

A JURISPRUDENCE OF THE RULE OF LAW: AN APPRAISAL OF ITS APPLICATION IN NIGERIAN DEMOCRACY TODAY*

Abstract

The Rule of law is the most important concept in public law and indeed, in every democratic society. The concept considers every citizen as equal before the law. It sanctifies the priority of the law – common good, over personal, sectional and group concerns. In this way, the law is enabled to provide a common measure of acceptable social behaviour in the absence of which anarchy will reign, making social life and government impossible. In the previous republics in Nigeria, the rule of law has not been quite impressive. What was the case had been an irregular rise and fall of the rule of law. But in the wake of the fourth republic, the situation has significantly improved. This essay will attempt to analyze the concept of rule of law and examine most common perspectives to it. Thereafter, the temper of the rule of law in the present (fourth) republic will be considered against the backdrop of earlier republics. Then, recommendations for a more realistic and sustained rule of law will be made.

Introduction

Statehood is a function of law for without the law, there can be no state. It is the law that organizes the people and regulates their affairs in such a way that accords with the requirements of a state.¹ Non occupation of a common territory notwithstanding, a state can still be, once the people are subject to a common authority of law. A lawless state is a contradiction in terms, and is analogous to a jungle – a state of nature where standards and values are compromised. As it were, planning in and for such a society is impossible since consistency and regularity necessary for such enterprise are absent. In such a disordered society, rights, interests, duties, positions, powers, authorities and conflicts against each other. The tendency is anarchy. Okere articulates the utility of law for a stable society in these words:

The law is the instrument which embodies the will and command of the people. The law is indeed the master, an indispensable organizer by which the people govern themselves. To have no ruler is possible but to have no law is chaos and anarchy. Thus, the law is a foremost instrument of ruling and especially of democratic ruling. Law is the ordinance of reason made by competent authority for the common good or the good of all ... If laws are flouted or weakly enforced, there is chaos or lawlessness can result in injustice, in corruption and eventually in self destruction of society.²

Nigeria, throughout her historical and political experience, reflects a differential appreciation of the sanctity of the rule of law. At the various political eras, varying degrees of socio – political stability are measurable against the backdrop of the value placed on the rule of law. Being a plural society in the sense of multi – ethnic, racial and political royalties, Nigeria needs commitment to a supreme legal framework to ever survive the forces of division and chaos. To such a rule, all competing and/or rival interests will be subjected.

Incidents of lawlessness and/or rule by man as against the rule of law have occasioned quite enormous disservice to the progress of Nigeria especially at the economic and political frontiers. At all those moments in the country's history when licentiousness and permissiveness were exalted, the consequences were tragic – civil war, several religious crises, political dominations, racial discrimination and economic meltdown. What is certain is that the ultimate

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¹ Cf. B. Sheila, (ed), **Concise Law Dictionary**, 9th ed., Sweet and Maxwell, London, 2001, o. 360.

² T. Okere, **Philosophy, Culture and Society in Africa**, Nsukka, Afro – Orbis pub., 2005, p.171.

effect of lawlessness in the country is the movement towards a failed state and inevitable extinction. This is because when absolute freedoms clash in a finite space they will exclude each other leaving nothing behind. Hence, law is needed to regulate freedoms.

But it is not enough to have law, it is even more important that it rules over all; for there is only a slim margin between the rule of law and rule by law. In the latter case, law assumes the nature of a contrivance for the subjugation of the minority, the inferior and the weak. This will inevitably lead to a dialectical situation whereby revolutions supplant revolutions in very quick successions to the end of anguish of man in society. Little wonder Plato observes that:

Where the law is subject to some other authority and has none of its own, the collapse of the state in my view, is not far off; but if law is the master of government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that gods shower on a state.³

