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Strengthening the Enforcement of the Rule of Law to Promote Effective Protection of Citizens Rights and Independence of the Judiciary in Nigeria

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ABSTRACT **Original Research Article**

The judiciary is a cornerstone of constitutional democracy. It has the solemn responsibility to protect human rights and check state power. However, political interference, corruption, and resource constraints have limited its ability to perform these functions in Nigeria. This paper examines the rule of law, what constitutes good governance, judicial activism and independence and how all of these inter play with the constitution in upholding human rights protection. The study finds a demonstration of the judiciary's duty to check executive power in Nigerian, cases of Lakanmi and Ojukwu and effective application of human rights law to protect citizens rights in the case of Fawehinmi v. Abacha. The paper concludes that Nigeria can strengthen its rule of law when the judiciary's role lies not in wielding unrestrained power but in exercising principled authority. The judiciary is not merely the interpreter of the Constitution; it is the guardian of the social revolution. When courts interpret law in the light of justice, liberty, and human dignity, they transform constitutional promises into enduring realities. Thus, reaffirm that the rule of law thrives where the judiciary remains both independent and enlightened activist and not subservient to power nor detached from the people it serves.

Keywords: Rule of Law, Good Governance, Judicial Activism, Judicial Independence, Comparative Constitutional Law, Human Rights Protection.

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Introduction

The rule of law is a key aspect of democratic governance. It ensures all activities of individuals and institutions including the government are done within the confines of legislation acknowledged by the public and not in any arbitrary manner. It also ensures the equal application of such laws and judgements of an independent judiciary. Therefore, the rule of law is a very necessary element because of the right protections it gives to all individuals through fairness, justice, equality, and an accountable government. In Nigeria, the rule of law is founded on the Constitution binding on all persons and all classes including the government and its institutions. The Constitution of the Federal Republic of Nigeria, 1999, Section 1(1) provides that 'the Constitution shall be paramount and its provisions shall have binding force on all authorities and people throughout the Federal Republic of.' This means that all must be done within the ambit of the law and is binding on all classes of persons. The legislation also provides for fair trials in all cases and safeguarding of rights. However, despite these fundamental safeguards, the rule of law is not fully practiced raising questions regarding the future of Nigeria. Judge manipulation, feeble institutions, delayed judicial system, neglect for judicial authority, corruption and violation of human rights such as; extra-

judicial killing, arbitrary arrests and imposition on the freedom of speech are issues of great concern to the ruling of law in Nigeria.

In discussing the challenges to the principle, structural functionalism theory by Emily Durkheim would be used. The structural functionalism theory deals with dissecting and understanding social issues. It is a sociological theory that deals with helping to digest and explain social issues. According to Durkheim, each of these social facts serves one or more functions within a society. Therefore, this theory is premised on the idea that individual behavior follows established norms, which helps to maintain social order. The theory is relevant for explaining the importance of adherence to the rule of law for good governance and for analyzing judicial activism and independence in Nigeria.[1]

Democracy was introduced as a system of governance in Nigeria by the colonialist. The system then after independence had come into force, however, like many African countries Nigeria suffered from persistent military coups and government till 1999, after which the nation had seized to be controlled by military government, till date. During the military reign there was an utter disregard for the rule of law and judicial activism suffered greatly during this period, the military government disregarded court orders and behaved arbitrary, after suspending the constitution, this was a period where Nigeria was ruled by dictatorship and not democracy. After regaining control from the military regime Nigeria still however fails to practice the rule of law properly. In the Nation's over 26 years of its return to democracy it still fails to meet the international average standard of the practice of this ideology.

Judicial activism is gradually fading in the country and its judiciary is overly dependent. In Nigeria, there are visible ties between the judiciary and the other branch of government, and even the fundings are traceable to the executive arm with justices selected and confirmed by the other arm of government. These unmistakable connections leave the judicial arm at the mercy of the other arm(s) of government. We are curious to note that the idea of judicial activism is adopted from the English common law from which the country also inherited her colonisers but in the first instance it would seem that Nigeria is also influenced by the judicial practice/court system of the United States of America that has to do with the initial controversy on the interpretation of the constitution in the language of broad versus strict construction or. Most importantly, judicial activism was rooted from the power of judicial review of the Supreme Court declared in Marburry v Madison in 1803. The judicial independence and the judicial review attempts to bolster the rule of law for a check on the capacity to check other authorities and to guarantee good governance and defend the rights and interests of the individuals involved.

