

THE JUDICIARY: THE CATALYST FOR DEMOCRATIC PRINCIPLES IN NIGERIA

Ishola Qudus Olayiwola¹¹⁵

ABSTRACT

“Justice delayed is justice denied” as rightly said by Williams E. Gladstone, Justice is paramount and must be seen to thrive for orderliness, equity, and peace to reign. Whose responsibility is it to dispense justice, and encourage equality? The Judiciary is the organ that interprets the law, guards the constitution, defends rights, punishes law breakers, and settles disputes among the state and its citizens, or citizens and other citizens. When a dispute arises or human rights infringement occurs, citizens approach the court because the court is considered the holy sanctuary of justice. The judiciary connotes justice, fairness, and equality.

However, this paper seeks to evaluate the roles of the judiciary arm of government in the conservation of democratic principles in Nigeria, commencing with a brief history of the judiciary in Nigeria, and the judicial roles in promoting democratization which include but are not limited to justice dispensation, protection of rights, and dispute resolution. This paper furtherly recommends some measures that will facilitate the promotion of democratic principles.

¹¹⁵ Lagos State University; isholainfoqudus@gmail.com

INTRODUCTION

The judiciary, being the third arm of government, is as crucial as other arms without which the laws made by the legislature and implemented by the executives would not be interpreted nor will its offender be punished. The history of the Nigerian Judiciary can be traced back to the period before 1842 when solutions to disputes are sought from the traditional institutions. The pre-colonial Yoruba and Ibo traditional dispute resolution mechanisms resolved around their traditional rulers starting from the head of a family, head of the community, up to the Obas. While the pre-colonial Hausa/Fulani was a bit structured, disputes were resolved through the Alkali system with the Emir as the ultimate appellate judge.

The advent of colonial rule in 1861, through the *Foreign Jurisdiction Act* of 1843 and 1893, brought about the establishment of native courts, with the establishment of the Courts of Equity as the earliest court in 1854 established in the Southern part of Nigeria. In 1863, through *Supreme Court Ordinance No. 11 of 1863*, the Supreme Court of Lagos State was established to resolve criminal and civil disputes. In 1900, a Supreme Court for the Southern protectorate through the *Supreme Court Proclamation Order No. 6* was established alongside the reformation of the Native Courts system in the Northern protectorate via the *Native Courts Proclamation Order of 1900*. Presently, the Nigerian judicial power is vested in the courts, which according to the 1999 Constitution consist of the Supreme Court, the Court of Appeal, Federal High Court, High Court of FCT and States, Sharia Court of Appeal for FCT and States, Customary Court of Appeal of FCT and State, and such other courts.

THE ROLE OF JUDICIARY IN UPHOLDING DEMOCRATIC VALUES AND PRINCIPLES IN NIGERIA

The judiciary performs crucial roles in upholding democratic values and principles in Nigeria. Respect for the constitution is a major principle of democracy, which is upheld by the judiciary. The judiciary is the guardian of the constitution, it is the arm that ensures strict compliance with the Constitution. The rule of law is a major democratic value, which signifies the superiority of law over the government and the govern. Rule of law, in democratic states, is enforced by the judiciary. With the aid of the judiciary, the superiority of the constitution as stated in the 1999 Constitution of the Federal Republic of Nigeria is enforced and complied with. The judiciary ensures that acts, laws, regulations, and policies are made pursuant to the provision of the Constitution, whenever laws are inconsistent with the Constitution the judiciary nullifies such laws. *Re Emmanuel Ekpenyong V. National Assembly & 2 Ors*, per Justice Omotosho, sections 839, 842, 843, 844, 845, 846, 847, 848, and 851 of the CAMA 2020 are inconsistent with sections 38 and 40 of the Constitution and therefore nullified.