The earlier history of Nigeria had a difficult task establishing a sustainable commitment to the rule of law. Those times were thus, critical in the struggle for political renaissance. It was left for the last political dispensation in the country to demonstrate a sincere desire for the rule of law. With the combined efforts of honest key players in the three arms of government especially the executive coupled with influences from other jurisdictions, national life was once more re – injected with sufficient socio – political conscience compliant with global standards. Recently, the executive for instance, afforded the judiciary the needed minimum standard of independence and ‘security space’ to interpret the laws and as well, expressed intentions to be bound by the prophesies of the courts. Within such a brief period, indications of a Nigeria, where peace and justice could reign appeared. This essay investigates the relevance of the rule of law and its implication for Nigeria today. It recommends strategies for more commitment to the rule of law.

Law, The Rule of Law and Rule by Law

Law is a special kind of ordering process, a special type of process of restoring, maintaining or creating social order. It is a kind of ordering which is neither by way of friendship nor force but somewhere between the two.⁴ Thomas Aquinas defines law as “an ordinance of reason, directed towards common good, and promulgated by the one who has the care of the community”.⁵ What this means is that law is an instrument for the achievement of common good and is therefore, at the root of social progress and civilization. Science, art, commerce, the capacity of cooperative effort by communities and peoples, which we identify with civilization, have become possible only through the establishment of social order which in turn makes law possible and of which law is the necessary concomitant.⁶

Garner in the *Black’s Law Dictionary*, does not depart from the social content of law and so finds it as “the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure backed by force in such a society”.⁷ As a standard of conduct, it is about the aggregate of legislation, judicial precedents and accepted legal principles which the courts of a particular jurisdiction will apply in deciding

³ J. Cooper *et al*, **Complete Works by Plato**, London, Hackett pub., 1997, p.1402.

⁴ H.J. Berman and W.R. Greiner, **The Nature and Function of Law**, The Foundation Press, New York, 1972, p.28.

⁵ T. Aquinas in S.O. Eboh, **Legal Theories and The African Concept of Law**, Heb – Uni – Tech pub., Port Harcourt, 2004, p.2.

⁶ H.F. Stone, **Law and its Administration**, Columbia University Lectures, New York, 1924, pp. 1-2.

⁷ B. Garner, (ed), **Black’s Law Dictionary**, 9th Ed., West Pub., 2009, p. 962.

issues before them.⁸ In this connection, Okoye defines law as “the set of rules established by nature or by human authorities, to regulate natural phenomena.”⁹

In the work of ordering the society, Law helps to maintain social equilibrium by giving remedies for wrongs. It provides channels for social action by protecting expectations. What is more, it helps to mold and remold social thought, feeling and behaviour by proclaiming and enforcing standards of conduct.¹⁰ Ewelukwa goes further to itemize the social functions of law as follows: regulation of human conduct, reconciliation of the interest of the individual to that of the community pointing out what interest exist, sustaining the dignity of man and midwifing socio – economic, political and religious changes.¹¹

The Rule of Law and Rule by Law

The rule of law is a legal maxim according to which no one is immune to law. It prescribes for equality of all before the law and binds governments as well as simple citizens. According to Olong, the rule of law “may be interpreted either as a philosophy or political theory that lays down fundamental requirements for law, or as a procedural device by which those in power rule under the law”.¹² In essence, the rule of law is simultaneously prescriptive and protective. Precisely as being prescriptive, it dictates the conduct required by law and as being protective, it insists against unlawful subjugation, domination and exploitation of citizens by fellow citizens and governments. Albert Venn Dicey, one of the most famous jurists who taught on the subject of the rule of law articulates it to represent:

- a) The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness of prerogative or even of wide discretionary authority on the part of the government.
- b) Equality before the law or equal subjection of all classes to the ordinary law of the land administered by the ordinary courts.
- c) The law of the constitution is the consequence of the rights of individual and not otherwise.¹³

Notwithstanding that the Dicey’s construction of the concept of the rule of law fails to recognize the necessary immunity provided in the constitution for some office holders, it nevertheless ranks as one of the most articulate presentations of the rule.

