

THE ROLE AND CHALLENGE OF THE JUDICIARY AND THE MASSES ON ENTRENCHMENT OF TRUE DEMOCRACY IN CONTEMPORARY NIGERIA

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Abstract

This paper examines the role of the judiciary and the masses on the entrenchment of true democracy in contemporary Nigeria. This is because the independence of the judiciary as enshrined in the principle of separation of powers implies that the judiciary should be independent of the two other arms of Government that is, the Executive and the Legislature. The whole relevance of this fact is to ensure that those who champion the judicial arm of government, such as, the judges at all levels from the magistrates to the justices of the Appellate Courts would be able to carry out their responsibilities and work without fear or favour to enable them deliver judgments in all matters before them. In reality, this paper raised a question, which is, has this been so in Nigeria? Unfortunately, the paper posits that Nigeria's judiciary and masses have not been able to entrench true democracy in Nigeria because of a number of factors that prevented the growth of democracy in Nigeria. The paper at the end of the study recommends some strategies to curb corruption of the judiciary and the masses as watch-dog of democracy in Nigeria in the 21st Century. The study adopted the descriptive design. It drew upon primary and secondary sources. Primary sources include oral information and testimonies. Newspapers and magazines reports were also used in conjunction with official records in government publications. Secondary sources include relevant books. The researcher also made use of direct observation method. All the information so gathered were subjected to historical analysis.

Keywords: Challenge, Judiciary, Masses, Democracy, Nigeria.

Introduction:

In 1999, Nigeria returned to democracy, after a long period of military rule, (1966 to 1999). From 1999 – 2019, a period of 20 years, the nation has witnessed an un-interrupted democracy. But the country is still going through difficult times, especially in the area of security, economy and national unity because to a great extent the judiciary and the masses have failed to entrench discipline and stability in Nigeria's democracy. Had it been that the judiciary and the masses were willing to play their role as the watch dog of the society, Nigeria's democracy would have experienced radical transformation and development. Some of the vices the judiciary have failed to check include the check of the other arms of government (executive, the legislature) electoral violence, high desperation from politicians, electoral irregularities, poor organization, vote buying and interference of the military and security agents in Nigeria's electoral process. The negligence of the judiciary and the masses has made the executive and legislative arms of government and politicians not only interested in representing their personal needs and ethnic group interest but undermining the general interest of the nation at heart.

Because the judiciary and the masses have failed to be the watch dog of the society, corrupt Nigerian politicians have succeeded in dividing the country along religions and ethnic lines. Elections to leadership roles is no longer based on the capacity and ability of the person to deliver, most Nigerian are more interested in seeing their kinsmen occupying the corridors of power. It is also unfortunate to note that the judicial institutions today look the other side while corrupt politicians and ethnic

champions are appointed into ministries, departments and agencies of government based on where one comes from and religious consideration rather than merit (Idris Mohammed, 2019).

It is also important to note that because of the challenge of the judiciary and masses to entrench true democracy in Nigeria, our economy is in bad shape with over 90.8 million Nigerians living below poverty line. Because there are no law and order in the country, so to speak, crime rate is high as young people are not willing to work. Hence, the manufacturing industries and agricultural sectors are no longer function effectively. Foreign investors are afraid to invest in the economy and the level of unemployment is a threat to national security.

Furthermore, because the judiciary and the masses are inactive and passive to check evil vices in the society, there is widespread deployment of hate speech among the Nigerians ethnic and religious groups in the social media. Fake news is rampant, hence, the Nigerian conversational space and democracy is suffocated with hateful content that threatens peace and national cohesion. The hate speech is not limited to social media platforms alone, it has permeated the electronic and print media. Hate speeches and fake news easily circulate in a corrupt society on daily basis and heating up the polity. Hence corrupt politicians and ethnic leaders often use it to cause national crisis if not urgently checked. Over the years, the judiciary and the masses did little to arrest the danger of hate speech by bringing the perpetrators of the heinous acts to justice. It is important for the judiciary and the masses to provide conducive atmosphere for order and discipline to grow and attract good governance and direct foreign investment.

The Transparency International verdict on Nigerian judiciary is not encouraging to assess the role of judiciary to entrench democracy in contemporary Nigeria. The transparency international has listed the Nigerian Judiciary as the second most corrupt public institution in Nigeria. Nigerians on recent history has seen some judges faced with corruption charges which help to undermine the growth of democracy in Nigeria. In fact, the former Chief Judge of Nigeria (CJN), Justice Onnoghen, was removed from office via an ex parte motion granted by the Code of Conduct Tribunal. In the process, the National Judicial Council (NJC) commended President Muhammadu Buhari for accepting for CJN, Onnoghen's voluntary retirement and recommending Justice Tanko Mohammed for the CJN position. The judiciary that supposed to fight corruption in Nigeria as an institution and arms of government was the one undermining itself in a democracy. These are some of the factors that challenge the judiciary as an institution to entrench democracy in contemporary Nigeria.

