



The Judiciary and Presidential Democracy in Nigeria: A Synthetic Analysis

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Abstract

The study analyzed the roles of the judiciary in Nigeria's presidential democracy using secondary source of data. The secondary source of data includes textbooks, magazines, Newspapers, Journals and other documentary materials relevant to the study. The judiciary as the third arm of Nigeria's government is appointed by the Executive on the advice of the Federal and State Judicial service commission, subject to the approval of the Legislature. The role of the judiciary includes interpretation of the constitution/laws, adjudicating of cases in courts, advises the Executive and Legislature on some sensitive matters and defends the rights/liberties of the citizens. In Nigeria's presidential democracy, the Executive arm of government implements laws. The problem of this study is delay in resolution of cases in courts. There are cases in courts that have been pending for many years. Failure of the Executive arm of government to obey court orders in some cases is also a problem. The study recommended that government should establish more courts and employ more judicial officials and the three arms of Nigeria's government should adhere strictly to the rule of law. Strict adherence to the rule of law by the rulers and the ruled promote democracy.

Keywords: Presidential Democracy; Judiciary; rule of law and Executives.

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Introduction

Judiciary is the organ of government responsible for interpreting constitution and adjudicating cases. Judiciary is the third arm of government that settles disputes among individuals, groups and governmental organizations. Judicial officers are the court people usually described as the last hope of common man. Democracy is a system of government where the citizens of a state are free to elect their leaders/representatives into Government through free and fair elections (Jacob and Alafuro, 2009). Every democratic state is expected to have judiciary that is

independent enough to defend democracy and fundamental human rights. Privy Council of Great Britain served as the highest court in Nigeria from the colonial era to 1962. It was in 1963 that the Supreme Court became the highest court in Nigeria. The judiciary has certain characteristics which include;

- i. **Impartiality:** The judiciary is impartial.
- ii. **Political neutrality:** Judiciary are political neutral. Judges do not engage in partisan politics.
- iii. **Permanence:** The judiciary is the permanent institution inherited by successive government.
- iv. **Independence:** The judiciary is independent of the Executive and Legislature
- v. **Professionalism:** The Judiciary is made up judges who are legal experts.
- vi. **Stable tenure of Office:** In some countries judges hold office until they retire, if they are not found guilty of any corrupt practices. (Ogu, 2021:171)

Apart from the above mentioned characteristics, other features of judiciary include, judicial immunity, due process and code of conduct. The above mentioned features enable the judiciary to discharge their duties. The main roles of the judiciary is to defend democracy / fundamental human rights and settles disputes. Fundamental human rights can be defined as legal claims or entitlements which every citizen enjoys in a state and which the state has a duty to protect and guarantee, for example, right to life, right to fair hearing etc. Rule of law means equality before the law, supremacy of the constitution and preservation of human rights.



In Nigeria's presidential democracy, the judiciary as the third arm of government is not elected in general elections but they are appointed base on their profession. The judicial officials are appointed by the Executive arm of government on the advice of the Federal and State Judicial Service Commission, subject to the approval of the Legislature. (Ibiyemi et.al 2001:50 and Ogu 2021: 173).Independent of judiciary is one of the features of democracy. The reasons for judicial independence according to Ibiyemi et.al (2001:50 are, "the rights and liberty of the citizens will be better defended where the judiciary is free from control by the other arms of Government. Judicial independence would guard against tyranny in the state by ensuring against improper use

of power by Executive and Legislature. It helps to protect the constitution through objective interpretation whenever necessary. Judicial independence would ensure that judges themselves are not victimized by the Executive on account of any proper judgment they have given." Nigeria operates separation of power from 1979 to date. The functions of government are shared into three arms of government namely, Executive, Legislature and Judiciary. In Nigeria's Presidential democracy, the three arms of government are separated both in functions and in personnel. The presidential system of government is the type where the Presidents is vested with Executive power. The President is the head of state and head of government. The Executive president and Legislature are directly elected by the electorates in general elections. The main function of the executive arm of Nigeria's government is to execute laws. The problem of Nigeria's judiciary is that there have been delay in court processes due to court congestion. The chief justice is the head of the judiciary.