The rule of law was finally enshrined in the Constitution of the Federal Republic of Nigeria, 1999, where it is provided that “this constitution is supreme.”¹⁴ It is pointed out that the supremacy of the constitution implies the supremacy of laws of the land over persons and interests, over governments and their policies. Hence, **in Military Governor of Lagos State v Ojukwu**, the Supreme Court pointed out that, the state is subject to the law and that the government should respect the rights of individual citizens under the law.¹⁵ If the government is not above the law, it follows that the rule of law has no sacred cows and as such no citizen should establish himself or be established above others in relation to the law. Thus:

⁸ *Ibid.*

⁹ I. Okoye, **Nigerian Press Law and Ethics**, Ibadan, Malthouse Press Ltd., 2007, p.3.

¹⁰ H.J. Berman and W.R. Greiner, *op. cit.*, p. 35.

¹¹ B.N. Ewelukwa, **Introduction to Nigerian Press Law**, Maranatha Press, Onitsha, 2004, pp. 1-2.

¹² A.M. Olong, **Administrative Law in Nigeria**, 2nd. Ed., Malthouse Press Ltd., Lagos, 2009, p. 11.

¹³ A.V. Dicey, **Law of the Constitution**, 10th ed. Spectrum Books, Ibadan, 1997, p. 202.

¹⁴ Constitution of Federal Republic of Nigeria, 1999, Cap c. 23 Laws of Federation, 2004, section 1.

¹⁵ (2001) F.W.L.R. (pt. 50) p. 1783.

Not only with us no man is above the law (what is a different thing) that here everyman, whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunal.¹⁶

Upholding the Rule of Law in a Democracy

In all democracies, the Rule of Law is obviously pre-eminent and it had since, been the office of the judiciary to see that the Rule of Law is upheld. Meanwhile, two major conceptions of the Rule of Law are highly canvassed. On the one hand is the *formalistic concept* and on the other is the *dynamic concept*. According to Friedman, in a formal sense, “the rule of law means any ordered structure of norms in a given community”. It is free from any particular ideological content and encompasses tyrannical as well as liberal and humanitarian order.”¹⁷ This formalistic concept was drawn from the postulates of Albert Dicey who conceptualized that the rule of law means: the absolute supremacy of the regular laws; equality of all before the law administered by the ordinary courts and the fact that the laws of the Constitutional Code are not sources, but the consequences of the rights of individuals codified and enforced by the courts.¹⁸

Considered from the *dynamic perspective*, the rule of law expands to include the minimum condition of existence in a free, open, humane, civilized and democratic society. It encompasses among other things “observance of democratic values and practices including: freedom of speech, thought, association and the press and regular free and fair election as the basis for assuming power in government”.¹⁹ The expansive intuitions found in this dynamic concept of the rule of law were inspired by *UDHR (1948)*, *ECHR (1958)*, and sundry conventions and conferences of international standing. In pursuance of the dynamic concept of the rule of law, public officers, being the people’s representatives must be made to account to the people. Hence, whether the Executive or Legislature, all representatives of the people in a democracy, must adhere to the principle of accountability. To insist on this, is the role of the courts in a democracy. It implies commitment to the rule of law.

Oputa JSC in Government of Lagos State v Ojukwu²⁰ extemporizing on the rule of law observes “the law is no respecter of persons, principalities, governments or powers and the court stands between the citizens and the government alert to see that the state or the government is bound by the law and respects the law”. Thus, with the sanctity of the rule of law intact and the implied accountability demanded of public officers preserved, criticisms geared towards eliciting the most insightful probe into their conduct ought to be accommodated.²¹

We find in Sir Abubakar Tafawa Balewa, an instance of a chief executive that understands the meaning of the rule of law. When in an occasion he met with Sir Adetokumbo Ademola CJN, he said to him “if I do anything wrong and I am brought before you, deal with me and if necessary send me to jail”. Subsequently, when the Supreme Court gave judgement against his government in **Doherty v Balewa and others**, on seeing the Chief Justice after the judgement, he said to him “I am glad you have put us in our place, this is what we deserved. If I do wrong,

¹⁶ A.V. Dicey, *op.cit.*, p.17.

