbah, 2007).

John Locke (1632-1704) laid emphasis on the theory of separation of powers in the second Treatise of Civil Government in 1690. This was after he had noted that there was temptation to corruption which existed where the same persons who have powers of making laws also have the power to execute them. Paradoxically, by a faulty analysis of the English concept of the separation of power in England, Baron de Montesquieu, the French political and legal philosopher who admired the English concept of separation of powers gave the impetus and moving spirit to the theory of separation of powers as a real antidote to abuse of powers. Thus, western political thought rest on the theory of separation of power and limited government, as reflected in the works of Jeffrey, K. et al. (2010).

Democracy cannot be sustained without the theory of separation of powers since civil disobedience and revolution will ensue. Concentration of powers either in the hand of one person or body of persons does not mean well for democratic governance (Madukwe, et al., 2006). Therefore, for the judiciary to be independent or sovereign in discharging its duties of ensuring unbiased justices and verdict, proper checks and balances, good governance and sustainability of our nascent democracy, separation of powers is inevitable and quintessential.

Summarily, the theory emphasizes that human freedom and liberty will be certain and guaranteed when the tripartite powers (executive, legislative and judiciary) are disintegrated from each. It is on this note that separation of powers of the government officials, will ensure for sustainable democracy and sovereignty of the judiciary.

4. THE ROLE OF THE JUDICIARY TO NIGERIAN DEMOCRACY AND GOOD GOVERNANCE.

Judiciary is the third arm of government in Nigeria, it is believed that with a very strong judiciary, the mistakes of the other two arms of government - Legislative and Executives can be spotlighted and corrected. Judiciary cannot afford to make a slip more so where the liberty of the subject is at stake (Jide, 2017). There is that strong belief that the Nigerian judiciary have the capacity to curb the excesses of the other two arms of government. Judiciary should not allow the peoples' trust to be misplaced. Once a nation has an independent or sovereign judiciary, there is the hope that any wrong done can be corrected.

Colonialism, corruption and military rule have impacted negatively on the Nigerian political system, which has produced oligarchic state and political actors who are bent on having control of the state power and disobedience to court orders. It is alleged that the other arms of government do not honour court orders which has perpetually held the wave for true democracy in the country, some high profiled individuals and political landlords high jacked the freedom and independence of the law making body. The Judiciary being the watchdog of the peoples' right and liberty should not hesitate to call to order anybody, institution or organisation of people. This is to guard against the influences that threaten to destroy, disfigure or otherwise undermine the corporate existence of this great nation.

The faith of the people in our judicial system must remain intact and unshaken in the dignity and the impartiality of the judges. This will maintain the high esteem in which the generality of the Nigerian judges are held by all our people. The path of an impartial and honest duty may be strewn with thorns.

The implicit confidence of Nigerians in the judiciary must not be misplaced. The judiciary and constitution are the key elements in ensuring good governance and ideal democracy. The Nigerian judiciary is still battling with the executives and other agencies of government about the disobedience of the orders of court. A flagrant disobedience of the order of court is giving cause for concern.

A sovereign and independent judiciary is a sine-qua-non to achieving and sustaining an ideal democracy or democratic state. This implies that democracy without an independent or a sovereign judiciary would fail and this will metamorphose to tyranny and dictatorship. It is very evident that tyranny and dictatorship are apt to collapse in the presence of a fair and sovereign judiciary, and a failed tyranny will give birth to an ideal democracy or democratic state. When the judiciary are not politicised by the political party in power, they will ensure for equality and true democracy.

The theory and practice of the separation of power is the premise upon which independent and sovereign judiciary is predicated. Undoubtedly, this over times leads to the inevitable collapse of dictatorial leadership and tyrant government, consequently enthroning the rule of law for good governance and sustainable or ideal democracy. The judiciary is the bedrock and landlord/defender of ideal democracy and democratic state. Their roles ought to be cherished and respected to ensure true and integrated democracy.

It is a known fact, that Rule of Law is an integral part of the judiciary; it has a distinguished and vital role to play in acquisition of power, utilization of power and consolidation of power by other arms of government to ensure ideal democracy. It provides the mechanism for a fair and peaceful resolution of conflicts in accordance with stipulations of the constitution and balanced procedures. It contributes to legal certainty by clarifying norms and the relationship between them through interpretation and by contributing to the evolution and refinement of legal rules (Blair, 2005).