This article looks at the judiciary as a corner stone of democracy charged with the responsibility of preserving human rights and to check governmental authority, all seen to be benefiting and strengthening the practice of rule of law in a country. However, Nigeria faces the challenge of the executive arm of government in obedience to courts and enforcement of judicial independence which have impacted negatively on the practice of rule of law in the country resulting to derogations in protection of human rights, ill governance and obliterating the performance of actual democracy in the country. The paper is structured into four parts; the first part, introduction, presents a background of the study. Part two is the conceptual clarification and framework which helps us bring out the nexus on the rule of law, good governance, judicial activism, judicial independence, comparative constitutional law and human rights protection. Part three presents the challenges of the rule of law in Nigeria, and the study concludes in part four.

Conceptual and theoretical framework

Rule of Law

According to the Oxford English dictionary, the rule of law is "the condition in which members of society, including its political leaders, accept the authority of law". In The law dictionary, "the rule of law is the legal principle that states that nobody, not even a king, president, or prime minister, is above the law." The predominance that is absolute of an ordinary law over every citizen regardless of that citizen's power. The UN Secretary General in his report to Security Council in 2004 gave a detailed definition thus;

> *The rule of law refers to principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to the laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.*[2]

It involves equal protection of human rights, supremacy of the constitution, and equality before the law. Rule of law is a key principle of democracy. It ensures there is a government of law and not of men and that the acts of persons and

[1]Ahmed Ladi Ibrahim, Zakariyya Olanrewaju Ibrahim and Muhammed Sultan Ibrahim Imperative of Rule of law for the Enhancement of Good Governance and Attainment of Socio--Economic and Political Stability in Nigeria, in Journal of political discourse. p26 (ISSN Print: 2992-2763 – ISSN Online: 2992-4618) | Vol. 2, Issue 2, No. 1 / June 2024.

[2]H. Phillips. The Constitutional Law of Great Britain and the Commonwealth, (London: Routledge & Kegan Paul 1957), pg. 31

institutions, including the government, are subject to a rule against arbitrariness under laws that are duly promulgated to the public. It also provides equality before and equal interpretation of such laws by an independent court. Thus, the rule of law is an important aspect in ensuring fairness and justice and equality as well as accountability and protection of the rights of each citizen. The rule of law in Nigeria is enshrined in a Supreme Constitution that subjects all individuals and classes including government and its institutions to its rules. However, the earliest attempt to give formal form to the concept of the rule of law was by Professor A. V. Dicey in his lecture on English Law at the University of Oxford in 1885. His description of the idea now enjoys the status of generally accepted authority. However, the first attempt to compress the concept of the rule of law into a definite legal form was made by Professor A. V. Dicey in his lecture on English Law at the University of Oxford in 1885. His definition has been authoritative and is recognised for the notion. According to Prof. A.V. Dicey.

> *The rule of law means the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness or even of wide discretionary authority on the part of the government." (The Law of the Constitution)*

A.V Dicey's definition hence, has thrown more light on what the rule of law means for a liberal democratic society. Dicey's definition comes with three interpretations; According to Dicey, the first part of this interpretation is; absolute supremacy of the regular law of the land, the rule of law gives and enforces supremacy to the laws of a land or state. In Nigeria such supremacy is enshrined in section 36(12) of the Constitution of the Federal Republic of Nigeria. Absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, or prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else.[3] Another interpretation derived from Dicey's work is the view of rule of law as an equalizer, the rule of law ensures equality on both the government and the people. It means "equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts". The rule of law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals. This presupposes that no one is above the law and that everyone, including government officials, is subject to the same laws.[4] The final interpretation to Dicey's definition of the rule of law means the recognition and enforcement of individual's rights. This includes a range of legal safeguards protecting individuals from arbitrary action taken by the government, with the courts empowered to act as the custodians of those safeguards.[5] Anthony Mathew summarizes the doctrine of the rule of law as follows: (a). that the law touching on the basic rights of citizens shall be narrowly and precisely drafted so as to constitute a clear guide to official actions and citizens' conduct; and (b). that the application and interpretation of such laws shall be under the control of impartial courts operating according to fair procedures.[6]

In A.N.P.P V B.S.I.E.C we find that the constitution of Nigeria is based on the principle of rule of law which means that all things are to be done according to law. It also implies that government should be conducted within the framework of recognised rules and principles which constrain the discretion of government which Coke lyrically termed golden and straight met of law as against the uncertain and crooked card of discretion. World Justice Project has developed an index that evaluates how countries adhere to the rule of law and the human rights. It measures absence of corruption, civil justice, open government, fundamental rights, order and security, regulatory enforcement and restrictions on government powers. Nigeria's rankings have been fluctuating over the years. In 2020 it was ranked 106th, which has further fallen to 118 in 2021, 120 now in 2023, and 2024. Akaahs J.C.A in Dapianlong v Dariye is of the opinion eroding the practice of rule of law in Nigeria and says; "I must remark that the development of our country politically and economically based on the Rule of Law cannot thrive unless we respect the rule of law."[7]