According to Bakare (2019:101), Nigeria's chief Justice since return to civil rule in 1999 are as follows:

1.	Muhammed Lawal Uwais	1995-2006	11 years
2.	Mohammed Alfa Belgore	2006-2007	1 years
3.	Idris Lagbo Kutigi	2007-2009	2 years
4.	Aloysius Katsina _ Alu	2009-2011	2 years
5.	Dahiru Mustapher	2011-2012	1 years
6.	Aloma Mariam Muktar	2012-2014	2 years,4 months



7.	Mahmud Mohammed	2014-2016	2 years
8.	Walter Samuel Onnoghen	2017-2019	2 years
9.	Ibrahim Tanko Mohammed	2019	

The above table shows Nigeria's chief justice since 1999 to 2019. Looking at the above table, most of the Nigeria's chief justice spent two years in office. Is two years enough for chief justice to introduce reforms and achieve the desired results? This study therefore aims at achieving the following objectives:

- Examine the functions of judiciary in Nigeria's Presidential democracy.
- Identify the challenges/problems militating against Nigerian Judiciary in the presidential democracy
- Recommend measures that can ease the problems confronting Nigerian judiciary.

The problem of this study is delay in resolution of cases in courts. There are cases in courts that have been pending for many years. The number of courts is not enough. There are insufficient times for some chief justice of Nigeria to introduce reform and effect positive changes in the judiciary. Failure of the Executive arm of government to obey court orders in some cases is a problem.

Methodology

The study adopted secondary source of data. The secondary source of data gathering include, textbooks, Newspapers, Journals, Magazines and other materials relevant to the study. Current data on judiciary and presidential democracy in Nigeria were gathered from journals, newspapers and magazines. Theoretical framework and other documentary materials were gathered from textbooks.

Theoretical Framework

This study adopts the theory of separation of power as its theoretical framework.



According to Anyaele (1994:40), “it was a French political thinker and jurist, Baron Montesquieu who developed and popularized the principle of Separation of power in his book entitled “Espirit des lois”. Montesquieu argued that if right, liberty and freedom of citizens are to be maintained and guaranteed, then three arms of government must be separated and entrusted to different people to administer. That there will be chaos, violence, dictatorship, tyranny and oppression if there is no separation of power. That the functions of law making, execution and adjudication should be handled by different organs of government without interference”. In Nigeria’s presidential democracy, there is separation of power. The judicial officials are not members of Executive or Legislature. The doctrine of separation of power does not envisage a

force competition for power between three man arms of government but rather collaboration, cooperation and partnership. (NILS, 2015). Separation of power aims at ensuring liberty of citizens and good governance. The functions of the judiciary and the other two arms of government are clearly specified in 1999 Constitution of the Federal Republic of Nigeria (as amended).

Conceptual Clarification

Presidential democracy

Presidential democracy is a system of government where the real political power in the state is vested on the Executive President. The Executive President is head of state and head of government. In Nigeria Presidential democracy, the Executive and legislative arms of government are directly elected in general elections by the electorates (voters). Nigeria operates separation of power with in –built checks and balances right from 1979 till date. According to Ogu (2017: 92), the powers of the Executive president are as follows:

The president is both the head of state and head of government.

He appoints ministers and other members of his cabinet (subject to the approval of legislature.

He is the commander in-chief of the armed forces.

The President prepares and presents annual budget to the legislature. He executes laws and signs bills into laws.



In Nigerian presidential system of government, the executive president is the head of Executive arm of government. He enters into treaties with other countries subject to the approval of the legislature. The Executive President in Nigeria is vested with enormous executive powers.