¹⁷ W. Friedman, “The State and the Rule of Law In a Mixed Economy” cited in A. Aguda, **Law and Human Rights in Democracy** in O. Obasanjo and A. Mabojunle (eds.), *Elements of Democracy*, Abeokuta, Alfa Pub., 1992, p. 34.

¹⁸ A.V. Dicey, **Law of the Constitution**, 10th ed., London, Macmillan, pp. 202-203.

¹⁹ I.E. Sagay, “The Judiciary in Modern Democracy” in Ayua I.A. and Guobadia D.A. *et al* (eds.) **Issues in the 1999 Constitution**, Nigeria Institute of Advanced Legal Studies, Lagos, 2000, p. 79.

²⁰ [1986] INWLR 18, p. 621 at 647- 648.

²¹ A.V. Dicey, *Op. cit* pp. 202-203.

do not hesitate to deal with me”.²² This was the spirit of the rule of law in the First Republic. Judges are not queried for entering judgement against the government in power. In contrast, we find in the case of **Lakanmi v AG Western States and others** a spirit inimical to the rule law. The Rule of Law has therefore, a number of implications for governance in Nigeria:²³

- (1) It implies that the Constitution is the supreme law of the land and that the judiciary, when its jurisdiction and powers are invoked acts as the guardian of the constitution.
- (2) It implies that the legislature shall not pass any law which is ultra vires for the reason of contravening Ss 4(8) and 4(9) of the constitution. Were the legislature to offend, the judiciary will strike down the offending legislation as in **Attorney General of Bendel State v Attorney General of the Federation**, where the legislature failed to follow the due process in making a money bill.
- (3) It implies that no member of the Executive arm of government shall exercise his executive function where there is no legal foundation for such act. Indeed, as Nwabueze articulates it, “every restriction on governmental power, whether express or implied, attracts the sanction of judicial review”.²⁴
- (4) It implies that every legislative or executive act is subject to judicial review. Thus, as White has put it “whether a particular branch of government has met their obligation or ignore them, whether they had appropriately exercised their powers or gone beyond them...” were proper questions for consideration and resolution by the judicial branch of government.²⁵
- (5) It implies that all rights and obligations in our constitution, African Charter, and other applicable and relevant laws and statutes are respected and enforced; otherwise the judiciary will rise to the occasion to exercise their interpretative jurisdiction.
- (6) Another important implication of the rule of law relates to the provisions of fundamental rights and their enforcement via the *Fundamental Rights (Enforcement Procedure) Rules, 1979*.

These and many others constitute the many implications of the rule of law, albeit dynamic for the Nigerian democracy.

Rule by Law

The dividing line between the rule of law and the rule by law is thin. A slip off, the former lands one into the latter with grievous consequences. Rule by law implies that there is a subject higher than the law in authority which uses the law as a contrivance to achieve desired ends. This is practically opposed to the rule of law by which principle law should govern and those in power should be servants of the law. Aristotle properly puts it in this way that “it is more proper that law should govern than any one of the citizens upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians and the servants of the law.”²⁶ Li Shuguang goes further to distinguish the rule of law from the rule by law observing that:

²² Cf. Forward to the book **A Right Honourable Gentleman the Life and Times of Alhaji Sir Abubakar Tafawa Balewa**, by Trevor Clark, cited in Madaki Y.A., *The Nigerian Legal Systems Tribunals: An analysis in E. Amuncheazi and .O. Olatowora (eds.) op.cit.*, p. 95.