Good Governance

Governance is the ability to govern a particular set of people (citizens of a nation or state). It is a sociological order following the order of natural justice that provides for a ruler and the followers or follower. However, good governance goes beyond the natural order and just merely governing but requires an actual ability to lead and govern properly. This could however translate to several things, as various people and scholars may interpret what good governance, means in different ways. Good governance refers to a set of practices and principles that promote effective and efficient governance. It is characterized by participation, adherence to the rule of law, transparency, responsiveness, consensus-oriented, equity and inclusiveness, effectiveness and efficiency, and accountability.[8] According to United Nations (2007), good governance encourages public participation in government, inclusion in law-making and policy making, and

[3] Ibid, n 1
[4] Ibid.
[5] Valcke, 2012
[6] Anthony Mathews. Freedom, State Security and the Rule of Law: Dilemmas of the Apartheid Society, (London: Sweet & Maxwell 1988), p 219
[7] [2007] 8 NWLR (pt. 1036) 239, p330, para F-G
[8] United Nations, 2016

accountability of elected and appointed officials. It as well empowers the civil society to influence policies formation that brings about large representation of societal interests in the decision making. Ability of government to design and implement solid policies that are respectful of citizens and the state in which they exercise their political, economic and social-making decisions.[9] Good governance involves good government bodies and agencies actively doing their duties and responsibilities, not going above and beyond their powers by acting ultra vires, government agencies and bodies have certain roles and responsibilities to fulfill in order for a country or state to be secure and grow. In the case of ***Governor of Lagos state v Ojukwu,***[10] the appellant government and the commissioner of police without order of court for possession of the property in dispute, forcefully ejected the respondent from his house. It was held that an order of interim injunction was granted until the court finally held in favour of the respondent, that no one is entitled to take possession of a premise without obtaining the authority of the court in the form of an order of ejection. This is the unfortunate picture of the Nigerian government, a picture of a governing body that goes beyond his/her jurisdiction often in disregard for the law. Good government bodies and agencies do not disregard the law and oppress their citizens by acting arbitrarily. It is within the name and scope of the idea that good things are meant to be of a benefit or positive impact, so, a good government is one who effects change and brings positive impact to the people it represents or guides.

Judicial Activism

Judicial activism refers to judges deviating from the rigid language of the statutes and constitutions. Instead, they employ an approach that takes into account the broader aims or objectives in their decision-making. The term is defined in Black's Law dictionary as:

> *Theory of judicial decisions, e.g. when it is said that judges are guided by an idea of social goals, etc., frequently also accompanied by a statement that those who follow this idea are likely to uncover violations of the constitution and are not afraid to reject precedents.*[11]

Lord Denning once said:

> *I suppose my basic philosophy can be expressed by saying that the proper function of the judge is to do justice; and if there is any rule of law which interferes with the doing of justice, then it is the duty of the judge to do all he can legally do to circumvent the rule, if necessary, to change the rule, so as to do justice in the case before him.*[12]

Judicial activism is an awkward notion with two schools of thought conflicting over it instating a dispute. The concept has brought forth an intellectual debate between scholars. One major one is the Har-Dworkin dispute which has greatly contributed to the present-day question about the role of the judge in the development of law. The great debate that originated in the monumental treatises written on the nature of law by H. L. A. Hart and Ronald Dworkin has left the will for many a large discussion. Other topics raised in the discussion by several legal scholars include the existence and limits of judicial discretion, the relation between policy and decision making, the principles and nature of rules, the idea of descriptive jurisprudence, the place of law in society, the importance of impartial judgements, and the challenges of vague concepts and aspects of legal reasoning and inference. The Dworkin school of thought (the pro-activists and ant-positivists) believes that the courts should use some practice of judicial discretion where warranted. The expedient Hart approach and anti-activists press judges to apply law as written, pro-positivism.[13]

In Nigeria's post-independence history which was punctuated by military coups, which repeatedly suspended constitutional governance. During military regimes, decrees were often declared superior to the Constitution, ousting judicial jurisdiction. Yet the judiciary occasionally displayed resilience, as seen in ***Lakanmi v Attorney-General***[14] *(Western Region)* (1971), where the Supreme Court struck down a military decree as unconstitutional, a bold assertion of judicial authority that led to its immediate reversal by another decree.[15] This episode demonstrated both the courage and the vulnerability of Nigeria's judiciary under authoritarian rule.

