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The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects

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Abstract
The judiciary, as the guardian of constitutionalism, ensures that the organs of government do not stray into the sphere of each other, and that powers and authority are exercised within prescribed constitutional boundaries. Accordingly, the judiciary acts as a watchdog over the other organs of government and ensures their fidelity to the doctrine of separation of powers and respect for the supremacy of the Constitution. This Article assesses the exercise of the power of judicial review of executive and legislative actions by the Nigerian courts. Lessons are also drawn from other jurisdictions, such as the United States of America, Ghana and South Africa. While the performance of the judiciary in Nigeria has so far been commendable, several factors continue to impede its attainment of optimal performance. These include lack of judicial independence, impact of corruption and judicial philosophy of supporting the executive, amongst others. These problems must be addressed through proper selection and appointment of people of integrity as judicial officers, training and re-training of judicial officers, improved conditions of service and effective control of the performance of judicial officers, amongst others; in order to enhance the utilisation of the power of judicial review in the promotion of constitutionalism in Nigeria.

1. Introduction

The Constitution of Nigeria and those of most other African countries contain impressive mechanisms for checking and restraining the exercise of executive and legislative powers. However, Oyewo[1] has rightly observed that constitutional provisions that foster constitutionalism and rule of law are not being effectively enforced in Nigeria, and there is the need for the various arms of government, especially the legislature and the judiciary to be alive to their constitutional duties.[2] Nwabueze[3] draws a distinction between "formal" and "real" constitutional democracy and notes that lamentably in Nigeria, the constitutional democracy transmitted in May, 1999 is one that exists largely on the pages of the Constitution.

Arguing in the same vein, Oketh-Ogendo[4] coined the phrase "Constitutions without constitutionalism" in apparent reference to the African paradox of having lofty constitutional provisions that support constitutionalism and the rule of law but actively working against their actualisation. Mangu[5] argues that "Constitution" should be distinguished from "constitutionalism" as the former refers to the form, to the document itself, while the latter relates to the substance, to the values embedded in the constitutional provisions. The existence of a Constitution even with clear provisions on separation of powers, limitations on governmental powers, human rights and other democratic principles would not necessarily guarantee constitutionalism.

Constitutionalism is basically concerned with the implementation, observance and enforcement of constitutional limitations and values. It should be viewed as a method of limiting political abuse and ensuring that the powers of the State are constrained so that the State cannot act capriciously.[6] Ronsenfeld[7] maintains that

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1 O. Oyewo, "Constitutions, Good Governance and Corruption: Challenges and Prospects for Nigeria", available at www.enclsyn.gr/peper/.../paper%20by%200oyelowo%20oyewo.pdf. (accessed 15/5/2014).

2 *Ibid*., at 20.

3 B.O. Nwabueze, *How President Obasanjo Subverted Nigeria's Federal System* (Ibadan: Gold Press Ltd., 2007) p. xxv.

4 H.W. Okoth-Ogendo, "Constitutions Without Constitutionalism: Reflections on an African Political Paradox", in Douglas Greenberg et al. eds., *Constitutionalism and Democracy Transitions in the Contemporary World* 65 – 80 (1993). See also R. Coomarasuamy, "Uses and Usurpation of Constitutional Ideology", in Douglas Greenberg et al eds, *Ibid.* at 160 (noting that Constitutions in South Asia are formal pieces of paper, whose basic provisions, such as fundamental rights, are rarely observed).

5 A.M. Mangu, "Constitutional Democracy and Constitutionalism in Africa" (2006) 3 *Conflict Trends* 3 – 8.

6 L.E. Habasonda, "Presidentialism and Constitutionalism in Africa: "Third Term" Phenomenon/Extension of Tenure: the Zambian Experience", available at http://www.Zesn.org.zw/does/Presidentialism%20and%20Constitutionalism%20in%20/lee%20Habas/onda.ppt. (accessed 15/5/2014).

7 M. Rosenfeld, "Modern Constitutionalism as Interplay between Identity and Diversity" in M. Rosenfeld ed. *Constitutionalism, Identity, Difference, and Legitimacy. Theoretical Perspectives* (Durham and London: Duke University Press1994).

constitutionalism is a "three-faceted concept" as it requires imposing limits on governmental powers, adherence to the rule of law and protection of human rights. Constitutionalism is the antithesis of arbitrary rule.

An important bulwark of constitutionalism is the existence of an efficient and effective mechanism controlling and compelling compliance with the letter and spirit of the Constitution.[1] Indeed, there can be no constitutionalism in terms of respect for the Constitution and the values and principles that underlie it if there are no secure review mechanisms, whether by ordinary courts or other specialised courts or bodies, that can independently enforce the provisions of the Constitution, while checking and controlling any abuses of its provisions.[2] The responsibility of ensuring that the standards and procedures laid down in a Constitution are observed rests with the courts.[3]

In the light of the foregoing, this article focuses on how the power of judicial review, vested in the courts, could be effectively exercised to check and restraint arbitrary exercise of legislative and executive powers in the promotion of constitutionalism in Nigeria. It is important to stress that both legislative and executive powers are generally susceptible to abuse and must therefore be checked and restrained in order to forestall arbitrariness and promote constitutionalism.

2. The Concept of Judicial Review

Judicial review is the power of the court, in appropriate proceedings before it, to declare a legislative or executive act either contrary to, or in accordance with, the Constitution, with the effect of rendering the act invalid or vindicating its validity and so putting it beyond challenge in future.[4] In the case of *Abdulkarim v Incar Nig, Ltd*.,[5] the Supreme Court of Nigeria, per Nnaemeka Agu JSC, succinctly highlighted the scope of judicial review within the Nigerian constitutional jurisprudence as follows:

> In Nigeria, which has a written presidential constitution, judicial review entails three different processes; namely:
>
> (i) The courts particularly the Supreme Court, ensuring that every arm of government plays its role in the true spirit of the principles of separation of powers as provided for in the Constitution.
>
> (ii) That every public functionary performs his functions according to law, including the Constitution; and
>
> (iii) For the Supreme Court, that it reviews court decisions including its own, when the need arises in order to ensure that the country does not suffer under the same regime of obsolete or wrong decisions.

Primarily, this article focuses on items (i) and (ii) above, which deal with the court's power to review both executive and legislative actions based on the grounds of unconstitutionality and illegality.

It is significant to note, from the outset, that in Nigeria the power of judicial review is expressly conferred on the courts by the Constitution,[6] unlike in the United States of America where such power had to be assumed by the Supreme Court itself in the *locus classicus* case of *Marbury v Madison*.[7] In that case the Supreme Court of the United States, for the first time, struck down an Act of Congress as unconstitutional. This

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1 Chales Manga Fombad, "Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa". www.saifac.org/docs/repapers/RPS%20NO%2018paf. Accessed 10/7/2014.

