CULTURE OF IMPUNITY: A CLOG IN THE WHEEL OF RULE OF LAW IN NIGERIA*

Abstract

There cannot be injustice without impunity and justice thrives where there is no impunity. There cannot be justice without the rule of law and injustice thrives where there is no rule of law. The culture of impunity breeds injustice because it poses a cog in the wheel of rule of law in Nigeria. In this article, the writer looks at the culture of impunity as a Cog in the wheel of rule of law in Nigeria viz – a - viz the causes, effects and consequences of the sit at home syndrome in the South East, Nigeria.

Introduction

Why is there sit at home in the South East? The protagonists of this sit at home, as you well know, are non-State actors who perceive that the people of the South East have been on the receiving end of injustice in Nigeria from the time of amalgamation till date. To them, this sit at home is not only a veritable means of ventilating their aversion to the injustice they perceive is continually being visited on the people of the South East but also a veritable means of arresting or putting an end to the perceived injustice. However, it is pertinent to point out that injustice visited on the people of the South East is a threat to justice for the entire people of Nigeria. This is why Martin Luther King Jr. once said: 'injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.' In this article, the writer will reflect on the question of injustice in Nigeria.

Conceptual Clarifications

The meaning and nature of Impunity

In the Black's Law Dictionary,[1] the learned authors define "impunity" as "an exemption or protection from penalty or punishment." The Cambridge Advanced Learners Dictionary defines "impunity" as "freedom from punishment or from the unpleasant results of something that has been done. Cambridge Advanced Learners Dictionary."[2] The United Nations Commission on Human Rights (UNHCR) defines the term "impunity" as follows:

> *The impossibility, dejure or defacto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and , if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.*

In the Nigerian parlance, impunity is commonly referred to in the layman or ordinary man's language as 'nothing go happen'. It manifests in blatant acts of corruption, bad governance, executive malfeasance, corruption of judicial powers, and compromise of official responsibilities by those in positions of power especially in the law enforcement agencies, the civil service, the executive, legislature, judiciary etc. There is also impunity amidst the common man. Impunity amidst the common man persists in everyday life in diverse ways. In this context, people become law unto themselves whereby they believe that they can do whatever

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O. A[1] Bryan A. Garner, *Black's Law Dictionary*, Eight Edition, Thompson Group, at page 774.

[2] Cambridge Advanced Learners Dictionary.

they want regardless of the dictates of the law. Acts of impunity amidst the common man include the unlawful eviction of tenants by landlords, indiscriminate dumping of refuse, violation of traffic rules and mob violence where angry members of the society lynch suspected criminals. The culture of impunity within the Nigerian security forces has continued in setting the pace in which the extra judicial killings and other human rights abuses are committed by the security forces in Nigeria. The response to unarmed protests and protesters with guns and armored tanks resulting in brutal killings is reckoned by many to be a reflection of the unbridled display of impunity and deteriorating state of the rule of law in Nigeria. The culture of impunity in Nigeria also consists in outright disregard and disobedience to subsisting court orders and decisions, inequality before the law and lack of accountability. It is the culture of being above the law, wherein an individual lives larger than the rest of the society and institutions of state are unable to perform their statutory responsibilities. In practical terms, impunity takes place when a felon is not apprehended and prosecuted for the brazen violation of ethics, laws or responsibilities imposed upon him; when might is right and the law itself becomes helpless to arrest the deliberate drift to constant deviations. In other words, impunity persists because perpetrators are seldom brought to book by the criminal justice system due to deliberate subversion of institutions of justice by the powers that be. This leads to erosion of the confidence of the common man in the justice system; resort by citizens to self-help and jungle justice; breakdown of law and order; enthronement of anarchy and absence of rule of law.
Hon. Justice Walter Nkanu Onnoghen GCON,[3] gave a vivid illustration of the consequences of impunity as follows:

> *Corruption or any other form of injustice, for that matter, thrives in a culture of impunity. To carry out a successful campaign against corruption, we have to fight the culture of impunity, which is an attitudinal phenomenon. If we allow and respect the rule of law, then there will be a dramatic reduction in corruption and injustice.*

One common phenomenon found in the foregoing discourse on impunity is the outright disregard and abuse of law without any reprimand. This is why **Louis Joinet** observed that impunity is a consequence of the:

> *failure of States to meet their constitutional obligations to their subjects, investigate violation and take appropriate measures against perpetrators, particularly in the area of justice, to ensure that they are prosecuted, tried and duly punished; to provide the victims with the effective remedies and reparation for injuries suffered, and to take steps to prevent any recurrence of such violation.*

Part of the reason for the enthronement of the administration of justice is to send strong signal to deviants that impunity is not profitable. Thus, when those in position of authority are found culpable but left off the hook, the wrong impression is thus created, albeit unwittingly that society does not abhor deviations. This cannot promote the rule of law. Rather, it perpetuates impunity in the polity.

Meaning and Importance of the Rule of Law

[3] The former Chief Justice of Nigeria, while speaking at the 2018/2019 Legal Year of the Supreme Court and swearing in of new Senior Advocates of Nigeria, at the Supreme Court complex Abuja.

