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Judicial Independence and Democratic Consolidation in Nigeria: The Fourth Republic Experience

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ABSTRACT

This study examined the judicial independence and democratic consolidation in Nigeria between 1999 -2016 (Forth republic). Prior to the fourth republic, the military unequivocally abused the judicial arm of government, rendering it dormant and stagnant but with the advent of the fourth republic when Nigeria joined the train for democratic nations precisely on May 29, 1999; the story changed for good. In Nigeria's newfound democracy, one fact that stands out is that there is a direct relationship between democracy, its practice, and the judiciary. The judicial arm of government remains an essential organ required for peaceful and continued existence of democracy in Nigeria. This study adopted Structural Functionalism as its theoretical framework. The theory is capable of explaining the issue of judiciary and democratic consolidation in Nigeria's fourth republic; showing how the structure of judiciary has performed the function of helping in the consolidation of democracy in Nigeria. Furthermore, existing bodies of knowledge were consulted in relation to cases where judiciary has helped to consolidate democracy in the fourth republic. Finally, this paper found out that the judiciary has impacted positively to the consolidation of democracy in Nigeria during the period under study. Indeed, some of their landmark judgments have actually laid credence to the above assertion. The study recommends that the appointment of judges should be made in an impartial way by integrating the view of all the major stakeholders in the justice system and the populace should consider the best candidate, stressing that the time to act is now.

Keywords: Democracy, Judicial Independence, Consolidation, Judiciary, Governance

INTRODUCTION

There has been an unending debate about the meaning and definition of democracy. "The concept "Democracy" comes from a Greek word "demokratia", which means "rule of the people", which was coined from "demos" which means "people" and "Kratos" which mean, "power" (wikipedia). The idea of democracy, the rule of the majority, is generally acknowledged as the only guarantee of freedom of the citizens [1]. Abraham Lincoln's definition of democracy as

government of the people by the people and for the people explains the supremacy in people's opinion (the masses) in this form of government. It is therefore of government that is responsive, responsible and one that guarantees the citizens the inalienable right or freedom from discrimination, right to clothing, a respect for the rule of law and equal participation [2]. This form of government is been characterize by the rule of law, free choice of leaders, frequent and regular elections separation of power, check and balance, flourishing of human rights and more especially independent of the judiciary etc, which we will lay more emphasis in this research work.

Democracy is no doubt the most popular form of government in the world today. There is hardly any politician who does not wish to be seen as a democrat, or a country¹ that does not seek to be described as democratic [3]. In the last decade however, the world witnessed the emergence of democracy in Asia, Latin America, Eastern Europe and Africa. In Africa, the practice of democracy has not been established firmly in the political system; for example, previous and present unstable government, and political crisis happening in Egypt, Congo, Ivory Coast, Tunisia, Morocco, and even Nigeria lays credence to this assertion. Long years of military rule and autocracy (one man rule) in the continent might have been the rationale behind the current political instability in most of these countries. It was not long ago in the early 1990's that public demands for democracy became an issue of global concern. These demands were made at the risk of persecution, imprisonment, and even death. Most members of ruling class still exhibit authoritarian and dictatorial tendencies while caring out state matters [4].

Nigeria joined the train for democratic nations precisely on May 29, 1999, when the then military head of state, General Abdul salami Abubakar handed over power to Chief Olusegun Obasanjo who was elected president in a general election. The emergence of democracy in Nigeria has to some extent brought about significant changes on the politics and administration of our great country Nigeria [5].

In Nigeria newfound democracy, one fact stands out like a score thumb and that is the fact that there is a direct relationship between democracy, its practice, and the judiciary. The judiciary arms of government remain an essential organ required for peaceful and continued existence of the political system. The judiciary, which is the main artery of democracy, appears to be anything but independent, popular consultation, accountability, and transparency, which are some of the hallmark of democracy, are only observed in the breach. In fact, some commentators have averred that what Nigeria presently practices is civil rule and not democracy [6].

