

Corruption in the Nigerian Judicial System: The Way Forward

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Abstract

Nigeria as a country operates Federal System of government where the principle of separation of powers is hinged on a separation of the three arms of government namely, the legislature, executive and the judiciary. The essence of their separation is to avoid fusion of powers among the three arms so as to ensure checks and balances that guarantee good governance in the country. Using a qualitative study which is based on a historical analytical descriptive approach that revolves around a combination of historical literature where both secondary and primary sources of data were utilized, to arrive at logical findings, the study argued that, the Nigerian judiciary which has been described by certain scholars as the last hope of a common man and also the bastion of democracy is saddle with the responsibility of interpreting the laws as well as determining and resolving dispute between individuals on one hand, and between states and other levels of government on the other hand. But regrettably, right from the military regime up to the present-day democratic experiment in Nigeria, the judiciary has been deeply abashed or embroiled with corrupt practices of various degrees. The paper is therefore, tailored towards examining not only the causes of corruption in Nigeria's judicial system but also the implications of corruption on our justice system. The paper finally canvases for total over hauling of the judiciary system for optimal performance of the sector in order to rekindle the lost confidence of Nigerians on the justice ministry or sector.

Keywords: *Judiciary, Legislature, Executive, Corruption and Separation of Powers, Good Governance.*

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Background to the Study

There is no gain saying the fact that an independent judiciary is very crucial to addressing the menace of corruption in Nigerian judiciary. Corruption in the judiciary is inimical to Nigeria's development as judicial officials are deeply involved in sharp practices. However, the issue of corruption in the nation's judicial institutions actually undermines judicial jurisprudence and by extension affects the functionality and credibility of democratic institutions. The judiciary is therefore entrusted with the protection of Nigeria's constitution.

Abimbola (2012), argues in clear terms that, most countries have practical view of the role of judges in the society despite their functions which are couched on serving the people and protecting individual rights. It is pertinent to state that the laws governing corruption in Nigeria are for the overall interest of the people. Similarly, Taylor (2012), observes that, the recent survey conducted by the Economic and Financial Crimes Commission (EFCC) and National Bureau for Statistics with the help of the United Nations Office on Drugs and Crimes found that Nigerian judiciary receives the biggest bribes from people. He further maintains that; corruption is the most embarrassing challenge confronting Nigerian Judiciary and also poses a threat to our economic and democratic development. This, however, implies that corruption actually impedes the rule of law in any given democratic society like Nigeria. This paper discusses perspectives on the effects of corruption in Nigeria's judiciary in so far as its definition, causes and way forward are concerned.

Conceptual Clarifications

Corruption

Keeping an average Nigerian from being corrupt is like keeping a goat from eating yam (Achebe, 1983). The above assertion indicates that corruption has eaten deep into all the facets of Nigerian society. Elaborating the above view, Achebe (2012), further states unequivocally that corruption in Nigeria has indeed grown so big because it is highly encouraged as Nigerians are themselves corrupt because the system they live under today makes corruption too easy and profitable; and that Nigerians will cease to be corrupt when corruption is made unattractive and difficult. Generally speaking, the word corruption is associated with a broad range of acts or behaviours which involve bribery and embezzlement of public fund. It is the root of moral decadence (Ogunna, 2003). To Osoba (1986), corruption is described as an anti-social behaviour which confers improper benefits on people contrary to legal and rural norms and which in turn undermines the authority's capacity to ensure the welfare of all citizens. Osoba's view point apparently explains that corruption in Nigeria's judicial system is endemic and has undoubtedly eaten deep into the fabrics of the nation's economy. In agreement with Osoba's ideas, Ogunna (2003), again considers corruption as a state of bad morality which encompasses the abuse of one's public office for one's personal enrichment. He posits further that corruption involves two parties (the "receiver and the giver") in which case, the two parties are grossly guilty of corruption. From the above definitions, description and meaning of corruption, it is important to state that corruption in the present-day Nigerian society is an off shoot of the trajectories of the British colonial exploitation in Nigeria. Meanwhile, the trends of corruption were noticeable in public offices in the first republic but were majorly observed in the military regimes and

unfortunately, have been inherited by the nation's present democratic dispensation with special emphasis on Nigeria's judiciary. To this end, it could be argued that corruption in the judiciary creates great problems to the country's unrigged democratic experience since 1999. This is true, especially when one considers the role of the judiciary as being an interpreter of legislation and guardian of the Constitution.

