



THE BURIAL OF THE RULE OF LAW BY POLITICAL LEADERS: THE BANE OF A VIRILE AND DEVELOPED NIGERIA

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ABSTRACT

The rule of law is the most important feature of good governance in a democratic polity. It preserves the jurisdiction of the Courts and promotes checks and balances of governmental powers. Adherence to the rule of law is seen more in a democratic system of government than in military dispensation. Although in practice, there is no ideal promotion of the rule of law. This thus calls to question the current abuse and lack of respect for rule of law in Nigeria. Worried by this scenario and the devastating consequences it portends for the development of Nigeria in all ramifications, it becomes essential that the gaps be addressed. Adopting a qualitative approach the study relied mainly on documented evidence in the literature for the secondary information used in the study. It was found that the rule of law is faced with serious systemic challenges resulting mainly from flagrant abuse of rule of law by mainly the executive arm of government and its agents. The study, therefore, reinforced the urgency of the need to constitutionally strengthen the autonomy of the judiciary to make it more independent and efficient in the administration of justice. In the submission of this study, the laws of the Federation of Nigeria require review so as to provide safeguards for the rule of law so that court judgments and orders will be always respected by all. In the overall context, all Nigerian leaders need to undergo re-orientation to enable them to understand and appreciate democratic values and principles that will engender a virile and developed Nigeria.

KEYWORDS

Burial, Rule of Law, Political Leaders, Developed Nigeria



Introduction

Democracy without strict adherence to the rule of law and due process is meaningless. Democracy is best suited to national development because when sustainable, it guarantees the citizens the much desired freedom of expression and participation in decision making and the process of production and distribution of goods and services. Rather than true democracy, Nigerian leaders practice semi-coercive system. The question is; what benefits can be derived in a nation where elections are manipulated and rigged with impunity, with the connivance of some government (electoral and security) officials? Rather than allow the voters to go to the polling stations and vote for candidates of their choice, some incumbent and their parties use their discretion to allocate votes to all the political parties, ensuring that their candidate get the highest allocations. So the country continues to suffer in terms of credibility, morality, socio-economic and infrastructural development in spite of overflowing crude oil and gas revenue associated with it.

From 1999 to 2007, Nigerians complained of witnessing the most sordid display of arrogance by a civilian ruling class, regretting also that virtually all the key industrial organizations established by previous regimes to provide employment and economic empowerment to Nigerians have been auctioned away in the name of privatization; thereby throwing thousands of Nigerians back into the labour market (Larry, 2010). They refused to fund and cater for public educational institutions, even as Federal Government-owned schools established as Unity Schools by previous regimes are perceived to be at the verge of being auctioned away by a government that abdicates its responsibilities. In many other democratic countries such as Britain, France, India, South Africa, Ghana, United States of America, Germany, etc, public-owned educational institutions and business enterprises such as airways, railways, shipping lines, etc, are still fruitfully operated by government (Larry, 2010).

In the case of Nigeria, many persons in the executive and legislative arms of government and their cronies are living in amazing opulence while the rest of the citizens are suffering. In spite of huge revenue made available to the legislators for constituency projects, most of them refused to provide such facilities, thereby denying their people the benefits derivable from consultations in such places. This is contrary to what obtains in other democratic nations. Infrastructural decay in Nigeria today is alarming and worrisome to all and there are no welfare schemes for the citizens, no good roads, no potable water, no regular electricity supply, educational and health institutions have broken down, and there is high unemployment rate with attendant violence and insecurity across the nation. Unfortunately, this has been rather a far cry giving the incessant disrespect of rule of law by successive administrations in Nigeria. The scenario has worsened since the Buhari government came into power.

In view of the foregoing, a letter dated 29 May 2021 and signed by the Socio-Economic Rights and Accountability Project (SERAP) deputy director Kolawole Oluwadare, states: "We are gravely concerned about persistent attacks on the rule of law. Millions of people are falling into preventable poverty, and live in a state of insecurity. According to SERAP (2019) "Systematically breaching the rule of law is not a sign of strength. The Buhari administration was urged to urgently comply with Nigeria's constitutional and international obligations to respect the rule of law, if it is not to leave behind a legacy of impunity and attacks on the rule of law, and ultimately, on the system of

protection of human rights after its tenure in 2023. The above scenario therefore provides sufficient grounds to justifying the need for this paper at this time.

