RULE OF LAW AS A CATALYST TO DEMOCRATIC GOVERNANCE: NIGERIA AS A CASE STUDY

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Abstract

Human society is founded on law which promoted democratic governance. This expose relied on how rule of law stood to promote democratic governance. The objective of this study is to confirm that rule of law stood as catalyst to democratic governance in Nigeria. Doctrinal methodology was adopted and it relied heavily on the pronouncements of Courts, judicial precedents, law reports, relevant provisions of the constitution and other relevant legal materials. It found that in the absence of rule of law, the human society became an anachronistic phenomenon. Rule of law therefore, remained a condition sine qua non to preservation of democratic governance in the world order, and without rule of law, human co-existence has remained unthinkable. The research found that, in Nigeria the grundnorm is faulty and so created loopholes that gave room for corruption, bad leadership and executive lawlessness, laxity in the judiciary and legislature. The paper concluded that the principles of rule of law must be promoted and preserved to ensure dividends of democracy in any human society and in Nigeria in particular. To this end, the paper suggested some measures to control the constraints mentioned herein. Finally it is recommended that overhauling the instrument that preserves the principle of rule of law among others is a panacea for the promotion of democratic governance in Nigeria.

1.0 Introduction

Rule of law is as old as man, because human society is basically and biblically founded on law[1]. So in the contemporary world order where civil rule is practiced, the rule of law and democratic governance are imperative phenomena. Rule of law and democratic governance are interrelated and also complement each other. Therefore, it may not be an overstatement to say that rule of law energises democratic governance which on the other hand embodies separation of powers, checks and balances and democratic representations[2].

The term rule of law prescribes the limits of governance and reinforces the importance of the supremacy of law and due process.[3] The rule of law is in fact the nerve centre of democracy because of its strict adherence to constitutionalism, the principles

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1 See Nihil Obstat, GoodNews Bible, Genesis, Chapter 2, verses 16 – 17, (Kolkata; Swapa Printing works Pvt. Ltd. 2004) 2 – 3.

2 Obi S. Ogene, in his work Fashioning the Constitution of a Federal Democratic System: Comparative Analyses of Nigeria, Anstralia, Canada and USA Representative Systems (2001) 53, explains democratic representation as a means through which people in a democracy exercise their sovereignty by the choice they freely make of those who are to represent them in the exercise of governmental powers. In this definition, unitary, federal and confederate democracies are inclusive. He further states that in Wesberry v Sanders, [1964] 376 USI, the Supreme Court of the United States in the Constitution of the United States, Article 15 (1) explained, the word representatives … to mean one man's vote in a congressional election is to be worth as much as another.

3 Arthur Obi Okafor, 'Rule of Law in Nigeria: The Way Forward' (Democracy and the Rule of Law in Nigeria, Nigerian Bar, Association Owerri Branch Law Week, Modotel Hotel, Owerri 23 – 29 June, 2019).

of the separation of powers and human rights. Furthermore the issue of law and legal system in any civilized society is a substratum upon which the nation is built.[4]

Albeit, Plato was credited as championing the idea that the government should be subservient to law, while his student Aristotle in his work. 'The Politics' constrasted the rule of law, and reason with the rule of man and passion to explain why the government should be bound by law as a means to prevent arbitrary rule and the abuse of power.[5]

Invariably and to the credit of both philosophers, they concurred that law must be promulgated for the common good. Also in England the principle that the King was bound by law was a prominent feature of the Magna Carta signed by King John in 1215.[6] To this end, he declared that no person should be deprived of his liberty or property expect by the lawful judgement of his equal or by the law of the land.

However, in the modern world order, the term rule of law gained a better insight and indepth explanation both in England and in other jurisdictions in the 19th century through the work of Albert V. Dicey.[7] Dicey expounded the concept of the rule of law from which subsequent writers who expounded the concept of the rule law took their base. Seeking to understand the workings of the

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4 Ibid

5 Anthony Valoke, 'The Rule of Law: Its origins and Meanings' (A Short Guide for Practitioners) [9th March 2016] <http://www.researchgate.net/publication/255726723>accessed/23 March, 2020).

6 Ibid.

7 See Albert VV Dicey's work or Introduction to the Study of the of the Constitution, 10th edn. In Arthur Obi Okafor (n3) 2

British Constitutional Law, Dicey expounded the rule of law as one of features of British Constitution and abstracted three fundamentals of the concepts, namely absolute supremacy of regular law as opposed to the influence of arbitrary power, equality of all classes to the ordinary law of the land as administered by the ordinary law courts and that the law of the Constitution in Britain is the consequence of the right of individuals as defined and enforced by the courts.[8]

Today, the concept of the rule of law has found itself virtually in every country in which democracy is practiced. Consequentially, abuse of the rule of law in any democratic setting especially in the face of executive lawlessness tilts towards dictatorship and militarialism while absent of democratic governance in democracy may result to chaos and anarchy.

Be that as it may, the major concern of this work is to examine the rule of law as a catalyst in the democratic governance in Nigeria, and make recommendations for the challenges thereto. However, before this endeavour, explanation of some conceptual frameworks are necessary.

2. Conceptual Framework

2.1 Rule of Law

Rule of law is a concept with diverse connotations and definitions which have gained great popularity especially in today's socio-political governance. Despite its different connotations and definitions, it conveys one central message, which is supremacy of the ordinary known law against arbitrary law. In view of this,

[8] Ibid.

the Secretary General of the United Nations defines the rule of law as:

> a principle of governance in which all persons, institutions and entities are accountable to law that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights, norms and standards. It requires as well as measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in the decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.[9]

The rule of law is the supremacy of regular law as opposed to arbitrary power. Every person is subject to ordinary law within the jurisdiction.[10] The Osborn's Concise Law Dictionary also aligns itself with the Blacks Law Dictionary's definition and states:

> So far as offences are concerned an offender will not be punished except for a breach of ordinary court, there is here an absence of the exercise of arbitrary power. Further the fundamental rights of the citizen; the freedom of the person, freedom of speech and freedom of meeting or association are rooted in

[9] The Secretary General of United Nation's definition in Chairlie Nwekeaku, 'The Rule of Law, Democracy and Good Governance in Nigeria' Vol. 2 No. 1 [March 2014] <European Centre for Research Training and Development UK <www.eajournals.org> accessed 15 March 2020.

[10] BA Garner (ed). The Blacks Law Dictionary (7th edn. St. Paul Minn: West Group Publishing Co. 1999) 1332.

> ordinary law and not upon any special constitutional guarantees'.[11]

The explanations of the Blacks Law Dictionary and the Osborn's Concise Law Dictionary vis-à-vis the rule of law, implicitly and emphatically admit application of a known law for common good as opposed to arbitrary law or acting on one's discretion for public good. This also entails that both the ruler and the ruled must curtail their whims and caprices, rather act in accordance with a known law devoid of arbitrary or discretionary powers. In other words, for one to be punished over a breach of law, it must be adjudicated by the ordinary law of the land which is most often enshrined in their Constitution in modern times. So all governance must draw its powers from the Constitution or a known law in a democratic governance. This is what Coke in a similar vain, coloursfully spoke of as golden and straight network of law as opposed to the uncertain and crooked cord of discretion[12].

The rule of law is a cardinal institution of constitutional democracy[13]. It is a concept that tends to explain itself – it connoted a regime of supremacy of laws; that the law in a given

[11] Leshie Rutherford and Sheila Bone (ed.) Osborn's Concise law Dictionary (7 edn. Canada: Sweet and Maxwell 1993) 295.

[12] Quoted in Miscellanous Offences Tribunals v Okoroafor [2001] 10 NWRL (Pt. 745) 310 in Mary Imelda Obianuju Nwogu 'The Rule of Law in Governance in Nigeria' Faculty of Law, Nnamdi Azikiwe University, Awka Nigeria (July 2010) accessed 15 March 2020. See Miscellaneous Ofence Tribunal v Okoroafor [2001] 18 NWLR.

[13] T. Bingham, 'The Rule of Law' in Ike Ekweremadu and Offornze D Amucheazi, Constitutional Review in an Emerging Democracy: The Nigerian Experience (New Jessey; Golden and Jacobs Publishing 2015)52

society holds sway over and above every person or authority therein.[14]

JSL Buffard in defining the rule of law argued that to understand public law, the rule of law must be viewed from two perspectives, that is, from the viewpoints of both a political philosopher and a constitutional lawyer. In his words:

> The rule of law is a term of political philosophy or institutional morality. It eschews the instrumentalist concept that enables an oppressive regime to attain its aim by the use of law … In the second sense, the rule of law is a general principle of law. It protects a citizen's right to legal certainty in respect of interference with his liberties. It guarantees access to justice. It ensures procedural fairness over much of the range of administrative decision-making officials.[15]

The explanation of Anthony Valcks on the concept of the rule of law is in line with the earlier explanation of Arthur Obi Okafor. Anthony states that the concept of the rule of law provides three interrelated elements and these are that punishment of a person for any default or breach of law is only subject to pre-established law; everyone is equal in the eyes of law and the law must be known or rather flow from the judicial recognition in a place like United kingdom where there is no comprehensive written Constitution.[16]

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[14] Ibid

[15] JSL Bufford in Ike Ekweremadu and Offornze D Amucheazi (n13)52

[16] Anthony Valcks (n6) 8

The principle of the rule of law is also discernable from the provisions of chapter 39 of the Magna Carta which provides that:

> No free man shall be taken, imprisoned, dispensed, outlawed, banished or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.[17]

Based on the above law, in ***R v University of Cambridge***,[18] the English court established the principle that:

> Nobody could be denied of his property without first having been given the opportunity to be confronted with the allegation against him, proffer his defence and thereafter be adjudged either guilty or innocent.