2 *Ibid*.

3 I.T. Mohammad, "Judicialism and Electoral Processes in Nigeria: What the Supreme Court Did; What the Supreme Court May Do", being a paper presented at the 2012 Felix Okoye Memorial Lecture, Organised by Nigerian Institute of Advanced Legal Studies, University of Lagos, held at the Nigerian Institute of Advanced Legal Studies, University of Lagos, on 18th September 2012.

4 B.O. Nwabueze, *The Presidential Constitution of Nigeria* (London: C.Hurst & Company (Publishers) Ltd in Association with Nwamife Publishers Ltd., 1982) p. 309.

5 (1992) 7 NWLR (Pt. 251) 1.

6 1999 Nig. Const., s. 4(8); s. 6(6)(a).

7 5 U.S. (1 Cranch) 137 (1803). See generally, K.M. Stack, "The Reviewability of the President's Statutory Powers" (2009) 62 *Vanderbilt L. Rev.* 1172. For a critique of the case of *Marbury v Madison*, see Bickel, *The Least Dangerous Branch* (1963) 2 - 13.

decision created the doctrine of judicial review and set up the Supreme Court of the United States as Chief interpreter and enforcer of the Constitution.

By giving the power of judicial review to the courts, the Nigerian Constitution ensures obedience to its provisions by all persons and authorities since any violation of its provisions will be an illegality.[1] Furthermore, the Constitution's supremacy is assured since any derogation from it will be declared void because it is unconstitutional.[2]

The vesting of executive powers of the federation in the President and the exercise of such powers by him are made subject to the provisions of the Constitution.[3] The executive powers so vested in the President extend to the execution and maintenance of the Constitution itself and all laws made by the National Assembly. Thus, the President shall ensure by his actions that the provisions of the Constitution are observed and enforced. Furthermore, the President, subject to the provisions of the Constitution, may exercise the executive powers by himself either directly or through the Vice President and Ministers of the government of the Federation or officers of the public service of the Federation.[4] It therefore follows that executive acts or omissions could relate not only to the direct acts or omissions of the President but also to the acts or omissions of the entire executive arm of the federal government including institutions constituting the public service of Nigeria.

The provision of section 1(2) of the Constitution of the Federal Republic of Nigeria, 1999 stresses the supremacy of the Constitution and insists that Nigeria can only be governed in accordance with the provisions of the Constitution. By means of judicial review, the judicial organ of government exercises a measure of control and check over the legislature and the executive.[5] To support this controlling and checking functions of the judiciary, the Constitution provides that the constitutional powers of the National Assembly or of a State House of Assembly shall be subject to the jurisdiction of courts and of tribunals established by law; and accordingly the legislative Assemblies shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.[6]

3. The Power of Judicial Review and the Nigerian Courts: An Overview

The Nigerian courts, even under military dictatorship, have been able to preserve constitutionalism to an extent[7] and have not suffered the same fate of disbandment that befell the legislature during the military regimes.[8] Since transition to civil rule in 1999, however, the courts have played a much more pronounced and critical role in settling varieties of disputes and becoming a bulwark for constitutional democracy and guarantee of fundamental rights – what Nigerians labeled as the "last hope of the common man".[9]

The courts in Nigeria, particularly the Supreme Court, have risen to the occasion by saving the country's bourgeoning democracy from total collapse. This is evident from several decisions of the courts reviewing legislative and executive actions that are contrary to the provisions of the Constitution. The courts have made radical pronouncements in landmark cases on some constitutional issues, such as conduct of election, impeachment procedures, revenue allocation, division of powers, fundamental rights, political parties and local government, which have gone a long way in strengthening democracy[10] and fostering constitutionalism in Nigeria. Some of these landmark cases shall be examined under the following headings:

3.1 Creation of New Local Government Areas by the States

In the case of *Attorney General, Lagos State v Attorney General of the Federation*,[11] the Supreme Court of Nigeria declared the Local Government Area Law N0. 5 of 2002 under which 57 local governments were

[1] S.I. Nchi, *Separation of powers under the Nigeria Constitution* (Jos: Greenworld Publishing Co. Ltd., 2000) p. 148.
[2] 1999 Nig. Const., ss. 1, 4(8) and 6(6).
[3] The 1992 Constitution of Ghana contains a similar but more explicit provision in Art. 58(1) which states that the executive authority of Ghana shall vest in the President and shall be exercised in accordance with the provisions of the Constitution.
[4] 1999 Nig. Const., s. 5(1)(a).
[5] Nchi, *Op. Cit*. at 148.
[6] *Ibid*. See 1999 Nig. Const., s. 4(8).
[7] *Lakammi and Others v A.G. Western State* (1971) U.I.L.R. 201 S.C.
[8] The courts were preserved by "the win some, loose some, cat and mouse relationship" with the military in their adjudicatory roles.
[9] T. Mamman and P. C. Okorie, "Nurturing Constitutionalism through the Courts: Constitutional Adjudication and Democracy in Nigeria", available at http://www.ialsnet.org/meetings/constit/.../mamman & Okorie (Nig). pdf., accessed 22/5/2014.
[10] J. Amupitan, "The Role of the Courts in Strengthening Democracy at the Local Government Level in Nigeria," available at http://www.ialsnet.org/meetings/constit/.../Amupitanjoash (Nigeria).pdf., accessed 22/5/2014.
[11] (2004) 18 NWLR (Pt. 904) 1.

created by the Lagos State government as unconstitutional, null and void. Under the said law, the existing 20 Local Government areas recognised under the 1999 Nigerian Constitution were broken into 57 Local Government Councils. The Law in effect abolished Local Government Areas created under the 1999 Constitution by altering their names, adjusting their boundaries and dividing them into smaller units. The Law further vested the Governor with powers to appoint persons to administer the affairs of the newly created local government areas. In the same case, the Supreme Court of Nigeria also held as null and void the decision of the Federal Government to withhold statutory financial allocations due and payable to the Lagos State Government in respect of the 20 existing Local Governments. Surprisingly, even after the Supreme Court's decision, the Federal Government still refused to release the funds to the said 20 Local Governments. Therefore, for about 3 years there was no statutory allocation to the Local Governments in Lagos State.

The Supreme Court also pointed out in that case that the creation of additional Local Government areas in Nigeria would result in the amendment of the Constitution. Thus, no State Government could, on its own, create additional Local Government areas without involving the National Assembly, which would then set the necessary machinery in motion for the amendment of section 3(6) of the 1999 Constitution to accommodate the newly created local government areas.

