

Realist Jurisprudence and the Therapy for Judicial Corruption in Nigeria

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Abstract

Justice as a worthwhile virtue is a glue that cements the fabric of society. It is the fundamental and material term in the social contract of human society. As conflict is inevitable in human society, the feeling that there is justice keeps the society in motion. It follows therefore, that every legal system must be structured in a manner that will guarantee justice to the various strata and individual members whom the legal system is designed to serve. In a democratic society with powers of the government decentralized into the executive, legislative and the judiciary, the judiciary is the *primus inter pares* in the issue of justice and all the citizens look towards it in the practical realization of justice. This is why the judiciary is commonly referred to as the last hope of the common man. The expectation of the common man is dashed when the judiciary is influenced by extraneous factors that defeat the course of justice. Realist jurists have a better understanding of the judiciary than other school schools of jurisprudence; hence the objective of this study is to combat judicial corruption in Nigeria by applying the therapy of Realist Jurisprudence. This study is a mixture of two research methodologies- empirical and doctrinal methodologies. The empirical data are derived from the personal experience and observation of the author as a Legal practitioner in Nigeria and the feedback from other colleagues whose views are similarly based on their experience. The doctrinal method entails the collection of data from both primary and secondary sources. Secondary source includes data from textbooks, journal articles, newspapers, internet etc. The study reveals that judicial corruption is endemic in Nigeria as it has infected the various hierarchies of the courts in Nigeria. It can be stamped out through both preventive and curative approach with the understanding of the tenets of legal realism.

Keywords: Corruption, realist jurisprudence, justice, idiosyncrasies, adjudication etc.

1. Introduction

Judicial corruption is a monster and a terminal virus in the blood stream of any society where it manifests. Corruption makes social order impossible and a herculean task for the government in its quest for peace, social solidarity and egalitarianism.. Judicial corruption in Nigeria is a notorious fact and no longer an idle talk in view of the recent happenings in Nigeria and particularly the prosecution of judicial officers on corrupt charges and the dismissal of some of them. Judicial corruption has completely eroded the confidence of the common man in that institution regarded as the last hope of the common man. A single incident of culpability for corruption by the court is an embarrassment considering the fact the court is like the proverbial man occupying a glass house and who should not throw stone. The frequent allegation of corruption against judicial officers in Nigeria may force observers to conclude that the courts have changed from its symbol as epithet of justice to the fountain of injustice simply because of the fact of corruption. The truth is that there are still some men of impeccable character whose integrity cannot be doubted. The few saint must be preserved from contamination, hence the need for radical approach to eliminate the scourge.

The judicial powers of the Federal Republic of Nigeria are vested in the courts which are listed in the 1999 Constitution as amended. The judiciary is constant as it is not affected like the other two arms in the change of government during the military era. The judiciary as the arm of government that interprets the law ensures that the other two arms of governments perform their duty with regard to the due process of law.. Judicial officers as arbiters and adjudicators between disputants are expected to hold the sword of justice impartially and uninfluenced by extraneous factors. This is an *'ought'* proposition as the real situation is that of perverted justice. The recourse to self-help becomes a crime where the courts discharge their duties impartially and in accordance with the rule of law. Corruption has soiled the immaculate robe of the judiciary to the level that the priests in the temple of justice cannot pontificate again on the ideal of justice. The image of the judiciary sinks daily in the murky water of corruption. To the extent that the end of law is justice and that justice is a branch of morality, corruption is immoral and it becomes a cancerous sore when it manifests in the judiciary. Judicial corruption must be given adequate attention in order to uproot it from the body polity. The need to deal decisively with judicial corruption becomes obvious when we consider the statement of Rawls that *justice is the first virtue of social institutions in the same way as truth is the first virtue of thought. And like truth justice is uncompromising.* The Realist thinkers or school of jurisprudence unlike the other schools of jurisprudence is concerned with the holistic study of law and by their expositions make the unassailable point that the decision of judges is a product of salient factors and not a logical exercise. They advocate the study of the factors to be able to predict the decisions of the court on a particular issue in controversy. The school of thought has its emphasis

on the courts, the judges and the law in action. Oliver Wendell Holmes, a leading protagonist of the movement advocated the science of law based on the study of law in action. The decision of the courts which is termed law is not based on logic but on the personal prejudices and idiosyncrasies of the judges.

The realist jurists issue a *caveat emptor* to potential litigants, lawyers and the public- “*know your courts*”. This is apposite in the war against judicial corruption in Nigeria. Judicial corruption is cancerous to the entire fabric of the nationhood. The fallout of corruption in Nigeria is self-help or jungle justice. There is also the unbridled rise in financial and other crimes. This study recommends both preventive and curative measures to the problem of judicial corruption. The discussion examined the judiciary, the cases of judicial corruption, and the tenets of the realist jurists and the therapy of realists for curbing judicial corruption in Nigeria.