These roles place the judiciary in a higher pedestal than the executive and the legislative arm of government. Oftentimes, it becomes a herculean task or rather very difficult for government to fight corruption in the judicial institutions in Nigeria simply because the judiciary which can declare the acts and deeds of the legislature and executive ultra-vice is embroiled in corruption. It is to be noted therefore that, in Nigeria, judicial corruption obviously destroys the tenets of equality before the law and also robs people of their legitimate rights to fair hearing and good judgement. Despite government efforts in combating corruption through the institutions of the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences (ICPC) since 1999 under the leadership's of President Olusegun Obasanjo when his government declared war against corruption, the menace is still rearing its ugly head in all the facets of judicial institutions and other segments of the nation's economy due to poor leadership vis-à-vis bad governance. Infact, it is more worrisome to note that the National Judicial Commission (NJC) is even neck-dip in corruption. For instance, according to Molele (2012), members of Akwa Ibom Election Tribunal who were indicted for collecting money bribe were relieved of their duties by the Former Chief Judge of the Federal Capital Territory (FCT) Abuja when he was serving in one of the courts in Sokoto where the incident took place prior to his transfer to Abuja.

In the same vein, Molele further informs that in 2005, Justice Okechukwu Opened and David Adeniji both of the court of Appeal were sacked from office for indulging in an act of corruption. Also, in 2021, judges who were involved in the act of giving conflicting Expert Orders were summoned and sanctioned appropriately by the then NJC President, Mohammed Tanko as their actions brought disrepute to the image of the bench. For example, between 2021 and 2022, an expert order was gotten by Governor Nyesom Wike to stop the Former PDP National Chairman, Uche Seconds from parading himself as the PDP's National Chairman pending the determination of a court suit against him. However, it was later observed that the said Expert Order was vacated in favour of Uche Second by a Federal High Court in Sokoto following his application. This development was a clear indication of abuse of court process orchestrated by the corruption tendencies of Nigerian judges.

The Judiciary

Osibanjo (2022), articulates that the judiciary is a major pillar of democracy. Democracy and social justice according to him are closely linked and that our society must be governed by the rule of law and not by the whim of man as democracy cannot endure without social justice. This view portends that in a modern state, the judiciary is indeed empowered by the Constitution to review both the executive and legislative acts. In the same direction, Egobueze (2020), opines that the judiciary is a system of courts or a body of judges created to

interpret the law of the state and also provide justice in a polity. On the other hand, Adebayo (1986) states that independence of the judiciary is the greatest bulwark of democracy, good governance and the rule of law in all civilized societies, hence, the judicial arm of government must be distinctly independent so as to prevent an arbitrary use of power by the executive arm of government and be able to clarify and interpret the laws passed by the legislature so that such laws can be for the good of the public. Supporting Adebayo's postulation, Ogunna (2003), asserts that the problem of Nigeria Judiciary is quite hilly and which started with the military administration. This quite so because during the military administration, the judicial arm of government was the only arm among the three organs of government which was not sacked just like the executive and the legislature. The military however, interfered with the judiciary. The result according to Ogunna, is that the judiciary succumbed to corruption that destroyed the fabrics of the Judicial system as the military leaders appointed military apologists to the judiciary position and those people who were conditionally appointed were at the whims and caprices of the military leaders who produced them. This ugly trend of the conditional appointment of judges during the military administration was bequeathed on Nigerians present democratic culture.

Legislature

According to Adebayo, (1986), the legislature is one of the three arms of government in a presidential system of government, in which powers or responsibilities of government are shared between the Executive, Legislature and the Judiciary. This sharing of powers, however, is what is sometimes referred to as the separation of powers. This implies that the legislature is seen as the watch dog of other branches of government and society Egobueze (2020). Buttressing the above view, Nwabueze (2007) asserts that the constitution of Nigeria wherein the legislature is the first before the other organs of government as section 4 of the constitution of the Federal Republic of Nigeria specifically stipulated is saddled with the responsibility of making the laws of the society. Therefore, the legislature is succinctly described as an essential organ of government that determines the successful operation of the other organs of in a presidential system.

Executive

Apparently, the executive everywhere in any given country is saddled with the responsibility of implementing or executing the laws made by the legislature. Apadorai, (1968) sees the executive as the second main branch of government. It indicates the totality of all the functionaries and agencies with the execution of the will of the state. In agreement with the above description, Egobueze (2020:85) informs that, section 5 (2) of the constitution of Nigeria establishes the executive powers of the state which is squarely vested in the governor of the state.