The traditional roles of the judiciary connotes the following according to Nnaemeka, (1994); the judicial (traditional) role is that the judiciary determines the claim in the basis of the law and facts, it examines and states the law before applying that law to the facts, it interprets relevant statutes including rules of procedures and states on the application of the statute. The court also carefully examines the relevant law as embodied in decided cases, overruling or modifying them while taking into account, the dynamics of our ever changing society. It is part of the role of judiciary to ensure that the livings are not ruled by dead laws which invariably will result to anarchy or societal pandemonium.

Fervently, the judiciary plays a pivotal and vital role of instituting a human interest democracy or democratic state. The judiciary recognises and safeguards the theory of separation of powers through the supervisory jurisdiction of higher courts over lower courts, the process of democratization has markedly transformed the role of the courts from the traditional role to its present pivotal role to uphold the rule of law and strengthen democratic government in Nigeria (Madukwe, .et al., 2016).

The ideal role of a fair and sovereign judiciary is an integral component of Nigerian constitutional democracy. The judiciary has the constitutional responsibility to review all constitutional decisions, for it is the protector and custodian/guardian of the fundamental law of the land.

Summarily, the role of the Judiciary in Nigeria Democracy cannot be over-emphasized, first; the Judiciary is constituted as the ultimate interpreter of the constitution and to it is assigned the delicate task of determining what is the extent and scope of the power conferred on each branch of government, what the limits of the exercise of such power under the constitution are and the determination of the question whether any action

of any branch transgresses such limit. In short, the judiciary is the guardian of the constitution and of the democratic process (Blair, 2005).

Secondly, the judiciary ensures that every exercise of power by other organs of government is in accordance and in compliance with the requirements of the rule of law.

Thirdly, the judiciary of the three arms of government has the competence to supervise and review the actions of the other two and where necessary, declare them null and void. This view point was emphasized by Fattai Williams.

Fourthly, the judiciary adjudicates on disputes between states, states and individual, individual and corporation or corporate entities, among others. They determine the meaning of the laws of the country.

Finally, Judiciary has a cardinal role to play in the administration of Justice. The Judiciary decides the result of elections as challenged by defeated and aggrieved candidates. The judiciary determines the legality or otherwise of various kinds of behaviour referred to it by litigants. The Judiciary also plays an integral role in impeachment proceedings against the President, Vice President, Governors, Deputy Governors as well as in the investigation of corruption against those aforementioned officials. The law making power of the judiciary through the interpretation of the law and the principle of “stare diesis” is also paramount.

5. THE ROLE OF GOVERNMENT IN ENSURING INTEGRAL SOVEREIGNTY OF THE JUDICIARY IN NIGERIA’S DEMOCRACY.

The government particularly the executive arm has major roles to play in enhancing judicial independence.

Continuing Legal Education: To enhance a standard of excellence in the work of our judges in this millennium or dispensation, there is need for constant training and retraining in legal education for Judges. In this regard, the effort of National Judicial Institute is highly commendable.

Law does not stand still, it moves continually, and once this is recognised, then the tasks of the judges are put in a higher plain. The government must strive to improve their minds and their intellects because; they are the architects, thinking of the structure as a whole, and building for society as a system of law.

Conducive Environment and Ouster Clauses: The provision of conducive environment to facilitate an effective administration of justice and non-interference by the executives is the minimum expectation of all lovers of the judiciary from the other arms of the government.

The thought or prospect of attaining an ideal judiciary will seem unrealistic if the environment is not made conducive for judges to dispense justice without fear or favour.

Better Funding of the Judiciary: The funding of the judiciary has been one of the intractable issues the Nigerian judiciary has had to contend with in the last millennium. To talk of attaining the ideal of democratic demands by the judiciary will be akin to wishful thinking, if the judiciary is not given enough funds to operate with.

It can hardly maintain any semblance of judicial independence if at every twist and turn, it has to look up to the other arm of government for sustenance, succour and support, financial or otherwise. A good judgement flows from a mind that is not bugged down by the thought of where the next meal will come from. If one should expect the right and ethical conducts from the judiciary, then the ideal salaries should also be paid to judges.

Improved Court Facilities: With the advancement made in Science and Technology, there should be simultaneous improvement in court facilities. In this contemporary age, judges should not continue to take notes in long hand and under great stress and strain. Recording devices should be installed in the courts. The chronicles of old fashion of pen and in delay of cases and contributes to denial of justice.