2.0. The Judiciary in Nigeria

The judiciary refers to the system of courts. It is the bulwark of democracy and the survival of the nation depends on its effectiveness and formidability. The judicial powers of the federation are vested in the courts of the land listed in the 1999 Constitution of the Federal Republic of Nigeria as amended. The courts are referred to as the superior courts of record while other courts not listed in the Constitution but created by the laws of the federation or the states are described as inferior courts. The superior courts of records are:

2.1.1 The Supreme Court-2 This is the apex court in the hierarchy of courts in Nigeria and it is located at the Federal Capital Territory, Abuja. The Chief Justice of Nigeria heads the judiciary in Nigeria and he is also the head of the Supreme Court. The court consists of the Chief Justice of Nigeria and such number of justices not exceeding twenty-one. The Chief Justice of Nigeria is appointed by the president on the recommendation of the National Council subject to confirmation of such appointment by the Senate. Other justices of the Supreme Court are appointed by the president on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate. The decision of the Supreme Court on any matter is final and is not subject to an appeal to any other body or persons. The decisions of the court are binding on all other courts in Nigeria. For the purpose of exercising any jurisdiction conferred upon it by the Constitution or any law, the court is duly constituted with not less than five (5) justices, but where the court is to take decisions on appeal in any civil or criminal proceedings on question as to the interpretation or application of the Constitution and where questions as to whether any of the provisions of Chapter IV (Fundamental Human Rights) has been, is being or likely to be contravened in relation to any person, the court shall be constituted by seven (7) justices.

2.1.2 The Court of Appeal-3 The Court of Appeal is next in the hierarchy of courts in Nigeria and its decisions are binding on all other lower courts. It is composed of the president of the Court of Appeal and other justices of the court not less than forty-nine(49) of which not less than three shall be learned in Islamic personal law, and not less than three shall be learned in customary law. The court has original exclusive jurisdiction over question as to whether a person has been validly elected to the office of president or vice-president of the federation or whether the term of office of such a person has ceased or vacant. The court also has appellate jurisdiction to hear appeals from the decisions of the high court and other courts of equivalent status. The court is duly constituted by not less than three justices for exercising any of its original jurisdictions. The court has judicial divisions which sit in various states of the country for administrative convenience. The president of the court is appointed by the president of Nigeria on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate. Other justices of the court are appointed by the president on the recommendation of the National Judicial Council.

2.1.3 The Federal High Court-4 The Federal High Court is the court with the largest jurisdiction in view of the wide areas in which it has exclusive jurisdiction. The court is also allowed to adjudicate in other areas covered by the powers of the High Court of the various states as provided for in the Constitution. The court has judicial divisions in almost all the thirty-six states of the federation. The Chief Judge of the Federal High Court is appointed by the president of the Federal Republic of Nigeria on the recommendation of the National Judicial Council subject to the confirmation of the appointment by the Senate. Other judges of the Federal High Court are appointed by the president on the recommendation of the National Judicial Council. The court has attracted odium to the judiciary in Nigeria more than any other level of courts in Nigeria. The court has been accused on many occasions of giving contradictory decisions on the same issue of similar facts. Sundry allegations of miscarriage of justice, corruption, interference with the smooth flow of justice, undue delay in case management among others have been levied against the court.

2.1.4 The National Industrial Court-5 The court has jurisdiction to the exclusion of any other court in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from work –place , the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith. The court consists of the president and such number of judges as may be prescribed by an Act of the National Assembly. The president of the Court is appointed by the president of the Federal Republic of Nigeria on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate. Other judges are appointed by the

president on the recommendation of the National Judicial Council.

2.1.5 The High Court of a State-6 There is a High Court in each state of the federation and the Federal Capital Territory, Abuja. Each Court is made up of a Chief Judge and such other number of judges as the State House of Assembly or the National Assembly (in the case of the High Court of the Federal Capital Territory) may prescribe. The High Courts have general original jurisdiction over civil and criminal matters except matters in respect of which any other court has been vested with exclusive jurisdiction under the Constitution. The court is duly constituted by one judge into judicial divisions for administrative convenience.

2.1.6 The Sharia Court of Appeal of the Federal Capital Territory, Abuja-7 There is a Sharia Court of Appeal for the Federal Capital Territory and any state that requires it. This court has appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the Constitution. The court comprises of a Grand Khadi and other Khadis as the National Assembly or the State House of Assembly may prescribe.

2.1.7 The Customary Court of Appeal for the Federal Capital Territory, Abuja-8 There is a Customary Court of Appeal for the Federal Capital Territory and any other state that requires it. The court has appellate and supervisory jurisdiction in civil proceedings involving questions of customary law. The court is comprised of a president and such number of judges as the National Assembly or the State House of Assembly (as the case may be) prescribes.

The various states of the federation have the power to establish other categories of court apart from the one specified and referred to by the Constitution. The courts include Magistrate courts of different grades; District courts; Area courts; Alkali courts and customary courts. The Constitution also provides for the establishment of Election Tribunals. There is the National Assembly Election Tribunals which have original jurisdiction to the exclusion of any other court or tribunal to hear and determine petitions as to whether any person has been validly elected as a member of the National Assembly or whether the term of office of any person has ceased or whether the seat of a member has become vacant.

Each state of the federation is to have one or more election tribunals to be known as the Governorship and Legislative Houses Election Tribunal. The tribunal has jurisdiction to the exclusion of any court or tribunal and to have original jurisdiction to hear and determine election petitions related to the governorship and election to state legislature.

There is also the national Judicial Council saddled with the responsibilities of appointment, removal and other disciplinary measures relating to judicial officers in the country. Each state of the federation has its own judicial council that performs similar functions to that of the National Judicial Council.

3.0 Judicial Corruption In Nigeria.

It is no longer an idle talk that the judiciary has been infested with the virus of corruption. The National Bureau of Statistics stated officially in its report that police officers, judges and prosecutors are the most corrupt public officials in Nigeria.⁹ The report came the same day the United Nations Office for Drug and Crimes (UNODC) released its own report that said Nigeria spent N400billion annually on bribes to public officials. The report which was presented to the public in Abuja ranked policemen and the judiciary as topmost on the list of bribe-takers. In the ranking of bribe-takers, the report listed the police (46.6%), the prosecutors (33.0%), Judges/Magistrates (31.5%), Custom officers (26.5%) and public utilities (22.4%).