The Black's Law Dictionary[4] defines "Rule of Law" as follows:

> *the supremacy of regular as opposed to arbitrary power. The doctrine that every person is subject to the ordinary law within the jurisdiction. The doctrine that general constitutional principles are the result of judicial decisions determining the rights of private individuals in the courts.*

Furthermore, A.V. Dicey,[5] posits the concept of Rule of Law to mean:

> *Equality before the law or the equal subjection of all classes to the ordinary law of the land, administered by the ordinary law courts; the rule of law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens from jurisdiction of ordinary tribunals.*

In *Courier v. Union of Post Office Workers*[6], Lord Denning MR stating the position of the law on equality stated that "to every subject in this land no matter how powerful, I would use Thomas Fuller's words over 300 years ago; "be you never so high, the law is above you."
In *Shugaba v. Minister of Internal Affairs,*[7] the court held that rule of law ensures equality of all persons without any distinction, that it also guarantees transparency and incorruptibleness and must be preferred.

The importance of the rule of law in a society was harped on by the former Chief Justice of Nigeria, Hon. Justice W.S.N. Onnoghen, GCON[8] where he said that the rule of law is necessary to ensure "government of the law and not government of men." On that occasion, the former Chief Justice of Nigeria also said of the rule of law thus:

> *It is the answer to our prevailing culture of impunity, which has held the nation hostage for a very long time now. Any alternative to the rule of law is nothing short of arbitrariness, lawlessness, insecurity and lack of order.*

Also in emphasizing the importance of the rule of law, the former United States Ambassador to Nigeria,[9] had this to say:

> *What many consider as the great corruption is stealing of money, but what to me is the great corruption is when people are deprived of justice, when you do things without regard to the rule of law.*

While we subscribe to the notion that national security is of crucial importance, democracy is built on rule of law. Therefore, no one, no matter how highly placed, should be allowed to take the laws into his hands or resort to self-help on any issue. Human, states, communal, societal and international relations are hinged on the hallowed principle of the rule of law. If you take it out, humanity is done for and man will return to the Thomas Hobbes state of lawlessness wherein the life of man is nasty, brutish and short. The rule of law is akin to ensuring that

[4]Bryan A. Garner, *Black's Law Dictionary*; *Ibid,* at page 1359.

[5] A.V. Dicey, "Introduction to the study of the Law of the Constitution," 10th Edition, at page 201.
[6] (1977) Q B 761-762.
[7] (1981) 1 NCLR 125.
[8]In his speech at the 2018 Public Lecture of the Faculty of Law, University of Lagos.
[9] Mr. William Stuart Symington.

justice is done at all times and under all circumstances. While the law allows for a variation of a person's rights on issues of national interest, only the courts of law are permitted to determine the terms of the said variation. Whereas the rights of individuals must take second place where national security and public peace is threatened, such suspension or denial of individual's rights can only be done in accordance with the rule of law. This explains why in *Arthur Yates & Co. Pty Ltd v. Vegetable Seeds Committee,*[10] Herring C. J. had this to say:

> *It is not the English view of the law that whatever is officially done is law……. On the contrary, the principle of English Law is that what is done officially must be done in accordance with the law.*[11]

Thus, it is not the place of the executive arm of government to decide whether or not an individual's rights should be suspended or denied for reason of breach of national security or on grounds of public interest. These are matters for the courts to decide as the executive cannot be the accuser and at the same time a Judge in its own case.

From the foregoing one can safely profess that the rule of law and impunity are strange bedfellows and repel each other. They cannot therefore operate side by side in a sovereign state. The enforcement of the rule of law in a state is measured by the level of impunity therein. Put simply the rage of impunity implies the dearth of the rule of law and the introduction of anarchy and double standard before the law. This calls for the intervention of strong and independent judicial institutions. The role of such judicial institutions is to uphold the rule of law and combat impunity. I will now discuss the role of the judiciary in upholding the rule of law and combating impunity in Nigeria.

The Role of the Judiciary in upholding Rule of Law and combating Impunity in Nigeria

In a constitutional democracy like ours, it is of utmost importance that the judiciary should fully play its role in upholding the rule of law and combating impunity. For the judiciary to achieve this, independence, impartiality and easy accessibility to court must be guaranteed. The jurisdiction of the courts should also be protected and guarded jealously for the protection of the rights of citizens. This proposition was expounded by Aniagolu, JSC in *Safekun v. Akinyemi & Ors.*[12] thus:

> *It is essential in constitutional democracy such as we have in this country, that for the protection of rights of citizens, for the guarantee of the rule of law, which include according fair trial to the citizen under procedural irregularity, and for checking arbitrary use of process by the executive or its agencies, the power and jurisdiction of courts under the Constitution must not only be kept intact and unfettered but also must not be nibbled at…. Indeed, so important is that preservation of and non interference with, the jurisdiction of the Courts that our present Constitution has specifically provided in S.4 (8) that neither the National Assembly nor House of Assembly shall enact any law that ousts or purports to oust the jurisdiction of a court of law or a judicial tribunal established by law.*

[10] (1945) 7 CLR 168.
[11] *Ibid*.
[12] (1980) 5-7 S.C. at 25.