Good Governance

The literature on what good governance represents is indeed robust. For example, Okoronji (2011) perceives good governance as one that hinges on the interest of the country at large rather than personal interest. It also describes where the state exists for the sake of everyone's moral, social, political, economic and of course intellectual fulfillment. Good governance

epitomizes justice, protection of life and property, preservation of the rule of law and improve standard of living of the populace (Iherue and Okafor, 2019). In the light of the above, it must be noted that the beauty of democracy is good governance which guarantees political participation, educational and health system as well as providing basic infrastructures for benefits of all people in the society. Similarly, The United Nations Development Programme (UNDP) reports that good governance is not only ridding of societies of corruption but also giving the people the right, the means and the capacity to participate in the decision that affects their lives and also holding their government accountable for whatever they do. The above exposition implies that, good governance simply represents fair and just democratic governance.

Separation of Powers

The theory of separation of powers is the fulcrum of democracy. This definition of the concept of separation of power portends the fact that, for a state to be democratic there must be well defined and established government with clearly defines the functions of the three organs of government in the country. In other words, separation of powers is a sine qua non to democracy hence it shapes the division of powers amongst institutions of the government so as to guarantee their functionality. Essentially, separation of powers is aimed at avoiding abuse of powers. Dye (2000), defines separation of powers as the constitutional allocation of powers among the three arms of government namely, the legislature, the executive and the judiciary.

Bottlenecks on the impartiality of judiciary in Nigeria

The Study carried out by Mauro (1995), has shown that organized corruption in the judicial system is a common trend in Nigeria as well as many other developing countries. Bribes given by users of the legal system, especially in election petition may take certain forms, which involve illegal 'fees', bribing of judges and use of intimidation. In Ekiti state, thugs allegedly invaded the court premises and beat judges to prevent the hearing of Ayodele's case. Mauro further maintains that court users pay huge sum of money to judges just to get their case through, influence the outcome of a given case, and delay it via unnecessary court adjournments. Bribes are given to judges or to their assistant staff, courts clerks, agents or lawyers to remove files of applicants from a particular court or get case assigned to a particular judge. Therefore, these challenges undermine fairness and impartial decision of the courts. Thus, where corruption is prevalent, it creates an additional barrier for ordinary citizens to access the justice system. The challenges and complication of judicial corruption in Nigeria are summarized here as follows:

Political Interference

In Nigeria, the judiciary has not fully gotten the executive machinery for enforcing its orders and judgement; since it beholds the executive arm of government to assist in enforcing court rulings and judgments. Even the executive and the legislature oftentimes disrespect court orders, judgments and rulings that are against them (Adebayo 1986). Evidently, politics has indeed influence `negatively the Nigeria judicial system. It is often said that he who pays the piper dictates the tone of the piper". This is a true situation in the case of appointment of

judges to High Courts, Appeal Courts and of course, the Apex court by either the President or the Governor, in which case, they always favour their masters in matters of their interest or concern.

Adebayo further maintains that corrupt politicians in Nigeria, instead of helping to maintain the integrity of the bench, do all they can to pollute the esteemed institution; not only do they bombard the bench with political quislings, but also waste no time or opportunity to pervert the cause of justice. A clear explanation of the validity of this postulation by Adebayo describes the simple fact that, Nigerian politicians often put pressure on judges in order to pervert justice, especially in election matters. Another challenge and implication of corruption to justice system is found in judges' political bias. Other forms of political influence emanate from the ways in which relations between the judiciary and other arms of government are organized, or reflect a legal culture where judges are expected to defer to political authorities.

Appointments of Judges

It has become a common norm in Nigeria judicial system that the appointment of judges by the President and Governors of the state has become a serious issue that should be addressed properly in order to ensure the effectiveness and workability of an impartial judicial system. Regrettably, the Nigeria judiciary, right from the time of military regime up to our present democratic experiment is indeed nothing to write home about hence, judicial officials are deeply engrossed with sharp practices that are inimical to the development of the judiciary in Nigeria.