There should be modern libraries even e-library in the courts to aid in studying cases and judgement.

Improved Security and Avoidance of Intimidation and Threats: The government should ensure for proper and integrated security for the judges and their families against threats and intimidations ranging from government officials, politicians, individuals and corporate bodies. Finally, the government in a nutshell must be prepared to provide the necessary tool for the judiciary to enable it perform its expected constitutional role.

ASSESSING JUDICIAL SOVEREIGNTY

To assess the judicial sovereignty within a democracy, we require a measure that identifies the extent to which the judiciary produces decisions that are sincere reflections of the underlying preference of the judges. To espionage the causal effect of judicial sovereignty or democracy or democratic state, it requires that any measure of judicial independence satisfy, at least two properties.

- a. It must be exogenous to order
- b. It must be available over a wide temporal and spatial range without being non-systematic to our key variables of interest.

The sovereignty of the judiciary as a study or phenomenon has become an international culture with divergent degree of loyalty. Non devotion or disloyalty to the sovereignty of the judiciary must not only be seen as a breach of Nigerian's constitution but also, as offending ordinary human values. A failure to understand the concept of the sovereignty of the judiciary or its independence signifies a failure to understand the duties and responsibilities of the judiciary in Nigerian democracy. Cognitive understanding of the concept of judicial sovereignty/independence brings to bare the indispensability of the role of the judiciary which is a catalyst for democracy in Nigerian polity.

There are no single or unified modalities to study the concept; it ranges from political, judicial, economic and constitutional/societal perspectives. This might be the reason for the abuse from different governments and nations.

This entails that the judiciary as an arm of the government and individual judges exercise their judicial functions without undue interference in the decisions making from the executive, the legislative, colleagues, the public or from any quarter whatsoever.

To buttress the assertion above, it is quintessential that judges must be given the free-landing space to decode matters before them fairly and impartially being regulated by the available facts and the law.

Sovereignty/independence of the judiciary guarantees justice to the citizens and upholds the rule of law, human rights and democratic systems. In the absence of the sovereignty of the judiciary, the principle of the rule of law will be undermined whereas initiating the collapse of Nigerian democracy just like the demise of it in the first and second republic.

To augment the judiciary so as to play its stabilizing role in achieving sustainable democracy in Nigeria, the judiciary ought to be sovereign both at institutional and individual levels. Institutionally, it is expected to be uninfluenced or remoted by other arms of government, individually, it is supposed to be impartial and unbiased; they are to pass verdicts to all persons and organisations equally not recognising positions and affluence. Finally, they are to be guided by the constitution which is the supreme paper work in the country.

6. RATIONALE AND SIGNIFICANCE OF JUDICIAL SOVEREIGNTY.

The Nigerian judiciary has had a history of four (4) distinct eras namely; periods of 1842, 1845-1912, 1914-1953, and 1954 to date. Before the advent of the Europeans, the

various indigenous people of Nigeria had different methods of dispute resolution (Yusuf Ali, 2016).

Sovereignty of the judiciary is at the very heart of the judicial function. It is a cornerstone of any worthwhile legal structure and an essential element of any democratic system of governance or government that pays cognisance to the rule of law (Madukwe, 2016).

It is the right of the citizens to have a sovereign judiciary, the right to fair and impartial adjudication of a matter before a court of law can only be held where there is a sovereign or independent judiciary. In Nigeria, as in other states, independence of the judiciary is imperative. More and more people are bringing their disputes to court for resolution. The notion of entrenched human rights demands an independent judiciary. Fairness and impartiality are the most quality of a sovereign judiciary. Fundamental obedience ad subscription to court orders and verdict is of utmost importance, if the expected ideal democracy should be attained. Judgment delivered by a sovereign and impartial judiciary ought to be respected and obeyed without bias. The state Nigeria should with a keen interest, establish a functional enforcement mechanism to court order, hence, judiciary administers justice in the name of the government (state), this is one of the legitimate roles, the legitimate role of the executives should not be wanting; thereby, they should ensure that hey enforce the court verdicts, with this chain of operations, the theory and practice of the rule of law and separation of powers becomes pertinent, and it ensures for ideal democracy of the state.

It is imperative that Nigerian government should ensure for sovereignty of the judiciary and avoid executive interference or influence. The independent nature of the judge is a sine-qua-non to free biased court orders. The rationale of independence or sovereignty of the judiciary in Nigeria is to ensure fair, unbiased and impartial justice but at institutional and individual bases.