Merits of the Presidential Democracy

The presidential democracy which kicked off in 1979 in Nigeria has some advantages.

“the President’s fix term of office enables him to give his full time to the pursuit of state duties during his tenure, rather than dividing his times between state duties and politics. The clear

separation of powers among the three organs of government helps to prevent the misuse of state power. Although, there are majority and minority parties in the legislature, the absence of an official opposition party makes everyone work together for greater development. The President’s power to discipline any erring member of his government especially the ministers, makes for an effective running of the executive arm of government” (Ibiyemi et.al, 2001:36). Presidential system of governing is suitable for Nigeria. Is the Executive arm of government obeying court orders? All arms of government should obey court orders.

Demerits of Presidential Democracy

There are problems usually associated with presidential system of government. According to Ibiyemi et.al. (2001: 36), “the presidential system is very expensive to run, in terms of financial and personnel required for the separate executive and legislative arms of government. Since the president is not responsible to parliament, an ambitious president may become autocratic because of enormous executive power at his disposal. The fix term of office of the President may make him become very unresponsive to public opinion. The separation of the executive arms of government often results in governmental crises-wherever both arms disagree with each other, especially on such issues as the budget”.

In Nigeria’s presidential democracy and federalism, each arm of government derive their powers and functions from the constitution. Supremacy of the constitution is one of the basic features of



Nigeria's democracy. Arms of government, agencies and individuals are expected to adhere strictly to rule of law. Adherence to rule of law promotes good governance and ensure liberty of citizens.

Judiciary in Nigeria's Presidential Democracy

The judiciary, generally described as the defender and promoter of human rights, performs many functions in keeping Nigeria's presidential democracy moving. According to Ogu (2021:172), the functions of judiciary are:

- i. **The Judiciary interpretes Laws:** The primary function of the judiciary is to interpret the laws/constitutions of the country.
- ii. **Settles disputes:** The judiciary adjudicates cases between the Executive and Legislature and also settles disputes between political parties, individuals and organizations. Judiciary is a legal expert.
- iii. **Protects rights and liberties of Citizens:** Judiciary protects citizens rights and liberties. Judiciary can order for the release of person or persons detained unjustly.
- iv. **Advices the Executive and Legislature:** The judiciary advices the Executives on some sensitive issues such as exercise of pre-rogative of mercy. Judiciary can also advice the legislature on some sensitive issues such as constitutional preparations and amendments.
- v. **Punish law breakers:** Judiciary make sure that the law is obeyed by the citizens. Those who refused to obey the law are punished.
- vi. **Determines election petitions:** Nigerian Judiciary hears and determines election petitions. Judiciary ascertain true winner of elections.

In the same manner, (Ibiyemi et.al 2001: 49) outlined the functions of judiciary as; "the Judiciary interprets the law. It settles disputes between any parties, individuals, organizations and government, whether they are civil or criminal cases. The judiciary ensures that the law is obeyed. It determines whether a person, organization or government is innocent or guilty and applies penalty as appropriate. The judiciary interprets the constitution, and protects it against violation. It can declare any action of government unconstitutional, and therefore null and void.



It protects individuals and group rights and liberties, by ordering the release of any persons detained unjustly.”

In view of the above mentioned functions, are there efficient service deliveries by the judiciary in this present presidential democracy in Nigeria? Are the Executive and Legislature obeying court orders? The functions of judiciary are very important in Nigerian democracy. Democracy and the liberty of citizens cannot be sustained without effective discharge of the functions of the judiciary. Judiciary as the powerful institution in democratic states determines who is innocent and who is guilty. Offenders are usually punished by the Judiciary depending on the gravity of the offence committed. “A Federal Capital Territory mobile court has sealed up Missouri Hotel,