The modern day writers like Ese Malemi have added their own conceptions on the concept of the rule of law.[19] But notwithstanding, the wide acceptance and application of Dicey's concept of the rule of law, it has been criticized in some material respect. Illustrative in this view is the second aspect of the concept of the rule of law. That is equality before the law, though it is true that the authority exercisable in accordance with the English law (Constitution) must be legally justified and applicable to all people in England. But it is still true that every government enjoys some discretionary powers which may not be

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17 Obi S Ogene (n3) 45

18 (1723) 1 Str. 567 (Eng)

19 See Ese Malemi, The Nigerian Constitutional Law (Lagos: Princeton Publishing Company 2009) 108 – 111

available to ordinary citizen. Members of the British Parliament enjoys certain powers, privileges and immunities such as;

a. Immunity of members for anything said by them in the course of parliamentary debates;
b. Immunity of members from arrest and imprisonment for civil causes whilst attending parliament, and for forty days after every prorogation and forty days from the next appointment meeting,
c. Immunity of witness summoned by the parliament from being questioned or impeached for evidence given before either the House of commons or the House of Lords;
d. Immunity of members from the obligation to serve on juries;
e. Immunity of officers of either House in immediate attendance and service of the House, from arrest for civil causes.[20]

Sequel to the above criticism, the third aspect of Dicey's definition on natural justice are not normally enshrined in statutes since they form part and parcel of the common law and English Courts ordinarily or conventionally apply these principles. These principles are also entrenched in the American Bill of Rights and have attracted world wild recognition. But Dicey's complete reliance on the court to protect the civil liberties of citizens underestimates the alacrity with which dictators enact retrospective or retroactive legislations emasculating the court. Despite the critisms of the Dicey's concept of the rule of law, the doctrine is still very essentially valid in today's constitutional jurisprudence.

[20] Obi S Ogene (n2) 48

2.2 Democracy

Democracy is derived from a combination of two Greek words 'demos' meaning people, and 'Kratia' meaning 'rule' or government.[21] Democracy could be described as government of the people through which they exercise their democratic liberties under the law, either directly or through their representatives. Democracy is also one of the concepts that lack a universally accepted definition hence, so many definitions from different perceptions and backgrounds abound. However, the definition of Abraham Lincoln the former President of the United States of America has attracted wide acceptance from the public. Lincoln rightly defined democracy as government of the people, by the people, for the people.[22]

Democracy may be described as a system of government under which the people exercise their governing power either directly or through representatives periodically elected by themselves.[23] This means that a state may in political sense be termed as democracy if it provides institution for the expression and in the last analysis, the supremacy of the popular will on basic questions of social direction and policy.[24]

David Beetham's expose provides more insight and presents a more accurate picture of the meaning of democracy and of the elements indispensable to it and represent therefore the maximalist conception of democracy. In this regard, democracy is defined as a system of government where citizens, through

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[21] Ese Malami (n19) 38

[22] Ibid 38

[23] MA Appadorai, The Substance of Politics (10th edn. New York: Oxford University Press 1975) 137

[24] Ibid

various institutions and devices, for example in free and fair elections of rulers, representative governmental bodies, political parties, the press, exercise, in freedom and equality, control over decision-making process of government.[25] Individual participation in collective decision-making "involves a recognition that decisions are the result of a process of interaction, in which no one person or group gets all they wanted at the outset of the process.[26]

The essential or central ingredient of democratic representation is that the authentic and feasible way to recognize and protect individual dignity and autonomy is for the people to govern themselves by direct election of their representatives.[27]

In ***Wesberry v Sanders***,[28] the Supreme Court of the United States held that:

> the phrase representative by the people of the United States in Article I S. (1) of the United States Constitution, means that as nearly as practicable, one man's vote in a congressional election is to be worth as much as another…

Democracy may be classified into: direct democracy and indirect or representative democracy.[29]

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[25] David Beetham in Ben Nwabueze, Constitutional Democracy in Africa Vol. 5 (Ibadan; Spectrum Books 2003) 11-12.

[26] Ibid

[27] Obi S. Ogene (n3) 53

[28] [1964] 376 U.S.I.

[29] Ese Malemi, The Nigerian Constitutional Law (n19) 39.

2.2.1 Direct Democracy

This could be said to be the early form of democracy that started in the small Greek city states. It involves all adult citizens directly participating in government by gathering in an assembly of the people to take part in the decision-making process to govern them.[30]

2.2.2 Indirect or Representative Democracy

Ese Malemi and Obi S. Ogene agree that a representative democracy is a government where all the persons of voting age are expected to vote to form the government who will represent and act on their behalf, especially in the executive and legislative arms of government. The elected persons are expected to generally manage the affairs of government for the welfare of the people.[31] Representative democracy is the commonest type of democracy in the contemporary world order.

Another imperative aspect of the rulers responsibility in democratic governance is the accountability to the people which implies a duty to offer explanation on crucial issues of governance. This duty is usually backed up with the ultimate sanction of removal of the ruler by the people in exercise of their power of sovereignty. This can be achieved through such mechanisms as periodic elections, impeachment or recall as the case may be.[32] Unfortunately these rights are not properly harnessed by the electorate in Nigeria either as a result of fear, intimidation or ignorance.

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[30] Ibid.

[31] Ibid. 29 – 40.

[32] M.O. Unegbu Democraticization and Development in Nigeria in USF Nnabue (ed) Thematics on the Law of Development (Owerri: Applause Multi-Sector 2017) 64.

Despite the clear advantages of democracy, some writers pointed out what may be called the critisms of democracy especially as regards representative democracy. These are;

a. Imposition by the political parties of candidates who are not the popular choice of the people.
b. Elected officials are more or less interested in the welfare and programmes of their parties than interests and welfare of the people.
c. Desperation to win may compel parties and candidates to engage in thuggery, arson and rigging.
d. Democracy involves dialague, persuasion, compromises, concessions, that is give and take, lobby and co-operation, and these may engender corruption.
e. Lobby, possible corruption, violence and dirty politics that may characterize party politics in a democracy, scare away intelligent, responsible, honest and well meaning persons from politics, paving the way for bad persons to assume political leadership.
f. Democracy as system of government is too expensive to operate. It involves for instance a lot of people, structure and sometimes creates cash and carry politics where only the rich can stand for the expensive election and this often gives room for selection than credible election as we find in Nigerian politics today.[33]

Flowing from the above disadvantages of democracy, Sir Henry Mains submits that democracy can never represent the majority

[33] Ese Malemi (n19) 41.

because, more often than not, the people merely accept the dictates of the leaders.[34]

On the other hand, Gerald et al noted that there are bound to be inequalities in status, contributions and rewards.[35] While we agree that these disadvantages abound especially in a country with poor leadership like Nigeria, we also are of the view that these disadvantages could be curtailed by adhering to the rule of law as it is obtainable in advanced countries.

3. Assessment of Rule of Law as a Catalyst to a Democratic Governance in Nigeria

Rule of law is so encompassing such that apart from the three major principles expounded by AV Dicey as earlier mentioned, it also connotes democracy, separation of powers[36] and checks and balances, civil liberty, accountability and transparency among others and these in the final analyses culminate to democratic governance. Under this dispensation the rule of law is thus a catalyst and energiser to a democratic governance, just as equity follows the law to give it a human face in situations of harshness and rigidity, the rule of law accompanies democracy wherever it

[34] Adeyinka Theresa Ajayi and Emmanuel Oladipo Ojo 'Democracy in Nigeria; Practice, Problem and Prospects' ISSN22-0565 Vol. 4 [2914] <www.11steorg> accessed 19th March, 2020.

[35] Ibid.

[36] The separation of powers is pioneered by Montesque who says that entrusting all powers of the legislature, executive and the judiciary in one man is dangerous because absolute powers corrupt absolutely. Therefore powers should be divided among the three arms of government – the executive, the legislature and the judiciary and each acting as a check on the other. For instance in advanced democracies, the legislatures act as the eyes, ears and voice of the people, watches and controls the governments.

is practiced to ensure that the ultimate goal of democratic governance is achieved.