Objective of the Study

The objective of this study was to explore the phenomenon tagged Burial of the Rule of Law by Political Leaders as the bane of a virile and developed Nigeria. In specifics, the paper will seek to achieve the following:

1. To explore the factors hindering practice of rule of law in Nigeria
2. To appraise the trajectory of burial of the rule of law by political leaders as the bane of a virile and developed Nigeria

Theoretical Framework

There is ample academic literature regarding the genesis and nature of the African leadership. Most of the literature focused on the “path dependency” that has led to the persistence of presidential dominance in African states since independence. The main theoretical sources that serve as a point of departure and that provides insight into the persistent nature of presidential dominance are Kwasi Prempeh’s Presidential power in comparative perspective: the puzzling persistence of imperial presidency of post-authoritarian Africa (2007) and Gary Rosen’s the time of the presidents (2006). Both articles agree that despite the democratic waves that have led to great political liberation and freed the continent of autocratic leaders through constitutional reforms, the phenomenon of presidential dominance still persist. Furthermore, these articles define “imperial presidency” in post authoritarian Africa, elaborate on the nature of the dominant African president and the factors that contributed to the persistence of presidential dominance.

These sources are supplemented by Oloka Onyango’s “New-Breed” leadership, conflict, and reconstruction in the Great Lakes region of Africa, his body of work elaborates on the notion that the period from the mid-1980’s generated a new breed of African leaders, although three decades later these rulers are looking more and more like the old breed. On the topic of theory, Robert Jackson and Carl Rosberg’s Personal rule: theory and practice in Africa (1984) provide an insightful look at the theory of “personal rule” which has been an important facet of politics and is based on Machiavelli’s The Prince. An additional source Democratic ideology vs. Autocratic practice: Is Africa a victim of her past by Kaniki considers the dominant political ideologies in African politics and the autocratic practices that the leaders apply to their rule. Such forces have their origins in the formation of a “defensive state” that survives on a personalized political power structure woven around the presidency. It is consequent on the above that this topic on the burial of the rule of law by political leaders takes the centre-stage.

Methodology

The descriptive method used for this study and it is mainly concerned with describing the nature or condition of a present situation. It is applied in order to investigate and explore the causes of a particular phenomenon. Descriptive studies provide a detailed highly accurate profile of people, events or situations. It also locates new data that contradicts past data and it clarifies a sequence of steps or stages. Additionally, a descriptive study reports on the background or context of a situation. In this study, the descriptive research method was employed to examine the burial of the rule of law by political leaders as the bane of a virile and developed Nigeria.

Conceptual Review

The term rule of law was first explicated by Professor A.V Dicey in 1885 in his book 'Introduction to the Study of Law of the Constitution'. The rule of law in Dicey's postulation is grounded in the principles of supremacy of law, equality before the law, protection of fundamental human rights, fairness in the application of the law and separation of powers. Without doubt, true adherence to the rule of law will produce a better society with justice as its hallmark and foster development (Oluwafemi, 2018). The contemporary interpretation of the doctrine of the rule of law refers to a cluster of ideas, the best known being related to the principle of legality, prescription of procedural standards in the administration of justice, the separation of powers, promotion of material justice and individual rights and the maintenance of public order (Fombat, 2005).

According to the Business Dictionary as cited in Oluwafemi (2018), rule of law is described as the absolute predominance or supremacy of ordinary law of the land over all citizens, no matter how powerful. A description given by the UN is more explicit; where it states that rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standard. Justice Taylor in Olayori's case (1969) 2 All N.L.R @pg. 308 noted thatif we are to have our actions guided and restrained in certain ways for the benefit of the society in general and individual members in particular, then whatever status, whatever post we hold, we must succumb to the rule of law. The alternative is anarchy and chaos...'