When we talk of the consolidation of democracy, we mean the process by which a new democracy matures in a way that it is unlikely to revert to authoritarianism without an external shock. After many years of military dictatorship and its attendant effects, the nation cannot afford to encourage authoritarianism; hence the need to depend on or consolidate democracy and its values. This is where the judiciary comes in. By their origin and functions, the judiciary as we shall be seeing later is always placed to mediate and moderate the diverse conflicting interest in the society. Given the fact that almost all of the times, those who are in control of the coercive and executive powers of the state are often tempted to brush aside the governing laws of the state and democratic practice just to have their way. The judiciary as an institution of government is charged with the responsibility of creating an enabling environment for democracy and what is now known among development practitioners as good governance. Furthermore, they are better positioned in making sure that the competition for power is open, transparent, and fair [7].

In the 1950s, through the early part of the 1980s, the Nigeria judiciary was for the most

part a world-class institution. Lawyers were well trained, well behaved, and well versed in the art and science of the law which endeared so many Nigerian youths to the profession [8, 9].

In the last two and half decades, however, the Nigeria judiciary has been plagued with problem and intractable challenges. Some of them include

The diminishing standard of legal education

The entrenched social ills that continues to eat away at the nation's moral fibers

The changing nature of the Nigerian society, which, in some cases no longer value the rule of law, ethics and morality.

The belief that anyone and anything can be bought, sold or compromised including the law and those who interpret the laws.

The single-material gain to the exclusion of noble ideas and ideals.

Today as most can attest to, the Nigerian judiciary has become a chamber of corruption, inefficiency, and inconsistency. There have been cases where the system has been labelled buyable and sellable which relegate the Nigeria judiciary to a messy state. One could spend hours cataloging what is wrong with Nigerian judiciary. When looked at all those irregularities mentioned above many keep questioning the ability and credibility of the judiciary in performing its statutory function [10]. These questions are normally asked because of the growing abuse of the principles of democracy such as the doctrine of separation of powers, the independence of the three arms of government. The rule of law in Nigeria have reached such an endemic and alarming rate that some asked whether this country has not turned into what in the words of EKPU, "The Land of the vanishing" [11], or even raised the repeated question that has been asked in the past by our late music icon, Sunny Okosun "which way Nigeria?"

It is against this backdrop that this study set out to examine the judiciary in the process of democratic consolidation in Nigeria in a bid to ascertain the judiciary's role in the consolidation of our young democracy.

Conceptual Clarification

Democracy

The term democracy is an age-long concept used even in the ancient Greek era. The word "democracy" is derived from a combination of two Greek words "demos" meaning "people" and "Krafla" meaning "rule", and so literally means people's rule demonstrating the ancient Greek belief that government rest on the last resort upon conviction and not on force, and that its institutions exist to convince and not coerce [12]. Different scholars have conceptualized the concept democracy;

According to [13] does not encourage exclusive decision-making group like it is the case with oligarchy, aristocracy or plutocracy. As such he insist that the democratic government is a situation or system where the power of decision-making is in the hands of the people at large, over those issue that are considered binding on all the members of a political group.

According to [14] aggress that there are many definitions of democracy but none has been as simple yet comprehensive as the one given by one time American president Abraham Lincoln, that democracy is government of the people by the people, for the people.

Consequently J.A Schumpeter in [15] conceive democracy as an institutional arrangement for arriving at political decisions, in which individuals acquire the power to decide by means of competitive struggle for peoples votes.

Similarly, [16] defines democracy as a system of government usually involving freedom of the individual in various aspects of political life, equality among citizens, justice in the relations between people and the government, and the participation of the people in choosing those in government.

Judiciary

The judiciary as popularly know and widely acknowledged is the third organ or branch of government vested with the authority to interpret the laws of the land in the tripartite division of governmental function. It is a system of courts organized differently in different countries to interpret the laws and adjudicate case between citizens. In enjoying their privileges, exercising their civil rights, and carrying out their duties and obligations, citizens come into conflict with one another. Their interests cross and move often than not require proper delineation of boundaries. It is the function of the courts to determine these and to say authoritatively where the interest of one citizen stop and those of another begin [17].

Judicial Independence

Independence of the judiciary is the idea that the judiciary needs to be kept away from the other branches of government. It should not be subject to improper influence from the other branches of government, or from private or partisan interest so as to avoid bias [18].