Arthur Obi Okafor quoted a learned Chief Justice as saying:

> The rule of law is not authority for wide ranging incursions into private and government activities. Judicial powers flow from the Constitution and legislation. The rule of law also requires of the courts the discipline to curb discretion and parliament must legislate freely in accordance with the Constitution.[37]

It is therefore notorious that where the powers of leaders and other stakeholders are effectively and efficiently derived from the Constitution the rule of law becomes a catalyst to democratic governance as we experienced in advanced countries of the United States, Australia and United Kingdom.

In Nigeria, there is no doubt that the legal system has also joined the race to implementation of the rule of law since the political independence in 1960. The preceding and the current 1999 Constitutions and the successive regimes have adopted the rule of law while the legal system has keyed into the race for the implementation of the rule of law as enshrined in these Constitutions. The preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) states;

> We the people of the Federal Republic of Nigeria, having firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign nation under God inter-

[37] Arthur Obi Okafor (n4) 5

> African solidarity, world peace, international co-operation and understanding. And to provide for a Constitution for the purpose of promoting good government and welfare of all persons in our country on the principle of Freedom, Equality and Justice and for the purpose of consolidating the unity of our people …[38]

Aside the preamble the Constitution also provides that the Constitution of the Federal Republic of Nigeria, 1999, (as amended) is supreme and its provisions shall have binding force in all authorities and persons throughout the Federal Republic of Nigeria.[39] The Constitution provides extensively for the promotion, preservation and protection of the Fundamental Human Rights which is also an aspect of the rule of law.[40]

The Constitution of the Federal Republic of Nigeria, 1979 and 1999, elaborately provides for the obligations of the government to the citizenry in chapter two and states:

> It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this chapter of this Constitution.[41]

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[38] See for example to the preamble to above mentioned Constitution.

[39] See the Constitution of the Federal Republic of Nigeria 1999, (as amended) S.I (1)

[40] These are enshrined in both the Constitutions of the Federal Republic of Nigeria, 1979 and the 1999, (as amended) chapters 4 and specifically at ss. 36.

[41] See ss 13 of both Constitutions.

Furthermore the Constitution provides that the Federal Government of Nigeria shall be a state based on the principle of democracy and social justice.[42] Again the words are all elements of the rule of law. The chapter two of the Constitution provides for socio-economic and cultural rights of the citizens.[43]

The above provisions as interesting as they may sound are not justiciable but, remained mere aspirations of the government to be attained in due course.[44] In the case of ***Okojie v Attorney General of Lagos State,***[45] it was held that the fundamental objectives are ideals towards which the nation is expected to strive, while the directive principles laid down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. This is unlike what is obtainable in advanced countries of the world especially the United States of America. In the USA Constitution, social and economic rights are part of human rights.

The saga of the non-justiciability of the fundamental objectives may have prompted late Obafrmi Awolowo to observe that the fundamental objectives are empty platitudes and hallow admonitions as their provisions are obeyed more in breach than observance.[46]

Hon. Justice G.G.I, Ojiako, the Chief Judge of Imo as he then was, commenting on the effect of the non justiciable nature of

[42] See ss 14 of the two Constitution.
[43] See at least ss. 15 – 21 of these two Constitutions
[44] See ss. 6(c) of the Constitutions
[45] [1981] 2 NCLR337.
[46] Nanmdi Onyeka Obiaraeri, Human Rights in Nigeria – Millenium Perspective (Lagos: Perfect Concept Printers 2001) 94.

these genre of economic, social and cultural rights termed Fundamental Objectives and Directive Principles of state policy as contained in both the Constitutions of 1979 and 1999 said among other things that, the observance and preservation of the non-justiciable clauses form part of the oath of office of persons exercising legislative and executive powers … but are not part of oath of office for judges, probably because of its non-justiciable nature. However the clauses still form part of the Constitution which the judicial officer swears and scribes the oath to protect and defend.[47]

Placing the socio-economic and cultural rights under the provisions of Fundamental Objectives and Directive Principles of State Policy in the chapter two of the Constitution is one of the defects of the 1999 Constitution because, it is not in consonance with the provisions of the Constitutions of many advanced countries especially the USA Constitution which the Nigerian Constitution claimed to have greatly modeled. This is because the socio-economic rights aid improved standard of living in a democratic governance and this is one of the goals of the rule of law, that is, 'good governance for common good'. It is therefore, imperative that the legislature should urgently place these provisions under fundamental rights as it is applicable in advanced countries to serve the desired purpose and until the needful is done, the socio-economic rights as placed in the chapter two of the Constitution under the Fundamental Objectives and the Directive Principles of State Policy could best be described as the fill up of the Constitution and serve nothing but such purpose, because our leaders take the advantage of the non-justiciable

[47] Ibid 95 – 96.

nature of these provisions of the Constitution to more or less abandon them.

Similarly, the non-decentralization of the powers of the National Assembly is another major default of the Constitution. Out of 98 items within the jurisdiction of both National and State Assemblies, the National Assembly controls 68 items in the Exclusive Legislative List, and share with the state Assembly in remaining 30 items under concurrent legislative list. The Constitution equally provides that where there is conflict of interests in concurrent legislative list between the two Assemblies, the interest of the National Assembly overrides the interest of State Assembly.[48] This defeats the democratic principles and the rule of law as regards equal rights, justice, fair play and good governance.

Notwithstanding some of the defects of the provisions of the Constitution as illustrated, the 1979 and 1999 constitutions provide for citizenship, separation of powers and many other conditions that guarantee the rule of law in the polity.[49] Nigeria is also a member of many international organizations that promote human rights such as United Nations, International Court of Justice, International Human Rights, ECOWAS and others.

The Constitution of the Federal Republic of Nigeria, 1999 (as amended), forbids any person or group of persons from taking control of the government of Nigeria or any part thereof except in

[48] See for example the CFRN, 1999, (as emended) Second Schedule, part 1 and s. 4(5) of the same Constitution.

[49] Some of these provisions are also enshrined in the CRN, 1999 ss 24 – 28 and 4,5,6 and 7.

accordance with the provisions of the Constitution,[50] this is why the military regime is an aberration because it is not supported by the mandate of the electorate nor the Constitution and so does not depict the rule of law.

The Constitution also provides that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extend of its inconsistency be void.[51] This provision portrays absolute supremacy of the regular law as opposed to the influence of arbitrary power. To this end, the judiciary as an arm of government and a representative of the interests of the common man has delivered judgements in landmark cases in protecting the interest of the common man and the rule of law as enshrined in the Constitution.

In ***Shugaba v Minister of Internal Affairs***,[52] the court held that rule of law ensures equality of all persons without any distinction and that it also guarantees transparency and incorruptibility and must be preferred.

In the case of ***Lagos State v Ojukwu***.[53] Justice Chukwudifu Oputa JSC (as he then was) held that:

> the rule of law is predicated on the following factors: that the state is subject to law, the judiciary is a necessary agency of the rule of law that government should respect the rights of the individual citizens; and that the judiciary is assigned to both the rule of law and by the

[50] See the Constitution of the FRN, 1999 (as amended) s.1 (2).
[51] See the CFRN, 1999, (as amended) s.1 (3)
[52] [1981] 1 NCLR, 125
[53] [1986] 1 NWLR (pt. 18) 621.

> Constitution in the determination of all actions and proceedings relating to matters in dispute between persons or government or an authority and any person in Nigeria.

It was also held in the above case that the Nigerian Constitution is founded on the rule of law, meaning that everything must be done in accordance with law. It means also that government should be conducted within the framework of rules and principles which restrict discretionary powers and also that disputes as to the legality of acts of government are to be decided by judges who are wholly independent of the executive.[54]

In ***All Nigerian Peoples Party v Benue State Independent Electoral Commission***,[55] the court held inter alia that:

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[54] Arthur Obi Okafor (n2) 9

[55] [2006] II NWLR (pt 922) 597. In a similar view, in Mr. Anthony Igwemma and anor v Chinedu Benjamin Obidigwe & Ors [2019] LCN/4729 (SC) one of the issues raised by one of the respondents was non-compliance with the party guidelines by the appellant during the primary election. The court held in reference to s.87(9) of the Electoral Act 2010 (as amended). "That notwithstanding the provisions of the Act or rules of a political party, an aspirant who complain that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection and nomination of candidate of political party for election, may apply to the Federal High Court or High Court of the state or FCT, for redress. This is because in the course of primaries, the court will not allow a political party to act arbitrarily or as it likes. Also a person who did not take part in the primaries cannot invoke s. 87 (9) of the Electoral Act 2010 (as amended) to institute a case in court. See also the case of ***Hope Uzodinma v Senator Osita Izunaso*** [2011] 5MJSC (Part 112), ***PDP v Sylva and Ors*** [2012] LPEPR – 7814 (SC), ***Maihaja v Gaidain and Ors*** [2017] LPER – 42474 (SC) ***APGA v Anyanwu*** [2014] 7 NWLR (Part 1407) 541, ***Ukachukwu v PD***P [2014] 17 NWLR (Part 1435) 134, ***Danil v INEC*** [2015] 3-4 MJSC 1 at 45.