The Supreme Court's decision in ***Lakanmi v Attorney-General (Western Region)*** stands as a landmark in asserting judicial supremacy.[16] The Court invalidated a military decree that sought to confiscate private property without due process, holding that even a military government could not act contrary to the Constitution. However, this assertion of independence provoked immediate executive retaliation; the government promulgated another decree nullifying the judgment. Despite this setback, *Lakanmi* symbolises the judiciary's determination to preserve constitutionalism amid authoritarian rule.

[9] " Coordinating for good governance", World bank (2000)
[10] (1986) 1 NWLR (Pt 18) 621.
[11] L. M. Swygert 'In Defense of Judicial Activism' at Valparaiso University Law Review. 439, 439 (2011).
[12] Lord Denning: *The Family Story*, (Butterworths 1981,) 174)
[13] Oyovwikerhi Imoni-Ogbe, ' The Role of Judicial Activism in Nigeria: Insights and Lessons from South Africa and India' at Indian Journal of Integrated Research in Law (Volume V Issue V | ISSN: 2583-0538)
[14] (1971) 1 UILR 201.
[15] *Lakanmi v Attorney-General (Western Region)* (1971) 1 UILR 201.
[16] (1971) 1 UILR 201.

In ***Fawehinmi v Abacha***, the Supreme Court made a landmark pronouncement that international human rights instruments ratified by Nigeria, such as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act formed part of domestic law.[17] This decision expanded the scope of judicial review by incorporating international human rights norms into Nigerian jurisprudence. Similarly in ***Ubani v Director of State Security Services***, the Court condemned arbitrary detention, reiterating that executive power must operate within constitutional boundaries.[18]

The judiciary also intervened in electoral disputes to strengthen democratic accountability. In ***Atiku Abubakar v Yar'Adua***, although the Supreme Court dismissed the presidential election petition, it emphasised the need for electoral integrity and judicial courage.[19] In subsequent years, courts have annulled gubernatorial elections marred by irregularities thereby reinforcing faith in the rule of law. Environmental and socio-economic rights have also gained judicial attention. In ***SERAC v Nigeria***, the African Commission on Human and Peoples' Rights, whose findings Nigerian courts have cited with approval and held Nigeria responsible for violating the rights of the Ogoni people through environmental degradation.[20] The case influenced Nigerian domestic courts to take a more rights-based approach to environmental protection.

Over the years, judicial activism in Nigeria has developed, frequently reacting to political and social issues. The notion that 'justice not only must be done, but also must be seen to be done' was expressed by Lord Hewart, CJ in the landmark case of ***Rex v. Sussex Justices***.[21] However, many are not in support of supposed judicial activism. Emmett Macfarlane's, in the review of Brand-Ballard's Limits of Legality, in Law and Politics Review, opined; "…even in reasonably just legal systems judges are not morally obligated to adhere to the law when they believe the legally required result is unjust. His argument is somewhat conditional: judicial deviation from the law is not limited only to exceptional cases that are viewed as "extremely" unjust; however, judges should nevertheless avoid deviating in all "suboptimal-result" cases or they risk damaging the rule of law."[22] Landmark decisions such as ***Attorney-General of the Federation & 2 Ors v. Alhaji Atiku Abubakar & 3 Ors***, reinforces the judiciary's power to interpret constitutional provisions.[23] The military era from 1966-1979 and 1983-1999 were challenging period for judicial activism in Nigeria but was also one of the strongest periods of activism, marked by the suspension of constitutional provisions and rule by decree. During these periods, the judiciary occasionally pushed back against executive overreach, in landmark cases like ***Odumegwu Ojukwu v. Military Governor of Lagos State***[24] despite limitations imposed by military decrees, this case laid the groundwork for a more assertive judiciary in the democratic era.[25] During the democratic era judicial activism did not relent either and became even stronger in its assertiveness. Earlier practice of judicial activism is evidently seen in the cases of ***Adegbenro v. Akintola***[26], ***Akintola v. Adegbenro***[27], ***Williams v. Majekodunmi***[28], ***Council of University of Ibadan v. Adamolekun***[29], and ***Lakanmi v. Attorney General of Western Nigeria.***[30] In Nigeria, judicial activism is a vibrant and changing facet of the judiciary's influence on the legal system, frequently obfuscating the distinction between legislation and adjudication.[31] In judicial activism in Nigeria, where are in support of the concept viewing it as necessary for democracy and helpful to the protection of human rights, while others view it as an encroachment on authority and an unnecessary abuse of power, especially in areas of election cases. In the case of ***Soni Ogbuoji & Ors, v. David Umahi & Ors,*** the Court of Appeal states; "the leaned trial judge must be commended for rejecting "the invitation [of the counsel for the petitioners to fill the lacuna by extrapolating the consequences for members of the legislature to" holders of executive offices], which would have done incalculable damage to the rule of law and constitutionalism. Judicial activism must be guided by the rule of law; otherwise it will degenerate into judicial rascality…"[32] Judicial activism at times is not always appreciated in Nigeria especially in areas of election litigation.