The rule of law involves due process or strict adherence to constitutionalism (laid down rules and regulations in an organization, community, state of nation). The rule of law as was formulated by Dicey (1939) has three basic interpretations as emphasized below:

- 1) There is the absolute supremacy of regular laws as opposed to the influence of arbitrary power. That means, a man may be tried and punished for a breach of the law, but he cannot be punished for anything else;
- 2) The rule of law clearly stipulates common equality before the law of the land administered by the ordinary law courts. That can be interpreted to mean that no man, irrespective of his social or official position, is above the law. Everyone is duty-bound to obey the same law; and
- 3) The rule of law holds that the legal rights of the subjects are secured not by guaranteed rights proclaimed in a formal code but by the operation of the ordinary remedies of private law available against those who unlawfully interfere with his liberty of action, whether they are private or official citizens.

According to John (2009), the rule of law is very necessary for justice to prevail in the society. This would involve the supremacy of the law over the whims and caprices either of the individual or the state. This rule further helps potential leaders to be instructed on the need to respect the law. The citizens on the other hand will take example from the leaders. But above all, it will enhance the

sustenance of the democratic ideal. In his opinion, Falaiye (1993) submits that “the corollary of this will be stability, peace and good government” in democratic institutions. In any society where the rule of law is adhered to, anarchy often prevails. The civil government in Nigeria is still perceived generally to be lawless, having little or no regard for the rule of law. Most observers contend that government hardly obeys court rulings or orders, with several examples to prove the point shall be addressed in subsequent sub heading.

Challenges and Problems Affecting Practice of Rule of Law in Nigeria

In Nigeria, though the rule of law is well enshrined in the 1999 Constitution (as amended), but in practice the rule of law is faced with some challenges these according to John (2009) includes:

1. Inefficient Justice System: The judiciary in Nigeria has been reported not to have discharged its duties without fear or favour. The judiciary, which is the last hope of the common man, is now crippled with no sufficient manpower and the system of judicial administration has not promoted quick dispensation of justice. To this extent justice delayed is justice denied.

2. Corruption: Corruption in the judiciary is no longer news as cases of judicial officers collecting bribes makes headlines almost on daily bases. This indeed has watered down the integrity of judges at both state and federal levels and it has equally affected the trust of the common man on the judicial system in Nigeria..

3. No True Separation of Powers: In Nigeria, there is a substantial amount of interference and influence and especially over the Judiciary by the Executive. Such instances as highlighted by Okoh (2019) include executive recklessness in flagrant disrespect to court ruling and orders, appointment of judicial officers and the climax was the unilateral removal of the former Chief Justice of Nigeria for obvious political reasons.

4. Political Interference: In Nigeria today, the law is being employed to serve the interest of the party in government and to settle political scores in favour of the ruling class. In the light of the above the judiciary is almost rendered incapacitated in the performance of its duties.

5. Inefficient and Corrupt Police System: The Nigerian Police has a crucial role to play in the enforcement of the rule of law in Nigeria. According to a report by Network on Police Reform in Nigeria (2018), Nigeria’s police force is over centralized, under-resourced and ill-equipped, and suffers from political interference. The NPF’s recruitment process has been compromised, leaving the police with a poorly trained, badly paid workforce that is prone to corruption and violence. The Nigeria police of today are now synonymous to corruption; extortion is now their real business. Nothing can be more unfortunate than law enforcement agents violating the laws they are employed to protect.

6. Immunity: One of the hallmarks of the rule of law is equality before the law; however, this equality is not real as it is encumbered by the fact that some top executive political office holders enjoy immunity which makes the above the law in contravention of the equality before the law principle of the rule of law.

7. Defiance to Court Orders: The rulings of the court when not appealed are expected to be final and are meant to be adhered to by the parties to a dispute. When the decisions of the courts are not

adhered to, there can be no rule of law. In recent times, there are news of accused person who have been granted bail by the courts and whose bail are not obeyed or enforced, especially by the government both at the state and federal levels (Oluwafemi, 2018).

Chukwuma and Eban (2008) identified other challenges for successful promotion of the rule of law in Nigeria to include; inefficient and ineffective legal and judicial systems and lack of constitutionalism and constitutional democracy. Results from national public perception surveys, key informant surveys, and administrative data collection and analyses conducted by the CLEEN Foundation (as well as other indicators) show that a major challenge to the promotion of rule of law is the lack of constitutionalism and constitutional democracy.