located in Maitama District of Abuja, for allegedly operating a night club within curfew hours in contravention of covid-19 regulations. In particular, the court presided over by magistrate Idayat Akani, which sat Monday at the Eagle square, ordered that the hotel be sealed up for the period of one week. The court also tried and sentenced eleven defaulters who are to engage three day community service, with payment of ₦5,000. Our correspondence gathered that six of the defaulters found guilty are staff of the hotel. They were apprehended by the Covid-19 enforcement team for opening up their business within the curfew hours which is from 10p.m to 6 a.m” (Muhammad, 2020:19). The laws/rules guiding the proper conduct of the state should be adequately be published by the government so as to enable the masses to be abreast with laws/rules guiding their environment. Nigerian citizens are expected to be law abiding. “A state high court presided over by Justice Okon Okonin Uyo, the Akwa Ibom State Capital has sentenced two women to 14 years in imprisonment each for trafficking in children. The convicts were jailed for trafficking in children who ages range between one and two for the sum of N500,000 each” (Anichebe, 2022:6). The judiciary determines who is guilty or innocent. The guilty are usually punished by the judiciary after due processes.

According to Abioudun (2023:7), “the Appeal court, Ado Ekiti Division has reinstalled 118 workers of Ekiti state University, Ado Ekiti who were sacked in December, 2019. They included



32 staff members of the laboratory department who were reinstated by the Appeal court of March 25 and 86 other employees consisting of both academic and non-academic staff members who were reinstated by the appellate court on Monday. The National Industrial court sitting in Akure had earlier ordered reinstatement of the sacked workers in the two separated suit filed by the two groups following which EKSU appealed the verdict. Justice Olatunde Awotoye of the Appeal court, who in the court verdict, ordered the reinstatement of the 32 laboratory technologist, said “they were unlawfully sack by the University Governing council which failed to comply with the provisions of the institution’s employment regulation”. Judiciary is defender of democracy and human rights. It is the last hope of a common man. People should go to court and seek for redress when their rights are violated.

Another institution where Nigerian Citizens can seek for redress is public complaints commission, otherwise, known as Ombudsman. Public complaint commission is the institution established by government to investigate and deal with the cases of maladministration, injustice and unfair treatment by the public officers or public authorities against the citizens. The commission listens and looks into the grievances of the aggrieved citizens. According to Abubakre (2015:24), “type of complaints entrained by the commission are, delay in the payment of gratuity, land compensations, non-payment of goods bought or service rendered to government departments and corporate bodies, wrongful termination of appointment/ dismissal, difficulty in getting issuance companies to pay claims, loss of postal documents or parcel by courier companies, non-refund of contributions by National Housing fund and other mortgage institutions”. Delay in court processes at times compel some citizens to seek for redress in public complaints commission.

Challenges / Problems Confronting Nigeria’s Judiciary / Presidential Democracy

The Nigerian Judiciary has been confronted with some challenges/problems in discharge of their constitutional mandates. According to Bakare (2019:101), “one does not need a microscope to discern that the judiciary in Nigeria is burdened with a lot of problems inhibiting its chances to



live up to the famous appellation, as the last hope of the common man. Issues bugging the Judiciary include alleged politicization, delay in resolution of cases, logistical problems, divergent positions by different courts on similar matters”. Delay in court processes is a serious problem that militates against the citizens. “Till date, there are cases in court that have been pending for over 20 years. There are awaiting trials inmates who have been behind jail cells for longer period than they will get even if they are eventually convicted for the crimes they are charged with” (Bakare, 2019: 101).

Due to delay in court processes, some citizens do not seek for redress in court. There are cases in courts that have been pending for many years. “Since the return to civil rule in 1999, apart from the justice Muhammed Uwais who retired in 2006 after eleven (11) years in office, each succeeding chief Justice has served in office for an average of just two years before retirement.