Judicial Independence

In simple terms, judicial independence is the freedom for the judicial arm of government to be independent of the other branches of government. The independence of the wing of the judiciary is the foundation of any democratic state. It is the ultimate hope and solace of the common individual. Judicial Independence is a necessary ingredient in the grip of democracy/rule of law. According to Ibiyemi, "Right and liberty of the citizens would have a fair chance of being protected where the Judiciary is free from the influence of the other arms of Government, the Judicial Independence would guard against tyranny in the state, by forestalling improper

[17] (2000) 6 NWLR (Pt 660) 228.
[18] (2013) 2 NWLR (Pt 1349) 382.
[19] (2008) 19 NWLR (Pt 1120) 1.
[20] *Social and Economic Rights Action Centre (SERAC) v Nigeria* (2001) AHRLR 60 (ACHPR 2001).
[21] Ibid.
[22] Brand-Ballard's "Limits of Legality" in Law and Politics Review, (Vol. 20, No. 11, November 2010) p.590.
[23] [2007]NGSC 177.
[24] [1986] NGSC 13.
[25] See, n18.
[26] [1963]All NLR 305.
[27] [1962] 1 All NLR 442.
[28] [1963]2 SCNLR 26.
[29] [1967] NSCC 210.
[30] [1970] LPELR-SC.58/69.
[31] C. Obianuju "Judicial Activism in Nigeria: A Catalyst for Legal Development or an Overreach of Power?" at Awka Journal of Private and Property, p213 (2025).
[32] (CA/E/53/2022) [p.41-42, 49]

use of power by the executive and legislative." Judicial independence would ensure that justice is properly delivered for all It guards the constitution from violation by dealing objectively where necessary Judicial independence will help to protect the judges from being victimised by the executive for any lawfully Judgements that they make Independence of Judiciary will only be ensured by a system where the Judiciary appoints completely qualified Judges without political concerns. Judicial independence is a technique of strengthening democracy in democratic states.[33] In several cases and instances, it has been proven that judicial independence is crucial for any civilized and democratic society.

The Nigerian judiciary evolved from the British colonial legal system. In ***Eshugbayi Eleko v Government of Nigeria***, the Privy Council held that "no member of the executive can interfere with the liberty or property of a subject except on the condition that he can support the legality of his action before a court of justice."[34] This pronouncement laid the groundwork for the modern conception of rule of law in Nigeria.

Between 1966 and 1999, Nigeria experienced several military coups that repeatedly disrupted democratic governance. Military decrees frequently ousted the jurisdiction of courts, subjugating judicial authority to executive control. The judiciary's response during these periods oscillated between cautious compliance and courageous defiance.

The Supreme Court's decision in ***Lakanmi v Attorney-General (Western Region)*** stands as a landmark in asserting judicial supremacy.[35] The Court invalidated a military decree that sought to confiscate private property without due process, holding that even a military government could not act contrary to the Constitution. However, this assertion of independence provoked immediate executive retaliation; the government promulgated another decree nullifying the judgment. Despite this setback, *Lakanmi* symbolised the judiciary's determination to preserve constitutionalism amid authoritarian rule.

In the case of ***Ojukwu v Military Governor of Lagos State***, where the Supreme Court criticised the military government for disobeying court orders in an eviction dispute involving the former Biafran leader.[36] Justice Kayode Eso famously declared that "the Nigerian government must not be seen to disregard the rule of law; obedience to court orders is the cornerstone of democracy." This pronouncement reaffirmed the judiciary's moral authority, even when its practical power was curtailed.