3.2 Dissolution of Local Government Councils

The Court of Appeal in the cases of *Attorney General, Plateau State v Goyol and Ors,*[1] and *Attorney General, Benue State v Umar and Ors,*[2] declared the actions of the Plateau State Governor and that of the Benue State Governor, respectively, in dissolving the Local Government Councils in those States as unconstitutional, null and void.[3] The Laws made by the two State Houses of Assembly which authorised the Governors to impede the smooth running of the Local Government Councils were also declared to be unconstitutional, null and void. The actions of the two State governments led to serious tension between the state governments and the elected council chairmen and councilors who formed themselves into associations to resist the dissolution.[4]

3.3 Nomination and Substitution of Candidates for Election

In Nigeria, State and Federal elections are conducted by the Independent National Electoral Commission (INEC) which receives nomination from political parties. The nomination process is the sole responsibility of the respective political parties for which the court cannot interfere.[5] However, where a candidate is properly nominated by the party and the nominee presented within time to the INEC, any subsequent changes would have to be made in accordance with the law.[6] An illegal change or substitution is fatal to both the political party and the candidate. In the case of *Ugwu v Ararume*,[7] the Supreme Court of Nigeria laid down the legal framework for change or substitution of candidates based on its ingenuous interpretation of the Electoral Act, 2006 as follows:

> From the words used by the Legislature in section 34(1) and (2) of the Electoral Act, 2006, it is clear that the intention of the Legislature is that even though the right of choice of a candidate to be sponsored for any election remains the special preserve of the political parties, just as the right to change or substitute such candidates, the right is no longer to be exercised capriciously, or any how or without recourse to reasonable expectations of a decent society. The law expressly states that the substitution must be made within 60 days to the election and there must be cogent and verifiable reasons for the substitution given by the political party

[1] (2007) 12 NWLR (Pt. 1059) 57.
[2] (2008) 1 NWLR (Pt. 1068) 311.
[3] See also *Governor of Akwa Ibom State & Ors v Hon. Peter Umah* (unreported) Suit N0. CA/C/30/2001, quoted in E. Okon, *Local Government Administration in Nigeria* 2003) pp. 193 – 218 where the Court of Appeal upheld the decision of the High Court declaring the dissolution of Ini Local Government Council of Akwa Ibom State by the Governor as illegal. However, the Court of Appeal further held that though the word "dissolution" is missing in the provisions of section 7(1) of the 1999 Constitution, the House of Assembly which has the powers to make laws to regulate the affairs of a Local Government Council, that is, for establishment, structure, composition etc, of such council, can make a law for dissolution of an erring local government council and for a bye election. If not there will be chaos and disorder.
[4] Amupitan, *Op. Cit*.
[5] *Onuoha v Okafor* (1983) 2 SCNLR 244, *Dalhatu v Turaki* (2003) 15 NWLR (Pt. 843) 310; *Ehinlanwo v Oke* (2008) All FWLR 1007.
[6] Electoral Act, 2006, s. 34(1) and (2) required that the substitution be made within 60 days to the election and that cogent and verifiable reasons for the substitution be given by the political party desiring the change or substitution.
[7] (2007) 12 NWLR (Pt. 1048) 367.

> desiring the change or substitution. The Legislature intended to bring sanity into the exercise by the political parties of their right to change or substitute their candidates, even on the eve or after an election simply because the nomination or sponsorship of a candidate for an election is the prerogative of the political parties to which the courts will not interfere or have no jurisdiction to interfere.

The principle in the above case was followed by the Supreme Court of Nigeria in the case of *Amaechi v INEC,*[1] where the Peoples Democratic Party (PDP) had replaced Amaechi with Omehia as its candidate for the Governorship election in Rivers State. In an action challenging the substitution, the appellant (Amaechi) contended that there were no cogent and verifiable reasons for the substitution as required by law. In his response, the 2nd respondent (Omehia) challenged the jurisdiction of the court to entertain the matter, contending that the issue of selection of a party's candidate for an election, being an internal affair of the party, was non-justiciable. The two lower courts upheld the respondent's objection. However, in allowing Amaechi's appeal, the Supreme Court of Nigeria held as follows:

> In the said *Ararume Case* this court decided that to offer the reason framed as "error" for a change of candidate is not in compliance with section 34(2) of the Electoral Act 2006. In this case, the same reason relied upon by the 3rd respondent in substituting the appellant with the 2nd respondent is the word "error", without more. Clearly in my view the cases are similar and the same principle applies…. It is my finding that the appellant was not substituted according to the law and therefore remained the 3rd respondent's nominated candidate for the Rivers State Governorship election held on 14/4/07…. It was the appellant and not the 2nd respondent who must be deemed to have won the elections.[2]

Accordingly, the Supreme Court directed that Amaechi be sworn in immediately as the Governor of Rivers State. Though the practical effect of this decision was to declare a person who did not actually participate in an election as the winner of that election,[3] we believe that the Supreme Court, in its pursuit of justice, took the right decision based on the facts and circumstances of this case. The decision introduced a significant check on the power of political parties to nominate and field candidates for elections which hitherto was totally regarded as a political matter within the exclusive domain of the political parties to which courts lack the jurisdiction to entertain. However, under the Electoral Act, 2010,[4] political parties are no longer permitted to change or substitute their candidates whose names had already been submitted to the INEC, except in the case of death or withdrawal by the candidates.

3.4 Disqualification of Candidates by the INEC

The decision of the INEC to exclude certain candidates, who were validly nominated by their political parties, from contesting elections was also challenged in courts. The INEC had based its decision to exclude some nominated candidates on their purported indictment by the Economic and Financial Crimes Commission (EFCC) investigation and the Government White Paper on it.[5] Thus, in *Action Congress of Nigeria & Anor v INEC*,[6] the Supreme Court of Nigeria held that the Independent National Electoral Commission had no power to exclude any candidate from contesting an election. The facts of the case are that the plaintiffs instituted an action against the INEC, being the defendant at the Federal High Court for determination of whether the defendant has the power to disqualify any candidate properly sponsored by a political party without recourse to a court of law. At the conclusion of hearing, the trial court granted the plaintiffs'/appellants' claim in part. It held that although the defendant/respondent had the power to screen candidates for election, it did not have the power to disqualify a candidate. It also held that the power to disqualify any candidate sponsored by any political party

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[1] (2007) 18 NWLR (Pt. 1065) 105, cited and followed in *Ehinlanwo v Oke* (2008) All FWLR 1007.