Judicial corruption refers to corruption related misconduct of judges, through receiving or giving bribes, improper sentencing of convicted criminals, bias in the hearing and judgment of arguments and other such misconduct.¹⁰ Judicial corruption includes also corruption that affects the administration of justice which consequence is perversion of justice. It is not limited to the judges but it includes corrupt act perpetrated by the priests in the temple of justice, the administrative staff of the judicial arms of government, prosecutors and the officials in the office of the Attorney-General/ Minister of justice(in the case of the federation) and the Commissioner for Justice (in the case of the state). The Para-legal officers such as the Registrars of courts, bailiffs, sheriffs, clerks etc. are *impari -delicto* as the priests in the temple whether in the superior or inferior courts. It also necessary to point out those legal practitioners are also not excluded when it comes to the issue of judicial corruption. Corruption in the judiciary is a threat not only to democracy in Nigeria but a threat to the fundamental basis of Nigeria's existence as a sovereign nation with over two hundred and fifty ethnic nationalities. There is no justification for corruption in the judicial arm of government in Nigeria considering the emolument of judicial officers and other perquisite of office. Corruption is deadlier than HIV/Aids virus. It is destructive and antithetical to the social order as enshrined under the fundamental objectives and the directive principles of state policy of the 1999 Constitution of the Federal Republic of Nigeria. The Constitution provides that the state social order shall be shall be founded on the ideals of Freedom, Equality and Social Justice.¹¹ To achieve the social order, the Constitution unequivocally recommended the independence, impartiality and integrity of courts of law and easy accessibility thereto as ideals to be maintained.¹² Corruption has adversely affected the quality of justice to the extent that the common man has lost confidence in the judiciary. The law

cannot again order the life of people because of lack of certainty. There is total disregard to precedence while facts are manipulated to achieve the aim of the corrupt judge. In 2016, the Department of State Security Services arrested seven judges on allegation of corruption. The judges are Sylvester Ngwuta (Supreme Court; Inyang Okoro (Supreme Court); Mohammed Tsamiya (Presiding Justice of the Court of Appeal ,Ilorin); Kabiru Auta⁹Kano state High Court); Adeniyi Ademola (Federal High Court, Abuja); I.A.Umezulike (former Chief Judge of Enugu state) and Muazu Pindiga (Federal High Court, Gombe state). Justice Adeniyi Ademola was prosecuted with his wife but both were discharged on the ground of no *prima facie case* established against them. The latest drama about the judge is that he tendered his letter of retirement which receipt was duly acknowledged by his employer but two days later, he was served a letter of dismissal by the same employer. Apart from the judges whose premises were invaded in a Gestapo manner by men of the Department of state Security Services, a list of other judges by the security outfit was sent to the president of the Federal Republic of Nigeria. The list includes the following: Zainab Bulkachuwa (the current president of the Court of Appeal); Ibrahim Auta (the Chief judge of the Federal High Court); Nnamdi Dimgba (Federal High Court); Anwulu Chikere (Federal High Court).¹³ The Federal Government embarked on the prosecution of some of them apart from those compulsorily retired and those placed on sanction. As at the time of this study, Justice Ofili Ajumogobia, a judge of the Federal High Court and number three in the Lagos judicial division is facing trial for corruption, money laundering and obstruction of justice.¹⁴

The Federal Military Government in Nigeria in 1989 under the military president, General Ibrahim Babangida set up a panel headed by a famous jurist and retired justice of the Supreme Court, the late Justice Kayode Eso to examine the issue of corruption and to find a solution to the problem in Nigeria. The jurist observed as follows:

*The saddest that could happen to a country is to have a corrupt judiciary. I am in position to and do make bold to say that at no time in the country, have we had a corrupt judiciary as an institution. But we have had a list of bad eggs. Bad and variegated enough to give the institution a bad name.*¹⁵

The jurist was equally commissioned in 1994 by the Federal Government to look into the problems of the judiciary in Nigeria. The Commission was able to find forty-seven (47) of the bad eggs, some who gorged certificates, some selling exhibits and pocketing the proceeds and some deliberately delaying cases in apparent corruption. Good number of the judges was weeded out.

A corrupt judge is more harmful to the society than a man who runs with a dagger in a crowded street. He can be restrained physically. But a corrupt judge deliberately destroys the moral foundation of a society and causes incalculable distress to individual through abusing his office while still being referred to as honourable.¹⁶ A corrupt judge is a visitation to the judicial organ and the continuous existence of such a person as a judge is catastrophic to the intendment of the Constitution which provides that, "the state shall abolish all corrupt practices and abuse of power."¹⁷ The personality of a corrupt judge is described by Akanbi in the foregoing statement:

*He is an afflicted person just like the carrier of the AIDS virus or kleptomania. He suffers from a deadly disease. To him, justice is not his primary concern. No, what matters to him is the corrupt money that is turned over to him by his partner in crime. His conscience is warped. His judicial oath means nothing, and so he hardly realizes that he is an obstacle to justice according to law...he is a stranger to justice.*¹⁸

Every successive regime in Nigeria has taken one step or the other to confront the menace of judicial corruption but on each occasion, corruption has always staged a comeback with strong force. In 2005, during the regime of Chief Olusegun Obasanjo, two justices of the Court of Appeal in Nigeria, Justices Okechukwu Opene and David Adedoyin Adeniji were dismissed after being found guilty of corruption and abuse of office as members of the appeal panel in the case of Ugochukwu Uba and Nicholas Ukachukwu. The dismissal of the two justices of the Court of Appeal was seen as novelty because it was the first time in the history of Nigeria that justices of the appellate court would be sacked on the basis of corruption.¹⁹ The two were alleged to have received the sum of twelve million naira to uphold the election of Senator Uba as a senator. In 2011, the president of the Court of Appeal disbanded the panel of judges hearing petitions that arose from the National Assembly elections in Anambra state, because of the allegation of corruption. The tribunal was headed by Justice Usman Bwala.