Under civilian regimes, judicial independence was constitutionally guaranteed but often undermined in practice by political interference, corruption, and inadequate funding. In ***Attorney-General of the Federation v Guardian Newspapers Ltd***, the Court invalidated provisions of the Newspapers Registration Decree that violated freedom of expression, signalling renewed judicial activism in the post-military era.[37]

Nigeria's 1999 Constitution, strengthened the institutional foundations of judicial independence. Section 6 vests judicial powers in the courts, while Sections 231 and 271 provide for appointment of judges by the President or Governor on the recommendation of the National Judicial Council (NJC). The NJC, established under Section 153, serves as a buffer between the judiciary and the executive, ensuring that appointments, promotions, and discipline of judges are insulated from political manipulation.

However, as scholars have observed, structural independence does not automatically translate into functional autonomy.[38] The judiciary's financial dependence on the executive branch often constrains its ability to act decisively. The struggle for financial independence led to ***Judicial Staff Union of Nigeria v National Judicial Council***, where the Federal High Court directed that judicial funds be directly charged to the Consolidated Revenue Fund, a judgment later endorsed by the Supreme Court.[39]

Moreover, executive disregard for judicial orders remains a recurring problem. Instances such as the detention of political activists despite court orders, and interference with judicial processes, have undermined public confidence. Yet, the judiciary continues to assert its constitutional role as the guardian of fundamental rights and the final interpreter of the Constitution.

In its applicability in Nigeria, is an issue under question and speculation. The Nigerian judicial system is divided into two parts much like any other judicial system, which are the bench and the bar. It is highly influenced and structured to that of the English common law system due to the influence of her colonial masters. The Nigerian judiciary is supposedly independent on paper, according to the constitution.[40] topics and difficulties to judicial independence in Nigeria the appointment and selection of judges in Nigeria is one of the controversial topics of Nigerian judiciary which is controlled by the Constitution and National Judicial Council; Judicial

[33] Ogu Sunday Chukwuma and Agidi Ejime Pally 'Analysis of the Methods of Safeguarding Rule of Law in Nigerian Democracy' at International Journal of Social Sciences and Humanities Reviews Vol.14 No.1, January 2024; p. 117 (ISSN: 2276-8645)
[34] [1931] AC 662 (PC).
[35] (1971) 1 UILR 201.
[36] (1986) 1 NWLR (Pt 18) 621.
[37] (1999) 9 NWLR (Pt 618) 187.
[38] Nwabueze BO, *Judicialism in Commonwealth Africa* (C Hurst & Co 1977).
[39] (2015) FHC/ABJ/CS/667/13.
[40] Section 17 (2) e " the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained"

Officers in the Federation and States are appointed by the Executive wing of the Constitution of Nigeria. Some critics have suggested that the judicial appointment has become a loyalty matter, as the managers of the judicial appointment here take to manipulating it with the aim of getting the pre-determined results of filling such offices with their children, God-children, the friends, the wives, and the prigs. This trend bears an element of manipulation, and recent incidents have attested to this. He/she chairs two very important institutions, the Federal Judicial Service Commission (FJSC) and National Judicial Council (NJC) and appoints 14 of the 24 members of the NJC, giving the CJF enormous influence over the appointment of judicial officers and attracting severe criticism of the same. This gives the CJN with enormous influence on the course of both the deliberations and decisions of the Council and puts the Council open to manipulation and intervention from outside whose say might be attractive to the Chief Justice.[41] The executive arm of government is not required to get the legislative arm consent before appointments as is the case for Justices of the appeal courts and other courts where the appointments become a breeding ground for nepotism and abuse of power. The long arm of the administrations and legislatures also controls the removal of judicial officers. No judicial officer shall be removed from office or appointment before the expiration of his tenure, save by the President on the address supported by a two-thirds majority of the Senate, for the Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, President, National Industrial Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja. in case of Chief Judge of a State or the Grand Kadi of the Sharia Court of Appeal of a State or President of the Customary Court Appeal of a State, by the governor acting on an address supported by two-thirds majority of the members of the House of Assembly of the State for the stated reasons or on the recommendation of the National Judicial Council.[42] All this affect the independence of the Nigerian judiciary today.