Democratic Consolidation

This is the process by which a new democracy matures, in a way that means it is unlikely to revert to authoritarianism without an external shock. According to mobile dictionary consolidation means to make something strong and more secure while oxford learner's dictionary, consolidation is to make a position of power or success stronger so that it is more likely to continue [19].

Theoretical Framework

The study is anchored on the structural functionalism theory.

Structural functionalism Theory

The theoretical framework adopted in this work is structural functionalism, which was developed in the field of sociology by Herbert Spencer and Robert Merton. The theory views the society as a system that is a set of interconnected parts which together form a whole [20].

Structural functionalism sees the political system as intercalated and reciprocally regulated patterns that have needs for the maintenance and survival of the system. When related to politics, it can be described as a means of explaining basic functions of the political structure in the political system and it is a fool of investigation [21].

The logic of structural functionalism stems from the fact that in every political system there exist certain functions that are performed by the relevant structures of the polity and it is only by examining these functions that one can understand the political process in the society. As a

result when political structures satisfy the demand made upon it, they are said to be functional but when on the other hand they do not satisfy demand, they are said to be dysfunctional. This theory is capable of explaining the issue of judiciary and democratic consolidation in Nigeria fourth republic, showing how the structure of judiciary has performed the functions of helping in the consolidation of democracy in Nigeria. This is true in section 6 of the 1999 constitution where the judiciary envisaged the functions of interpreting and upholding the tents and provisions of the constitution [22].

Nevertheless, as it has been shown and will still be shown in this work that the judiciary in this present democratic dispensation (4th Republic) has helped a lot in enthroning democratic values and ethos in Nigeria through their specific judicial pronouncement [23].

The Origin of Nigerian Judiciary

Before the advent of the Europeans, the various indigenous people of Nigeria had different dispute resolution mechanisms. Among the Yoruba and Igbo, the system revolved around their traditional institutions. It was fashionable among the Yoruba to refer contention matters to the head of the family. If he could not settle the dispute, the matter will be taken to the head of the compound until a solution could be found up to the Oba. Similarly, this system existed among the Igbos [24].

In the North, there was a bit of formalization as founded on the Islamic legal system, the Sharia. There was an elaborate system of court systems, the hub of which was the Alkali system. The Emir was the ultimate appellate judge.

After 1842, the power to administer and dispense justice in Nigeria was mainly vested in native courts. These courts in dispensing justice, fashioned out systems of taxation, civil laws and procedure, penal law and sentencing policies including death sentence. It should be noted that these native courts are the forerunners of the present customary Area and Sharia courts.

With the advent of the colonialists in the Southern part of Nigeria between 1843 to 1913, the British through a combination of foreign jurisdiction Act of 1843, and 1893 'established law under which various courts were set up. In 1854, the earliest courts called the Courts of Equity were established by the British in the southern parts of Nigeria particularly Benin, Okrika and Opobo. The principal agents of trading firms, consular or other administrative officers constituted this court of equity, they acted as the judges. Simultaneous in exercise with the court of equity and consular were courts that were established by the Royal Niger Company. By a Royal charter granted in 1886/8 the company had the power to govern and administer Justices in its areas of operations, until the charter was revoked in 1899. Despite the establishment of British courts, native courts were still allowed to function, in so far as the native law and custom, they administered were not repugnant to natural justice, equity and good conscience [25].

Several creation of courts were also pronounced and activated by the British colonialist from 1899 until 1954 when a Federal Supreme Court was established and was presided over by a chief justice of the Federation, Nigeria then consisted of regions. Each region then has a High court presided over by a chief justice. Appeals from each of the High Court of the regions were laid to the Federal Supreme Court while appeals from magistrate courts, customary or native courts grade A to the regional High courts.

In 1967, Nigeria became a federation of 12 states each with its own state judiciary. In the same year, the western state via the court of appeal Edict, No 15 of 1969 established a Regional court of appeal.

