

JOURNAL OF POLITICS AND INTERNATIONAL RELATIONS (JPIR)
THE ROLE OF JUDICIARY AND DEMOCRATIC SUSTENANCE IN NIGERIA
AND EGYPT: A COMPARATIVE FOCUS

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ABSTRACT

The concept of democracy needs to be clearly understood before we can appreciate the roles of Judiciary in deliver justice in its sustenance. Democracy is a system of government under which the people are expected to exercise the governing power either directly or through representatives periodically elected by the people. Both Nigeria and Egypt Judiciary cannot be over emphasized as it is a stabilizer in the political system and has the extra duty of the protection of the constitution. This paper looks at the role of Judiciary in both Nigeria and Egypt on how it's resolute of intra-party disputes, death of candidate before announcement of results, removal of the vice-president by the president and resolution of disputes bordering on resource control of both countries. Despite the key role played by the Judiciary both countries in upholding a democratic society, there are however major impediments hindering the sustainability of democracy in Nigeria and Egypt ranging from corruption, with independence Judiciary, appointment of Judicial officers, funding etc. This paper will center on the role of the Judiciary in sustaining democracy in Nigeria and Egypt and its major challenges. The paper concluded that Judiciary has done wonderfully well to protect the sustain democracy in Nigeria and Egypt despite its shortcomings as highlights above. How have judiciary institution play a vital role in democratic consolidation in those countries.

KEYWORDS: Constitutional Law, Democracy, Egypt, Judiciary, Nigeria

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INTRODUCTION

Democracy is a system of government under which the people are expected to exercise the governing power either directly or through representatives periodically elected by them. Abraham Lincoln “gave what has since become the most definition of democracy as government of the people, by the people and for the people to have an effective administration of justice in a democratic setting, the judiciary has definitive and decisive role to play”

According to A.T Ajayi “The Judiciary plays complimentary role within the principle of separation of powers. It is an indispensable organ that balances the exercise of powers in the policy of any nation. The judiciary arm of government, resolves conflicts involving individuals, organization, government and political parties in both Nigeria and Egypt”. The judiciary above has the power to review the actions of both the executives and the legislative. It has been playing pivotal roles in the dispensation of justice for sustainable democracy.

An independent, impartial and informed Judiciary holds a central place in the apprehension of good, transparent and accountable government. This is necessarily made possible by the provision that charges the judiciary with the function and responsibility to determine all matters between people or between government or authority and any person in both Nigeria and Egypt, and to all actions and proceeding relating to the determination to any obligations of any

person. However, this paper looked at the role of Judiciary in resolution of intra-party disputes, death of a candidate before announcement of the results, removal of vice-president by the president and resolution of dispute bordering on resource control which has the livelihood of truncating democracy in Nigeria and Egypt. Despite the key role by the judiciary in upholding a democratic society, there are however major impediments hindering the sustainability of democracy in Nigeria and Egypt. These are corruption, lack of independence of the judiciary, appointment of judiciary officers, funding among others.

CONCEPTUAL CLARIFICATION

Democracy: there is no agreement on definition of democracy. According to ML Strom, Democracy can be defined as the form of government in which political control is exercised by all the people, either directly or through their elected representatives.

It is a system of where people can change their rulers in a peaceful manner and the government is given the right to rule.

TYPES OF DEMOCRACY

Representative Democracy: everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people shall be the basis of the authority of government; this shall express in periodic and genuine election.

Voting is one of the mechanisms that guides a democratic state and keep its leaders on track, it serves to let the leadership know how they have performed

Constitutional democracies: according to Bolanle (2018) explained that democracies are based on written constitution or a supreme law that serves to guide legislators to make law in the country. It is purely as democratic based on constitutional provisions and support

Judiciary: according to Frank Jeroma (2010), it is the system of coverts that interprets, defends and applies the law on the name of the state. It is the mechanism for the resolution of disputes. Under the doctrine of the separation of powers, the Judiciary does not make interprets, defends and applies the law to the facts of each state.

Jeroma(2010) stipulated that, in many jurisdictions the judicial branch has the power to change laws through the process of judicial reviews. Courts with judicial rules of the state when its funds them incompatible with a higher norm, such as primary legislation, the provision of constitution or treaties or international law.

THE ROLE OF JUDICIARY IN SYSTAINING JUDICIARY IN NIGERIA

According to E. Enaruna (2020) said the judiciary no doubt has played a significant role in sustaining democracy in Nigeria. Since the inception of democratic governance in Nigeria, there

is one organ of government which has exercised its function and which said function is targeted at ensuring the life of democracy principles. There are many ways through which the judiciary has protected the Nigeria democratically. Unfortunately, the space and nature of this work will not afford the opportunity to discuss all of them. However, a few of them shall be discussed hereunder

RESOLUTION OF INTRA-PARTY DISPUTE

Gbenga M. (2024) defined intra – party dispute as a dispute between members of the same political party. Intra-party dispute between members of the same political party. Intra-party dispute usually touches on the issues of control and management of a political party or sponsorship of a candidate for an election. It nearly truncated the practice of democracy in Nigeria because of the recurrent nature of intra-party disputes from first republic till date, there appear to be a legal development in that area. One vital area of discussion on this paper is the way the courts have viewed intra-party dispute

This kind of dispute appeared at the centre of democratic governance in that political parties hanged on the altitude of the court to perpetual injustice to their members. This is done by substituting a member who has emerged in primaries with another member, suspending a member who has prospects of winning primary election against the will of the party leadership.