> government business should be done to avoid dictatorial tendencies because, if discretionary powers are allowed, those in government would use such to the detriment of the less privileged members of the society.

In the locus clasicus case of ***Garba and Ors v University of Maiduguri***[56] where students were alleged to have carried out demonstration in the University and were tried by the University panel without giving the accused fair hearing nor made to know the offence against them. The Supreme Court held that the students were entitled to the four declarations sought. One of the declarations was right of fair hearing denied the applicant and other affected with him in the report of the investigation of the panel. The students were entitled to be allowed to return to school.

In this case, Hon. Uwais JSC, (as he then was) said:

> it is the view of this court that where a person is accused of committing a criminal offence, he must be taken before a court of law for trial and will not merely be dealt with by a tribunal[57].

Similarly in the rule against delayed justice that involved ***Ariori v Elemo***,[58] the case was filed in 1960 but was not given adequate hearing until 1974, the judgment in the case was delivered in October 1975, fifteen months after the conclusion of the counsel's

[56] [1986] INWLR (pt 18) 550 SC, ***NAB v Bard Eng. Ltd.*** [1995] 8 NWLR (pt 413), 257, ***Olatunbosun v NISER*** [1988] 3 NWI (pt 80) 25.

[57] [1986] 1 NWLR (Pt 18), 550 (SC). This is the rule of natural justice which is expressed in Latin maxim as Audi alteram partem, meaning hear the other side.

[58] (1985) ISCNLRI

final addresses on appeal to the Supreme Court, the Supreme Court upheld the contention that the inordinate delay in the conduct of the proceedings has robbed the plaintiffs of fair trial and the decision of the High Court was set aside and a retrial ordered.

The attitude of the Supreme Court in the above case coincided with the views expressed by Lord Denning in 1968 when he said:

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> The delay of Justice is a denial of Justice. Magna Carta will have non of it. To no one will we deny or delay right of justice. All through the years men have protested at the law's delay and counted it as a grievous wrong hard to bear. Shakespeare ranks it among the whips and scorns of time… To put right the wrong we will in this court do all in our powers to enforce expedition[59].

The events that weakened the 1963 First Republican Constitution such as, the census and the federal election crises of 1964 and the Western Regional election crisis of 1965 led to the First Military intervention in Nigeria in 1966 and other fellow up or rather subsequent interventions.

[59] Lord Denning in RA Onuoha, 'Concept of Rule of Law in Modern Democracies; Comparative Analyses' (Democracies and Rule of Law in Nigeria, Nigeria Bar Association Owerri Branch, Law week, Modotel Hotels, Owerri 23-29 June 2019); see also the intellectual wisdom displayed by the Supreme Court showing a full adherence to the rule of Law in ***Peter Obi v INEC*** (2007) II NWLR (PT. 1046) 436 at 616.

One of the distinctive feature of the military rule, is that upon attaining proper through the barrel of the gun as against the ballot box, the military most times suspends and modifies some parts of the Constitution. The Constitution will then exist subject to the existing Decree and sometimes subject to Edicts.[60] Therefore, a successful military intervention gives rise to a new legal order and under this dispensation the government acquires unlimited or all round powers. The rule of law goes in abeyance, and most parts of the constitution are suspended. Ouster clauses are readily employed by the military to deal with any clash or conflict of interest between the old order and new order and any decision of the court based on old order is null and void,[61] though the courts more often challenged the provisions. In the illustrative case of ***Jackson v Gowon and others***,[62] in which the provision of the Tribunal and Inquiry Decree,[63] was challenged as being contrary to the 1963 Constitution which provided against the ouster of jurisdiction of the courts in certain matters. The learned trial Judge, Hon. Justice Sowemino referring to the case of ***Doherty v Balewa***[64] being a case of similar nature and decided under the old Constitution said;

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[60] C C Ani, Understanding Legal Concepts in Nigeria, vol. 1 (Enugu; CIDJA Press Ltd. 2020) 296.

[61] See the Constitution (Suspension and Modification) Decree No. 1 of 1966, Federal Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984. The Federal Government (Supremacy and Enforcement of Powers) Decree No 13 of 1984 stated in clear terms that the events of December 31, 1983 amounted to a revolution which created a new legal order and gave the new Government unlegislative powers.

[62] [1967] Nigerian Bar Journal, Vol. VIII. Abiola Ojo, Constitutional Law and Military Rule in Nigeria (Ibadan: Evans Brothers Nigeria Ltd) 19.

[63] No 41 of 1966

[64] [1961] All NLR 630

> The decision in the case I have referred to simply put is that the Jurisdiction of the court will not be ousted where it conflicts with the provisions of the Constitution if it is proved in this case before me that section 22 of the Constitution of the Federal Republic of Nigeria, 1963 will be violated by the proceedings in the LEDS Tribunal of Inquiry, then of course there is a provision that no court of law should inquire into such proceedings, then one would be bound to declare that such a provision is invalid and unconstitutional.[65]

Ultimately the rule of law means the establishment of constitutional democracy in its most comprehensive, purest and finest sense. In ***Yates v United States***, the US. Court,[66] described a democratic country as:

> A free government, one that leaves the way wide open to favour, discuss, advocate or incite causes and doctrines however obnoxious and antagonistic such view may be to the rest of us.

In democratic governance power belongs to the people, the common man or rather the electorate who at the appropriate point in time have power derived from the Constitution to elect their representatives who then work for their common good. Free and fair elections, the right to free expression, equality before the law, multiparty system, independence of the judiciary, enjoyment of fundamental human rights by individuals and a career civil

[65] This was the trial Judge Sowemino .J decision in the above case, see Abiola Ojo, Constitutional Law and Military Rule in Nigeria, (Ibadan: Evans Brothers Ltd 1987) 118.

[66] [1958] 354 US 294 at344.

service whose members enjoy appointment and promotion on merit are all attributes of true democracy[67] and democratic governance.

In a similar vein, respect for civil liberty is a fundamental requirement of the rule of law and democracy. In other words, the rule of law serves to protect the shared liberty interests of all members of the society. It does this by establishing a dynamic equilibrium between power and law. Pure power is arbitrary might; law is a system by which institutions channel power so that it conforms with a people's values and established patterns of expectations. Neither power nor law alone will lead to a stable society.[68]

The rule of law thrives in a state when there is separation of powers among the main organs of government, normally the legislature, the executive and the judiciary, so that the powers of making the law, execution and adjudication are not concentrated in one person or a group of persons,[69] to curb the dangers of absolute powers corrupting absolutely. It is also pertinent to add herein that not only should there be a separation of powers among the organs of government but effective checks and balances among them are paramount to curb the excesses of the other arm, this is also in line with Lord Atkin's view.[70]

From the illustrative facts and the decided cases examined in this work. There is certainly no denial of the fact that the rule of law

[67] Peter Oluyede's, Constitutional Law in Nigeria (1st edn, Ibandan: Evans Brothers Nigeria Publishers Ltd 2001) 15.
[68] WY Deniel, in Mary Imelda Obianuj Nwogu (n 12).
[69] Ibid
[70] see Mary-Imelda Obianauju Nwogu (n12)

exists in the democratic governance of Nigeria right from the republican Constitution to the present Constitution. However the current legal framework (Constitution) from which the rule of law drives its efficacy created some challenges or rather bottle necks apart from those earlier illustrated. These hindered the effectiveness and efficacy of the rule law in Nigeria thus, preventing it from being effective catalyst to the democratic governance in Nigeria. Some of these challenges are hereunder discussed.

4. Challenges to the Rule of Law as a Catalyst to the Democratic Governance in Nigeria

4.1 Corruption

Etymologically the word corruption originates from the Greek word 'corruptus' meaning an aberration or misnomer.[71] Again what appears to be the first attempt to define corruption was made by Senturian JJ who stated that corruption is the misuse of public powers for private profit[72]. The World Bank and Transparency International (TI) a leading global anti-corruption watchdog in a similar vein define corruption as the abuse of public office for private gain for the benefit of the holders of the office or some third party[73].

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[71] R.O Anazodo, CI Igbokwe and B C Nkah, 'Leadership, Corruption and Governance in Nigeria. Issues and Categorical Imperatives' (2015) <http://dx:ipiorg/10.4 314/affrew, v91:2-4> accessed 3rd January 2018.

[72] JJ senturian in CK Okorie, 'Corruption and Development in Uba SF Nnabue (ed) Thematics on the Law of Development', (Owerri: Applause Multi-seetor L.N 2017) 48.

[73] Michael M Ogbeidi, 'Political Leadership and Corruption in Nigeria Since 1960: A Socio Economic Analysis', Department of History and Strategic Studies, University of Lagos Nigeria. (2012) <Michaellogbeichi@yahoo.com> accessed 2nd January 2018.

Corruption is described as acts that are considered immoral, such as fraud, graft, bribery, stealing, perjury, lying, dishonesty, indiscipline and debased act like sexual immorality or perversion[74].