Discussion

Since the beginning of the Fourth Republic and particularly the assumption of the administration of President Muhammadu Buhari, the country has witnessed several cases of outright disregard to the rule of law and disobedience to orders of the courts. The rule of law is a liberty-centred constitutional concept which stipulates that everything must be done in accordance with the law. This is in juxtaposition to military rule, which is marked with autocracy and rule by coercion. The people are denied civil liberties which conflict with the dictator's will. The decree is the supreme law of the land in military dispensation; no wonder military regimes are tagged as aberration.

However, in democratic dispensation, constitutionalism and rule of law are supposed to be sacrosanct. Thus, there is that need to examine the ideal place of rule of law in governance vis-à-vis the Nigerian experience especially under the present democratic governance. Since May 29, 1999 when Nigeria got back on the path of democracy, there has been various challenges facing governance in the country, most of which analysts have always been quick to ascribe to "learning process." But 20 years down the line, it has become of serious national concern that democracy is yet to assume the colour of what the average Nigerian desires. During those early years of democracy, The Olusegun Obasanjo-led government, at times, came under criticism on account of perceived anti-democratic actions. Many Nigerians would not forget the Federal Government/Lagos State government debacle over withheld N30 billion local government allocations. The Obasanjo-led Federal Government was on the ticket of the People's Democratic Party (PDP), while the then governor of Lagos State, Senator Bola Ahmed Tinubu was of the Opposition Alliance for Democracy (AD). Obasanjo's grouse with the then Lagos State Government was reportedly the creation of local council development areas by Tinubu, a development the president saw as going against the dictates of the nation's constitution (<https://tribuneonlineng.com/nigerias-democracy-without-the-rule-of-law>). However, with the intervention of the judiciary, Chief Obasanjo's position was faulted. The Supreme Court, the highest court in the land, ruled that the Obasanjo-led Federal Government had no power to withhold allocations meant for Lagos State local governments. But Obasanjo refused to heed the call of the court. The development was seen by many as blatant disregard for the rule of law.

Another scenario was the Odi crisis in Bayelsa state, where some military men were killed by the locals. The development infuriated the president who commanded the community to provide the erring boys or face dire consequences. Convinced that residents of the community were shielding the militants, the government ordered that the community be leveled, an operation that claimed lives of scores of people, mostly the aged, women and children. Not a few Nigerians considered the action of the Federal Government as being at variance with democratic tenets.

When the late Umaru Yar'Adua succeeded Obasanjo in 2007, the foundation of the incoming government appeared to have been shaky from the outset on account of the rule of law. The election that produced former President Yar'Adua was widely believed to have been flawed. It was reportedly massively rigged, so much so that on assumption of office, the late former president admitted that his election did not follow due process and best practices (Yar'Adua, 2008). More so, many people believe that the Yar'Adua-led government was not without its own share of disregard for the rule of law, particularly as a result of some actions and inactions of his then Minister of Justice and Attorney-General of the Federation, Mr Mike Aondoakaa, a senior advocate of Nigeria. It was alleged that that office was used to corruptly enrich certain highly placed individuals, especially a former governor in the Niger Delta Area who had a case with the United Kingdom authorities.

In fact, according to a Vanguard Newspaper report, the government failed to ensure access to justice in some instances, a development many said encouraged the people to take the laws into their own hands. Particular mention is made of the Jos, Plateau State riots of November 28 and 29, 2008 where more than 500 people were reportedly killed. The cause of the riot was said to be the inability of the Independent National Electoral Commission (INEC) to live above board in an election it conducted in Plateau State that year. It took the deployment of soldiers in the area to stop the orgy of killings. The development was to ignite the religion-coloured riots, which analysts attributed to frustrations arising from failure of the legal system to redress the injustices perpetrated during the general elections of 14 and 21 April, 2007 that were also condemned by both national and international observers (Vanguard Newspaper, 2008).

According to a report, "the European Union (EU) Chief Observer of the elections, Max Van Den Berg (2008), had said 'the EU observers witnessed many examples of fraud, including ballot box stuffing, multiple voting, intimidation of voters, alteration of official result forms, stealing of sensitive polling materials, vote buying and under-age voting. "INEC's selectivity and inconsistency with regard to the application and enforcement of electoral laws and court orders were apparent in a number of instances" (Darlington, 2008). Even when former President Goodluck Jonathan eventually became substantive president following the demise of Yar'Adua and led the country for six years, vestiges of non-adherence to the rule of law persisted and there were allegations that human rights continued to be subjected to violation. The case of the then president of the Court of Appeal, Justice Ayo Salami, almost became a sore point. Leaders of the opposition had accused Jonathan of dabbling into the activities of the National Judicial Council (NJC) over Salami's case.