[2] *Amaechi v Omehia*, *Ibid*. at 105 – 106, per Katsina – Alu. The submission of the Respondent that section 308 dealing with immunity of the Governor from judicial process enured to the benefit of 2nd respondent – Omehia, was rejected by the Court as untenable, since the wrong upon which the appellant premised his claim, had been in existence before the election.

[3] See *The Daily Sun Newspaper,* Monday, October 29, 2007 p. 6, where Chief Gani Fawehinmi (SAN) condemned the order of the Supreme Court which directed that Amaechi be sworn in as Governor of Rivers State when he did not contest the election; describing it as a "terrible judicial imposition".

[4] Electoral Act, 2010, s. 33. (Nigeria)

[5] A.A. Bello, "Judicial Review As Efficient Tool For Electoral Reform in Nigeria," available at http://ssrn.com/abstractz1119526. (accessed 22/5/2014)

[6] (2007) 12 NWLR (Pt. 1048) 220.

including the 2nd plaintiff/appellant from contesting an election is vested in the courts as provided in section 32(5) of the Electoral Act, 2006.

The Supreme Court, in a unanimous decision, held that to disqualify a person from contesting election for the office of the President solely on the basis of an indictment for embezzlement or fraud made against him by an administrative Panel of Inquiry with the presumption of guilt for those offences thereby implied, runs completely against the purpose and significance of vesting of judicial power in the courts by section 6(1) of the 1999 Constitution. The Supreme Court pointed out that there was nothing within the provision of section 137(1) of the Constitution of the Federal Republic of Nigeria, 1999 that empowers the INEC to disqualify any candidate, especially the 2nd appellant, from contesting the election as a presidential candidate. According to their Lordships, "there is nowhere in the Constitution where any such power is conferred on INEC to disqualify any candidate. By virtue of section 6(1) and (6) of the Constitution of the Federal Republic of Nigeria, 1999, it is only a court of law that can exercise a function, which is exclusively adjudicative in nature". The Court pronounced with finality that the INEC, not being a court of law cannot exercise such adjudicative function. It relied on section 32(4) of the Electoral Act, 2006, which provides that:

> Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit is false, may file a suit at the High Court of a State or Federal High Court against such person seeking a declaration that the information contained in the affidavit is false.
>
> If the court determines that any of the information contained in the affidavit is false, the court shall issue an order disqualifying the candidate from contesting the election.[1]

The apex court further stated as follows:

> Whereas under section 21(8) and (9) of the Electoral Act, 2002 the Independent National Electoral Commission (INEC) had the power to disqualify candidates, the legal position changed with the enactment of the Electoral Act, 2006. The lawmakers in their wisdom took away the power from the respondent. The power is now vested in the courts by virtue of section 32(4), (5) and (6) of the Electoral Act, 2006.[2]

Mere allegation of crime or dishonest conduct, without evidence of trial and conviction, is not enough to ground the disqualification of a person from contesting a primary election of a political party or any other election.[3]

In compliance with the Supreme Court's decision in this case, the presidential candidate of the Action Congress, Alhaji Atiku Abubakar, was eventually placed on the ballot and allowed to contest the elections. Following on the heels of the Supreme Court's decision in the *AC Case*, the Governorship elections of Kogi and Adamawa States were annulled by the Governorship and Legislative Election Petition Tribunals of the respective States and the nullification upheld on appeal by the appropriate Court of Appeal sitting as appellate court on election petitions. Elections conducted in both States were nullified on grounds of unlawful exclusion of candidates of some political parties (Action Congress Party candidate in Adamawa and All Nigeria Peoples Party candidate in Kogi). In the repeat elections directed by the Court of Appeal, only the candidates excluded were to be on the ballot without recourse to any intra party nomination process. The other political parties were free to nominate any candidate they desired.

3.5 Removal from Office for Changing Political Party

Alhiji Atiku Abubakar, while serving as Nigeria's Vice President, successfully challenged an attempt by the President, Chief Olusegun Obasanjo, to remove him from office after he relinquished his membership of the People Democracy Party (PDP), on whose platform he was elected along with the President, to join another party, the Action Congress (AC). On the 22nd December 2006, the office of the Vice President was declared vacant by the presidency. This followed his expulsion from his former political party, the People's Democratic Party (PDP); subsequent upon which he decamped to the Action Congress. The presidency insisted that it relied on the provisions of sections 142 to 146 of the 1999 Constitution of Nigeria to arrive at its decision. In *Attorney General of the Federation v Atiku Abubakar*,[4] the Supreme Court said that disagreements between the President and the Vice President cannot avail the President a legal justification for depriving the Vice President of any

[1] Electoral Act 2006, s. 32(4)(5).
[2] *Ibid*. Per Katsina-Alu JSC at 262.
[3] Mohammad, *Op. Cit*.
[4] (2007) 6 NWLR (Pt. 1031) 626; (2009) All FWLR (Pt. 456) 1.

powers, including the right to exhaust his or her tenure as Vice President as conferred by the 1999 Constitution of Nigeria. Upon a proper construction of the provisions of section 146 of the 1999 Constitution, the Supreme Court dismissed the appeal and held that: "The term of the 1st respondent as Vice President has not expired and he cannot be removed by the President, except through impeachment by the National Assembly".[1]

3.6 Immunity of Public Officers from Prosecution

One of the most criticised provisions of the 1999 Constitution of Nigeria is section 308 which provides for immunity of the President, Vice-President, Governor and Deputy-Governor from judicial processes.[2] This insulation of the leadership of the executive from judicial process is generally believed to encourage executive lawlessness, engender abuse of power and shield corrupt practices by such leaders.[3] Initially, the provision was understood and applied by the Federal High Court in *Fawehinmi v Inspector-General of Police*[4] as a bar to investigation of such officers. On appeal, however, the Supreme Court reversed the decision,[5] holding that the immunity clause did not prevent the investigation of the affected public office holders; although they can neither be prosecuted nor arrested while in office. This decision has since offered the necessary impetus for law enforcement agencies to investigate allegations of crime against such officers while they are in office and build a file which could, and, indeed, have often been used for prosecution on exit from office.[6]

3.7 Adherence to the Law Making Procedure

The role of the court in judicial review of legislative and executive actions was further emphasised in the case of *Attorney General, Abia State v Attorney General Federation*,[7] where the Supreme Court of Nigeria, per Tobi JSC, stated that where the National Assembly or the State House of Assembly, in the exercise of its constitutional power to make laws, strays from the constitutional purview of section 4(2) and section 4(7) of the Constitution respectively and a question as to constitutionality or constitutionalism arises, the courts in the exercise of their judicial powers, when asked by a party, will move in to stop any excess in exercise of legislative power.