In the western state, the supreme court ceased to have direct jurisdiction to hear and determine appeals in any matter from the high court of the state (including appeals in any proceeding pending in any court in the state) except in any case in which noticed of appeal to supreme court had been filed 1st June 1967.

In order to meet the need for case, involving the revenue of the Federal Government to be expeditiously determined, the Federal Revenue court Decree No 13 of 1975 established the Federal Revenue court. In 1970, 19 states were created in 1976. Its function among others was to hear and determine appeals from the state High courts. The law setting up the western court of appeal was replaced.

Presently under the 1999 constitution, the courts recognized as constituting the judiciary are the Supreme Court, the court of appeal, the Federal High court, the High Court of the Federal capital territory Abuja, the customary Court of appeal, Abuja, the state High Courts, the Sharia court of appeal of the states and the customary court of appeal of the states.

The Judiciary and Democratic Governance: A Historical Context

An independent judiciary is universally acknowledged as one of the most defining and definitive features of a functional democracy. Many see it as an essential bulwark against abuse of power, authoritarianism, and arbitrariness. How it functions as well as how the various stakeholders in a democratic experiment appropriate its interventions and role in the polity are critical indicators of the health or otherwise of a democracy. There seems to be nowhere in the world presently where this reality is more apt as it is in Nigeria, one of the world's largest democracies with a population of over 140 million people.

After many decades of ruinous and by many accounts the most rapacious military rule in modern history, Nigeria witnessed a transition to civil rule in 1999 which many though argued as well stage managed to favour the overbearing interests of the retreating military establishment given that it resulted in the emergence of Chief Olusegun Obasanjo himself a former military dictator, as the new president via an electoral process that had all the trappings of high level military maneuverings. Thus began in earnest Nigeria's third attempt in full-blown constitutional democratic experiment following the botched experiences of 1966 and 1983, all by military. However, with a combination of an agitated local populace that has also become evidently disenchanted and disillusioned with military rule, as well as an international system that seems more predisposed to the spread institutionalization and nurturing of democratic values across the world. This however did not vitiate the fact that as at 2003, the judiciary as weakened and disenabled as it was, had more capacity to function in the emerging democratic Nigeria. Though many commentators and analyst in Nigeria since 2003 have had to express an almost unanimous view that the actions posturing and predilections of not a few political office holders have been everything but democratic, there was also an overwhelming optimism in some quarters that being a process and journey and not necessarily a destination, its continued experimentation would likely result to some semblance of perfection and orderliness.

The 2007 Nigeria General Elections was remarkable in more ways than one: one, it was a civilian-to-civilian transition in Nigeria's chequered political history. Two (2), there were widespread fears if the elections were inconclusive and deadlocked leading to threat to peace and security not just in the West Africa but in the African continent in general, given that one out of every five Africans is a Nigerian. As events however turned out, the election was widely, reported by both local and foreign observers as the most fraudulent, and flawed in Nigeria's electoral history; a consequence was the demand by the opposition and civil society for its outright cancellation.

Against this backdrop, there is a spreading feeling of ecstasy by Nigerians that the judiciary is assuming its position as the bastions of democracy in the country, the absence of which would create room for the reign of tyranny of the strong, rich and mighty. At no time in Nigeria's political history are citizens' optimism about democracy is so high as it is now because the judiciary seems awakened to its role, among other things checkmate the arbitrating politicians, high handedness of those in power and the illegalities and brazenness of a few privileged individuals.

Assessment of the Impact of Judiciary's landmark Judgments on Nigeria's Democracy

PETER OBI VS CHRIST NGIGE (2006)

This case was on election petition between Peter Obi and Chris Ngige on who actually won the April 2003 gubernatorial election in Anambra State. Mr. Peter Obi of All progressive Grand Alliance (APGA), instituted the case against the declaration of Dr. Chris Ngige of Peoples Democratic Party (PDP) as the winner of April 2003 Generational election claiming that he (Peter Obi) was the actual winner of the gubernatorial poll.

After a prolonged legal battle that took twenty-six (26) months, the first Anambra State election petition tribunal sitting in Awka on August 12, 2005 held that Christ Ngige did not win the governorship election of Anambra State in 2003 and so ought not to have been declared winner in the first place. In their pronouncement, the tribunal held that Obi scored the mandatory one-quarter of the vote cast in 15 Local Government Areas while Ngige scored only in six L.G.As.