This can never be regarded as sufficient time to deliver the reform they promised on assumption of office. How does one justify the fact that Nigeria has had Nine (9) CJNS in twenty (20) years?” (Bakare, 2019). The tenure of office of the chief Justice of Nigeria before retirement seems to be a problem. One or two years in office as chief justice of Nigeria may not be enough to introduce reforms and achieve the desired positive changes in Nigerian Judiciary. According to Anyaele (1994:68):

One of the problems facing judiciary is lack of adequate funding by Executive. Court congestion that causes delay of justice is another problem encountered by the judiciary. Poor remuneration or salaries paid to judicial official. Lack of adequate judicial personnel caused mainly by poor salaries paid to them. The number of courts is insufficient.

The problems militating against the judiciary should be solved so as to live up to expectation as the last hope of a common man. According to Sobowale (2023: 13), “I can understand the frustrations, anger and sense of impatience of Kanu who is arrayed against a lawless Federal Government in what is supposed to be democracy. A competent court of law has ordered that he be set free; the FG had even been asked to pay him damages. But Buhari and his minister of Justice and Attorney-General of Federation, Abubakar Malami, in an executive lawlessness



have disobeyed the court order, as they have done several others, thereby weakening our democracy”. Adherence to rule of law promotes democracy. Arms of Government are expected to adhere to rule of law. Nigeria operates separation of power with in-built checks and balances. According to Godwin (2023:25), “the supreme court has ordered that old bank notes of ₦200, ₦500, ₦1,000 denominations remain in circulation till December 31, 2023. The apex court further nullified the Federal Government’s naira redesign policy, declaring it as an affront to 1999 constitution. Meanwhile the apex court declared that President Muhammadu Buhari’s disobedience of its February 8 order is a sign of dictatorship”. All arms of Nigerian government should adhere strictly to rule of law. Adherence to rule of law promotes democracy.

Conclusion

The judiciary is the arm of Nigerian government charged with the responsibility of interpreting the constitution, adjudicating cases between Governments, organization, individuals and groups. Judiciary advises the Executive and the Legislature on some sensitive matters. Judiciary ensures that the law is obeyed and protects individuals and groups rights. The Chief justices of Nigeria can be described as the head of Nigerian Judiciary. The appointment of Judicial officials are by the Executive, acting on the advice of the Federal and the State Judicial service commission, subject to the approval of the legislature. Citizens whose rights are violated can seek for redress in courts. Public complaints commission is also government institution where citizens can seek for redress when their rights are violated by government authorities. Nigeria operates presidential democracy, separation of power, check and balances from 1979 till date. The executive implements laws but the challenges confronting Nigerian Judiciary include, delay in resolution of cases in courts, divergent positions by different courts on similar matters, insufficient time for the Chief Justices to introduce reform and effect positive changes before retirement and failure of the Executive to obey court orders in some cases. The above mentioned challenges / problems militating against the judiciary / Presidential democracy need



to be solved so that the judiciary will live up to the expectation as the last hope of common man.

Recommendations

In view of the findings of this study, the following recommendations are necessary.

- i. **Appointment of chief justice with longer years to serve:** The appointment of chief justice of Nigeria should be for those who have at least 6years left before retirement. This will enable chief Justice to have sufficient time to carryout necessary reforms. Nigerians need reforms that can wipe away delay in court processes and ensure good governance.
- ii. **Establish more Courts:** Government should establish more courts and employ more judicial officers so as to decongest cases in courts. Delay in resolution of cases in courts is not in the best interest of the citizens.
- iii. **Adequate funding of judiciary:** For efficient service delivery in the judicial arm of government, adequate funding is necessary. There should be adequate budgetary allocation to judicial arm of government. Good remuneration of judicial officials are necessary in Nigeria's democracy.
- iv. **Strict Adherence to the rule of law:** supremacy of constitution is one of the features of Nigeria's democracy. Rulers should rule according to the constitutional procedures while the citizens are expected to obey the laws of the state. The Executive, Legislature, Judiciary, government agencies, groups and individuals are expected to adhere strictly to rule of law. Adherence to rule of law promotes democracy, good governance and ensure liberty of citizens.



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