3.8 Protection of Human Rights

Judicial review of executive actions also extends to the protection of the citizen's fundamental rights from abuse by government agencies and individuals. The extent of the guarantee or protection of human rights in a country is measured not by the width of the relevant constitutional provisions, but the manner or nature in which such provisions are interpreted and implemented.[8] Citizens look increasingly up to the judiciary to see to executive accountability and the protection of their basic rights.[9]

Elaborate provisions in the Constitution on the rights of the citizens are not in themselves enough to guarantee their implementation or enforcement. It requires judicial enforcement to give effect and life to those provisions. Similarly, a constitutional guarantee of a right may be inadequate, but in expounding the provisions through judicial review or enforcement, the courts may inject life into them.

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[1] *Ibid*, Per Akinola Akintan JSC.
[2] Immunity of Executive Heads of Government from judicial processes was first introduced into the Nigerian constitutional jurisprudence under section 267 of the Constitution of the Federal Republic of Nigeria, 1979.
[3] Mamman & Okorie, *Op. Cit.*
[4] (2002) 7 NWLR (Pt. 767) 606. per Egbo-Egbo J.
[5] The Court, however, refrained from ordering mandamus to compel investigation by the police, being a question of discretion.
[6] Mamman and Okorie, *Op. Cit.*
[7] (2006) 16 NWLR (Pt. 1005) 265 at 381 – 382; see also the earlier case of *Attorney General of Bendel State v Attorney General of the Federal* (1982) 10 SC 11, where the Supreme Court of Nigeria declared null and void the Revenue Allocation Act 1981 for non-compliance with the procedure laid down in the Constitution for the making of law relating to money and other revenue matters.
[8] F.S. Nariman, "Judicial Aspects of Human Rights Protection in India" (1992) (17) (N0. 4) *International Legal Practitioner* 118 at 112.
[9] M. Pieterse, "Coming to Terms With Judicial Enforcement of Social Economic Rights" (2004) 20 SAJHR 383 at 388. Being and paper presented at the British – Nigerian Law Week 23 – 27 April, 2000, Abuja, Nigeria.

The Supreme Court of India has developed three basic commitments to aid the promotion of human rights: one is the commitment to participative justice, the other is the commitment against arbitrariness and the last one is the commitment to just standards of procedure.[1]

The Nigerian courts have shown great courage in the protection of the fundamental rights of the citizens even during military rule when these rights where greatly curtailed and frequently abused. In *Attorney General of the Federation v Abule*,[2] the Court of Appeal emphasised that the Constitution being the organic law of the country declares in a formal, emphatic and binding principles the rights, liberties, responsibilities among others, of the people including the government. It is, therefore, the duty of the authorities, which include the judiciary, to ensure its observance. The court in Nigeria therefore play a significant role in safeguarding the fundamental rights of persons through effective intervention in cases where it is shown that such rights have been or are being threatened.[3] Commenting on the role of judges in America in relation to the protection of fundamental rights of citizens, Warren CJ, in *Trop v Dulles,*[4] stated as follows:

> We are oath-bound to defend the Constitution. This obligation requires that congressional enactments be judged by standards of the Constitution. The Judiciary has the duty of implementing the constitutional safeguard that protects individual rights. When the Government acts to take away the fundamental right of citizenship, the safeguards of the Constitution should be examined with special diligence… when it appears that an Act of Congress conflicts with one of the provisions of the Constitution, we have no choice but to enforce the paramount commands of the Constitution. We are sworn to do no less.[5]

The foregoing words of Warren CJ are equally relevant to the courts in Nigeria to guide them in protecting the fundamental rights of citizens as guaranteed in the Constitution and other human rights instruments. It is however important to reiterate that while the exercise of the power of judicial review by Nigerian courts has so far been quite encouraging and commendable; the attainment of optimal performance by the courts has been impeded by several intractable factors, some of which are examined below:

4 Impediments to Effective Exercise of Judicial Review in Nigeria

4.1 Problem of judicial independence

Although the Constitution of Nigeria and those of most African countries recognise and guarantee the independence of the judiciary, this principle remains elusive in practice. There is apparent lack of commitment to the principle of judicial independence by most political leaders in Nigeria and other African states. Obviously, the independence of the judiciary is an integral part of a constitutional democracy.[6] A cardinal feature of a democratic system is the doctrine that the judicial branch is independent, and that judges, as officers of the courts, are protected from political influence or other pressures that might affect their judgments. The remuneration packages of judges and the attendant social prestige that accompany their offices are meant to give them financial independence and immunity from economic and social temptations. However, independence of the judiciary means more than absence of interference from the other organs of government. According to Aguda,[7] it means:

> "…the deciding officers shall be independent in full sense, from external direction by any political and administrative superiors in the dispensation of individual cases and inwardly free from the influences of personal gain and partisan or popular bias; thirdly, that day to day decisions shall be reasoned, rationally justified in terms that take full account of both of the demands of general principles and the demands of the particular situation".[8]

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[1] P.N. Bhagwati, "Human Rights as evolved by the Jurisprudence of the Supreme Court of India" (1987) 13 *Commonwealth Law Bulletin* 236 at 237.

[2] (2005) 11 NWLR (Pt. 936) 369.

[3] Constitution of the FRN, 1999, s. 46, which grants special jurisdiction to the High Court for enforcement of the fundamental rights of any person who alleges that any of his fundamental rights has been, is being or likely to be contravened in any State.

[4] (1958) 356 US 86.

[5] *Ibid*. at 104.

[6] J.B. Diescho, "The Paradigm of an Independent Judiciary: Its History, Implications and Limitations in Africa" available at http://www.kas.de/upload/aus,landshomepages/narmibia/independence_judiciary/diescho.pdf. (accessed 12/4/2014).

[7] A. Aguda, *The Judicial Process and the Third Republic* (Lagos: F & A Publishers, 1992) pp. 35 - 36.

[8] *Ibid*.