It is important to note that Section 4 (8) of the Constitution of the Federal Republic of Nigeria, 1999[13] preserves the jurisdiction of the courts and precludes the ouster of the jurisdiction of the courts in legislations. The provision of Section 4 (8) of the 1999 Constitution enables the judiciary to fully play its role in upholding the rule of law and combating impunity in a constitutional democracy like ours. In view of this, disputes as to the legality of acts of government must be decided by the courts and by Judges who are wholly independent of the executive, hence there are checks and balances and arbitranness is reduced. This is illustrated in a good number of cases. In *Governor of Lagos State v. Ojukwu*[14], the Court of Appeal had earlier granted an *ex-parte* application of an interim injunction to stop the ejection of Chief Chukwuemeka Odumegwu Ojukwu pending the determination of the motion on notice. While the case was still pending in the court the Lagos State Government without an order of court forcibly ejected Chief Ojukwu from the property in dispute. On application to the Court of Appeal, the court gave an order of mandatory injunction restoring Chief Ojukwu to his residence at No. 29 Queens Drive, Ikoyi Lagos. The Lagos State Government and the Commissioner of Police, Lagos State without carrying out the order of the Court of Appeal to restore Chief Ojukwu to his residence, sought an order staying the execution of decision of the Court of Appeal pending the determination of the appeal at the Supreme Court. In dismissing the application, the Supreme Court (per **Obaseki**, **JSC**) held thus:

> *I can find no constitutional or legal authority to support the action of the applicants. Indeed all the authorities are the other way. In the area where rule of law operates, the rule of self-help by force is abandoned…… Once a dispute has arisen between a person and the government or authority and the dispute has been brought before the court thereby invoking the judicial powers of the state, it is the duty of the government to allow the law to take its course or allow the legal and judicial process to run its full course. The action the Lagos State Government took can have no other interpretation than the show of intention to pre-empt the decision of the court. The courts expect the utmost respect of the law from the government itself which rules by the law.*

In *All Nigerian Peoples Party & Ors v. Benue State Independent Electoral Commission & Ors,*[15] the appellants sponsored candidates for election into the office of Chairman and Vice Chairman of the Kwande Local Government Council of Benue State. After the elections, the results were collated and the officials of the respondents on 28/4/2004 declared the results of the poll and gave the copies of the certificate of return to agents of the appellants, police and other agents present at the collation centre. To the appellants' greatest surprise instead of the 1st respondent publishing the result and declaring same in the Gazette as required by law, they announced the following day over the state radio that the election had been postponed indefinitely. Aggrieved by this action, the appellants filed a suit in the State High Court. The State High Court said it has no jurisdiction. Dissatisfied, the appellants appealed to the Court of Appeal. The Court of Appeal Jos Division unanimously allowing the appeal stated that the Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything should be done according to law.

[13] As amended.
[14] (1986) 1 NWLR (Pt. 18) 622.
[15] (2006) 11 NWLR (Pt. 992) 587.

For the rule of law to thrive in a society, there must be respect for the decisions, orders and processes of the courts. Any person against whom the decision of a court is given is bound to obey it, irrespective of whether the person against whom the order is made is of the opinion that the order is void. Ay disobedience to court's order is a serious contempt and a court of law has the jurisdiction to protect its decisions or orders from being ridiculed or disparaged. This is illustrated in an avalanche of cases.

In *Ejike Oguebego v. Peoples Democratic Party,*[16] the Anambra State Executive Committee of the Peoples Democratic Party (PDP) led by the 1st appellant was elected into office on 7/3/2012. When an attempt was made by some elements in the party to recognize some group of persons as the authentic PDP Executive Committee for Anambra State, the appellants filed an action at Port-Harcourt Judicial Division of the Federal High Court. The Federal High Court, Port-Harcourt ordered the PDP to maintain the status quo ante bellum, which was that the Ejike Oguebego – led Executive is the authentic PDP Anambra State Executive. However, during the pendency of this order of the Federal HighCourt, Port-Harcourt, the 1st respondent set up a Caretaker Committee to run the affairs of PDP, Anambra State Chapter. The appellants instituted an action at the Federal High Court challenging the constitutionality and legality of the appointment of a Caretaker Committee by the 1st respondent to take over the duties of the Anambra State Executive Committee of the PDP when there is in existence a mandatory order of the Federal High Court commanding the 1st and 2nd respondents to deal with the Ejike Oguebego led Anambra State Executive Committee in all election matters. The Federal High Court granted the reliefs sought by the appellants. Dissatisfied with the judgment of the Federal High Court, the 1st respondent successfully appealed against the said judgment to the Court of Appeal, which set aside the judgment of the Federal High Court. The appellants appealed against the decision of the Court of Appeal to the Supreme Court. The Supreme Court allowed the appeal. In allowing the appeal, the Supreme Court[17] held thus:

> *It is a trite principle of law that any person against whom a decision of a court is given is duly bound to obey it irrespective of whether the person against whom the order is made is of the opinion that the order is void. He is bound to obey the order until it is set aside---------It was contended by the 1st and 3rd respondents that the trial Federal High Court had no jurisdiction to entertain the suit. The Court below also took this position. I disagree. I am in full agreement with the learned Senior Counsel for the appellants that the Federal High Court had jurisdiction to protect the sanctity of its mandatory order as well as its processes and proceedings when the 1st respondent chose to act in gross disobedience to its order made on 12th September, 2013. A court of law has the jurisdiction to protect its own judgment from being ridiculed or disparaged as done by the 1st respondent in this case. Any disobedience to court's order is a serious contempt and courts of law must protect themselves from being maligned and/or ridiculed.*

In *Denton-West v. Muoma*[18], the appellant appealed against the judgment of the High Court and filed an application for stay of execution of the judgment. However, despite the fact that the application for stay of execution was pending and also that the appeal had been entered, the respondent initiated garnishee proceedings, which led to the freezing of the appellant's