The Criminal Code Act defines an act of corruption as:

> any person who corruptly asks for, receives or obtains any property or benefit of any kind for himself or any person who agree or attempts to receive or obtain any property or benefit of any kind for himself or for any other person is guilty of the felony of official corruption and is liable to imprisonment for seven years[75].

Corruption is the act of doing something with the intent to gain some advantage inconsistent with official duty and the rights of others, or official use of a station or office to procure some benefit either personally or for someone else contrary to the rights of others [76]

Corruption may be said be as old as man, thus inherent in man and so can only be controlled by one's self discipline and known law. From the biblical point of view there are so many instances of corruption, Cain killed his brother Abel in other to take his

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[74] Ernest Ojukwu, 'Rule of Law in Nigeria: Gains or Pain?' (Democracy and The Rule of Law in Nigeria in Nigerian Bar Association Owerri Branch Law week, Modotel Hotels Owerri;27 June 2019)

[75] Criminal Code Act, Cap C38, LFN, 2004, s.98 (1) (a) (b) (i) & (ii).

[76] Bryan A Garner (ed) Blacks Law Dictionary (n 10) 132. Ben Nwabueze in his book titled Current Issue and Problems in the Working of Constitutional Democracy in Nigeria, p.35 explains inequality/injustice as corruption.

position,[77] Children of Eli Converted God's Sacrifices,[78] Jacob disguised himself and took Esau's position.[79] However these acts of corruption were condemned then as they are being condemned now.

Corruption is found in every fabric of Nigeria, be it political, economic, social or religious sectors. Governor Ajimobi of Oyo State was quoted as saying, 'every Nigerian is corrupt'.[80] The Transparency International ranked Nigeria 121st corrupt country in the world in 2008, 136th corrupt country in 2014, and 128th corrupt nation in 2018,[81] and with the high rate of corruption in the system at present, the rating must have gone up. A renowned clergy was quoted as saying 'corruption is the name of Nigeria.[82] It is presumed that N10 billion was mapped for the celebration of Nigeria's 50th Independence Anniversary during Goodluck Jonathan's administration when the youths roamed about with certificates looking for jobs or employment that were no where to be found. Monies which would have been used to site new industries, refurbish old ones to reduce unemployment among the youths and graduates are being diverted to private pockets, there by neglecting youth development.

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[77] Good News Bible, Today's English Version, Genesis Chapter 4, verse 8" (4 edn. Koikata Swapa Works pvt Ltd 2004) 4.

[78] See also the same text, Samuel 1, Chapter 2, verses 12 – 16.

[79] Good News Bible, Genesis Chapter 27, verses 9 – 25.

[80] Ernest Ojukwu (n73)

[81] Comfort Ani Chinyere, 'Corruption in Criminal Justice Administration in Nigeria: The Role of Legal Profession' (2011) Nigerian Bar Journal in Ann Akpunonu, 'Youth Development and Empowerment in Nigeria: The Panacea for National Integration' [2019] (3) (2) African Journal of law and Human Rights 178.

[82] Arch Bishop A. J.V Obinna, The Leader [2012] <www.theleaderassumpter .com>.

Large sums of money is lost to corruption in Nigeria. On the 3rd of May 2016, it was reported that Nigeria lost $ 15bn in security equipment procurement. The former Vice President of the World bank, Oby Ezekwesili stated that $400bn of Nigerian's oil revenue was stolen or misappropriated since Nigeria gained independence.[83] Nigeria has one of the largest Presidential Airs Fleets (PAF) in the World. While Ghana and Algeria each has only one aircraft in their Presidential Fleets and Japan and Netherlands each has two, Nigeria has ten.[84] A massive waste and corruption show that in the 2012 in national budget, about N176 million was allocated for the extension of the gates of the Aso Rock Villa (the official residence of the President; N200 million allocated for the purchase of two bullet proof vehicles; N36 million for extension of power supply to the State House Centre store.[85] The lists could go on uninterrupted and increase as the new President or Chief Executive emerges.

Most politicians are corrupt and desperate to win elections at all costs. They pay electoral umpires at the polling both to frustrate voting. Sometimes they cause disappearance of ballot boxes and pay for announcement of false results which will favour them. Some lecturers prefer to sell 'handouts' (lecture materials) that are never taught to the students instead of teaching or lecturing them and failure to buy the handouts often affect the student's performance. Most legislators indulge in budget padding, the controversial 2018 national budget speaks for itself.

[83] C Amachi and CA Obodo, 'The Relationship between Economic Crisis, Corruption and Human Right Enforcement: Rethinking their Impact on Nigeria Development in Uba SF Nnabue (ed) thematic on the Law of Development' (Owerri: Apoplexies Multi-sector Ltd 2017) 362-363.

[84] Theresa Adeyinka and Emmanuel Oladip Ojo (n34).

[85] Ibid.

Pricewaterhouse Coopers estimates that corruption in Nigeria could cost up to 37 % of the Gross Domestic Products (GDP) by 2020.[86]

4.2 Bad Leadership

The definition of leadership is among the concepts that lack universally accepted definition. To this end some writers and scholars defined leadership from the functional, charismatic to influential point of view. The Oxford Advanced Learner's Dictionary defines leadership as the state or position of being a leader.[87] This is also similar to the definition of the Chambers Universal Learners Dictionary.[88] Different leadership styles include motivating, autocratic or authoritarian, participative or democratic leadership styles while others include laissez-fare or free range styles, task oriented and leadership oriented styles.[89]

We are not really interested in the indepth study of what these leadership styles entail, but references are made to a few of them to buttress bad leadership styles in Nigeria. Most Nigerian political leaders are autocratic, arrogant, greedy and selfish. The attitude of most Nigerian leaders tilts most times towards concentrated and personalized powers or what may be described as narcissist leadership style. In this case the leader is only interested in himself at the expence of his subjects. Leadership with this characteristic is arrogant, domineering and hostile.

[86] C Amachi and CA Obodo (n 83) 363

[87] AS Hornby, Leonie Hey and Suzann (eds) Oxford Advanced Learner's Dictionary of Current English (9 edn, Oxford: Oxford University Press 2015)885.

[88] E M Kirkpatrick, Chambers Universal Learners Dictionary (Ibadan: Spectrum Books Ltd 2007) 409

[89] Ann Akpunonu, 'Youth Development and Empowerment in Nigeria: The Panacea for National Integration' (n81).

Experience shows that seventy percent of the political Chief Executives in Nigeria both at the national and at the state levels exhibit these attitudes towards the governed.

Most Nigerian civil and military leaders are corrupt. They indulge in embezzlement, lack accountability, transparency and sincerity instead of leading the citizenry to achieve the desired objectives as provided in the preamble to the current Constitution. These are age long corruption in Nigeria and its consequent effects as enlisted herein poss very big problems almost from the inception of Nigeria. These attitudes are incontraste with the rule of law. The Nigerian Civil War 1967 could have been averted but for the insincerity of Gowon in retreating from honouring the Aburi Accord, rather he saw the accord after the meeting and at the point of giving full assent as a proposal which should be subjected to further scrutiny…[90]

In respect of corruption, many Nigerians leaders are also deep soaked in corruption, such that most often the Chief Executives are being dragged to court by the Chairmen of local government council over the conversion of the local government council allowance and usurping the latter's functions or powers as in the case of Knight, Frank and Ruthly v AG Kano State.[91] In this case the Supreme Court held that collection of rates on rateable herediment and the assessment of rate for privately owned houses are subjects within the responsibility of local government council.

[90] Odumegwu Ojuku, On Aburi We Stand, May 1967, in Ben C Aungwonye, 'The Distortion of Aburi Accord', Great Speeches of Historic Black Leaders Vol.11 (Lagos: Mindex Publishing Company Limited 2009) 274.

[91] [1998] NWLR [Pt 556] 156 at 172 D-E in, Denwigwe SAN (a paper presented at the NBA Owerri Branch, Law Week at Concord Hotel Owerri, Imo State 2014).

Most often we find that the state Chief Executive single handedly removes a democratically elected Chairman of local government council to put his loyalists. These are well illustrated in the case of A.G Benue State v Umar[92] and Onuebgu & Ors v A.G Imo State.[93] These cases are similar to the cases of Akpan v Umeh,[94] where the Court held among other things that, the removal of democratically elected local government counselor by the 2nd respondent and appointment of a caretaker committee are inconsistent with section 7 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and therefore, null and void.