Corruption has always featured as one of the themes in the annual conference of judges in Nigeria but despite all the yearly ritual of emphasis and reading of riot act to judges, the problem continues to surface in a grander style. The code of conduct of judicial officers in Nigeria prohibits the acceptance of gift, bequest, loan, favour, benefit, advantage, bribe etc.²⁰ The corrupt judges remained undeterred by statutory provisions and rules of conduct. The scourge of corruption features regularly in high profile cases such as election petition, money laundering and other financial crimes involving public and political office holders in Nigeria. In electoral disputes whether before the tribunal or before the appellate court, the allegation that makes the round is that justice is determined by not by the application of law to facts but by the application of money to facts. According to Eso, the tribunals now concentrate on whom has the deepest purse to buy judgment.²¹ Eso alleged that many

of the election petition tribunal judges are budding billionaire from the proceeds of their corrupt enrichment. Instances of confirmed acts of corruption by the judges in Nigeria are endless. The tragic story about the June 12, 1993 election in Nigeria cannot be quickly erased without the scandalous input of the late Justice Bassey Ikpeme who gave an order to stop the election considered to be the freest and fairest on the eve of the polls . In 2016, Justice Yunusa Muhammed of the Federal High Court and Justice Olamide Folahanmi Oloyede of the Osun State High Court were dismissed by the Federal Government. Justice Yunussa was of receiving kickbacks and bribes. Other allegations against him include writing and delivering two different judgments in one case and also granting interlocutory injunction stopping the Economic and Financial Crime Commission from investigating and arresting Senator Stella Oduah, a former Minister of Aviation who was the target of Economic and Financial Crime Commission's investigation. Oduah was accused of massive embezzlement of public funds and numerous acts of fraud in contracts. Yunussa was equally accused of receiving bribes from Rickey Tartar, a Senior Advocate of Nigeria. Justice Oloyede was sacked for causing a scandal as a serving judge. She petitioned the Osun State House of Assembly urging them to impeach Governor Rauf Aregbesola who she accused of corruption.²²

Also in 2016, Justice Mohammed Tasmiya of the Ilorin division of the Court of appeal and the Chief Judge of Enugu State, Justice I.E. Umezulike were compulsorily retired on sundry allegations of abuse of office and corruption. Justice Umezulike was accused of delivering judgment One Hundred and Twenty Six days (126) after the final addresses were adopted by parties and also of receiving a donation of Ten Million Naira from a businessman, Prince Arthur Eze during his book launch. Prince Eze , the donor was alleged to have vested interest in two cases before the judge. Another judge, Kabiru Auta was accused of collecting One Hundred and Ninety Seven Million Naira(N197m) from a man, Alhaji Kabiru Yakassai under the pretext that he had the plans to use the money to help a then newly appointed Chief Justice of Nigeria to secure accommodation and for Yakassai to be later rewarded with contract by the Chief Justice of Nigeria. In 2006, justice Daman Naron, the chairman of the Election Petition Tribunal sitting in Osun State in a case between the Action Congress of Nigeria (ACN) candidate, Rauf Aregbesola and Olagunsoye Oyinlola of the Peoples Democratic Party (PDP) was accused of compromising judicial integrity by exchanging text messages with Otunba Kalejaye (SAN), a counsel to one of the parties. Justice Naron was dismissed while the lawyer, Otunba Kalejaye had his name struck off the roll of lawyers in Nigeria. The former president of the Court of Appeal in Nigeria, Justice Issa Salami swore to an affidavit in which he alleged that the then incumbent Chief Justice of Nigeria, Justice Alloysius Katsina –Alu was interfering with the Court of Appeal handling of the Sokoto state governorship petition appeal. The Supreme Court later took over the case (even when the Supreme Court at that time had no jurisdiction) to adjudicate. The allegation did not go well with the Federal Government as they supported the Chief Justice and the National Judicial Council presided over by the Chief Justice who swiftly recommended the suspension of Issa Salami. The National Judicial Council (NJC) had earlier offered Salami an appointment at the Supreme Court which he turned down as a Greek gift. The incumbent