Financial Control

Corruption in the judiciary, just like in every other sector of the nation's economy has assumed not only a national embarrassment but also a global condemnation. Financial control of judiciary has been over talked about by Nigerians without any remediation. Apparently, the constitution of the Federal Republic of Nigeria 1999 (as amended) guaranteed that the salaries of judges should emanate from a consolidated revenue fund for onward disbursement to the National Judicial Service Commission for the payment of judge's salaries to ensure financial autonomy of the judiciary. Unfortunately, this very important section of the constitution according Ogunna (2003) has not been practicable as the executive high jacks, regulates and controls the finance of the judiciary in Nigeria, a situation that affects the efficiency and service delivery in the sector. Recognizing the above view, Ekwueme asserts that, in Nigeria, the executive regulates not only judges' salaries and benefits but also the running costs of the judiciary. (Ekwueme 2008). This explains the fact that, the judiciary in Nigeria simply relies on statutory budgetary allocation from the executive and this negates the principle of consolidated revenue fund as stipulated by the constitution.

Pressures from Court Superiors

Pressures from judges of various court cadres do not only emanate from our corrupt politicians but also from judicial top notches, especially during rulings. This is another area of

manifestation of corruption in the justice system, especially where the Chief Justice is perceived to be close to the powers that be.

Judiciary Advisory Jurisdiction

National judiciaries possess advisory jurisdiction, and the President of Nigeria or Governor of a State may seek the advice of the Apex Court or The State High Court on any proposed legislation on matters that could lead to the sustenance of peace. Unfortunately, our corrupt leaders at all levels of government do not recourse to this postulation because of their selfish political interests (Egobueze2020).

Judiciary Autonomy

Adebayo (1986) put it that:

The judicial arm of government which is given the power to decide cases and to adjudicate legal disputes is referred to as the judiciary. According to him, the power of the judiciary is exercised through the courts which have the authority to determine the facts, interpret and apply the law.

It must be recalled that in the years of both military regime and civilian rule in Nigeria, the judiciary had been highly politicized. In many instances, both the Chief Judge and Attorney General are prominent members of political parties. He further maintains that there were instances in which State Governor and Presidents appointed judges not recommended by the judicial service commission. The result is that some of the judges had no sufficient training or knowledge required of them; and corrupt politicians, instead of maintaining the integrity of the bench, did all they could to pollute the institution and pervert justice. From the foregoing, it is expected that judges in Nigeria should at all times be able to render justice where it is due.

Conclusion and Recommendations

Conclusion

This study has indeed established the fact that corruption in Nigeria's judiciary has become a common norm and is, understood in terms of the gross abuse of trust through the misuse of judicial powers. Corruption within the justice system affects adversely not only the administration of justice. The war against corruption as stated earlier in this paper is therefore a collective one and all hands must be on deck in order to ensure a corrupt-free judicial system in Nigeria. This paper also establishes that the court, which is recognized as the final arbiter in our criminal justice system and the last hope of a common man is unfortunately cut in the web of corrupt practices which appears to be detrimental to the socio-economic development of Nigeria.

Recommendations

It is altruism that the fight against corruption within the Nigeria's judicial system has not received the adequate attention it deserves. As a result, a clear-cut executive's proactive strategy to fighting the dreaded monster head on is envisaged. To this end, the paper therefore suggests that:

The Nigerian Judicial Commission should be holistically overhauled with an enabling act away from the executive undue influence. The Consolidated Revenue Fund allocated to the Nigerian Judicial Commission should be given directly to the body for easy assessment. Also, appointment of judges should equally be the exclusive rights of the NJC and not by the executive and members of National Assembly. This would enable judges to carry out their constitutional functions effectively without fear or favour. In Deeping the fight against corruption in the judiciary, Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) should endeavour to have full insights into the activities of the judiciary. Furthermore, practical measures put in place for the investigation of allegations of judicial offences should be carried out after due considerations of the views of judicial officers, legal profession and the general public. However, judges just like other humans should not be above the law and also should not be under any form of immunity. This means that fairness and equality before the law should not be the basis of personalities or the highest bidders. Thus, there should also be a well-functioning judicial institutions that would be charged with the responsibility of tackling the enormous problems bedeviling the institution. Duration of cases in court should be enacted by the law to ensure that litigants would remain alive to witness the outcome of their cases/matters pending in court. There should also be a synergy between the Government and the judiciary for optimal discharge of judicial functions. Discipline and integrity of Nigerian Court Judges should not be compromised in anyway. Finally, the Press (which is the Fourth Estate of the realm) should henceforth be allowed to cover courts' proceedings from time to time and make them available to the public as this would encourage effective service delivery in justice system.

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