Furthermore, Nigerians in the recent past, saw the DSS operatives breaking into judges homes in the wee hours of the night in what they called a sting operation, arresting a handful of them in the process (Elemuo, 2019). In spite of these hue and cries by the general public, members of the legal profession appear undaunted and carry on as if everything is normal. It is because corruption in the judiciary is alarming that is the reason they cannot entrench true democracy in contemporary Nigeria.

The Role of the Judiciary on the Entrenchment of true Democracy in Nigeria

There is no doubt that the judiciary in Nigeria is grappling with many corruption allegations. It is hope that the Chief Justice of Nigeria, Justice Tanko Mohammed should do the needful to redeem the image of the judiciary. The place of the judiciary in a democracy cannot be over emphasized. There is no denying the fact that the judiciary plays an important role in the sustenance of democracy. It is the hope of the common man. Therefore, when it is falter and weakens, it leaves dire consequences. It is important to note that the Chief Judge of Nigeria has the important sacred role and duty to advance the needed reforms in the judiciary. In this regard, he must work with the other arms of government. This is because the inability of the three arms of government to work in harmony will ensure instability of the nation, but not as rubber stamp, the weakness of the judiciary and the masses has robbed the country of the dividends of democracy. While the independence of the other three arms of government in accordance with the doctrine of separation of powers is necessary, it should never be at the expense of the harmonious relationships and synergy amongst them. The working conditions of the judicial officers should be substantially improved because of their peculiar duties in a democracy.

Furthermore, the respect of court rulings should be given due consideration by the executive and the legislative to enable the rule of the law play its role in a democracy. The judiciary and the masses as arms of government over the years in Nigeria can check the activity of government, Public

opinions and pressure groups, through the platform of the different courts constitution, newspapers, magazines, radio and the television. The judiciary and the masses view has the potential to influence government policies and programme in a democracy. The judiciary has the power to make court decisions that interpret and apply the constitution in case they hear and act upon that can help entrench true democracy in Nigeria. Constitution interpretation by the judiciary helps in the shaping of government and its processes in a democratic setting. For example, in a democracy, it is the electoral laws that determine the quality of the electoral system.

The judiciary has powers to entrench democracy in Nigeria through judiciary reviews; as the courts have power to decide if what government does squares with what the constitution provides. The courts have power to determine the constitutionality of government actions to declare illegal, null and void or of no force and effect, especially if the governmental action is found to violate some provision of the constitution. The powers of the courts, especially the Supreme Court helps to curb dictatorial regimes high handedness in a democracy; so that the masses, the oppressed or the minority will have a say and right in a democracy, even though the majority may have their way.

The Challenges of the Judiciary and the Masses on Entrenchment of true Democracy in contemporary Nigeria

This paper has come forth with some of the challenges facing the judiciary and the masses on Entrenchment of true democracy in contemporary Nigeria, which include:

- 1) Bad eggs in the judiciary: There are so many bad eggs in the judiciary armed of the government that hinders the institution on entrenchment of true democracy in contemporary Nigeria.
- 2) The evasive attitude of the Nigerian Bar Association as an institution created to curb or discipline erring judiciary officers, makes them to be tootles bull dog that can bark but cannot bite. Therefore, the corrupt Judicial Officers feels if they can violate the laws of the judiciary to entrench democracy nothing will happen to them.
- 3) Another factor that hinders the judiciary on entrenchment of democracy in Nigeria is that the judiciary has been neglected in the scheme of things to the extent that it does not have enough accommodation and officers for its personnel, more so, the salaries and enrolments of judiciary officers leave much to desire in Nigeria's democratic process. This poverty mentality and oppression affects the role of the judiciary as watchdog of the society.
- 4) The passive attitude of the Nigerian Judicial Council (NJC) that supposed to be the watch dog; has weakened the institution. The NJC lacks the will power to entrench true democracy in Nigeria. For example, during the eve of the 2019 presidential election. Justice Onnoghen's was charged of fraud by the Code of Conduct Tribunal, instead for the judiciary to protects its image as another armed of the government, unfortunately, it was literally begging President Buhari to accept Justice Onnoghen's Voluntary retirement. So that it can give way for Buhari's loyal Justice Tanko Mohammed for the NJC position. This episode exposed the weakness of the judiciary and the masses to entrench democracy in contemporary Nigeria.
- 5) The lack of strong willed leadership of the NBA and NJC to protect the institution of the judiciary as a separate organ of government to protect democracy in Nigeria. Instead the executive and the legislative organs of government had continued to clamped on the judiciary, hence, judiciary corruption will continue to be a recurring decimal in Nigeria's democratic process.
- 6) Another factor that explains the failure of democratic experience in Nigeria is the failure of the people, the electorate, the Bar and the Bench as well dictatorial regimes to stand in their positions to protect the tenant of democracy in Nigeria. Nigerian masses and the electorate are not strong enough, united enough and courageous enough or enlightened enough to cause the three arms of government to adhere strictly to the principle separation of power.
- 7) Judicial corruption in Nigeria is a seed that has been planted by the desperate politicians in Nigeria that want to be relevant in the corridors of power. This factor has been a bane and barrier to the growth of Nigeria's democratic process. Corrupt politicians often bride judges of the election petitions tribunals to win cases to secure elective positions. This has enabled corrupt politicians to steal the mandate of other weak politicians.