President, Goodluck Jonathan acted on the recommendation of the NJC and suspended the president of the Court of Appeal. He was not reinstated despite a counter recommendation from the NJC which exonerated him of the allegation. In 2014, the Federal Government of Nigeria approved the recommendation of the National Judicial Council for the dismissal of Justice Gladys Olotu and Justice U.A. Inyang on the ground of corruption. Olotu was alleged to have delivered a judgment in a case eighteen (18)months after the final address by counsel.²³ Justice Inyang was retired over a judgment in which he ordered the Federal Road Maintenance Agency (FERMA) to pay Four Hundred and Sixty Million Naira (N460m) to Chukwumani in a dispute relating to a certain sum of Twenty-Seven Million (N27m) Naira unpaid sum of contract. The speed with which the order was signed by the judge, enrolled and executed despite a subsisting interlocutory injunction by the Appeal Court, Abuja raised a suspicion. Other justices found culpable of corruption from 1999 to date include justices Charles Archibong, Ebute,B.T; Ewuh,M.J; Tanko Yusuf; A. Mahmud Talba; Solomon Hunponu-Wusu; Dahiru Saleh;Egbo-Egbo Wilson and Chuka Jideofor Okoli. Archibong was accused of dismissing the grievous charges against former Intercontinental Bank Managing Director, Dr. Erastus Akingbola without taking his plea. He also refused to release the Certified True Copy (CTC) of his ruling to lawyers. The National Judicial Council also found that there were glaring procedural irregularities which showed that Archibong did not have a full grasp of the law and procedure of the court . Ebute of Cross River State High Court was accused of judicial power suppression and illegal/forceful takeover of property in Calabar. Ewu and Tanko Yusuf both of Niger State Judiciary were found to have falsified their age as a result of which they were recommended for compulsory retirement. Abubakar Talba of the High Court of the Federal Capital Territory was dismissed over the manner he handled the case of a civil servant convicted for police pension fraud. Hunponu-Wusu, the Lagos State Deputy Chief Judge (Administration)was retired on allegation of shady deals in the suit between it and another company.

At the special session of the Supreme Court of Nigeria held on 19 September , 2012 to mark the beginning of the 2011/2012 legal year, the Nigerian bar Association and Justice Musdapher (the then acting Chief Justice of Nigeria who later became the substantive Chief Justice) agreed that all was not well in the judiciary. The then

president of the Nigerian bar Association (NBA), Joseph Daudu said:

There is a growing perception backed up by empirical evidence that justice is purchasable in and it has been purchased on several occasions in Nigeria. We are reaching the point in time where accusations of corruption in the system will be at its loudest

Corruption in the administration of justice in Nigeria is no longer a black market issue. It is an open secret perpetrated with arrogance by the syndicates who unfortunately find themselves in the temple of justice. The culprits whether in the lower bench or the higher bench have the same personality's traits. They are disposed favourably to friends or the party who is ready to do their bidding. The culprits have brought odium to the judicial arm of the government with the consequence that the judiciary has forfeited its right to pontificate on the issue of moral probity and the rule of law in Nigeria. Evidence of likelihood of corruption and injustice is made manifest at the level of fact findings both in criminal and civil trials at the court of first instance. The police at the point of investigation and the officials of the Ministry of Justice prosecuting criminal cases at the Magistrate Courts and the High Courts are the first level where corrupt practices are manifested in the administration of justice in Nigeria. This is where facts are distorted simply for gratification. The truth is that suspects in the custody of the police cannot be granted police bail as provided under the law unless the suspects or relations part with certain amount of money (which is determined by the gravity of the offence) before such a suspect can be released on bail. At the Ministry of Justice, legal advice to prosecute or not to prosecute is a matter of discretion of the office of the Director of Public prosecution. The decision of what will be the content of the legal advice and how soon the legal advice will be issued is a function of the corrupt money or property that flows into the hands of the official responsible for taking the decision or as he may be directed by his boss. The Constitution has also made it possible for justice to be perverted at the altar of corruption. The Attorney-General of the Federation or of the State has the power to discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by him or any other authority or person.²⁴ The power gives the executive arm of government the latitude to interfere in the administration of justice and contrary to the rule of law.

The second level of corruption in the administration of justice is on the arraignment in criminal cases before the Magistrate Courts and the High Courts, and in civil cases at the High Courts. Corruption begins at the level of assigning cases to the different courts by the administrative judge or the chief judge. The court officials such as the Registrar, Clerks, Bailiffs, Interpreter etc. are equally engaged and they facilitate judicial corruption through their cases to the priests in the temple of justice as well as their privilege to court files and documents. The court officials when in league with a counsel to one of the parties can do havoc to the case of the opponent in many ways such as leaking of information and tampering with documents in the court files. On many occasions, they induce innocent and unsuspecting litigant to part with their money to influence the priest in the temple of justice. In some judicial divisions where there are so many cases on the cause list, the court official may deliberately refuse to list a particular case in which he/she has interest on the cause list. The Chief Judge is responsible for assigning cases to the judges at the judicial headquarter in the states. In assigning of cases to judges, the Chief Judge might be influenced in his decision by the fact of corruption. There are occasions when a judge at the verge of concluding a case may be transferred to another judicial division with the consequence of commencing the hearing of the case *de novo*. The procedure is for either counsel to apply for a fiat to allow the judge on transfer to conclude the case but the fiat is not always automatic and where the fiat is not granted, the parties would be faced with the hurdle of recalling the witnesses and in many instances such witnesses may not be available again by the reason of death or change of location.

The third level of corruption is at the hearing of the cases in which the judges or the magistrates have to use their discretion in the hearing and recording of evidence of witnesses. As cases are determined on facts recorded which incidentally are recorded by the judge alone in his own handwriting at the court of first instance, the corrupt judge who has made up his mind to do mischief usually do not record the statement given in evidence by the witnesses of the party the judge has already made up his mind to oppose. The final stage of corruption is at the delivery of judgment where the judges in the evaluation of evidence have the discretion as to which evidence to believe or not. The corrupt judge in order to further his goal usually discountenances vital pieces of evidence that would have tilted the scale in favour of the party. The corrupt judges involved in high profile cases are reputed for delivering judgments with little or no substance showing that they are no longer engaged in the novel act of reasoning. Their judgments are hurriedly put up in the day of judgment and some of them usually have two judgments ready where they are yet to be fully paid the corrupt money..