²³ Nnaemeka Agu “The Position And Role Of A Judge In A Democratic State” in Nweze C.C. (ed.), **Justice in the Judicial Process, Essays in Honour of Honourable Justice Eugene Ubaezonu**, Enugu, Fourth Dimension pub., 2002, pp. 220-224.

²⁴ B.O. Nwabueze., **Nigeria’s Presidential Constitution, 1979-1983** in *Ibid.* p. 222.

²⁵ Whyte, “The American Judicial Tradition, in Nweze C.C., *op. cit.*, p.223.

²⁶ Aristotle, *Politics*, 3.16.

Under the rule of law the law, is preeminent and can serve as a check against the abuse of power. Under the rule by law, the law can serve as a mere tool for a government that suppresses in a legalistic fashion.²⁷

All the instances in government where and when laws were enacted against or in favour of a predetermined target group relates to rule by law. In this way, militarism, dictatorships and feudalism are all instances of rule by law. In the modern times, communism and socialism are examples for isolated engagement. What is more, times when laws were enacted with retroactive effects are obvious cases when rule by law has overthrown rule of law.

Courts and the rule of law in Nigeria

The role of the court in the sustenance of the rule of law is critical. Hence, the greatest challenge to the rule of law is not more of the acts or omissions of persons, groups and government than it is of the attitude of the courts in the face of such circumstances. For instance, when the military promulgate retroactive laws and put up exclusionary clauses, when government officials become laws upon themselves and when individuals exalt themselves to positions apparently invulnerable by the law, the duty falls on the courts to recover the law from the precipice, safeguard it and restoring same to its pristine position. The government and individuals must therefore be subjected, to the independent judicial control.²⁸ The substance of the argument is that the failure of the rule of law is the failure of the courts of the land.

When the courts adopt a courageous attitude in the face of any affront to the law irrespective of who is involved, the rule of law in a general sense is observed. Yet, it is in seeking out the spirit of the law and giving it expression in their judgements, often against the letters of the law, that the courts idolize the rule in its dynamic sense.

In the interpretation of the law, judicial activism and passivism comprise two competing theories of the courts attitude. Passivists attempt to literally and mechanically apply the letters of the law. This had often outworked detriment for a democracy. This is because at certain points in the history of every democracy, there arises the need to make a radical leap in order to serve the polity from the destructive margins of injustice. On the other hand, judicial activism is about a judicial philosophy of creative will capable of creating new paradigms. It assumes that the law is a charter of a dynamic society and is inspired by certain philosophical and ideological motives not immediately obvious in the letters of the draftsman but which must be given expression to have justice done indeed. History finds Lord Denning at the vanguard of this legal teleology. According to him in **Mayor v Newport** “we sit here to find out the intention of the parliament and of ministers and carry it out, and we do this better by filling the gaps and making sense of the enactment.”²⁹ In one strong sentence, Sagay summarizes this dynamic vision of the courts approach saying, “in order to meet the requirements of a modern democratic society, our courts must adopt an activist approach to the interpretation of the law”.³⁰

Earlier republics and regimes in the history of Nigeria were not altogether favourable to the dynamic concept of the rule of law. Cases were mostly tried and determined in reference to the letters of the law. During the first republic when executive lawlessness was prevalent, the courts did not sufficiently make the dynamic angle of the rule of law prominent. **In the case of Balewa**

²⁷ B. Tamanaha, **On the Rule of Law**, Cambridge University Press, London, 2004, p.3.

²⁸ **My Home Office** (1994) AC 377.

²⁹ (1950) ALL E.R. 1226, 1236.