- 8) Another ill method judges may use not to entrench democracy in Nigeria is when a judge refuses to hear a motion no matter the merit, this has amount to judicial misbehavior which should have been sanctions from the NJC. But it seems that in such a situation, all the counsel is urged to do is to file an appeal to the court of appeal. Until judges are booked for judicial misbehavior in the course of their judicial duties, corruption in the judiciary will continue to fester and hinders the growth of democracy in Nigeria (Elemuo, 2019).
- 9) The level of professional decadence in the judiciary is nothing to write home about, as these unscrupulous and ruthless behaviours has hindered the growth of democracy in Nigeria in recent times. For example, some of the judges take the laws for granted and act with impunity because they are protected by the NJC. For example, a judge cannot be tried for crime without clearance from the NJC. This makes some corrupt judges to enjoy immunity from criminal prosecution; hence, this hinders the true practice of democracy in Nigeria as members of the legal profession should be protecting their own members unjustifiably.
- 10) It is unfortunate to notice that the judiciary in recent times has often remained mute when democracy is threatened in Nigeria. This is because corrupt politicians often buy over the corrupt judicial officers, hence, some of the corrupt judges often implore technicality to avoid substantial justice.
- 11) Another factor that has held back the growth of democracy in Nigeria since independence is the emergence of all kinds of dictatorial and authoritarian military/civilian regimes that oppressed the judiciary. The judiciary has been faced with a serious challenge to break loose from all forms of undemocratic governance.

Conclusion

For the judiciary and masses to entrench true democracy in Nigeria, the verdict of the Transparency International that listed the Nigerian judiciary as the second most corrupt public institution in Nigeria, should be a wakeup call to the NBA, NJC and others. The judiciary as a watch dog of the society and the last hope of the common man, must expose and shame the bad eggs or criminals in their fold. When a judge implores technicality to avoid substantial justice, that judge is corrupt. Therefore, he is unfit to be a judge (Elemuo, 2019).

The judiciary as an institution should hold strongly to Aristotle, one of the often cited and quoted philosophers, who emphasized the place and import of the separation of powers as one of the strong pillars of democracy with emphasis on the independence of the judiciary. The independence of the judiciary as enshrined in the principle of separation of powers implies that the judiciary should be independent of the two other arms of government, that is, the executive and the legislature.

The whole essence of the independence of the Judiciary is to ensure that those who man the judiciary would be able to carry out their duties without fear or favour, to enable them deliver judgments in all matters before them (Afe Babalola, 2019). The lawyers and the judiciary as an institution should see themselves as the defenders of the rule of law, instead of being transactional with the overriding interest being materialism. Legal advisers to different levels of government and political parties are duty bound to demonstrate high level of professional candour and ethical rectitude expected of their office. Legal advises should sacrifice their office and resign political appointments as a protest if their idea is rejected by an authoritarian government. This will demonstrate as a high degree of professional uprightness and ethical rectitude (Afe Babalola, 2019). It is important for the judiciary officers to know that, if they do not maintain Justice, Justice will not maintain them. The Judiciary should be able to live by example to entrench true democracy in Nigeria in the 21st century.

Recommendations

This paper has come forth with the following recommendations to enable the judiciary and the masses entrench true democracy in contemporary Nigeria; they are:

- 1) The NBA and the NJC are supposed to be watch dogs of the society to check the executive and the legislative organs of the government. This will help entrench true democracy in contemporary Nigeria.

- 2) The NBA and the NJC should develop strong will power to check the presidency, rather than begging and appear cap in hand to degrade the judiciary before the executive and the legislature. The NBA and the NJC should have a strong will power leadership to fight judiciary corruption.
- 3) A proactive Bar that is alive to its responsibilities as a watch dog is a panacea to executive lawlessness. (Babalola, 2019). This will help entrench democracy in Nigeria. Lawyers should see themselves as watch dog of the independence of the judiciary. That is the best way for the judiciary to prevent any of the three arms of government from tramping on the powers of the other arms.
- 4) The judiciary should always adhere to the principle of the law and rule of the law. Judiciary officers should distance themselves from judicial misbehavior which should attract sanctions from the NJC in order to entrench true democracy in Nigeria. Until judges of election petition tribunals are booked for judicial misbehaviour in the course of the judicial duties, corruption in the judiciary will continue to hinder the growth of democracy in Nigeria. The seat of a judge is the throne of God and the voice of the voiceless people.
- 5) Judges that threaten the growth of democracy in Nigeria should be allowed to be tried for crime without clearance from the NJC. This will help to check the evil of judicial corruption in Nigeria's democratic process. Hence, the Economic and Financial Crime Commission, (EFCC), DSS, Police or ICPC should be allowed to institute criminal prosecution against corrupt judiciary officers. There is nothing wrong in this, members of legal profession should stop protecting their own unjustifiably (Elemuo, 2019)
- 6) As Caroline Kennedy pointed out the bedrock of democracy is the rule of the law, that means the judiciary should be independent of the political winds that are blowing. This the best way the judiciary should entrench democracy in Nigeria in the 21st century.

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