The corrupt judges do not have integrity and this can be seen in their disposition during trial and even at the delivery of judgment. Their judgments are usually skeletal and bereft of logic, The corrupt judge knows that he is a mischief maker; hence after the delivery of judgment, he mounts every barrier to prevent the aggrieved party from appealing by not releasing a copy of the judgment to the parties within the period stipulated by the Constitution. The record of the court is a public document which should be accessible to parties and the public but the corrupt judge usually frowns at the parties or anybody having access to the record of the court. In the compilation of records of appeal at the lower court, the party who intends to appeal is subjected to all manner of

bottlenecks such as the heavy amount of money usually demanded by the Registrar for the record to be compiled.

The calling of a judge demands probity and higher integrity than that of public offices in the other two arms of government. A judge possesses two salts- the salt of knowledge lest he becomes insipid and the salt of conscience lest he becomes diabolic and devilish. A corrupt judge is thus the greatest vermin, the greatest ever to afflict a nation. According to Oputa, “it is far better to have intellectual average but honest judge than a legal genius who is a rogue.²⁵

The corruption scourge is the most devastating and reprehensible malady of the judiciary.²⁶ Corruption tarnishes, desecrates and disfigures the solemn, sacred and beautiful image of justice and the judiciary. It is most disturbing when judicial officers are involved since by virtue of their professional training and culture, they are supposed to be men and women of integrity and probity.

4.0 The Basic Tenets of Realist Jurisprudence

Realist jurisprudence is a radical departure from the traditional approach to law and to a modern approach of the actual world practice of law. The realist school denies that any legal or legal rules exist until a court has made its pronouncement in a specific case. The general proposition about law is that law is what the courts decide and that legal rules are not law until the courts have made a definite pronouncement on a statutory provision in a particular situation. The rule in our statutes, according to the Realist jurists is just a source of law while the actual law is the decision of the court. Holmes sowed the seed of the controversial concept in 1897 wherein he employed the metaphor of a ‘bad man’ as follows:

But if we take the view of our friend, the bad man, we shall find that he does not care two straws for the action or deduction, but that he does want to know what Massachusetts or English courts are likely to do in fact, I am much of his mind. The prophecies of what the courts will do in fact and nothing more pretentious are what I mean by the law

Gray affirmed unequivocally that *until a statute had been enforced by a court, it was not law at all but only a source of law.*²⁷ Law, to Gray is what the judges decide while the source is the statute. Realists argue that the real world practice of law is what determines what law is. We are to understand that the judges who determine what the law is are not logical machines. Judges have moods; they change their mind and are subject to all the other weaknesses or strengths of the human condition.²⁸

Legal realism insists that there are no objective criteria applied by judges in their rules as adjudicators. This fact is confirmed in Nigeria by the conflicting decisions of courts of the same level on issues of similar facts. Oliver Wendell Holmes posited that “the life of the law has not been logic, it has been experience”. Jerome Frank, another jurist of the realist stock expatiated more on the doctrine by insisting that judges decide cases not on the basis of reasoned and principled analysis of a *priori* doctrine, but primarily on hunches arising from an intuitive sense of rights and wrongs under the circumstances and used legal reasoning to rationalize these intuitive conclusions. The term ‘judge’s hunch’ means the true basis for the judge’s decision. The judge’s hunch is also referred to as personal idiosyncrasies. The society including lawyers and litigants are advised to prowl around the judge’s family history, subconscious impulses, environmental urges, cultural compulsiveness, economic predilections, body chemistry, personal ideology which are necessary for us to understand the real but an unexpressed factors which push judicial pen and help to spell out the true course of the law.

The overall view of Jerome Frank is that for any particular lay person, the law, with respect to any particular set of facts is a decision of a court with respect to those facts so far as that particular decision affects that particular person, until a court has passed on those facts, no law on that subject is yet in existence.²⁹ Lawyers and law students are expected to recognise that judges are influenced by more than legal rules and that not all forces which motivate judicial behaviour are words in printed books. The solicitor must know more than words in law if he is to guide his client. The student of law must be familiar not only with statutes and cases but with the social realities in which the statutes and cases impinge and with the social realities that in turn impinge on courts and legislatures as determinant in the development of the law.³⁰

Understanding the tenets of realist jurisprudence will serve as a compass to approach the issue of judicial corruption in the Nigerian judiciary. The society, the lawyers, and litigants should show interest in the courts so as to be able to overcome the scourge of corruption.

5.0 Realist’s Therapy Against Judicial Corruption in Nigeria

Legal realists advocate that knowledge is basic to the challenges of justice. Judicial officers, counsel, litigants, law-makers and the members of the public require knowledge to combat the scourge that has afflicted justice delivery in Nigeria. The tenets of realists that ‘until a judge has made a definite pronouncement on a statutory provision, such a provision remains a source of law. It is his pronouncements that give flesh and blood to the skeleton of law which is the benchmark of justice in Nigeria. It is imperative in Nigeria since legal rule is the most important variable and the premise for justice, in other words, justice is according to the rules of law, the knowledge of what aggregates to justice must be acquired by all. The judge himself must be studied just as the

knowledge of the rules applicable to the case of a particular litigant must also be acquired. Law as a discipline must not be exclusive or reserved for a particular group of people. Every member of the civil society must have elementary and basic knowledge of the rule of law applicable to a particular factual situation. For instance, a prospective couple seeking to be married under the statute must have the knowledge of the rule of law relating to marriage and matrimonial causes. Such a couple must know the ground for the dissolution of a marriage. The couple must know what makes a marriage a nullity, void or voidable. Also, it is expected that parties to a contract must know the essentials of a contract while at the same time a creditor must have knowledge of the provisions of the statute of limitation and its effects on his case. The elementary knowledge is necessary for the litigants to know when the judge has veered off the course of justice.