Ideal democracy is the government of the majority opinion that accommodates the opinion/interest of the minority, a government that pays cognizance to fundamental human right and obeys constitution without sentiment or stratification/class. The broad of the judiciary is very large beyond that of its counterpart (executive and legislative).

Finally, disobedience to the court orders is a catalyst for societal crisis which certainly is a stumbling block to an ideal democracy; invariably that kills the sovereignty of the judiciary in a state.

7. PROBLEMS OF NIGERIA JUDICIARY AND ITS EFFECTS ON NIGERIA'S DEMOCRACY.

There can be no gainsaying the fact that there are no problems with our legal education in Nigeria. The quality of lawyers trained in the last twenty years or so is not the same with those earlier trained. The Nigerian concept of doing things has crept into the training of lawyers.

The faculties of law have refused to abide by the quota of grandaunts that are sent to the law school, the hurried and unprepared relocation of the law school from Lagos to Bwari Abuja, the dearth of law teachers and law books have all ensured the lowering of standards. Coupled with the above is the geometric jump in the population of law graduates and lawyers as well as the parlous state of facilities for their training (Ali Yusuf, 2016).

For us to have an ideal judiciary that will ensure ideal democracy in Nigeria, in this millennium, lawyers must support a sound legal education and strong continuing legal education for bar and the bench.

Support the right of the public, the efficacy of the judiciary is judged usually from the prism of the ordinary man in the street, what he thinks of the judiciary judicial system means a lot. The advocate has a Herculean duty to inspire the confidence of the ordinary man in the judiciary.

Issue of Corruption

Corruption has become a second name to all average Nigerians; corruption in the judiciary has been over and over again alleged. In the special edition of the Newswatch of October, 6, 1997 devoted to "Nigeria in search of Democracy" the magazine on the judiciary in a title "the Lady has soiled Finders" quoted from the editorials of the Daily Times in 1995 wherein the paper said:

"the tragedy of a sick judiciary does not even end with the shattered expectation of citizens. A morbid bench from outset finds itself incapacitated in the discharge of its sacred duty as the legal watchdog of the nation. It cannot uphold the rule of law; neither can it administer justice without fear or favour nor present citizens' right from being imperilled by overbearing government functionaries".

Corruption within the judiciary has made it impossible for it to play a neutral and fair role when political disputes arise. Controversial judgements and frivolous injunctions

have cost the judiciary the people's confidence and subsequently affected the democratic ethics in Nigeria. The Nigerian judiciary had never before been as ridiculed as it is now (2015-date). Judicial decisions are overly given political coloration. There became many conflicting judgments, judicial brouhaha and unwarranted attack on various judicial personnel.

It is not the duty of judiciary to twist the truth, or fabricate evidence, the duty of the judiciary is to interpret the law, base its judgment on the acceptable and admissible evidence of facts that rejects the manipulative evidence before it and come to a just decision. The moment a judge thinks about the personalities and not the fact, he had abdicated the responsibility of a judge to decide according to law and facts before him.

It is therefore this obnoxious development in the business of law that made the judiciary a thing of public mockery and a rape to true democracy.

8. MODALITIES THAT ENSURES EFFECTIVE JUDICIARY IN A DEMOCRACRATIC SETTING.

The effective administration of justice through the law, by the bench, in our courts presupposes a virile, dynamic and courage Bar full of advocates who are bold and fearless and who have enough courage to defend the essential liberties of the subjects and exposes injustice from any quarters whatsoever. To fulfil this purpose, every advocate appearing before our court should be the watchdog of the country. He should be, as the need arises, a determined fighter for the freedom of the ordinary citizens.

The ordinary citizens may not and perhaps cannot protect himself against those concentration of powers which by their weight or by their nature conduce to operation of the individual, it may be power of prosecution/wrongful prosecution, the power of parliament, the power of executive, wealth, status, monopoly, influence and affluence (Ali, 2016). It is the duty of the advocate, a duty he owes to the community to ensure that there is fairness, that individuals are properly protected from power, to see that there is fair, equitable and just balance between those who have power and those who are subjected to such power. This is what the advocate can do by defending vigorously any infringement of the rights of the individual by oppressive use of power thus helping to "break the rod of the oppressor". The Bar cannot help the court to maintain a just balance in the claims and the rights of the rich and poor, strong and weak, oppressor and oppressed if it has to compromise their interest in any way and for any inducement whatsoever. But if members of our Bar inculcate some of the noble qualities of the great Thomas Erskine.