[16](2016) 4 NWLR (Pt. 1503) 446.
[17]Per Okoro, JSC.
[18] (2008) 6 NWLR (Pt. 1083) 418.

accounts in her banks. Consequently, the appellant filed a motion at the Court of Appeal for inter alia, an order granting stay of execution of the judgment of the High Court pending appeal. The Court of Appeal granted the application for stay of the execution of the judgment of the High Court pending the hearing and determination of the appellant's appeal against the judgment. In granting the stay, the Court of Appeal[19] at page 451-452 held as follows:

> *In my considered view, by virtue of the provisions of order 4 Rule 11 of the Court of Appeal Rules, 2007, copiously referred to above, and the plethora of decisions of both the Supreme Court and this Court over the issue, it would amount to an effrontery for a party or court to proceed with execution of judgment knowing fully well that a motion for stay regarding that judgment is pending in the Court ……It's axiomatic that disrespect to a court of law, in whatever ramification, is antithetical to the rule of law, democracy and the well cherished independence of the judiciary. And the importance of a competent, independent and impartial judiciary in preserving and upholding the rule of law cannot be over emphasized. There is no doubt that public confidence in the independence of the courts, in the integrity of Judges that man such courts, and in the impartiality and efficiency of the administration of justice as a whole, play a great role in sustaining the judicial system of nation.*

In *Nigerian Army v. Mowarin*[20], Ubaezuonu, JCA reading the lead judgment of the Court of Appeal says:

> *An order of court must be obeyed even if such an order is perverse, until such a time that the order is set aside by a competent court…… a flagrant flouting of an order of the court by the executive is an invitation to anarchy.*

I must not fail to point out that notwithstanding the numerous Decrees and their associated Ouster clauses promulgated by the Military government in Nigeria during the days of military interregnum, the courts have often times tried to guard their jurisdiction jealously and applied the principles of the rule of law in their decisions. This is illustrated in a plethora of cases. In *Lakanmi & Anor v. Attorney-General, Western State & Ors,*[21] the Tribunal of Inquiry into the assets of Public Officers set up under Edict No. 5 of 1967 made an order vesting the properties and accounts of the appellants in the State Government until the Governor shall otherwise direct. The plaintiffs challenged the validity of the Edict in the High Court and sought an order of certiorari to quash the order of the Tribunal. The High Court held that the order is not ultra vires and that the Edict was validly made and that by Decree No. 45 of 1968, the Federal Government validated the subject matter of the action and ousted the jurisdiction of the courts. On further appeal, the Supreme Court held that this ad-hominem Decree was unconstitutional, that is contrary to the 1963 Constitution and as such null and void. That ad-hominem rule against specific individuals amounted to a judicial rather than legislative function or act and that only courts are entitled to make judgments on individual cases.

In *Oba Lamidi Adeyemi (Alafin of Oyo) & Ors v. Attorney General of Oyo State & Ors*,[22] the Supreme Court observed thus:

[19]Per Saulawa, J.C.A.
[20] (1992) 4 NWLR (Part 235) 345.
[21] (1971) 1 UILR 201.
[22] (1984) 1 SCNLR 525 at 602, per Aniagolu, JSC.

> *It cannot be too often repeated -------- that the jurisdiction of the courts must be jealously guarded if only for the reason that the beginning of dictatorships in many parts of the world had often commenced with usurpations of authority of Courts and many dictators were often known to become restive under the procedural and structural safeguards employed by the courts for the purpose of enhancing the rule of law and preserving the personal and property rights of individuals. It is in this vein that the Courts must insist where possible, on a rigid adherence to the Constitution of the land and curb the tendency of those who would like to establish what virtually Kangaroo courts are under different guises and smokescreens of judicial regularity.*

The decision of the Supreme Court in *Lakanmi & Anor v. Attorney General, Western State & Ors*[23] and *Oba Lamidi Adeyemi (Alafin of Oyo) & Ors v. Attorney General of Oyo State & Ors*[24] was a bold step towards judicial activism and the rule of law by the court.

Furthermore, respect for civil liberty is the fundamental requirement of the rule of law and democracy. Advocating the need for respect of civil liberties and rule of law, Justice Louis D. Bradis of the United States Supreme Court in *Whitney v. California*[25] opines thus:

> In government, the deliberative forces should prevail over the arbitrary; the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of the political truth, that without free speech and assembly, discussion would be futile------- that the greatest menace to freedom is an inert people…. That it is hazardous to discourage thought, hope and indignation---- that the part of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies.[26]

The courts in Nigeria have in an avalanche of cases dealt passionately and extensively on the need to respect and protect civil liberties and the rule of law entrenched in the Nigerian Constitution. In *Archbishop Okogie v. Attorney General, Lagos State*[27], the Lagos State Government abolished private ownership of primary schools by issuing Government circular dated 26th March, 1980 by which no private primary school will be allowed to operate in the state with effect from 1st September, 1980. The plaintiff contended that this action by the Lagos State Government was in breach of the right of freedom of expression and press under the Constitution. The court held that the Lagos State Government had no power under the relevant laws to abolish private ownership of primary schools in Lagos and that the right of the plaintiff to own and operate schools under the Constitution must be protected.