Although, men are political animals as postulated by *Aristotle* connoting the socializing trait of men, yet, disputes occur among men which must be settled by a disinterested and unbiased third party. The judiciary function as arbitrators and mediators among disputing parties to promote equality. Disputes arising between the government and the governed, a citizen and an organization, or other citizens must be resolved amicably in a bid to promote equality and fair hearing. The 1999 Constitution of the Federal Republic of Nigeria has empowered the judiciary to entertain and resolve disputes between the governments, the government and other bodies, the government and citizens, citizens and other citizens, etc. The judiciary being an impartial body resolve dispute and provide remedies for injured parties without preferential treatment or

favouritism to promote equality and justice in the state. Such as *Re Ogwuche V. Federal Republic of Nigeria* in which the Community Court of Justice of the Economic Community of West African States held that a new regulation imposed by the Nigerian Government against a human rights group was tantamount to censorship and violated their freedom of expression.

Furthermore, the judiciary is the body through which justice is served and remedy is provided. Law through the judiciary grants remedies and justice to those who have been wronged. Provision of justice and remedy for the injured party is a major function of the judiciary which cannot be carried out by any other arm of government. With justice served and remedy provided by the judiciary, stability of government is maintained, riots are curbed and peace is promoted. As stated earlier, rule of law is a concept that is the bedrock of our justice system and symbolizes the most important features of democratic governance, which cannot be enforced without justice in society. The law would not be seen to be superior over the government and the govern if there is a damage suffered by any party without remedy. It is said that justice delayed is justice denied, the court is the only body saddled with the responsibility of providing justice without which democratic values such as the rule of law could not be enforced or demonstrated.

In addition, wherever the judiciary is absent or inactive, the fundamental human rights of the people tend to be unsafeguarded and unprotected. The judiciary is a major element that realizes and enforces the constitutional rights of citizens. In the celebrated case of *Ransome Kuti V. Attorney General of the Federation*, the Supreme Court of Nigeria per Kayode Eso, JSC defines fundamental human rights as ***'the rights which stand above the ordinary laws of the political society itself, which is a primary condition to a civilized existence.'*** Whenever these rights are infringed upon, the citizens have the right to seek redress in court against such actions that may amount to infringement of their fundamental rights. Human rights are rights and privileges that

are inherent to humans and provided for by the constitution, infringement of which cannot be curbed or sanctioned without the judiciary. It is the solemn function of the judiciary to uphold the fundamental human rights as provided for by the 1999 Constitution of the Federal Republic of Nigeria, as a democratic principle.

Moreover, the institution capable of checkmating the government over corruption and ensuring **government's accountability to the people is the judiciary. The judiciary's central role in the** administration of justice and fight against corruption is based on the provision of the Constitution of the Federal Republic of Nigeria, by the virtue of which the judiciary is the only body vested with the power to adjudicate between the state (prosecutor) and individuals (accused).

CONCLUSION AND RECOMMENDATION

In a nutshell, the judiciary as seen from the foregoing is tremendously important for its role in the interpretation of law, guardianship of constitution, settlement of dispute, justice dispensation and remedy provision, human right protection, and maintenance of check and balance all which shape public policy. Therefore, it is pertinent to preserve these crucial roles of the judiciary, by facilitating its independence from other arms of government, upholding diligence in handling of cases, and championing exemplary conduct among judicial officers.

This paper, having revealed the important role of the judiciary in upholding democratic values and principles in Nigeria, recommends the appointment of persons with accurate skill, wit, intellect, diligence, and integrity into the judicial arm of government alongside provision of necessary facilities for effective administration of justice so as to produce an outstanding judicial system that will strictly uphold democratic values and principles in contemporary Nigeria.

In conclusion, Hon Justice Dahiru Mustapha CJN once said, while advocating for the betterment of the judiciary, ***'I have a vision of a justice system which is simple, fast, efficient, effective and***

responsive to the needs and yearnings of the citizenry. Nigerian Judges and the Judiciary as a whole must endeavour to advance the frontiers of adjudication to include the advancement of political and social justice in the country. This is what we hope to have in Nigeria.