Comparative Constitutional Law

Comparative constitutional law compares legal concepts, judicial decisions, and constitutional provisions of different jurisdictions for similarities, contradictions, and novelties. It investigates how countries have addressed such fundamental concerns as separation of powers, protection of individual rights and freedoms, and effect of amendments. This notion has been very instrumental in the enactment of several constitutions in some other nations. For example, in Nigeria, the American constitution and some others were compared to result in the current constitution. The constitution is the law of a country governing himself and contains all the rules and regulations against the law as opposed to one of the measures or regulation made by the governments to the advantage of his population.[43]

Human Rights Protection

According to the Black's law dictionary second edition, a right could translate to mean "justice, ethical correctness or a consonance with the rule of law." The discussion on human rights is spare headed by certain scholars, like Thomas Hobbes, John Locke, Aristotle, and many others, giving their own definitions to the concept. John Locke defined personal rights and freedom as fundamental human rights.[44] In the case of ***Ransome Kuti and others v. Attorney General of the Federation*** Eso (JSC) **opined** that;

> *All civic and legal rights are not basic. The concept of fundamental rights is also predicated on the notion that man has some inherent rights, such as life, liberty, and the pursuit of happiness. In young nations with written constitution, some of these essential human rights have been established in such constitution on which some of the rights referred to as fundamental have been explicitly stated.*[45]

It is universal because it is offered to human beings irrespective of who they are and wherever they are located. Even in times of crises, it is believed that civilized society must and should ensure that the human rights of all citizens are preserved and guaranteed. The following is a robust declaration from the World Conference on Human Rights about universality of human rights (in the 1993 Vienna Declaration):

> *All human rights are universal; indivisible, interdependent and inter related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states regardless of their political, economic, and cultural system, to promote and protect all human rights and fundamental freedoms.*[46]

In Nigeria these rights are entrenched in chapter 4 of the country's constitution as amended. It contains a bill of civil and political rights, drawn mostly from sections 33-42 of the Universal Declaration of Human Rights 1948 and the

[41] NULAI Nigeria 'Review of Judicial Independence in Nigeria' at Submission to the United Nations Special Rapporteur on the Independence of the Judiciary on the current State of Nigerian Judiciary. January 31, 2024
[42] Section 292 of the 1999 constitution as altered 2010
[43] Ibid.
[44] S. Mukherjee Ramaswamy, *A History of Political Thought Plato to Marx* (Pretence –Hall of India Ltd 2007)200.
[45] [1985] 8 NWLR (pt 6) 211.
[46] Vienna Declaration, 1993

International Covenant on Civil and Political Rights 1966.[47] These rights are also codified in other international laws domesticated by Nigeria. The writing down of these rights ensures their protection and enforcement, by making them laws. In Nigeria, human rights are protected through Fundamental Rights Enforcement Procedures, the Constitution of the Federal Republic of Nigeria 1999, Anti Torture Act 2017, Childs Rights Act 2003, and Violence against Persons (Prohibition) Act 2015, Criminal Code Act 2004, Police Act 2020 and the Nigerian Correctional Service Act 2019.[48] Human rights protection is a necessity for any democratic nation. The proper practice of the rule of law support and helps to ensure these rights.

Challenges with the Practice of the Rule of Law and Protection of Citizens' Rights in Nigeria

The judiciary in Nigeria has over the years become a shadow of itself. In the sense that the hope of the common man is dashed daily and fighters for justice are relenting in their fight, due to various reasons and ongoing challenges in the countries judicial system and operation.

Executive Control

In the case of ***Hon. Justice Raliat Elelu –Habeeb v. Attorney General of the Federation*** [49] where the chief justice of Kwara was almost removed from her post without due process or procedure by the governor of the state, however through the interference of the judicial system, justice prevailed; the ruling give was in favour of the honorable justice. This dose make one wonder if without judicial activism and independence, the judiciary and its members would not be safe from the interference of the other arms. The simple answer, is no. With a weak system that permits interference from the other arms the judiciary suffers from the fear of removal. A power vested in the executive arm of government. This fear also extends to appointments, judges and justices are appointed by the executives, who have the power to appoint a person they favour and not a person that deserves the appointment. The executive has a strong hold on the Nigerian judiciary; in the name of upholding the paramount principles of democracy, through the principle of check and balance, the executive has been given the leash to control the judiciary. As outlined in the 1999 Constitution (Sections 231, 238, 250 and 256). The intent of the principle was to ensure judicial independence, but that doesn't seem to be the case now.

SCPA, s 84: A judgement creditor must get the agreement of the Attorney General before he/she can attach upon moneys and credits in the hands of a public person in an official capacity. The clause is a protection against wanton attachment of public monies so as not to unreasonably disrupt government business. However, its operation has been the subject of rigorous judicial scrutiny, leading to conflicting interpretations in decided cases by the Supreme Court.