Declaring Obi the winner of the election, the tribunal's chairman Justice Garba Mohammed said from the scored compiled by INEC, we found performance of the political parties as follows

APGA (Obi) 241,459 votes, POP (Ngige) 175,221 votes, other candidates pulled 829 votes from INEC, the petitioner (Peter Obi) scored one-quarter of the total votes cast in 15 L.G.A out of the 21 L.G.A of Anambra State

The respondent (Chris Ngige) later appeal against the judgment, the court of appeal sitting in Enugu on March 15, 2006, through Justice Rabiuh Muhammed who delivered the lead judgment, confirmed the verdict of Anambra State election petition tribunal declaring Peter Obi the winner of the election against the sitting governor.

LADOJA VS OYO STATE HOUSE OF ASSEMBLY (2007)

This case concerned itself with the interpretation of section 188 of the 1999 constitution, which centers on the process of impeachment of governors.

On 13th December 2005, a faction of Oyo State House of Assembly Ibadan Suspended the draft rules of the house and issues a notice of allegation of misconduct against Governor Ladoja with the purpose of starting impeachment process against him. The Governor (Ladoja) filed a suit at Oyo State High Court as a mean of originating summons seeking an order setting aside the process taken by the house in his impeachment. The trial judge in his judgment on 28th December 2005, made a pronouncement that he had no power to treat the matter based on section 188 (10) of the 1999 constitution and therefore dismissed the suit.

Annoyed by this, he went to court of Appeal Seeking the following reliefs:

- An order setting aside all the steps taken by the dependant in relation to the issuance of notice of allegation of misconduct and the purported to the directive to the chief judge of the state, the said steps having breached the provision of section 188 of the 1999 constitution.
- A declaration that the purported notice of allegation of misconduct, made against Governor Ladoja as a proceeding step to his removal by the defendant is unconstitutional, null and void and of no effect whatsoever having regard to the provision of section 188 (1) and (2) of the 1999 constitution.
- A declaration that the purported notice of allegation of misconduct made by the dependants against Governor Ladoja, not having been received and or served on each of the 32 members of the house of Assembly as envisaged by section 188 (2) of the 1999 constitution is unconstitutional, null and void and of no effect among others

The court of appeal granted all the relief's and declared that governor Ladoja remain the legally, constitutently, and democratically elected governor of Oyo State setting aside the purported impeachment.

CELESTINE OMEHIA VS ROTIMI AMECHI (2007)

After the storm in Anambra state, came the victorious end of a protracted suit by Rotimi Amechi, a governorship aspirant of PDP in Rivers State who had been denied the party's ticket for the April election. The party (PDP) had substituted his name with that of Celestine Omehia.

After travelling through the courts, the case came up for hearing at the Supreme Court which proclaimed Amechi Rotimi as the proper candidate of the party and gave a consequential order which instantly installed Amechi Rotimi as the governor of River State in place of Celestine Omehia who was instructed to vacate his seat. The Supreme Court decided that PDP did not provide "justifiable and cogent reason" for substituting Amechi with Omehia as required in the electoral act. Majority of Nigerians hailed the decision as bold and revolutionary and expressed profound hope that the decision and few others, which had emanated from the Apex court during the period reflected the emergence of an independent judiciary.

The Impact of Judiciary's landmark Judgments on Nigeria's Democracy

Right through history, especially in a constitutional democracy, the judiciary is seen as the last hope of the common man, this important arm of government has performed creditably since the inception or enthronement of democracy in Nigeria, is no longer in doubt. It is one arm of the government that has really endeared itself to the people. There was a time in this country when the image of the three arms of government lumped together were in terrible shape. However,

through sheer courage manifested in landmark judicial pronouncement, the judiciary has carved out an enviable image for itself in the current democratic process.