However, the current dispensation of the Muhammadu Buhari-led government on the ticket of the All Progressives Congress (APC) appears to have suffered more backlash than all of its predecessors on account of violation of human rights and disregard for the rule of law. After a plethora of complaints against the government within the beginning of its first term about five years ago and now, the government is currently battling with criticisms over its handling of cases against its opponents and critics, particularly that of the convener of #RevolutionNow and publisher of Sahara reporters, an online news medium, Omoyele Sowore. Competent courts had ruled on more than two occasions that Sowore should be released on bail, but the government of Buhari saw things differently. The same was applicable to former National Security Adviser (NSA), Colonel Sambo Dasuki (ret'd); and leader of the Islamic Movement of Nigeria (IMN), also known as Shi'ite Muslims, Sheik Ibrahim El-Zakyzaky (<https://tribuneonlineng.com/nigerias-democracy-without-the-rule-of->

law). At a point, an attempt to re-arrest Sowore in a court room, during a process of litigation drew flaks for the Presidency, and generated a lot of hoopla both locally and internationally.

The most visible sore on the human rights rating of the Buhari government is the disobedience to pronouncements of various courts. Many people have said that the government chooses which court judgment it likes to obey and which it doesn't. The government's stand remains that 'national security' takes preeminence over the rights of any citizen or the rule of law. According to <https://tribuneonlineng.com/nigerias-democracy-without-the-rule-of-law>) some law experts, from the beginning, the government has left no one in doubt as to how it intends to relate with the judiciary. It was said that President Buhari detests the manner in which lawyers and citizens exploit the judicial process to escape 'his venom,' merely in the name of rule of law. Sign of what to expect came early in the life of the administration when men of the State Security Service (SSS), otherwise known as Department of State Service (DSS), in a nocturnal raid, went after some judges on allegations of corrupt enrichment emanating from the executive.

Despite the widespread outcries that trail each action of the government considered to be at variance with democracy, human rights and the rule of law, it does not appear to be ready to change course. This development has thrown up the question of whether or not the country is actually under a democracy. Therefore, many Nigerians are worried over the present administration which promised to govern the country in such a way that equity, justice and peace shall reign, but latter turned its back on the rule of law and due process. Again, during the first term of the administration in 2016, for instance, a Federal High Court in Abuja gave an order directing the government to set El-Zakzaky and his wife, Malama Zeenat Ibrahim, free from custody. The government refused to release the Shi'ite leader, maintaining that setting El-Zakzaky free would be too dangerous for the Nigerian state. The Islamic leader and his wife have been in security custody since December 2015, following an altercation between members of the Nigerian Army and the IMN in Zaria, Kaduna State (<https://tribuneonlineng.com/nigerias-democracy-without-the-rule-of-law>).

The case of Dasuki represents another instance of abuse of rules of law. Despite local and West African court orders granting Dasuki bail, the government of Buhari refused to release him. The Economic Community of West African States (ECOWAS), in 2016, declared the arrest and detention of the former NSA unlawful and arbitrary. But the Attorney-General of the Federation (AGF), Abubakar Malami (SAN), who is the Chief Law Officer, argued that Dasuki's personal right to regain freedom could be violated for what he referred to as the "larger public good" (<https://tribuneonlineng.com/nigerias-democracy-without-the-rule-of-law/>). Dasuki was picked up by operatives of the SSS in December 2015 and he is being prosecuted over alleged illegal possession of firearms and diversion of \$2.1 billion from the arms deal contract.

Apart from act of disobedience to court orders by the federal government, its agencies, responsible the security of the country, especially the State Security Services (SSS) have recently formed the habit of invading court rooms, setting fears in the heart of judges and judicial workers. The most recent, the case of Sowore and Adebayo Bakare, as will be recalled by many, has a trial that was disrupted on December 6 as DSS operatives invaded the courtroom to re-arrest Sowore, less than 24 hours of releasing him from unlawful detention on the order of Justice Ijeoma Ojukwu. Thus, Femi Falana, SAN, counsel to Sowore, described the action of the DSS as a "horrendous, bizarre, and barbaric

contempt of court never witnessed under even the most brutal of past dictators that had ever ruled Nigeria” (Falana, 2019).