For example, the Supreme Court's decisions in Central Bank of Nigeria v. Interstella Communications Ltd & 3 Ors (2018). In that case before the Supreme Court was Whether the CBN is a public officer under section 84 of the SCPA. The Court concluded that CBN being the banker to the government is a public officer and as such the agreement of the Attorney General is required before any garnishee case may be brought against money in custody of the CBN for the government

Section 84, however, has been controversial in terms of applicability and constitutionality as seen in Central Bank of Nigeria v Onoja (SCN/S/24/1/25) and Central Bank of Nigeria v Ochife. In this case, the Supreme Court has addressed the matter, specifically on the legitimacy of the approval of the Attorney General before enforcing judgements against public funds. In her partial concurring judgement, the partial concurring judge (Justice Helen Ogunwumiju) doubted whether this condition constituted an undue interference with the execution of a legal judgement of a court.

She held that a permission of the Attorney General could amount to executive interference with court processes as well as the separation of powers and judicial independence. Although her co-panelists, did not address the subject directly, her opinion pointed out the need for the process of enforcement of the order of payment of money to be done economically, especially where the existence of the debt in question was uncontested in terms of credibility.

Corruption and Favoritism

According to Giwa, a judicial official is the image or incarnation of God to the average man. He added that a judicial officer such as a High Court Judge who has the power to send a person to the gallows right or wrong is such a person. Corruption is a monster that has ever lived with the Nigerians especially in the public sector. The Nigerian judiciary is likewise not exempted from this monster. The NJC also does not state what should be the position on the proceeds of judicial corruption where a judicial officer is convicted of judicial corruption like bribery or extortion. This means that the proceeds of judicial corruption are left to be enjoyed by the retired or terminated judicial officer. In Nigeria, court officers have only been recently arrested for corruption. It is the usual that a judicial officer cannot be charged unless he is investigated by the NJC for his breach of his oath of office and dismissed from office. It is commonly accepted that the arrest of judges over corruption in Nigeria

[47] Constitution of the Federal Republic of Nigeria.1999 (as amended)

[48] OBU, Ibietela Madighi " National legal frameworks for the protection of human rights in Nigeria" at Rivers State University Journal of Public Law ISSN: 1597 6638 Volume 9(2) 2022

[49] [2012] NWLR (pt. 692) 1011

has mostly been owing to the systemic inability of NJC to be aggressive in disciplining judicial servants in Nigeria.[50]

Disregard for Judicial Authority

One of the biggest challenges affecting the Nigerian judiciary is the executives' blatant lack of respect to court orders and compliance with due process. An example of such disrespect is the removal of Justice Walter Onnoghen as Chief Justice of the Federation by President Buhari in 2019. His removal was supposedly in compliance with an order issued by a tribunal after hearing his case on alleged breaches of the Code of Conduct. This happened even after courts with higher jurisdiction had ordered that the proceeding at the tribunal be halted.[51] In the case of ***Governor of Lagos state v. Odumegwu-Ojukwu*** JSC, Eso stated;

> *I think it is a very serious matter for anyone to flout a positive order of court**….** It is more serious when the act of flouting the order of court, the contempt of court, is by the executive…. I think…. For the executive, (who) holds physical powers, to put up itself in sabotage or deliberate contempt of the order is to stage an executive subversion of the constitution it is to uphold.*[52]

It is most common amongst the executive and administrative bodies in Nigeria to flaunt court orders. This may be as a result of the immunity held in certain public offices. Several cases have proven this position countlessly.

Conclusion

In the final analysis, the judiciary's role in strengthening the rule of law lies not in wielding unrestrained power but in exercising principled authority. As Justice P.N. Bhagwati observed, "*the judiciary is not merely the interpreter of the Constitution; it is the guardian of the social revolution.*"[53] When courts interpret law in light of justice, liberty, and human dignity, they transform constitutional promises into enduring realities. Thus reaffirm that the rule of law thrives where the judiciary remains both independent and enlightened activist, neither subservient to power nor detached from the people it serves.

The paper advocates enhanced judicial oversight, to ensure that government obligations are met in a manner consistent with constitutional principles and international best practices. Such reforms will not only strengthen the enforcement of judicial decisions but also bolster public confidence in the legal system.

[50] Ibid

[51] "Court Judgments in Nigeria and the Independence of the Judiciary" at Brickmans Law https://www.mondaq.com/nigeria/court-procedure/1455698/court-judgements-in-nigeria-and-the-independence-of-the-judiciary accessed 14 October, 2025.

[52] [1986] 1 NWLR (pt. 18) 621 at 633.

[53] Justice P.N. Bhagwati, *Judicial Activism and the Role of the Judiciary in the Twenty-First Century* (Lecture, New Delhi 2002).