The transparency and accountability expected from the Nigerian leadership are not being demonstrated and thus defeat the essence of the rule of law. Supporting this view, a legal writer had this to say:

> … the use of money to buy political office and the encouragement by the government of politics of settlement' and recycling of political office holders have encouraged corruption than curtail it.[95]

Again dialogue on issues that concern the citizen is a matter of choice. The fall of the First Republic in 1966 was among other things attributed to General Ironsi's quest to personalize power

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92 (2008) NWLR (Pt 1068) 311 at 365

93 Appeal No CA/OW/215/ 2011 delivered on 5th day of July 2012 unreported.

94 (2002) NWLR (Pt767) 701 at 732

95 Ngozi Chumah 'A Critical Analysis of Nigerian Socio-Economic Situation vis-à-vis the Fundamental Objectives and Directive Principles of State Policy as contained in the Constitution of the Federal Republic of Nigeria 1999,' (2010-2011) (1) (205..

which resulted to changing the federal system of government to unitary system of government[96] without the consent of the governed. The Shagari administration more or less practiced Laissez-fare style of leadership, thereby leaving the citizenry in a worst free for all condition; the Abacha administration clearly practiced autocratic leadership, thus leaving the polity devastated.[97] The Buhari administration recently pronounced a nationwide lock down on the 29th of March, 2020 without consultation or consent of the National Assembly, the lists can go on unabated, because, virtually all the Nigerian leadership both the past and immediate, civilian or military practiced more of bad leadership than the democratic governance. Most of these problems are caused by the enormous powers vested in the Chief Executive by the Constitution. The section 81(1) of the CFRN, 1999 (as amended) provides that the President shall prepare at time in each financial year estimate of the revenue and expenditure of the Federation for the next following year. This is the major reason why the national budget is often delayed and most often not being passed into law until the following year. Since there is no specific month and date for passage of the budget as the laccuna provided by the Constitution often aids the President to do otherwise. The rule of law cannot thrive under bad leadership.

4.3 Executive Lawlessness

The Constitution of the Federal Republic of Nigeria, 1999, (as amended) provides for the executive powers of the Federation which shall be vested on the President and may, subject as a foresaid and to the provisions of any law made by the National

[96] Ann Akpuuonu Youth Development and Empowerment in Nigeria: the Panacea for National Integration (n81) 177

[97] Ibid.

Assembly be exercised by the President either directly or through the Vice-President and Minister of the Government of the Federation or Officers in the public service of the Federation, and this shall extend to the execution and maintenance of the Constitution; all laws made by the National Assembly and to all matters with respect to which the National Assembly has for the time being, power to make laws.[98]

Similar provisions are made for the executive governors of states of the Federation.[99] These powers shall be exercised in such a manner as not for example impede or prejudice the exercise of the executive powers of the Federation.[100] In exercising these powers, the supremacy and bindingness of the Constitution are paramount. Therefore, the control of governance of Nigeria or any part thereof must emanate from the afore mentioned Constitution.[101] Also any other law that is inconsistent with the provisions of this Constitution shall be void to the extent of its inconsistency and the provisions of the Constitution shall prevail.[102]

Ideally this is the guide line for the execution of powers of the Chief Executives of the Federation and the state, ultimately to prevent clash of interest and arbitrary powers or executive lawlessness. By virtue of these provisions of the Constitution, the Chief Executives at both federal and state levels are the custodians of the Constitution and so must resist any act contrary

[98] See the Constitution of the Federation Republic of Nigeria, 1999 (as amended), s.5 (1) (a) and (b)
[99] CFRN, 1999, s.5 (2) (a) and (b).
[100] CFRN, 1999, s.5 (3) particularly (a).
[101] See s. 1(2) of the above Constitution.
[102] see S. (1) (3) of the above Constitution .

to this duty. But experience shows that the majority of the Nigerian Chief Executives often disobey the provisions of the Constitution. The Obasanjo civilian administration radically pushed for the third-term presidency in 2006, which is clearly against the provisions of the CFRN, 1999 which provided two terms of four years each. Thanks to the Senate for stopping the over ambitiousness by voting down the proposal.[103]

The same Obasanjo administration single handedly withheld the statutory allocation of the old twenty (20) local government councils in Lagos in 2005 because of a few local government councils created by the Tinubu administration in Lagos State without recourse to the provisions of the Constitution. The allocation was withheld for a long time even after the Supreme Court ordered the release. Attempt to reach a political accord with the Lagos State Government only led to the release of part of the funds from the presidency...[104]

Also the tyranic shooting and killing ordered by the Obasanjo administration against the Odi community in Rivers State in 1999 speaks for itself. This is very unimaginable because it happened during a democratic administration when lives ought to be protected by the Chief Executive himself in keeping with the oath of office.

Under the Obasanjo administration there were other extra-judicial killings in Gbaramatu in Delta State Zarki-Biam in Benue State as well as secret trials of Henry Okah and other hostile acts

[103] Olisa Agbakubu OON, 'How the Nigerian Bar Association Promotes and Defends the Rule of Law in Nigeria', Accessed 14 April 2020.

[104] J. Isawa Elaigwu, the Politics of Federationalism in Nigeria, (Jos: Mindex Publishing Company Limited, 2009)

perpetrated against the citizenry. Under his administration also there was a crack down on the journalists particularly on Mid-Day News, which attempted to expose the secret behind his foreign trips on 6 July 2002,[105] this is again a breach of freedom of the press as enshrined in the current Constitution and an act of executive lawlessness.

The current President Muhammadu Buhari administration ordered the invasion and search of the official residences of some serving judicial officers by the security agents in Port Harcourt, Rivers State and other jurisdictions in 2018 without due process or application of the rule of law. The immediate removal of the immediate past Chief Justice of Nigeria Hon. Justice Onnoghen the same year was without due process or reference to the CFRN is a breach of rule law and executive lawlessness[106]. The same Buhari civilian administration refused to release the former National Security Adviser Sambo Dasuki despite the court order to release him on bail. This is a breach of one's fundamental rights and this is not in accordance with rule of law.

In ***Eze (Dr) Cletus Ilomuanya v the Governor of Imo State & anor***,[107] the Governor resumed office and immediately dissolved the State Council of Traditional Rulers and dethroned the Chairman of the council. Despite the Court of Appeal decision in

[105] Most Rev. Dr. Hilary Dachelem 'Democracy and Rule of Law in Nigeria (Keynote Address delivered during the Nigerian', Bar Association Owerri Branch Law Week, Modotel Hotels Owerri 27 June 2019).

[106] The Constitution of the Federal Republic of Nigeria 1999, (as amended) provides the procedure for appointment and removal of the CJN at s. 292 C. and no person no matter how highly placed nor any organs of the government with overriding interest can alter the provisions without recourse to the appropriate provisions of the Constitution.

[107] (2013) LPELR 2,88, (CA)

favour of the initially constituted council, the state Governor refused to recognize the de jure Chairman of the Council of Traditional Rulers.[108] There are dozens of executive lawlessness perpetrated very often in every jurisdiction but these are just a few to buttress the fact in issue on executive lawlessness in Nigeria which on the other hand hinders the free flow of the rule of law and justice.

4.4 Laxity in the Judicial Arm of Government

The Judiciary is one of organs of the government. The powers of the judiciary like the other arms of government is provided in the Constitution and mainly invested in the superior courts of records, especially the apex court.[109]

The judiciary, the legislature and the executive operate on separation of powers and checks and balances in a constitutional democracy to ensure that they are subject to law and no other authorities.[110] In the words of Hon. Justice Oputa:

> Experience has shown that an independent judiciary, no less than a virile, fearless and equally independent Bar, are essential pre-requisites to the maintenance of rule of law and a proper and effective as well as efficient administration of justice. Where the rule of law is consciously or

[108] Ernest Ojukwu (n74) 3, see also Onuegbu & Ors case (n93).

[109] See the CFRN, 1999, ss.6, 230-284. The superior courts of records are the Supreme Court of Nigeria, otherwise called the apex court, the Court of Appeal, High Court of the Federal Capital Territory Abuja, National Industrial Court of Nigeria, the High Courts of States, the Sharia Court of Appeal of the FCT, Abuja, the Customary Court of Appeal of the FCT, Abuja Customary Court of Appeal of the States and Sharia Court of Appeal of the States.

[110] See further sections 4,5 and 6 of the current Constitution.

> unconsciously forced to abdicate; forced to become an empty slogan… there the bench and the bar must have first been successfully emasculated and reduced to unenviable importance, thus become mere shadows of what they ought to be. The primary role of the judiciary is to defend the Constitution, to uphold its enactment and to examine any other legislation and declare same ultra vires, null and void if it is inconsistent with the latter or the spirit of the Constitution[111]
>
> … the judiciary is the mighty fortress against tyrannous and oppressive law; it is the judiciary that has to ensure that the state is subject to the law; that the government respects the rights of the individual under the law. The judiciary by the nature of the functions and role is the citizens last line of defence in a free society, that is the line separating constitutionalism from totalitarianism. The court is thus a significant theatre where the battle over infringement of rights and denial of freedom are vigorously fought out … [112]

The Supreme Court as the apex arm of the judiciary and other superior courts have before now and without doubt, fear or favour demonstrated impressive attitudes to certain matters before it and maintained the above status quo, especially during the military

[111] See the above quotation of Hon. Justice Oputa of Supreme Court, 'The Law and Twin Pillars of Justice, (selected Law lecturers and papers) in MO Unegbu 'Independence of the Judiciary in Nigeria: Myth or Reality or Slouching Towards the Dreamland' [2010] National Judicial Institute Law Journal Abuja 84.