In *Attorney-General, Bendel State v. Aideyan,* [28] the then Bendel State Government purportedly acquired the respondent's building. Not being satisfied, the respondent sued the Bendel State Government. On appeal, the Supreme Court of Nigeria held that the respondent was entitled to his building. In that case,[29] Nnaemeka Agu, JSC had this to say:

[23] *Supra*.
[24] *Supra*.
[25] (1957) US 357 at 367.
[26] *Ibid*.
[27] (1981) 1 NCLR 218.
[28] (1989) 4 NWLR (Pt. 118) 646.
[29] *Ibid*.

> *The right to property is entrenched under Section 40 of the 1979 Constitution. That right is inviolable and such property or any right attendant thereto can only be taken possession of or compulsorily acquired by or under the provisions of a law. Further, such law must provide for the payment of adequate compensation to the owner……. It follows therefore that any purported acquisition which is not according to a law containing the above provisions is no acquisition at all in the eyes of the Constitution.*

In *Director of State Security Service v. Olisa Agbakoba*[30] the appellant brought an action for a declaration that the forceful seizure of his passport by agents of the State Security Services (SSS) was a violation of his right to freedom of movement as guaranteed by the Constitution and for an order of mandatory injunction directing the respondents to release the passport forthwith. On appeal to the Supreme Court, it was held, inter alia, that the respondents were liable and theywere ordered to release the appellant's passport forthwith.

We must come to terms with the fact that arbitrary use of power is no longer the norm. For the rule of law to thrive in a democracy like ours, there is the utmost need to stop arbitrary use of power and acts of impunity in the course of governance. The courts have made this point loud and clear in a plethora cases. In *Faith Okafor v. Lagos State Government* ,[31] the appellant was arrested by officers of the Lagos State Task Force on Environmental Sanitation. She was accused of wandering, loitering and walking about in defiance of the restriction on movement during the State's monthly compulsory environmental sanitation exercise. She was held for five hours in a Black Maria and thereafter she was arraigned in a sanitation tribunal before which she pleaded guilty and was fined N2000 (two thousand naira). Dissatisfied with her arrest and arraignment, the appellant filed an application at the High Court of Lagos State for the enforcement of her fundamental right to dignity of human person, personal liberty, freedom of movement and fair hearing. The High Court dismissed the application. Dissatisfied with the judgment of the trial court, the appellant appealed to the Court of Appeal. At the hearing of the appeal, the respondents conceded that there is no written law in Lagos State restricting the movement of persons within the state on its environmental sanitation days. They however argued that the directive of the Governor of the State was sufficient to validate such restriction. The Court of Appeal held that the arrest, detention and transportation of the appellant in Black Maria for a purported environmental sanitation offence violates the appellant's fundamental rights to respect for the dignity of her person, personal liberty and freedom of movement as provided under Sections 34, 35 and 41.[32] It also declared that the purported trial and conviction of the appellant for a purported environmental sanitation offence violates the appellant's fundamental right to fair hearing as provided in Section 36 of the 1999 Constitution. The court further declared that in the absence of a written law prescribing the same, the 1st respondent's directive for people in Lagos State to stay at home and not to move about thereby restricting movement of persons in Lagos State within the hours of 7.00 am to 10.00 am on the last Saturday of every month is unlawful, illegal and unconstitutional. In declaring unlawful, illegal and unconstitutional the arrest, detention, trial and conviction and the directive of the 1strespondent, the Court of Appeal (per **Georgewill**, **JCA**) at page 442-444 held thus:

[30] (1999) 3 NWLR (Pt. 595) 314.
[31] (2017] 4 NWLR (Pt. 1556) 404.
[32] Constitution of the Federal Republic of Nigeria, 1999 (as amended).

> *It is my view that democracy thrives more on obeying and promoting the rule of law rather than the whims and caprices of the leaders against the led. I find the conduct of the respondent in not only persecuting the appellant, yes that is what in my view it amounts to when a free citizen of this great country such as citizen Faith Okafor, is put through the rigors of criminal proceedings for an offence not prescribed in any written law but merely on the directive of the Governor of Lagos State. An action which if allowed to thrive in a democracy such as ours could confer on such office holders infinite, absolute and autocratic powers contrary to the clear provisions of the Constitution of the land, to which both the leaders and the led are subject. I refuse to allow such autocratic, absolute and infinite powers to fester upon our nascent democracy. The respondent, therefore lacks the power in law to direct the restriction of movement of any and every person who has not committed any offence or is not reasonably suspected of having committed any criminal offence but also their prosecution, conviction and punishment for any offence not prescribed in any written law……I think it is worth reiterating here that the culture of impunity, this time as displayed by the respondent in not only restricting the movement of the appellant, a free citizen of this country, on 25/5/2013 but also arresting, prosecuting, convicting and punishing her not for any breach of any offence as prescribed in any written law but purportedly for breaching the directive of the Governor of Lagos State, which like many other acts of impunity in the land have been tolerated for far too long in this country and has indeed run its full circle, must be stopped now."*