Impartiality or neutrality means not merely an absence of personal bias or prejudice in the judge but also the exclusion of irrelevant consideration such as his political, social, economic or religious views. It means that the judge should not advert to matters which go beyond those necessary for decision in the case before him. The judge is not to take into account any consequences which might flow from his decision and which is wider than the direct interests of the parties. The judge must act like a political, economic, and social eunuch and have no interest outside his court when he comes to decide a case.[1]

The Nigerian judiciary has been widely condemned for alleged complicity in the political and social malady that has afflicted the country. It has been accused, for example, by aggrieved politicians of favouring their political opponents in the ruling party in the handling of election petition cases.[2]

The judiciary itself must take positive steps to improve its image and secure its independence. The National Judicial Council must be active in monitoring the conduct and performance of judicial officers. Reports of misconduct against judicial officers must be promptly investigated and determined. Erring judicial officers should be punished accordingly, to serve as deterrence to others. The judiciary must project and nurture its good reputation in respect of its independence and integrity, by, providing adequate domestic mechanisms to correct erroneous or unjust decisions, making access to the courts friendly and comfortable, and demystifying anything in the language of the law that makes it unintelligible.[3]

Financial autonomy is also an aspect of judicial independence. The constitutional provisions on financial autonomy of the Nigerian judiciary are apt and unequivocal. Section 81(3) of the Constitution of the Federal Republic of Nigeria, 1999 provides that: "the amount standing to the credit of the judiciary in the consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement". Similarly, section 121(3) provides, with respect to the State judiciary, that: "any amount standing to the credit of the judiciary in the consolidated revenue fund of the State shall be paid directly to the heads of the courts concerned".

However, despite these clear constitutional provisions, the executive branch, both at the Federal and State levels have been reluctant to enforce them. Indeed, many State Governors consider these provisions as "affront to their imperial powers and prefer to see the Chief Judges and other heads of courts trembling before them, cap in hand to beg for funds to run the State's judiciaries".[4] In a recent judgment, the Federal High Court, per Ademola J., directed that in line with constitutional provisions, funds meant for the judiciary should be disbursed directly to the heads of courts and not to the executive arm of government.[5] The court further restrained the heads of the federal and state executive arm of government from holding on to funds appropriated to the judiciary; and declared that "The piecemeal allocation of funds through the State's Ministry of Finance to the State's judiciary at the Federal Government and State's pleasure was unconstitutional, unprocedural, cumbersome, null, void, and should be stopped forthwith". Expectedly, the implementation of this judgment has not been free from resistance by the executive arm of government, resulting in series of strike actions by the judiciary workers who are insisting on the full implementation of the court's judgment.

4.2 The Problem of Corruption in the Judiciary

The judiciary in Nigeria has not only remained financially dependent on the executive for many years, but has also been excessively politicised.[6] This state of affairs makes the judiciary vulnerable to corruption. While corruption in the judiciary relates to unprofessional or infamous conduct by some judicial officers, it is also taken to mean attempts by extraneous bodies to undermine the judiciary either through inducement, cajoling, intimidation, or some other means.[7] Undoubtedly, a financially dependent judiciary cannot enjoy full autonomy neither can it dispense justice without fear or favour.

Consequently, while the Nigerian masses might historically perceive the judiciary as "the last hope of the common man", the political elite have sought to humiliate, exploit or marginalise the judiciary through

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[1] Lord Reid "The Judge as Law Maker", available at www.oppapers.com/subjects/thejudge... accessed 12/5/2014.

[2] See I. Nnochiri, "Corruption in Nigerian Judiciary: How Safe is 2011 General Elections?" *Vanguard*, Nov. 18, 2014.

[3] O.C. Ruppel, "The Role of the Executive in Safeguarding the Independence of the Judiciary in Namibia", available at www.kas.de/upload/auslandshomepages/namibia/.../ruppel.pdf., accessed 23/4/2014.

[4] E. Essien & Mary Udofia, "Judicial Reforms and Democracy in Nigeria" E. Essien (ed.) *Law: All-Round Excellence Essays in Honour of Professor Peter Umana Umoh, Ph. D (London)* (Lagos: Toplaw Publishments Ltd, 2012) p. 13.

[5] V. Achiuma-Young, "Right Group to State Governments: Comply with Judgment on Financial Autonomy for Judiciary", *Vanguard* July 31, 2014.

[6] E.O. Ojo, and P.F. Adebajo, "Can Nigeria's Nascent Democracy Survive?" (2009) 11 *Journal of Sustainable Development in Africa* 1 17 – 19. See also I.S. Ogundiya, Democracy and Good Governance: Nigeria's Dilemma (2010) 4 *Afr. J. Int'l Rela* 6, 206.

[7] A. Oyebode, "The Judiciary, Corruption and Democratisation" in A. Gboyega, ed.,. *Corruption and Democratisation in Nigeria.* (1996).

inducements that affect its independence. The situation is compounded by the deplorable economic condition of the country, which makes an individual susceptible to corruption. Ojebode, contends that in a society bedeviled by social insecurity, political instability and economic woes, it would "require near superhuman guts to be upright and stand firm on the side of judicial integrity, independence, due process of the law and kindred virtues of democratic polity".[1] Corruption in the judiciary does not only lead to delay in justice but may also lead to its eventual denial and thereby perpetuating the same injustice which the judiciary is meant to cure.[2] No meaningful reform can be successful in this sector unless this menace is properly dealt with.[3]

The current efforts of the National Judicial Council in monitoring the performance of judicial officers through the requirement of periodic returns on the number of cases handled and entertainment of petitions against judicial officers, among others, have impacted positively on the attitude and performance of the Nigerian judicial officers. The tempo must however be sustained.

4.3 Problem of judicial philosophy

A Constitution is not a mere monument for the nation and generations yet unborn. Therefore, the courts should adopt a flexible, progressive, functional and purposive approach rather than strict, legalistic, conservative and mechanistic approach to constitutional interpretation. A contrary approach, will among other things, stifle the development of healthy constitutional jurisprudence.[4]

In the Nigerian case of *Nafiu Rabiu v Kano State*,[5] Udoma, JSC advocated the liberal/purposive approach in the interpretation of statutes and the Constitution, when he stated as follows:

> My Lords, it is my view that the approach of this court (Supreme Court) to the construction of the Constitution should be and so it has been, one of liberalism, probably a variation of the theme of the general maxim *ut res magi valeat quam pereat*. I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends.[6]

Though, Udoma JSC did not give the lead judgment in the case, his recommended approach for interpretation of the Constitution, contained in his concurring judgment, has been adopted in several subsequent decisions of the Supreme Court and the Court of Appeal.[7] However, in most other cases, the courts in Nigeria still follow the concept of traditionalism and literalism[8] in the interpretation of statutes and the Constitution.