[112] Ibid.

administration as regards the application of technicalities, ouster clauses in defence of principles of federalism and democratic governance as exemplified in the above cases. The court has frowned at and interpreted strictly the statutes that oust the jurisdiction of court and cagged the rights of the individuals,[113] as was held in Udoh v Orthopedic Hospital.[114] Also in the Balewa case,[115] the court sanctioned the concept of enumerated powers in Nigerian federalism when it held that Nigerian Constitution is truly a Federal Constitution and that the Federal Parliament can only legislate on matters it is especially empowered to.[116] These were examples of few cases among the many cases determined boldly by the judiciary to maintain the integrity of the courts and the rule of law in Nigeria.

However since the return to civilian regime in 1999, many disputes have come before the courts concerning individual rights, electoral matters, federal and state rights and most often Federal Government is found intruding in the affairs of the states or individuals probably as a result of long military administration in Nigeria. Unfortunately, the determination of such issues thereto, sometimes lack standardization, due process of law and aroused some mixed feeling as to whether the courts in Nigeria, especially the Supreme and Appeal Courts would really save the federal and the democratic principles as well as the integrity of

[113] Y Y Dadem in MM Gidado, C.U Anyanwu and H.O. Adekunle (eds.) 'Constitutional Essayss: Nigeria Beyond 1999: Stabilizing the Polity through Constitutional Re-engineering in Honour of Bola Ige, (Enugu: Chinglo Limited 2005) 319.

[114] [1993] 78 SCNJ 456 at 446.

[115] Balewa's case (n 63) 630.

[116] YY Dadem in MM Gidado, CU Anyanwu, AO Adekunle (eds.), (n112).

the judiciary and more so the rule of law in Nigeria as observed in other advanced and developing Federal states.

In the exemplary case of ***AG Ondo v AG Federation***,[117] where the issue was on an attempt by some of the states of the Federation to annul the corrupt practices and other Related Offence Act, 2000 on the ground that corruption is not a matter on either the Exclusive or concurrent Legislature Lists. Being therefore a residual matter, only the state could legislate on it and not the Federal Government as provided by the Act.[118]

The court held in relation to the above matter that the state and federal legislatures could legislate on corruption because the power to abolish corruption was concurrent between them. This decision demonstrates a trend that the court often leans towards the Federation in any row between it and the state and thus disrupts the flow of justice and the rule of law. The judgement also draws a doubting hope over the guardianship of the Supreme Court and other superior courts of records to protect what YY Dandan calls federalistic principles.

On the mode of application by a party to an election petition for issuance of pre-trial notice in ***Onmeje v Odumu***,[119] the judgement of the 1st petitioner into Benue State House of Assembly for Ado State Constituency was set aside and the objection of the 1st respondent allowed because the 1st petitioner neither applied for pre-hearing notice by motion on notice nor was there any motion

[117] [2000] 6 NWLR (Pt 764) 321

[118] The facts of this case are contained in the law reports of the case provided therein and in MM Gidado, CU Anyanwu and AO Adekunle (eds.), (n 112) 321.

[119] [2011] All FWLR (Pt 600) 1328 at 1353 A – D 1354 BC

served on the 1st respondent as required by law. But in the subsequent case of ***Isa v Tahir***,[120] over a similar election petition to Governorship and Legislative Houses Election Tribunal into Adamawa State House of Assembly requiring the same pre-hearing notice by way of motion on notice, the Court of Appeal took a contrary position and dismissed the objection of the respondent who contended that instead of pre hearing notice through a motion on notice, the petitioner issued a letter through the secretary and affirmed that the decision of the tribunal that the letter to the secretary of the tribunal was proper for the issuance of pre-hearing notice.

In ***Obumeke v Sylvester***,[121] the issue for determination was whether the petition was incompetent in view of the fact that the petitioner failed to use the exact words by the legislature tofthe first schedule to the Oath's Act 2004, in concluding his statement on oath. The Court of Appeal held that failure to use the exact words renders the statement inadmissible. But in ***Ibrahim v INEC***,[122] the court held that non compliance as regards the above issue is not fatal to the petition.

The latest conflicting judgement is the Edo PDP primary for governorship. The issue was whether Obaseki, the immediate past Governor of Edo State under the platform of APC who now defected to PDP was qualified to vie for governorship under the platform of PDP as objected to by some interested member of the PDP, the Edo State High Court gave Obaseki a green light to

120 [2012] All FWLR (Pt 632) 1681 at 1696 CA
121 [2010] All FWLR (Pt 506) 195 at 1961
122 [2007]

contest while the Federal High Court Port Harcourt restrained him.[123]

Not only that the recent lackadaisical attitude of the judiciary to protect the masses is worrisome, the recent flush out of corruption in the judiciary by the Buhari administration is quite revealing. Some judicial officers were indicted for corruption while some were proved to be corrupt and were either sacked without benefits or retired. This kind of embarrassment may have prompted Uwaifo JSC to have said before now,

> 'A corrupt judge is more harmful to the society than a man who runs amok with a darger in a crowded street, while the man with a darger can be restrained physically, a corrupt judge deliberately destroys the foundation of the society.[124]

No wonder Fayose, the former Governor of Ekiti Sate reportedly said that the judiciary is not only corrupt, but immensely compromised.[125] The compromise of the judiciary, the corruption and conflicting judgements not only reduced the integrity of the judiciary and the trust the masses hove on the court as the last hope of the common man but obstructed the flow of justice since the highest bidder takes it all.

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[123] Clifford Ndujihe et al, Edo PDP Primary; Vanguard News Paper (Lagos, 24 June 2019) 5.

[124] Comfort Ani in 'Corruption in Criminal Justice Administration in Nigeria – The Role of Legal Profession', in Ann Chinwe Akpunonu, 'Youth Development and Empowerment in Nigeria: The Panacea for National Integration', (n81) 178.

[125] Fayose in Ernest Ojukwu (n 74).

4.5 Lack of Capacity and Inexperience of the Legislatures

The legislative arm of the government of both the Federal and State Assemblies, have the powers to make laws in Nigeria, and their jurisdictions are mainly provided for, in the CFRN, 1999, (as amended),[126] Despite these powers as provided, the National Assembly or a House of Assembly shall save as otherwise provided by the Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunal established by law, and accordingly the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of the court of law or of a judicial tribunal established by law.[127] On the other hand, the legislatures of both National and State Assemblies shall not in any criminal offence make any law whatsoever which shall have retrospective effect.[128] The s. 4 (8) and (9) provisions presupposes checks and balances between the legislative and judicial arms of government in this regard.

Legislatures are set up to represent the people and so play central roles in constitutional democracy, and as such, democracy depends on the legislatures for its vitality.[129] As an Israeli Supreme Court Justice expresses it, 'The foundation of democracy is a legislature elected freely and periodically by the people. Without majority rule, as reflected in the power of the

[126] See the Constitution of the Federal Republic of Nigeria, 1999, (as amended) s. 4(1) – (9)

[127] See the CFRN, 1999, s. 4(8) See the above Constitution, s. 4 (9)

[128] Okechukwu Oko, Legislator in Changing and Challenging Times – An Analysis of Nigerian National Assembly (New Jersey: Goldline and Jacob Publishing 2014) 27.

[129] Ibid

legislature, there is no democracy'.[130] The functions of the legislature are quite encompassing.

The legislature is to act as a forum for the representatives of the people to articulate the needs and aspirations of their constituencies, express their grievances and anxieties, demands that wrong done by the executive be rectified, debate public issues and policy options and take decisions in the interest and welfare of all the people in the country.[131]

From another angle, the functions of the legislature can be summarized in three main capacities – representation, law-making and over sight.[132] To effectively carry out these functions, the CFRN, 1999 provides for separation of powers among the legislature, the executive and the judiciary and independence of these organs of government is paramount.
For the effectiveness and efficacious execution of these functions, the legislature must be elected by the people in a free and fair election, the people must have scrutinized him, the wealth of experience, pedigree, qualification and be convinced that he can

[130] Ibid

[131] Aharon Barak, cited in Okechukwu Oko above

[132] In the representative capacity, the legislature is the eye, mouth, conscience, advocate and representative of the interests and concerns of the electorate especially between other legislatures, the executive and the judiciary, and must show maximum commitment in executing this function and others. In law-making, the legislature makes law for the peace, order and good governance to ensure justice. Under this provision, the legislature can enact new laws and amend the existing ones where necessary to meet the current needs of the people. As regards the oversight functions, the legislature ensures the accountability, transparency expected of them, the executive and the judiciary to meet the public yearning. They restrain the excesses of the executive and sometimes offer impeachment where need be to affect democratic governance.

assist the country or the society to meet their objectives. These preconditions and experiences exclude the uninformed and charlatan from running the race of the legislative post in advanced countries.