³⁰ I.E. Sagay *op. cit.* p. 79.

v Doherty³¹, the court was formalistic. For while it voided the action of the Federal government, which empanelled a commission of inquiry into the affairs of a region; it did not go further to declare the Act pursuant to which the commission was set up void. The reason for this being that particular non severable provisions of the said Act exceeded the powers of the parliament. Another case notable for its extreme formalist approach to justice was **DPP v Chike Obi**.³² Here, Chike Obi published materials critical of government and was thus charged for the offence of sedition. The issue before the court was whether the offence of sedition provided in section 50(2) of the criminal code is inconsistent with freedom of expression guaranteed under section 24 (2) of 1966 constitution. The Supreme Court held that it is not. In seeking to maintain formal validity of the law, the court failed to address the fact that colonial masters used the offence of sedition to suppress the press so as to frustrate prevailing desire for self government. Other cases where activism was not brought to bear on the judgements of the courts were **Akintola v Adegbenro, Olawoyim v AG Northern Nigeria etc.**³³

What is more, when in 1970, the Federal Military Government promulgated the Federal Military Government (Suspension and Enforcement of Powers) Decree No 128, 1970; the courts appeared to have been intimidated. This was because the Decree asserted the supremacy of decrees over the constitution and ousted the court's jurisdiction in many matters. The effect was that timidity was infused into the courts and human rights abuses and executive lawlessness were sanctified.

By the second republic, the cases of **Awolowo v Shagari**³⁴ and **Nwobodo v Onoh**³⁵ are sufficiently illustrative of both a formalist approach to the rule of law and a positive desire to outwork injustice. In Shagari's case, 2/3 of the nineteen states of Nigeria were determined to be 12^{2/3} all in effort to deliver Shagari as the winner in the pools. In doing this, geographical spread was confused with numerical superiority albeit purposely.

Buhari's and Babaginda's military administrations were lethal to the rule of law. For instance, in the case of **Guardian Newspaper v A.G Federation**³⁶, the court was unable to uphold true publication as a defense in libel for the reason of Decree 4 of 1984. Under Babaginda's administration, the judiciary collapsed entirely. The courts appeared to have accepted the supremacy of the decrees over the constitution³⁷ and judges received gratification from the powers that be. The logical conclusion of all these was the funeral of democracy, a *historical dark hole* which dawned when Justice Ikpime of Abuja High court was influenced to issue an injunction leading to the cancellation of June 12 elections. Until the end of this 'dark age', the norms of democracy were trampled upon without redress. However, it will be over generalization to hold that the entire period covered above did not show any instances of bold and dynamic decisions. It does. Yet, Ajomo's remarks remain instructive to the effect that "what the citizen expect of the courts is not ad hoc justice which staggers or whose flow hiccups, but continuous uninterrupted flow of justice as a legacy to a decent political society."³⁸ In what follows an examination of the paradigm change in recent times will be made.

³¹ [1961] ALL N.L.R. 604; (1963) I.W.2.R. 961.

³² [1961] IANLR, 194.

³³ [1963] ZWLR 63 (P.C.), (1961) IALL NLR 269.

³⁴ [1979] 6-9 sc. 51.

³⁵ [1984] ISCNR.

³⁶ (suit No. m/139/84.

³⁷ **Dokun Ajai v Alhaji Mustafa and Ors** (1992) 8 NWLR pt. 258, 139.

³⁸ E.C. Ajomo in Ubaezuonu E.C., "Judicial Activism in Nigeria", I live. The memoirs of the Hon. Justice Eugene Ubaezuonu (JC), Enugu, Fourth Dimension pub., 2002, p. 242.

Rule of Law in the Present Democratic Dispensation: An Examination of the Paradigm Shift

Throughout the political history of Nigeria, whatever appeared to be a democracy was always aborted by the supervention of military rule. It is only the present democratic experiment which started in 1999 that has handed over to other democratically elected officials without such “abortion”. It is only these ten years that one can say that Nigeria has sustained a democratic dispensation more or less. For the purpose of this essay, this era can properly be called the **Nascence of Nigerian Democracy**. Within the period in question, given the constitutional empowerments and safe environment it has, the judiciary has done a lot of self-clearance and promoted the rule of law more than ever. A number of cases, especially those that are of constitutional importance were handled with great and commendable activism. Many of such cases include: **Ngige v Obi; Balonwu v Peter Obi; Ladoja v Oyo State House of Assembly; INEC v Musa; Alhaji Atiku Abubakar v Attroney General of the Federation**, to mention a few.