The knowledge of the court and specifically the priest called upon to dispense justice cannot be negotiated. The truth is that a corrupt judge is not the one that does not know the law but rather, the corrupt judge is a mischief-maker who has vowed to compromise justice to satisfy his idiosyncrasies. The idiosyncrasies of the judge must be understood and identified immediately before the hearing of the case at first instance or before such a person is included as a member of the panel of appeal. Corruption is a trait like a golden fish that has no hiding place. A sensitive litigant, counsel or even members of the public will readily know what the prophecies of the court would be in a particular case.

The totality of the personality of a judge as a public figure in that hallow chamber must not be shrouded in secrecy. His predilections, ideology, relationship, political view, ethnic and religious views, experience are forces that influence the use of discretion by the judges in Nigeria. How can a litigant know the variables that are not made public?

The corrupt judge is elusive to the unsuspecting masses but to the realists, he is not. There are checklists that can be used to identify him or predict him with mathematical accuracy. He is a stranger to justice and only accountable to his flesh and not God, his creator. He is morally bankrupt and he has insatiable appetite for opulence because of his training in the school of materialism. His pedigree reflects his presence. In the hallow chamber of justice while performing the ritual, the corrupt judge does not record exactly what the witnesses say. He manipulates proceedings to suit his whims and caprices. He has a misunderstanding of the discretionary power vested in the judges and he applies the power not judicially and judiciously. He manipulates the rule of evidence to favour the accomplice corrupt party by upholding objection to the admissibility of evidence and overruling objection to evidence at will. He applies not the same standard. To him, the rule of precedent designed to ensure certainty does not matter. He would regularly and arrogantly advise parties not satisfy with his ruling to go on appeal. His judgment is usually scanty, watery and void of jurisprudential touch. The corrupt judges have closed the chapter of logical appraisal and appreciation of issues. Their knowledge of the contribution of Hohfeld to conceptual analysis of rights, privileges, obligations, duties, possession, ownership, liberty etc. is hollow or puerile. They are allergic to jurisprudential and philosophical thoughts and to compensate for their intellectual poverty, they are mostly arrogant and incorrigible. They embrace corruption with open arms. Materialism takes a firm grip of their daily thinking. Some of the corrupt judges know the law but their conscience is darkened by materialism, hence to them, the effigy of justice, lady Thermis is only blind but can identify the voice of the favourite who should, be assisted with the scale of judgment. Justice to this category is "cash and carry".

A party with adequate training in realist jurisprudence can at a glance or before any havoc is done to his case detect a corrupt judge. Interaction with the para-legal staff of the court will reveal certain facts about the personalities of the judge. A study of the court official without even interacting with them will also give some hint about the boss. Counsel and litigants are to undertake a form of psychological reconnaissance directly or indirectly in order to identify the exact personality of the judge. The information about the social life of the judge such as his/her marital life, food, drinks, political views, body chemistry, religion, morality, ideology etc. Can easily be gathered from the court officials. A corrupt judge cannot easily cover his/her idiosyncrasies. He is an extrovert, flamboyant, proud and morally bankrupt in addition to other traits earlier identified. He is guided by his personal feelings and experience and above all, he is everything described as injustice.

The realist therapy to judicial corruption is both preventive and curative. The preventive approach requires the determination of all that are allergic to corruption and desire a just society. The corrupt judge is a product of corrupt society and legal system. The system of appointing judges must be revisited and to do this, the independence of the judiciary must be guaranteed. The Constitution provides:

- (i) *The appointment of a person to the office of the chief judge of a state shall be made by the Governor of the state on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the state*
- (ii) *The appointment of a person to the office of a High Court of a state shall be made by the Governor of the state acting on the recommendation of the National Judicial Council.*³¹

This provision needs to be overhauled in order not subordinate the judiciary to either the legislative or executive arm of the government. A Governor may refuse to appoint a person recommended to him by the

National Judicial Council for some political reasons and particularly where the person recommended is suspected to have sympathy for the opposing political party. This happened in Ekiti State of Nigeria between 2010 and 2014 when the incumbent governor refused to appoint the judges recommended to him for appointment.

A permanent body without affiliation to either the executive or the legislative arm of government should be put in place for the purpose of recruitment and discipline of judicial officer. The body should be appointed by the Council of state. The Constitution provides further:

*(3) A person shall not be qualified to hold office of a judge of a High Court of a State unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years.*³²

The above provision is of little or no assistance to the parameter required in the recruitment of a person with high integrity into the judicial arm of government. The totality of the personality of a prospective applicant for recruitment as a judge must be subjected to deep forensic examination. The anatomy of the applicant must be carried out through a scientific analysis of his genealogy and pedigree and the correlation between them and the present trait manifested in the period before the application for appointment. As the leopard can hardly change its skin, a person is likely to exhibit some of the traits peculiar to his ancestry. A prospective applicant must be opened for public scrutiny. His totality from birth, past record from educational institutions attended, the company he keeps, and marital status, social life, ideology etc. must be subjected to analysis by experts in behavioural science and must be found worthy before such a person should be recommended for such a noble office.