4.4 The Problem of Locus Standi

The citizens do not have unfettered access to court for the enforcement of their rights and protection of the Constitution. The problem of *locus standi* constitutes a major impediment to the full utilization of the court to foster constitutionalism in Nigeria. Therefore, where there is any executive or legislative action which violates the provision of the Constitution, an individual citizen may be restricted by the doctrine of *locus standi*

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1 *Ibid*.
2 B. Okafor, "Prospects and Problems of Access to Justice Through the Multi-Door Court" (2014) *ABUAD Law Journal* Vol. 1 N0. 1 p. 41.
3 *Ibid*.
4 L. Uzoukwu, "Addressing the Legitimacy of the 1999 Constitution through the Reform Process" being a paper presented at the British – Nigerian Law Week 23 – 27 April, 2000, Abuja, Nigeria.
5 *Nafiu Rabiu v Kano State* (1980) 8 – 11 SC 130.
6 *Ibid*. at 151.
7 See for example, *A-G, Abia State v A-G, Federation* (2002) 6 NWLR (Pt. 763) 264 at 485 – 486. *A-G, Ondo State v A-G, Federation* (2002) 9 NWLR (Pt. 772) 222 at 340; *Orhiunu v F.R.N.* (2005) 1 NWLR (Pt. 906) 39 at 55 and *A-G, Abia State v A-G Federation* (2003) 4 NWLR (Pt. 809) 124 at 230.
8 For example, in *Abubakar v Yar'Adua* (2008) 36 NSCQR (Pt. 1) 231, the Supreme Court, in determining whether a petitioner could bring an election petition based on section 145(1)(d) and section 145(1)(a)-(c) of the Electoral Act, 2006 in the alternative, and in interpreting the word "exclusion" in section 145(1)(d) of the said Electoral Act 2006, applied the literal rule. The court held that the petitioner was not excluded from participating in the election as his name was on the ballot paper, even though he was just cleared to contest few days to the election. See also *Buhari v INEC* (2008) 36 NSCQR (Pt. 1) 475 at 599 – 602; C.A. Ogbuabor, "The Supreme Court and Presidential Election Petitions in Nigeria: The Impregnable Reign of Literalism." (2010) 6 *Nigerian Bar Journal* 123 – 164; O.N. Ogbu, "The Doctrine of Substantial Compliance in Election Petitions in Nigeria: The Imperative of a New Judicial Approach" (2010) 6 *Nigerian Bar Journal* 29 – 48.

from maintaining an action in court to remedy the violation and protect the Constitution. The term *locus standi* denotes the legal capacity to institute proceedings in a court of law. In the locus classicus case of *Adesanya v President of the Federal Republic of Nigeria*,[1] the Supreme Court held that a person has *locus standi* if he or she can show sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed.[2] This is derived from section 6(6)(b) of the Nigerian Constitution which provides that the judicial powers vested in the courts shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

However, a major shift in judicial attitude on the requirement of *locus standi* in public law, manifested in the case of *Fawehinmi v President F.R.N*,[3] where the Court of Appeal held that it will definitely be a source of concern to any tax payer who watches the funds he contributed or is contributing towards the running of the affairs of the State being wasted when such funds could have been channeled into providing jobs, creating wealth and providing security to the citizens.[4] Such an individual has sufficient interest in coming to court to enforce the law and to ensure that his tax money is utilized prudently.[5]

Though the Court of Appeal allowed the appeal and held that the Appellant had *locus standi* to maintain the action, it still stressed the need to amend the Constitution on the issue of *locus standi* and access to court, when it further held as follows:

> It will be appropriate at this point to proffer that for this country to remain governed under the rule of law in view of the controversies the problem of *locus standi* has generated especially in constitutional matters, it is suggested that any future constitutional amendment should provide for access to court by any Nigerian in order to preserve, protect and defend the Constitution.[6]

It is significant to note that the above decision, not being a decision of the Supreme Court of Nigeria, has not finally settled the controversy on the issue of *locus standi* in public law in Nigeria. Nevertheless, the court's suggestion on the necessity for a constitutional amendment to liberalise the issue of *locus standi* in constitutional matters in Nigeria is quite plausible.[7] A good example of such liberalisation could be found in Article 2 of the Ghanaian Constitution, which provides as follows:[8]

> 1. A person who alleges that:
> (a) an enactment or anything contained in or done under the authority of that or any other enactment;
> (b) any act or omission of any person is inconsistent with or in contravention of a provision of this Constitution may bring an action in the Supreme Court for a declaration to that effect.
>
> 2. The Supreme Court shall, for the purposes of declaration under Clause (1) of this article, make such orders or give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made.

The Supreme Court of Ghana is further empowered to impose sanctions for non-compliance with the orders made pursuant to the above provision by clauses 4 and 5 of Article 2 as follows:

> (4) Failure to obey or carry out the terms of an order or direction made or given under clause (2) of this article constitutes a high crime under this Constitution

[1] (1981) ANLR 1.
[2] See also *Olagunji v Yahaya* (1998) 3 NWLR (Pt. 542) 501; *Ogbuehi v Governor, Imo State* (1995) 9 NWLR (Pt. 417) 53 and *Okafor v Asoh* (1999) 3 NWLR (Pt. 593) 35.
[3] (2007) 14 NWLR (Pt. 1054) 275.
[4] *Ibid*. at 341.
[5] *Ibid*..
[6] *Ibid*, at 343.
[7] Though the Fundamental Rights (Enforcement Procedure) Rules, 2009 (Nigeria) in its Preamble 3(e) provides that: The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*...) a specific constitutional provision liberalising the requirement of *locus standi* in Nigeria is still required.
[8] 1992 Ghana Const., Art. 2.

and shall, in the cases of the President or the Vice-President, constitute a ground for removal from office under this Constitution.

(5) A person convicted of high crime under clause (4) of this article shall –
(a) be liable to imprisonment not exceeding ten years without the option of a fine; and
(b) not be eligible for election, or for appointment, to any public office for ten years beginning with the date of the expiration of the term of imprisonment.

In the case of *Sam (N0. 2) v Attorney General,*[1] the Supreme Court of Ghana held that any citizen is entitled to invoke Article 2 of the Constitution for interpretation or enforcement of the Constitution without the requirement of establishing a special personal interest in the outcome of the case. Thus, every citizen has an inherent right to enforce the Constitution.