It is now settled beyond peradventure that a Nigerian citizen is absolutely entitled to his freedom and cannot be deprived of it unless and until due process of law is meticulously observed. This is why it is the bounden duty of the police or detaining authority to justify their actions which infringe on the fundamental rights of law abiding citizens. This point was driven home by the Court of Appeal in the case of *Jim-Jaja v. Commissioner of Police.*[33] In that case[34] the appellant on 5/2/2002 obtained a loan of ₦700,000 from the 3rd respondent with a promise to repay on or before 6/3/2002. On the due date, the appellant could not honour his obligation to repay. The 3rd respondent wrote to the 1st respondent alleging that the appellant obtained the money by false pretences. Acting on the 3rd respondent's letter, the 1st respondent caused the 2nd respondent to arrest the appellant and detain him. The appellant's Solicitors wrote to the 1st respondent complaining that the matter over which the appellant was arrested and detained was basically a civil case bordering on debt recovery for which the police has no role. Upon the failure of the 1st respondent to yield to the complaint of his Solicitor, the appellant filed an application for the enforcement of his fundamental human rights at the High Court. His application was dismissed by the High Court. Dissatisfied with the dismissal of his application, the appellant appealed to the Court of Appeal. The Court of Appeal allowed the appeal. In allowing the appeal, the Court of Appeal (per Ejembi Eko, JCA as he then was) at page 392, 393 and 396 held thus:

> *The 1st and 2nd respondents had no plausible justification for the arrest and detention of the appellant based on the 3rd respondent's complaint which prima facie shows a civil contractual dispute and that they were invited or instigated by an acclaimed money lender to act as his debt collector. Be it reiterated again that once a transaction is in a form of a contract the police are enjoined to exercise*

[33] (2011) 2 NWLR (Pt. 1231) 375.
[34] *Ibid*.

> *restraint……..... Police duties under the relevant statutes including the Police Act, do not enjoin the police to act as debt collector. Debt collection is therefore ultra vires their enabling statutes……. The 1st and 2nd respondents offered no explanation on how they came to the conclusion to arrest and detain the appellant upon the complaint of the complainant or petition of the 3rd respondent. There is nothing in the printed record that they did any basic preliminary investigation on the 3rd respondent's petition before they embarked on arresting and detaining the appellant on same. The appellant was not arrested on a warrant of arrest or any order duly issued by a Court of law. The entire scenario points irresistibly to the 1st and 2nd respondents acting rashly or impetuously…….. It was a reckless abdication of their responsibility leading to a suggestion that they were working in tandem with the 3rd respondent at the peril of the appellant……. For the monstrous and capricious behavior, exemplary damages would have been awarded to demonstrate that the law, indeed the fundamental right provision of the Constitution, cannot be broken with impunity…….*
>
> *But in law it is not right for any court of law to award a relief not sought as law courts are neither charitable organizations nor Father Christmas. Suffice that the appeal is allowed. The learned trial Judge was wrong in not holding that the appellant's right to personal liberty guaranteed by section 35 (1) of the 1999 Constitution was unjustifiably violated with impunity. The cold blooded callousness of the 3rd respondent is only matched by Shakespearean Shylock. The shame of it is that the police were available tools to be used to perpetuate this dastardly conduct.*

It is important to note that the rule of law and the rule of force are mutually exclusive. This is because law rules by reason and morality, force rules by violence and immorality. Thus, where the rule of law operates, the rule of self help by force is abandoned. Once one court is seised of a matter no party has a right to take the matter into his own hands. This is the ratio in the case of *Nwadiajuebowe v. Nwawo & Ors.*[35] In that case,[36] the respondents on the 7th day of December, 1995 filed a suit wherein they claimed that the rulership of Onicha-Olona was rotational. During the pendency of the suit, the Delta State Government published on August 16, 1996, the Delta State Legal Notice No.6 of 1996, which favours one of the parties. The Court of Appeal, Benin Division held that for the Delta State Government to go ahead and promulgate the said legal notice is clearly to undermine the proceedings before the court and it amounts to treating the court with levity and contempt as it is trite that once the court is seized of a matter, no party has the right to take the matter into his hands.

Over the years, the judiciary has stood its ground against impunity and disrespect for the rule of law in many cases. In one of those cases, the Supreme Court nullified the unlawful substitution of a candidate who won the PDP primaries with a candidate who did not contest the primaries for the selection of the party's flag bearer at the 2007 Governorship Election. That was in the case of *Amaechi v. INEC*[37] where Aderemi, JSC held:

[35] (2004) 6 NWLR (Pt. 869) 439.
[36] *Ibid*.
[37] (2008 5 NWLR (Pt. 1080) 227 at 453 – 454 paras. G-E.

> *Before I end the discourse in this appeal, I shall like to say a few words about the unfortunate scenario that has avoidably led to this calamitous situation. It is true that in modern democratic societies, Judges occupy a privileged position. Let me say that that privilege springs from public recognition that democratic government and society as a whole can only function fairly and properly within a framework of laws, justly, fearlessly and fairly administered by men and women who have no obligation save to justice itself. I hasten to enter a caveat, and it is that it does not of course mean that Judges are licensed todo exactly as they like, quite the opposite. They must allow themselves to be guided by well tested principles so fashioned that lead to justice. The decision to substitute Celestine Omehia for Rotimi Chibuike Amaechi by the 3rd respondent (P.D.P) during the period of pending gubernatorial election represents a display of very grave display of political rascality and an irresponsible and wanton disrespect for rule of law. No responsible person or group of persons who parade themselves as having respect for rule of law and due process, can be credited with such a dastardly act. The 1st respondent, by acceding to the request of the 3rd respondent for the substitution, has painted a picture of itself as a spineless body whose pre-occupation is dissemination of injustice. It (1st respondent) has forgotten or it has thrown into the winds the position carved for it by the Constitution of the land – AN UNBIASED UMPIRE. Finally, on this point, I wish to say that in all countries of the world which operate under the rule of law, politics are always adapted to the laws of the land and not the laws to politics. Let our political operators allow this time-honoured principle to sink well into their heads and hearts. The vicious acts of the dramatis personae in this case that have led to this unfortunate and time wasting court case must not be allowed to repeat themselves. No decent and polished characters can be credited with such vicious acts.*