If therefore, the above procedures and pre-conditions are what are required of any legislative seat then Nigerian legislatures are far from them. Most Nigerian legislatures both at the National and State levels lack these conditions. Rather, the only qualification for most of the legislatures in Nigeria is having the resources to enable most of them bulldoze their ways through most times rigged elections often supported by godfatherism.

Most Nigerian legislatures lack the intellect, temperament and experience required to realize the aspirations of their constituencies. For those who care to do on the job training while they are already legislators, the lapses of their legislatures delay the dividends of democracy of their constituencies.

As for the careless group, they are just there to massage their ego, show case their self aggrandizement and finally grab as much as possible the nations resources, embezzle their constituencies allowance, engage in budget padding while their constituencies concerns and interests suffer. For the little experienced and qualified group, their contributions are often insignificant because the majority opinions often overwhelm the minority.

Some of the legislators have neither sponsored any bills nor motions, nor contributed meaningfully to any debate. Paying attention to the needs of the citizens is often neglected. Sometimes bills that concern the citizens are passed into law without the contributions of the citizens.

There are lots of laxities among the legislatures caused mainly by the enormous power vested in them by the current Constitution. As stated earlier, out of ninety-eight (98) items to legislate in the exclusive and concurrent legislative lists of the federation, as provided in the (Second Schedule Part 1), sixty-eight items are for the exclusive preserve of the National Assembly while the remaining thirty (30) items are shared between it and the State Assembly and if there is any conflict of interests, the interest of the State Assembly will give way for that of the National Assembly. So lack of decentralization of powers poses a challenge to the rule of law and democratic governance in that the National Assembly sometimes invoke these powers unjustifiably to disrupt democratic governance even when the jurisdiction is within the purview of the State Assembly as illustrated in some cases above. The legislature in Nigeria rarely calls the executive to order when the latter oversteps his bonds. They pay less attention to the integrity and interests of the nation they are serving and this is the position of most of the law makers in Nigeria from the inception of the Fourth Republic to date.

While the rule of law depicts justice, equity, fairness, accountability, transparency, enhancement of fundamental rights among others which in the final analysis aids democratic governance, the constraints as explained above distort the democratic governance and development.

Rule of law cannot thrive under a democratic governance in which there is frequent infringement of fundamental rights of the citizens, lack of freedom of the press, lack of free and fair election. The rule of law cannot also operate in an atmosphere where the economic and social rights of the citizens are optional to the obligation of the government. Democratic governance is a team work, or rather a symbiotic affair. That is a title bit to the

right and a little bit to the left by both the governor and the governed. So the citizens cannot be patriotic to the government that does not care for them. To this end, it may not be an over statement to say that the rule of law is not a catalyst to democratic governance in Nigeria rather it operates mainly in the provisions of the Constitution while up service is paid to it by the leaders and the elits especially under the current constitution. No wonder Nigeria is tilting towards total disintegration, aggravated each day by so many ethnic agitations mainly caused by poor governance and faulty Constitution.

5. Recommendations

The paper looked at the rule of law as a catalyst to democratic governance in Nigeria. To this end, many constraints to the effective implementation of the objectives are discovered and discussed herein. Among them are a faulty Constitution which gave room for corruption, bad leadership, executive lawlessness, laxity and timidity of the judiciary and legislative incapacity, ineptitude, and inexperience. In view of these, the paper recommends the following:

5.1 Effective Control of Corruption

Corruption is taking a negative toll on the Nigerian polity and has regrettably given bad image to the country as years go by. Therefore, stiffer measures or punishments should be enshrined in the Economic and Financial Crimes Commission Act to deter people from committing such offences. Punishment such as ten years imprisonment without option of fine if proven guilty of minor offence and life imprisonment for huge amounts and aiding the offence will reduce the magnitude with which corruption is committed in Nigeria.

Government should also improve the living standards of people through provision of primary health care, provision of basic infrastructure like adequate and steady electricity, pipe borne water, good roads, housing and others. These will give the citizens sense of belonging and thus thinkless of corruption.

Civil and public servants should be paid their salaries regularly and their gratituieties as they retire from service and pension paid as and when due. These will reduce the fear of the unknown that usually grabs them towards retirements which negatively push some of them to embezzle public money to prepare for their exist, since they are not sure of government aids.

People of integrity should be appointed to sensitive positions to handle resources like money. Workers who show extra ordinary care and hard work should be rewarded from time to time to motivate others. Establishment of industries and other skill acquisition centres will do a lot in reduction of unemployment among the young graduates and other youths who may not have the resources to further their education. These will reduce the pressure on parents and guardians who are employed to deep their hands into government purse to cater for these unemployed.

5.2 Election of people with Good Educational Background, Experience and Capacity

If leadership is defined as influencing people to achieve a desired goal, then Nigerian leaders have missed the mark because, the crop of leadership in Nigeria is very far away from influencing the citizenry to achieve the desired objectives. Instead our leaders take the citizens on Merry-go-round and subject them to the game of the more you look the less you see type of leadership. Many Nigerian leaders are inexperienced and confused. So election of

people with good educational background orientation and experience through credible elections is the answer to bad leadership in Nigeria, and without this, Nigeria can never compete favourably with world nations, no matter the resources. This is because you cannot put something on nothing and expect it stand. In other words no one gives what he possesses not. (***Nemo dat qui non habet***).

5.3 Control of Executive Lawlessness

The provisions of the CFRN, 1999, (as amended) explicitly vested the execution and maintenance of law made by the National Assembly in the President or indirectly it may be executed by the Vice President or his ministers sometimes through delegated legislations. Similar provision applies to the State Governors, the deputy and the commissioners. It is therefore, quite sad that most of the Nigerian executives are lawless. Most often they do not follow due process which depicts the rule of law. They clearly disobey court order especially when it does not favour them.

So adequate measures should be put in place to check this. The Constitution should be amended to curtail the enormous powers of the executive and remove the immunity of the executive in criminal matters while in office. Full independence of the legislature and the judiciary are necessary to restrain the executive who tries to act beyond his jurisdiction or disobey court orders.

5.4 Overhauling the Judiciary

Court they say is the last hope of the common man in the administration of justice. But with the recent flush out of corrupt judges and lawyers the above saying may be hanging in the

balance. In this regard therefore, only personalities with proven integrity and good academic records should be elevated to the bench at the appropriate time and no longer according to seniority. Those who show extra ordinary hard work and output should be rewarded without ethnic considerations. Effective measures should be taken by the Judicial officers to protect the fundamental human rights being breached by our leaders especially under the present administration. This will prevent a repeat of what is currently happening in the US over breach of human rights from happening in Nigeria.

As for the lawyers, the Legal Practitioners Disciplinary Committee should leave up to the expectation by constantly fishing out grievous offences, try them accordingly, and due punishment meted out without sacred cow considerations.

For the law undergraduates, the five year ban on going to the Law School if found guilty of malpractice during examination should be more effective in the universities to improve the quality and integrity of students being sent to the Law School for possible lawyers.

5.5 Lifting the Educational Qualifications for membership and Decentralization of the Powers of the National Assembly

Education they say is the light. So the educational qualification of the legislators both at the federal and state levels should be lifted to university degree or its equivalent as recommended by the 2014 National Conference. If we believe that education increases one's perceptions and understanding on issues, then secondary school certificate as the basic qualification for our law makers may not give them enough experience needed to make

good laws to enhance the rule of law and tackle complex problems emanating daily as a result of the hetrogenous nature of the country and global changes. In addition, legislative duties should be made to be on part time basis as practiced in the US to curtail the huge amounts being siphoned by the legislators.

Similarly, the CFRN, 1999, (as amended) as discovered earlier is not the will of the people, rather it is the document of the military regime and as such has a lot of defaults and over centralization of powers at the centre is one of them. This does not encourage the rule of law, because the arrangement suggests a unitary system more than a federal system. So while we wait for a change of the current Constitution, the enormous powers of the National Assembly should be amended to allow the State Assembly partake effectively in law making to take care of issues affecting them. Issues such as primary and secondary education for example may be handled by the Federal Government if need be, to give every citizen an opportunity of being literate. While on the other hand, tertiary education may be left with various state governments to checkmate poor standard of education and rampant examination malpractice that is threatening the education sector in Nigeria.

6. Conclusion

The rule of law can only be a catalyst to a democratic governance where the instrument that created the polity is the will of the people and viable. Unfortunately, the Constitution of the Federal Republic of Nigeria, 1999, (as amended) lacks these qualities. It is the creation of the past military regime and so is riddled with a lot of flaws, some of which are discussed in this paper. These invariably pose a lot of challenges to effective enhancement of the rule of law in the democratic governance of Nigeria. So the

effectiveness of the rule of law in the democratic governance of Nigeria can only be realized if these challenges and recommendations among others are considered while urgent steps are taken to change the Constitution entirely to emanate from the people and also correct the defaults. To this end, the rule of law remains a panacea to democratic governance in Nigeria. Anything short of this, Nigeria will continue to live in its day dream and lip service to democratic governance while the nation crashes.