The curative approach is about the serving judicial officers who are corrupt. A process must be evolved to make it difficult for them to operate without being detected. Hearing of cases must be taken from the level of long hand recording of evidence to the level where electronic device will be used for the recording of evidence. The court room must be computerised in such a way that parties will have access to electronic copy of evidence taken during the proceedings. This will check the tendency to manipulate or distort the evidence of a witness by the judge in the chamber while evaluating the evidence of the witnesses of the parties.

As the society grows, there is the need to upgrade the legal systems in a country like Nigeria to meet the present age reality considering the fact of diversity of culture, religion, ethnicity and values. The court of first instance in Nigeria should be restructured to imbibe the jury system or for the court to be composed with a minimum of three judges. The practice of allowing a judge to constitute himself to the almighty decider of issues of fact and law is contrary to the ideals of social order of freedom, equality and justice. The other option is to have two levels in the court of first instance in both civil and criminal matters. The first level is the level of hearing the evidence of witnesses of the parties and the addresses of their counsel by a judge. The second level is the level of evaluation of evidence of witnesses and the delivery of judgment. As the proceedings is computerised, the judge at this level will through the electronic disc made available encounter no problem on the issue of the demeanour of the witnesses. The judges at this level must be judges from other states other than the state where the matter is heard at the first level. The second level must be composed of a panel of judges not less than three. Counsel to the parties during the first level must be made to submit report as to their observation particularly on the issue of electronic recording of the evidence in order to ensure that the electronic recording is not manipulated against the interest of justice. A counsel or the client must be at liberty to protest at the first level where a judge manifests tendency designed to perpetrate ignoble act. A judicial officer indicted of corruption must be visited with severe sanction that will deter others in their ilk.

5.0 Conclusion

The judiciary remains the last hope of the common man in every clime but this is not so where the judiciary is infested with the virus of corruption. In a corrupt setting, the judiciary is the Golgotha of the common man. The war against corruption in the judiciary must not be fought with deodorant if the basis of Nigeria's existence as a corporate entity is to be sustained. The government and the masses must resist judicial corruption with dogged determination. The independence of the judiciary must be guaranteed. Both the preventive and curative approach will work wonders in sanitizing the judiciary. Counsel, litigants and the masses must know the court and be ready to cry out where the common patrimony of the society (justice) is being toiled with by a corrupt judge. A judicial officer indicted for corruption must be treated like an armed robber whose existence in society may work havoc on the social fabric. The law School must include in the curriculum topics relating to the study of the court and the dynamics of justice in the Nigerian legal system.

References

1. Doherty, M (2003) *Jurisprudence: The Philosophy of Law* (3rd ed.) London. Old Bailey Press . 302; Rawls, J (1972) *Theory of Justice*
2. Constitution of the Federal Republic of Nigeria, 1999. Ss230-236

3. Ibid, Ss237-248
4. Ibid, Ss249-254
5. Ibid, S.254
6. Ibid, Ss 270-274
7. Ibid, Ss260-264
8. Ibid, Ss265-269
9. 'Police Officers, Judges most corrupt in Nigeria' *Daily Trust* (Lagos,18 November, 2017).
<https://dailytrust.com.ng/news/general/police-officers-judges>< accessed 19/11/2017>
10. <https://en.m.wikipedia.org/wiki/com>.<accessed 19/11/2017>
11. Constitution of the Federal Republic of Nigeria, S.17(1)
12. Ibid Ss17(2)
13. 'Names of Nigerian Judges under Investigation Revealed', *Sahara Reporters* .<http://sahara-reporters.com/2016/names-nigerian-judges> <accessed 18/11/17>
14. 'Justice Ajumogobia earned N120m in 13 years: Accountant'. <https://www.vanguardngr.com> <accessed 21/12/17>
15. Eso, K.,(2010) 'Law, Democracy and Corruption' *The Nation* (Lagos, 30 July 2010)
16. Uwaifo, S.O.,(2005) 'Valedictory Speech Delivered on 24 January, 2005' *All Federation Weekly Law Report*, 248.
17. Constitution of the Federal Republic of Nigeria. S.15(5)
18. Akanbi, M.M.,(1996) *The Judiciary and the Challenges of Justice*. 42
19. Ijalaye, D.A (2008) 'Corruption in the Public Service of Nigeria: A Nation's Albatross' *Nigeria Institute of Advanced legal Studies*,24
20. Revised Code of Conduct of Judicial Officers of February, 2016, Rule 10
21. Eso, K (2010) 'Billionaire Tribunal Judges' *The Nation* (Lagos,29 June 2010) 19
22. <https://Sahara-Reporters.com>>2016/07/16 <accessed 19/11/17)
23. Constitution of the Federal Republic of Nigeria. Section 249 which provides that judgment shall be delivered within Ninety(90) days after the counsel address.
24. Ibid. Ss 174(1) and 211(1)
25. Oputa, C.(1993) *Our Temple of Justice*. 231
26. Akume, G 'Keynote Address at the 37th Annual Conference of the Nigerian Association of Law Teachers. *NALT publications 11*
27. Dias, R.W.M (1985) *Jurisprudence*. 449
28. Doherty, M *op.cit* 208
29. Harris, J.W (1997) *Legal Philosophy*.98
30. 'The Problem of a Functional Jurisprudence' (1937) *Modern Law Review*.12
31. Constitution. Section 271(1) &(2)
32. Ibid. S271(3)