Prior to the inception of the President Olusegun Obasanjo administration in 1999, this arm of government was viewed as lagging behind among the other three arms. One reason for this was its' perceived "Snail Spread" approach to matters of urgent national importance especially matters that bothers on election petition. While some alleged that it was colluding with the executive or the powers that be to stall justice, others believed that it was incompetent. But in the last few years, a revolution has taken place in this vital institution or organs of government.

This fact was corroborated by the former Chief Justice of Nigeria Justice Salihu Belgore who said when they were hosted to a valedictory dinner by the board of National Judicial Institute (NJI) that the judiciary is the pillar that has prevented the collapse of democracy in the country.

Since the enthronement of democracy a lot of landmark cases, which had hitherto set the country back, have been determined. Even cases that would have thrown the country into the state of chaos have been resolved with ease. A recent patriotic enthusiasm with which plays in the third arm of government are dispensing justice in several landmark political cases with judgments daily coming out of the court go to show that the judicial arbitrators and decision makers are ready to stay above the fray. All over the country, the courts have given judgments, which have showed that the judiciary is ready to protect its independence. More decisions have delivered against the government than at any time in the history of the nation. Not left out of this, is the apex court, the Supreme Court, which has helped to illuminate the dark areas of the constitution, to help correct the anomalies in the political system.

CONCLUSION

After a careful perusal of the available information and materials as well as detailed discussions with stakeholders in the judiciary, the study clearly identified some serious challenges encountered by the Nigerian judiciary and some solutions were equally proffered to the problem in order to help trigger a tonic to pick our conscience, to question hopelessness, halt the drift, the decadence and this culture of rapid accumulative instinct in Nigeria.

In the course of this study, we found out that the judiciary has impacted positively to the consolidation of democracy in Nigeria on the period under study. Indeed, its landmark judgments have actually help to consolidate our nascent democracy. Secondly, the Nigerian judiciary 'is faced with the problem of lack of independent machinery to carry out its decisions' and functions. Thirdly, the Nigerian judiciary is remunerated poorly and at that a few judicial officers engage in corrupt practices in justice delivery and there is also a delay in justice delivery as a result of poor working conditions of judicial officers.

It seems that the future of Nigerian judiciary looks so bright, and for this to be actualized the challenges identified in this study must be addressed properly to enable the Nigerian judiciary perform effectively and efficiently in consolidating our nascent democracy. Most importantly, the sustenance of democracy depends on independence of the judiciary. This is because, it is the judiciary that interprets the constitution, settles disputes in the process of democratization, safeguards human rights and civil liberties and the rule of law. The courts irrespective of jurisdiction, is to ensure the clear separation of powers and checks and balances among and between the three tiers of government. The court is equally being saddled with the responsibility

of punishing the offenders in a democratic setting. Indeed, democracy cannot be sustained without an independent and active judiciary.

Nevertheless, there is no doubt that there might have been some salient issues in the study that were not adequately discussed and also there might be important issues that were not raised in the course of this work. These inadequacies might have been caused by the limitations of this study. We therefore plead that future research should be geared towards these inadequacies.

RECOMMENDATIONS

Deriving from the finding of this study above, we proffer the following recommendation:

The appointment of judges should be made in an impartial manner by integrating the view of all the major stakeholders in the justice system (that is the judicial service commission, representative of the judiciary the ministry of justice) and the populace should consider the best candidate.

Judges should be granted immunity, which means that they cannot be punished or held personally responsible for doing their official duties constructively. Thus an accused person who is found guilty and jailed, but later freed by another judge on appeal cannot sue the wrongful sentence or vice versa.

Judges should also be given security of tenure, which means that they should not be removed before they reach retirement age. In this way, no one can threaten them with dismissal and thereby influence them. On the other hand, if a judge commits any offence, there are special ways to impeach him and in the process, due process should be followed.

Executive interference, reckless disobedience to court orders and flouting of rule of law should be guided against for effective justice system. Flouting of rule of law and disobedient to court orders have dealt severe blows to our democracy.

Finally, perennial poor funding, congestion of cases infrastructural decay and corruption among judges should be corrected by improving the welfare package of judiciary workers, improved budgetary allocation, and adequate punishment for erring judges. The budget for running the courts should be removed from the executive arm and transferred to the judges to control.

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