Loyalty to the profession involves the support of the advocate for the entire institutional framework that supports the judicial system. The advocate must treat as

sacrosanct the ethical values of the profession. A bar that is not disciplined cannot insist that the bench be disciplined. A corrupt and inept bar cannot tell the bench to be upright and diligent. A bar that is disorganised and disarranged cannot evoke confidence of the bench and the public. A strong, virile, dynamic, progressive and committed bar will go a long way in enhancing the ideal judiciary in an ideal democratic government like Nigeria.

ATTRIBUTES OF A GOOD DEMOCRACY

Through many ages of human civilization and advancement of culture, democracy as a form and concept of government has shown many historic changes in terms of meaning and scope. In the simple form, the concept of democracy means a laid form of government by the generality of the people as opposed to government by a king or oligarchy/dictator.

Ideal democracy ensures to each member of the society, the fair and equal chance to live fully as a conscious and self-directing person (Izukanne, 2003). The modern democratic structures of government gave rise to the three-tiers of operational government. John Dewey in his work *Democracy and Education*, states “if democracy has a moral and ideal meaning, it is that a social return be demanded of all, and that opportunity for development of distinctive capacities be afforded to all”. These invariably states that men should rule themselves by discussion, mutual and accepted persuasion and agreement for the sake of their own common maximum happiness.

The key attribute of ideal democracy that this work is concerned about are: sovereign judiciary, educated citizenry, intellectual freedom, economic security, majority rule, popular agreement, importance of individual and above all respect for the rule of law and adherence to separation of power. Looking at the American democratic structure and system, it is obvious that Nigeria is very far from the best practices.

9. CONCLUSION AND RECOMMENDATIONS

Where there is no rule of law, the rule of terror prevails, and this seems to be the Nigeria’s situation; a country where politicians and the leaders have come to regard the acquisition of power as a springboard for acquisition of wealth. This makes their bid to lead the country to a true democracy an illusion making the quest for the attainment of ideal democracy in Nigeria a mirage.

The sovereignty of the judiciary implies that judicial officers are free in the administration of justice without interference from any other organ of government. It is a calamity to have judiciary that is subservient to the executive or legislative arm of the government, or under any form of pressure and influence of from any political group/class/organisation. A judiciary that yields and defers to the siren power unjustly accommodates the demand of the rich and the privileged. The rule of law presupposes an

independent, honest, courageous and competent Bench as well as able, fearless and responsible Bar. The stability, and in fact, the very measure of a sovereign democratic constitution is the degree of importance it that is attached to the judiciary as well as the powers it gives to its judiciary.

Democracy is the reign of reason, governance of tolerance and dialogue, a way of life which finally gives political vent for to national development. Nigeria therefore should evolve a true and ideal democratic system that responds to the peculiarities and aspirations of the people of Nigeria while renewing faith in the maxim “Unity in Diversity”. This is with the view to establishing trust, security, law, order, justice and fairness.

Finally, this paper avers to the words of Abraham Lincoln which admonish that, reverence for the rule of law be preached from pulpits in Nigeria’s various places of worship- churches and mosques. Let it be the language of market men and women, proclaimed in our legislative halls and enforced in our courts of justice, become our media jingle, become the maxim in all Nigeria’s social, economic and political institutions, with this, the sovereignty of the judiciary will be guaranteed resulting in ideal democracy in Nigeria’s polity.

Democracy can only be meaningful, if the judicial arm of the nation is sovereign and independent. The traumatic journey of Nigeria to an enduring democracy is still far from getting to the destination. The three arms of the government should have a clear insight into the basic principles underlying the rule of law and separation of power which are essential ingredients for ensuring that the ideals of democracy are upheld.

RECOMMENDATIONS

On the basis of the study and reviews made therein, the following are our recommendations:

- 1) Minimization of alliances between judges and the executive arm of the government: Judges (Juries) should not antagonise the government, but the unholy alliance between some judges and the executives will give room for suspicion and should be discouraged.
- 2) Judiciary must not be treated as a branch of the Executives: The separation of power provided by the constitution appears useless and a mere camouflage if the powers of the three arms of government are willed and influenced by the Executives.
- 3) Dismissal or forced retirement should be meted to those found wanting in the discharge of duties.
- 4) Consolidation of a good welfare packages for the judiciary personnel.

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