In another case,[38] the Court of Appeal voided the unlawful removal, deposition and banishment of the Emir of Yamattu. In that case,[39] of ***Georgewill***, **JCA** held:

> *My Lords, I thought I should perhaps further reiterate that in this country governed according to the law and democratic norms, the law is no respecter of persons and frowns at every affront to and infractions of the rule of law once proved. It abhors impunity in whatever disguise. When the law stipulates that reason must be given for the exercise of powers conferred by it particularly in the instant appeal for the deposition of the appellant by the Governor of Gombe State, then reason must be proffered for any valid exercise of that power, which thus cannot be exercised in disregard of the provisions of the law in a nation governed by law. Both those who govern and those they govern are subject to the law and must therefore, operate within the ambits and confines of relevant laws. Anything less or else will endanger the rule of law, the very soul of every civilized democracies wherever it is practiced in the world and Gombe State nay Nigeria is no exception to this rule. This was the position or the law even under Military rule in this country and should be so even with more force under civilian democracy as currently practiced in Nigeria.*

[38] Bello v. Governor, Gombe State (2016) 8 NWLR (Pt. 1514) 219 at 291 - 292, paras G-C.
[39] *Ibid*.

Furthermore, in *Aondoaka v. Obot,*[40] the Court of Appeal deprecated the conduct of a public official which smacks of impunity and disregard for rule of law. In that case, the appellant was at all times material to the commencement of the suit the Attorney General of the Federation and Minister of Justice. The 1st respondent's case was that he won the PDP primary election to fly the party's flag for the Uyo Federal Constituency of Akwa Ibom State in April, 2007 election. Ultimately the Court of Appeal ordered the President of the Court of Appeal to set up a new Tribunal to try the 1st respondent's petition. The appellant in his capacity as the Attorney-General and Minister of Justice wrote to the President, Court of Appeal urging him not to set up a new Tribunal as was ordered by the Court of Appeal. The President of the Court of Appeal ignored his letter and reconstituted another Tribunal to try the 1st respondent's petition. The new Tribunal delivered its judgment and ordered that the 1st respondent be sworn in as a Member of the House of Representatives. The Court of Appeal dismissed the appeal against the said judgment of the new Tribunal and ordered INEC to issue a certificate of return to the 1strespondent. The appellant again wrote to the Chairman of INEC urging him not to issue the certificate of return as was ordered by the Court of Appeal. He also wrote to the Speaker of the House of Representatives directing him not to swear in the 1st respondent. In consequence of the above series of letters, INEC refused to issue a certificate of return to the 1strespondent and the Speaker of the House of Representatives also refused to swear in the 1st respondent. The 1st respondent felt injured by the deprivation of his right as pronounced by the court, hence his action at the Federal High Court. The Federal High Court delivered judgment in favour of the 1strespondent and the appellant appealed against the judgment. In dismissing the appeal, the Court of Appeal (per Oyewole, JCA) at page 327-328 had this to say:

> *The facts leading to this appeal capture a most sordid low in the administration of justice in this country. Itis unthinkable that the occupier of the exalted office of Attorney-General would subvert the ends of justice as was crudely done in this case by the appellant.When an Attorney-General acts imperiously, placing himself above the Superior Courts of the land, impunity and anarchy are enthroned.Public office is a sacred trust and an Attorney-General should epitomize all that is good and noble in the legal profession. That office should never again be occupied by individuals of such poor quality as the appellant.It is ironic that the appellant could approach the same temple he so brazenly desecrated for succor against the consequences of his appealing conduct. To restore the dignity of the legal profession and reinforce the confidence of the ordinary citizens in the administration of justice, the Nigerian Bar Association is invited to the facts of this case and the judicial reactions thereto and subject the appellant to its appropriate disciplinary processes.*

The judiciary has also invoked the full weight of the law against security agents who indulged in extra judicial killing in order to stem the tide of their brazen impunity of violating the fundamental right to life of citizens. In the case of *Aminu v. State,*[41] owing to an altercation over taxi fare between the driver and the deceased, the driver in anger falsely reported to policemen at a nearby junction that he has been harassed and robbed by cultists of his Nokia phone and a sum of N1, 500. The superior police officer immediately detailed the appellant and other policemen to go with the driver and arrest the alleged cultists/robbers. They drove after the taxi boarded by the deceased and his companions, overtook the taxi and stopped it.

[40] (2016) 6 NWLR (Pt. 1508) 280.
[41] (2002) 6 NWLR (Pt. 1720) 197.