5. Conclusion

The impressive courage so far exhibited by the Nigerian courts in the exercise of its power of judicial review portends well for the promotion of constitutionalism in Nigeria. Indeed, since the inception of the current democratic experience in Nigeria in 1999, there have been a number of occasions when the intervention of the courts, especially the Supreme Court was sought in various constitutional and electoral matters. In all these cases, the apex court had never shied away from playing its constitutionally assigned role in the polity. The essence of the Court's intervention has always been to promote democratic culture among the Nigerian populace, strengthen the confidence of the people in the democratic process and promote constitutionalism and due process in the political system.[2]

Generally, judicial review is a potent instrument for checking and restraining the exercise of executive and legislative powers. Indeed, the mere consciousness by the executive and the legislature that their actions and decisions could be reviewed by the judiciary and struck down as unconstitutional, could constitute a major mechanism for restraining the exercise of executive and legislative powers. However, the independence of the judiciary is central to the effective performance of judicial review and other judicial functions. It is submitted that apart from Liberia where the judiciary is virtually subservient to the executive, the judiciary in Ghana, Nigeria and South Africa have secured varying degrees of independence. Though financial autonomy and independence have not yet been fully achieved, funding of the judiciary in Nigeria has improved tremendously within the last three years and this has reflected in the provision/upgrading of physical structures and facilities of the judiciary.

The salaries and welfare packages of judicial officers have also received a great boost. Osibanjo, former Attorney General of Lagos State[3], sums up the improvements in the conditions of service of judicial officers as follows:

> In 1999 judges of the High Court earned barely ₦70,000 monthly. They were entitled to an official car and a driver which was withdrawn on retirement….Today, approved monthly remuneration for judges is in excess of ₦500,000 a month. Upon retirement, every judge is given a house for life; in addition, a piece of land in a choice location. Recently, a generous holiday allowance was approved which would enable the judges and a spouse to spend a comfortable vacation abroad.[4]

However, incidents of corruption have not disappeared from the judiciary[5] and the judicial philosophy of supporting the executive has not completely shifted in favour of the modern conceptions of constitutionalism. Therefore, even if full independence is secured, the effectiveness of the Nigerian judiciary to check the executive and legislative branches of government would still be hampered by its jurisprudence of executive supremacy,

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[1] (2000) S.C.G.L.R. 305. See also *NPP v Attorney General* (1996 – 97) S.C.G.L.R. 729 where the Supreme Court of Ghana held that a corporate person is entitled to invoke Article 2 of the Constitution to institute an action in the Supreme Court for the interpretation and enforcement of the Constitution.

[2] Mohammad, *Op. Cit.*.

[3] Osibanjo is currently the Vice President of Nigeria, having been sworn into office on 29th May 2015 for a four year term.

[4] Yemi Osibanjo, "Impact of Corruption on Socio-Economic Development in Nigeria." Being a speech delivered at the Fourth Gani Fawehinmi Annual Lecture, organised by the Ikeja branch of the Nigerian Bar Association in Lagos on January 15, 2008. See *The Punch*, Monday, March, 2008 at 56 & 58.

[5] Ojo & Adebajo, *Op. Cit*. at 19 (noting that there are widespread allegations of corruption against members of the bench and bar).

which is fundamentally different from the jurisprudence of constitutionalism.[1] In general, judges who follow the former, disclaim any exercise of discretion on their part in matters of interpretation. In practice, too, they tend to follow strictly the dictates of past precedents and usually give literal effect to the plain meaning of legal texts. As a result, their methods of interpretation tend to be narrow, rule-driven, and text-bound.[2] A jurisprudence of constitutionalism, on the other hand, invites more active judicial intermediation and interpretation. In particular, it demands that judges interpreting a constitutional text not only consult the spirit of the law but also endeavor to harmonise the letter with the spirit. To do so, judges must bring to their reasoning and decisions a clear understanding of the overarching values and philosophical foundations of a liberal democracy; of the social, economic, and political evolution of their country; and of the historical antecedents and contemporary purposes of the particular provision in dispute.[3]

6. Recommendations

Based on our discussions in this article, the following recommendations are proffered for the effective utilisation of the power of judicial review by the Nigerian courts to promote constitutionalism in the country:

6.1 Transparency in Recruitment of Judicial Officers

The process of recruiting judicial officers should be more transparent in order to ensure that only qualified, competent and honest persons of integrity are appointed into the Nigerian bench.

6.2 Continuing Education and Training of Judicial Officers

In view of the need for jurisprudential change, the judiciary must give priority to continuing legal education for judges. Emphasis should be placed on comparative study of contemporary constitutional law, administrative law, human rights law, and public law jurisprudence in general.[4] Judges' appreciation of the jurisprudence of constitutionalism could also be enhanced by learning gained from cognate disciplines, like political theory, legal history, and ethics.[5]

6.3 Periodic Review and Improvement of the Conditions of Service of Judicial Officers

There is need to periodically review and improve the conditions of service of judicial officers in line with prevailing economic realities in the country.

6.4 Independence and Financial Autonomy of the Judiciary

The judiciary in Nigeria, and, other African countries, has not attained full independence from executive influence. All constitutional and statutory provisions on the independence and financial autonomy of the judiciary should be fully enforced. The independence of the judiciary is a vital guarantee of a democratic society, and, is built on the foundation of public confidence.

6.5 Liberalisation of Locus Standi Requirement

The requirement of *locus standi* should be liberalised in Nigeria. The current position where a plaintiff must show his personal interest in the subject matter, and, what he stands to lose, has constituted an impediment to the development of public interest litigations and judicial review of executive and legislative actions in Nigeria. In this regard, it is recommended that Nigeria should borrow from the Constitution of Ghana which grants the citizens the right to bring an action in the Supreme Court for the enforcement of the supremacy of the Constitution.[6] Under the Constitution of South Africa, every citizen has the right to protect the Constitution from infringement.[7] This is an effective way of checking and restraining the exercise of executive and legislative powers, for the enhancement of constitutionalism in the country.

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1 See H. Kwasi Prempeh, "A New Jurisprudence for Africa" (1999) 10 *J. of Democracy* 3, 140, also available at http://ssrn.com/abstract=1324005.

2 *Ibid*. See also Authur E. Davies, "The Independence of the Judiciary in Nigeria: Problems and Prospects" in (1990) 10 *African Study Monographs* 3 at 125 – 136 (noting that Nigerian Judges are in most cases unable to interpret the laws to accord with the progressive aspiration of the people).

3 *Ibid*.

4 *Ibid*. at 147.

5 In Nigeria the National Judicial Institute organizes regular courses and workshops for judicial officers; however, the impact on the quality and quantity of the outputs of these officers is yet to be noticed.

6 1992 Ghana Const., Art. 2.

7 1996 S. Afr. Const., s. 34.

6.6 **Public Enlightenment and Education on Tenets of Constitutionalism**

It is also recommended that efforts be made to enlist and strengthen commitment of political leaders and the ordinary citizens to constitutionalism in Nigeria. This role can best be performed by those engaged in advocacy such as non-governmental organisations. The Nigerian Bar Association can mobilise and sensitise its members to advocate and promote the practice of constitutionalism. The media, the churches and other religions organisations can also play an important role in this regard.

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