In **Ladoja v Oyo State House of Assembly**,³⁹ the Judiciary, rising to the occasion of frequent impeachments in the country, made a judicial review of the acts of the aforestated House of Assembly to ensure compliance with the procedure as set out under Section 188 of the 1999 Constitution. This it did with a view to finding the real legal effect of Section 188 (10) thereof which sought on the face of it, to oust the court’s jurisdiction. When the matter went up to the Supreme Court, “it affirmed the judgement of the Court of Appeal by finally laying down the law that “the ouster clause contained in Section 188 (10) of 1999 Constitution will only operate where the legislators fully comply with the conditions set out in Section 188 thereof. Any omission to follow the laid down procedures makes these actions susceptible to judicial review.”⁴⁰ This decision fundamentally altered the constitutional platform on the law of impeachment in Nigeria. Commenting on the significance of this case for the judiciary and Nigerian democracy, *Akpo Mudiaga Odje*⁴¹ says that this is “a case where the judiciary made another bold statement that has subtly reduced⁴² the tension in our land and upheld the Rule of Law in Nigeria.”⁴³ It rendered the retinue of impeachments from Diepreye Alamiyiesiegha of Bayelsa State to Peter Obi of Anambra State null and void.

Democracy has a lot to do with multiplication of options and sufficient allowance of freedom for people to choose from available options. Thus, one of the most decisive matters that challenged our nascent democracy and therefore the judiciary was that of “whether it is for the INEC to decide how many political parties we should have in Nigeria.” Thus, in **INEC v Musa**,⁴⁴ the court held that the constitution has provided for the number of the political parties and what INEC has to do is to register as many political parties that meet the constitutional requirements.

Elections petitions are among the many aspects, if not the principal one, where the judiciary had constantly not lived over board. In this aspect, consider the cases of **Awolowo v Shagari; Nwobodo v Onoh; Buhari v Obasanjo** and many others. However, it is a different story in this new era. After the gubernatorial election of 2003 in Anambra State which returned Ngige as Governor, allegations of fraud and irregularities were overbearing. Accordingly, the Election

³⁹ **Inakoju v Adeleke** (2007) 4NWLR, pt 1025.

⁴⁰ Cf. *Daily Independent*, Thursday, Feb. 22, 2007, p. 111.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Loc. cit.*

⁴⁴ [2007] 9 NWLR (Pt 796) 412 at p. 447.

Tribunal sitting at Awka after a three-year hearing declared Mr. Peter Obi as the true winner at the elections. In the case of **Ngige V Obi**,⁴⁵ the judgement of the tribunal was challenged under thirteen (13) points sensitive issues to be determined by the Court of Appeal. What is more, the Independent National Electoral Commission also sought for the nullification of the election which it conducted and defended before an Election Tribunal. Handing down its judgement per Augie JCA, the court said: “it does not speak well of INEC, in fact, it is deplorable, that it can defend an election it conducted at the lower tribunal and without shame turn up at this court to say... we want you to nullify it and allow us conduct another one... It is unfortunate that because of the failure of INEC to conduct a free and fair election on 19th of April, 2003, Dr. Chris Ngige who has been running Anambra State as Governor for the past three years will have to be removed at this 99th hour; but out of nothing, nothing can arise.”⁴⁶

Much more instructive it is to look at the Court of Appeal’s decision on **Alhaji Atiku Abubakar v Attorney General of the Federation**.⁴⁷ This one appears to be the latest constitutional case decided to the great advantage of democracy. The issue before the court was (1) whether a Vice-President who was elected together with the president on one political platform as provided under section 142(1) of the constitution, could, while holding on as the Vice-President, legally defect to another party.

(ii) Whether Mr. President has the powers under Section 146(1)(C) of the constitution to declare the seat of the Vice-President vacant.