Consequently, there have been serious condemnations of the action of the DSS by stakeholders in the judiciary, civil society groups and well-meaning Nigeria, who accused the agents of the Federal Government of outright disrespect to the rule of law and due process. The Nigerian Bar Association (NBA, 2019), in its reaction, described the DSS as “a notorious agency that enjoys treating judicial process with disdain, particularly as it pertains to obeying orders of courts enforcing the fundamental rights of Nigerians”. The NBA spokesperson further called on the National Assembly to review the laws setting up the DSS and, indeed, all security agencies in Nigeria, with a view to repositioning them to be more responsible and responsive to the public. Also concerned about the high level of disrespect for the rule of law in Nigeria, the National Human Rights Commission (NHRC, 2019), in its reaction, reiterated the need for law enforcement officials to be law abiding and not be above the law. The commission said security officials are paid with tax payers’ money and as such, there is no room for impunity and utter disregard for the constitution. In the in submission of the Commission, Nigeria’s democracy is founded on the principle of separation of powers and all citizens, including law enforcement officials, must understand the implications of that and are enjoined to respect the law and the constitution in the enforcement of the law (NHRC, 2019).

Ozekhome (2019) has also been critical about government’s lack of respect for rule of law and constitutionalism; making reference to the invasion of the court by men of DSS following the “Revolution now protest” and arrest of OmoleyeSowore, he lamented that a situation where a government that was supposed to respect and protect institutions, citizens’ rights and rule of law invaded and desecrated the sacred precincts of a court of law, then, the country was in trouble.

Former senator, Shehu Sani, described the human rights record of the present administration headed by President Muhammadu Buhari as appalling, repugnant and odious. He said, “We have seen a consistent pattern of erosion of democratic values, disobedience to court order and disrespect to the rule of law under this administration. It is unfortunate that a government that came to office with a lot of promises and expectations in the protection of fundamental human rights and freedom of Nigerians has found itself in this mess,” adding that the present government derives its legitimacy from the constitution and its legitimacy could only be sustained if it respects the constitution of the country (Sani, 2019). Sani, therefore, advised President Buhari, whom he said was the greatest beneficiary of human rights struggle in the country, to ensure that he doesn’t leave behind a legacy of human rights violation and desecration of the rule of law. “Those who are encouraging the violation of human rights, those supporting the persecution of others, those aiding and abating the disrespect of the rule of law today will not be there to defend the legacy of this administration tomorrow,” he concludes

Conclusion

The study assessed the phenomenal theme, burial of the rule of law by Nigerian leaders as the bane of a virile and developed Nigeria. The study affirmed the untrammelled trespassing of the rule of law and, by extension, the judicial process by Nigerian leaders, especially in the current fourth republic. It has equally been viewed this as a serious issue since no nation that wants to be strategically important in the comity of nations would ever toy with some serious constitutional provisions like the rule of law. Therefore, this paper is a clarion call for all and sundry to rise to the challenge of restoring

dignity to the Nigerian nation by resisting any attempt to abuse the rule of law by those in political positions. This is imperative because the rule of law is one concept that is being put in place by enlightened societies for the purposes of peaceful coexistence of citizens, irrespective of his or her tribal, social, economic, religious, military or political standing. In conclusion therefore, this work agrees that it is only when the rule of law becomes a reality, that individual citizens would enjoy personal liberty and equal treatment by the law, in an atmosphere of brotherhood. But it is still a truism that this kind of atmosphere is highly fictitious in Nigeria, at least for now.

Recommendations

Consequent upon the issues raised in literature, the following recommendations are apt:

1. There is urgent need to reinforce and constitutionally strengthen the autonomy of the judiciary to make them more independent and efficient in administration of justice.
2. The laws of the Federation of Nigeria should be reviewed to provide safeguards for the rule of law so that court judgments and orders will be always respected by all.
3. African leaders need re-orientation to enable them understanding and appreciate democratic values and principles.

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