Death of candidate before announcement of result: this nearly truncated democratic governorship in Kogi state during the 2019 governorship election in Kogi state. The supreme court of Nigeria recently salted democracy by ruling that the first runner up of the deceased A.P.C candidate Alhaji Mohammed Bello can step into the shoes of the deceased APC candidate Alhaji Abubakar Audu Resolution of dispute Boarder us on Resource Control: This is another area wherein the Judiciary has played enormous role in sustaining democracy in Nigeria. This issue borders on who control resources in the federation and who sets what from the federation account.

Impeachment on the Chief Executive: This used to be a democratic cankerworm that tried to destiny the practice of democracy in Nigeria where the house of assembly has not attempted to impeach the chief executive or his deputy. Before the present democratic dispensation, the court declined jurisdiction of the court. Alhaji Balarabe Musa the then second Republic Governor of Kaduna State under the People Redemption Party (PRP) challenge his impeachment by the Nigerian People Party (NPN) dominated Kaduna State house of Assembly. The court of Appeal declined jurisdiction to entertain the matter.

CHALLENGES OF THE JUDICIARY IN SUSTAINING DEMOCRACY IN NIGERIA

Corruption: Corruption is the misuse of public power for private profit. It is the act of doing something with the

intent to give some advantages inconsistent with official office to procure some benefit either personally or for someone else contrary to the right of others.

According to Adeyemi (2012), the term corruption means; an offence which aim mainly at the conduct of public official who take advantage of their position within public administration for the purpose of private gain.

Lack of independence of judiciary: The importance of the competent, independent and impartial judiciary in preserving and upholding the rule of law cannot be over-emphasized. There is no doubt that public confidence in the independence of the court, in the integrity of judges that man such courts and in the impartiality and efficiency of the administration of justice as a whole.

The performance of the judiciary determines to a great extent the stability of both the policy and other branches of government independence of the judiciary is a indispensable prerequisite of a civilized and developed society under the rule of law.

INDEPENDENCE OF JUDICIARY IN A DEMOCRATIC SOCIETY MUST BE IN LINE WITH THE FOLLOWING PRINCIPLES

a. The principles of the independence of the judiciary entitle and required the judiciary to ensure that judicial proceeding is to be conducted fairly.

b. Everyone shall have the right to be tied by ordinary courts or tribunals using established legal procedures.

c. It shall be guaranteed by the state and enshrined in the constitution or the highest law of the country

Lack of Financial Authority: Amongst the various challenges of Judiciary in the sustenance of democracy in Nigeria is lack of financial autonomy of the Judiciary. This is the most experienced challenges. It is rather unfortunate that in Nigeria the power of the purse resides in the executive and legislative as this hampers the independence of judiciary. Although the constitution ostensibly grant financial autonomy to the judiciary by providing that recurrent expenditure of judicial officers of the federation and states shall be a charge upon the consolidated revenue fund of the federation.

THE ROLE OF JUDICIARY SUSTAINING DEMOCRACY IN EGYPT

According to Duus (2003), the legal and judiciary system in Egypt like most of the Arab world system, stems from the Latin legal system whose basic characteristic and historical roots largely defuse from the French system, legislation is the prime source of law and not drafting the law. The ordinary judiciary in Egypt is divided into two main branches: the regular judiciary on top of which is the court of cassation guarantee the infirmity and consistency

of the law implementation and interpretation and administrative dispute, represented by the council which is hierarchy higher than the supreme Administrative court

According to Bolanle (2018), the regime of Sadat, Mubarak El-asisi was constrain judicial independence because after taking power, Nasser issued law 353 of 1952 and law no 165 of 1955 which transferred the powers of investigating judges to the executive control public prosecution office and place the minister controlled judicial appointment, promotion and discipline of judges expressed grave concerns with judges who would not issue ruling the obstructed the regime agenda.

As judges in the civic court refused to allow Nasser to unilaterally impose his ideological agenda, he curtailed their jurisdiction.

COMPARATIVE ANALYSIS OF NIGERIA AND EGYPT JUDICIARY

The 1999 constitution of federal Republic of Nigeria (as amended) mandate the independent National Electoral commission (INEC) to conduct election both National and 36 states which Egypt practice authoritarian system of government that jeopardize their electoral process. Both Nigeria and Egypt are placed with challenges of ethnicity and ethnic politics

Nigeria enjoy presidential system of government since 1999 till

today but military coup d'état was overthrown the Egypt president system of government since 2013 till now

The parliament of Egypt is the oldest legislative chamber and it practice unicameral legislative while Nigeria counterpart operate bicameral legislative. In the Egypt current system, the president is elected for a six term while Nigeria constitution allow just two term with four years a single term in line with 1999 constitution (as amend)

Both Nigeria and Egypt Judiciary have challenge in delay and complexity in a adjudication and obstacles in the execution of judicial sentences. Nigeria and Egypt judiciary is corrupted base on the discrimination of judges between the cases of poor which make the rich have advantage of proficient, efficient and prompt procedure

CONCLUSION

The Judiciary in Nigeria and Egypt has played a significant role in the Nigeria and Egypt democratic processes. Both countries has witnessed series of political events that ordinarily would have led to a return to military rule but for the intervention of the judiciary, as the masses regard that judiciary as the last hope of common man, they have indeed been the last hope of the Nigerian and Egyptian democracy in the event of serious political threats to democracy. These threats happened in so many facts of the democratic governance beginning from constitutional loopholes in the

electoral process. Sometimes the coverts have adopted the doctrine of necessity to save the nation from a return to military rule instead of the word used. This paper concludes that, the judiciary though has its shortcomings, as was discussed above has done wonderfully well to protect and has sustain democracy in Nigeria and Egypt.

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