The court held that the defection though immoral is quite legal. It further held that pursuant to section 239(1)(C), the President acted ultra-vires when he declared the seat of the Vice-President vacant.

What one may consider as the greatest manifestation and/or victory of the dynamic concept of the rule of law in the present dispensation appears in the case of **Amechi v INEC**⁴⁸. There, for the first time, a person who did not contest an election was declared the Governor of a state. The court was minded to consider that votes were cast not for the candidates but for the political parties. Hence, once a candidate has been issued with the party’s ticket and thereafter unlawfully excluded from participating in the elections, such exclusion remains void. In such a circumstance, the candidature of the unlawfully excluded party remains unaffected. It is immaterial that he was not finally presented to the electorates at the elections. This decision has been unprecedented and has received greatest approval of jurist and exponents of liberal and participatory democracy.

As it were, “the judiciary, by the fore-going decisions and many more, has to a large extent succeeded in stabilizing the polity by calling to order the legislature and the executive any time they over-step their bounds.”⁴⁹ This role has almost single-handedly sustained democracy so far and is in accord with the principle of the rule of law.

Conclusion

⁴⁵ (2006) 14 NWLR, (pt. 999).

⁴⁶ *Ibid.* at Pp. 203-204; see **Macfoy v U.A.C.** (1961) 3WLR PC 1405.

⁴⁷ (2007) 3 NWLR (Pt. 1022).

⁴⁸ **Amechi v INEC** [2006] 5 NWLR (pt 1080), p. 22; [2008] 33 NSCQR, 332.

⁴⁹ M. Uwais, “Judicial Activism: An Imperative for the Sustenance of Democracy in Nigeria”, lecture delivered at the Annual Law Seminar organized by LAWSA, Nnamdi Azikiwe University Awka, 14th May 2007, at p.9

The rule of law is the first and highest principle of every legal system worth its name and is the foundation of every civilized society. For what are laws when they are not supreme and obeyed but artifacts filled away in archives adding to abandoned historical volumes. Its formal sense can occasion great tyranny especially if the laws are unjust or out of use. But it makes some legal sense, if its dynamic concept is embraced, for then it can respond to differential situations in very unique ways in the interest of justice.

Nigeria has had a hard time trying commitment to rule of law. Incidents of obsolete laws, inefficient legislators, lawless executives and rascal judicial officers have worsened the matter. Until recently, the rule of law in Nigeria has been below bar, the novel experience of the latter years from 1999 till date is hope inspiring. Yet, not enough. Much is still needed to be done to move to the next level of experience and practice of the rule of law. Yet, the bulk of the work lies with the judiciary or at least revolves around it. This is justified by the resolution of the council of International Bar Association in 2008 relating to rule of law viz:

An independent, impartial judiciary; the presumption of innocence; right to a fair and public trial without undue delay; rational and proportionate approach to punishment; a strong and independent legal profession, strict protection of confidential communication between lawyer and client; equality of all before the law; these are all fundamental principles of the rule of law⁵⁰.

The paradigm shift witnessed in the recent times in favour of the rule of law is indicative of a new Nigeria up coming. If the trend is sustained for the next 20 years an American type of democracy and development will dawn. Then freedoms will be respected, right enforced and injustice redressed in their proper ways and without prejudice to who is involved.

In view of this future coming up, it is recommended as follows:

- (a) That a commission be set up to understudy the history and indices of American democracy and recommend appropriately for a more conscious imitation and experimentation.
- (b) That the history and features of American type of democracy be structured into the curriculum of secondary and tertiary institutions.
- (c) That the laws be amended to be stricter in terms of penalty in cases of official corruption and executive lawlessness.
- (d) That a commission be set up to recommend further on infrastructure and devices that can accomplish the long desired independence of the judiciary.

⁵⁰ Cf. Resolution Bar Association of October 8, 2009, on Rule of Law Resolution, (2005).