The police officers (including the appellant) ordered them to come down from the taxi and lie down facing the ground, which they did. The police officers beat them and searched them, but found nothing incriminating on them. The deceased was hit by the appellant with the butt of his gun. When the appellant wanted to hit him again, he got up and took to his heels. The appellant there and then shot him at the back hitting him on the neck. The deceased died on the spot. At the conclusion of trial, the trial court convicted the appellant and sentenced him to death. The Court of Appeal dismised his appeal against his conviction. The Supreme Court also dismissed his appeal and in so doing the apex court (per Kekere-Ekun, JSC) at page 228, paras E-F and 235, paras B-E held:

> *This is another unfortunate case where a private citizen uses the Police Force to settle a personal issue with devastating consequences. A mere altercation over a taxi fare resulted in the death of the deceased, when the taxi driver (DW1) vindictively made a false report to the Police that he was attacked by cultists/robbers and that a sum of money and his mobile phone were taken from him. He also alleged that the alleged robbers were armed with a gun……The appellant's counsel also raised for the appellant a plea that the deceased was shot to restrain him from escaping. Section 271 of the Criminal Code Law of Rivers State permits a Police Officer to shoot at an escaping felon in order to restrain him. The defence offered by Section 271 of the Criminal Code is clearly not an excuse for unreasonable reckless killing that smacks of extra-judicial killing that the instant case appears to be. The robbery of DW1, as alleged, was not verified. It was not committed in the presence of the appellant.Section 271 Criminal Code Law of Rivers State only avails the appellant if the force used to restrain the deceased was 'reasonably necessary to prevent the escape' of the deceased from arrest. As found concurrently by the two courts below, from the prosecution's evidence the deceased had already been subdued and had been forced to lie on the ground. Shooting him at the back of his head was, in my firm view, no longer a reasonably necessary act to prevent him from escaping.*

Furthermore, in the case of *Inspector-General of Police v. Ikpila,*[42] the police also shot and killed two unarmed persons while they were lying face down on the ground. The trial court found the appellants culpable for the infringement of the right to life of the deceased persons. Dissatisfied with the decision of the trial court, the appellant appealed to the Court of Appeal. In dismissing the appeal, the Court of Appeal (per Georgewill, JCA) deplored the conduct of the policemen who indulged in the shooting thus:

> *From the despicable conduct of the 2nd appellant and his team of mobile policemen on 10/11/2013, these affected policemen rather than keeping the highway safe for the citizens, as so many other conscious and faithful thousands of police officers and men striving their best to do daily on our high ways and for which they stand commended and appreciated by the grateful public, the 2nd appellant and his bloodthirsty policemen had turned the very instrument for the protection of the citizens against the citizens and in the ensuing orgy cut down in their prime the lives of two innocent and defenseless citizens of this country.*

The courts have emphasized the need to award exemplary damages to stem the tide of impunity and abuse of citizens' rights in Nigeria. The Court of Appeal drove home this point in the case

[42] (2016) 9 NWLR (Pt. 1517) 236.

of Inspector-General of Police v. Ikpila,[43] where Georgewill, JCA at page 298 para. F had this to say:

> *……I have always hoped that the time will come and now is the time for the courts in this country; as even aptly called for by the court below, to rise up in one accord and with one voice clearly and in unmistaken terms in all appropriate cases to not only condemn and deprecate abuses of the fundamental rights of the citizen but also to make abuse of these rights by agents of the state and or individualsor organizations very unattractive by awarding exemplary damages in deserving cases.*

This hope expressed in the foregoing dictum of Georgewill, JCA in *Inspector-General of Police v. Ikpila,*[44] was kept alive by the High Court of Anambra State, sitting at Ekwulobia in several cases. In the *Mr. Ugochukwu Ekwenugo v. Nigeria Police Force & 4 Ors*,[45] the High Court, Ekwulobia awarded exemplary damages of N50m (Fifty Million Naira) against the defendants for shooting the plaintiff and causing grievous bodily harm to him. In awarding exemplary damages against the defendants (the police) in that case, Ezeoke, J held as follows:

> *…… I must not fail to point out that the conduct of the 5th defendant in shooting the plaintiff without any justifiable reason is unlawful, despicable, reprehensible, callous, wicked, sadistic and reckless. The fact that the trigger happy 5thdefendant exhibited this conduct when he and his satanic team of policemen were on duty is not only a very big dent on the image of the Nigerian Police Force but an absolute negation of the duties which the Police Force is saddled with. The purport of the provision of Section 4 of the Police Act and the sacrosanct provision of Section 214 (2) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is that they confer the Police Force with enormous powers and discretion in the performance of its duties including the power to arrest and detain or to prevent or detect crimes. But the enormous powers vested in the police do not give it the carte blanche to exercise powers with impunity or in reckless disregard and in contravention of the laws of the land…… In view of this, the police should maintain zero tolerance for willfulmisconduct including shooting at unarmed, innocent and defenseless citizens on the part of delinquent policemen. Such erring policemen ought to be investigated and prosecuted for their actions……In the light of the foregoing, it is my view that no compensation can be adequate for the plaintiff's pain, agony, loss of normalcy and hope for the future and life expectancy. In the circumstance, the plaintiff is entitled to the reliefs of special, general and exemplary damages which he claimed against the defendants.*

Furthermore, in the unreported case of *Rev. Msgr Prof. John Bosco Akam & 3 Ors v. Inspector General of Police & 9 Ors*,[46] the same High Court, Ekwulobia awarded exemplary damages of N100,000,000 (One Hundred Million Naira) against the respondents. In awarding the exemplary damages, Ezeoke, J had this to say:

[43] *Supra*.
[44] *Supra*.
[45] Unreported case of Suit No AG/93/2017.
[46] Suit No.AG/MISC.80/2020.

> *The behavior displayed by the respondents in detaining the 1st applicant for five hours and only released him on bail after forcing him to sign an undertaking is outrageously reprehensible. The brutal assault on the 2nd applicant by the same 1st – 4th respondents was sadistic. There is also unchallenged evidence that the freezing of the applicants' bank accounts frustrated the running of their educational institutions as it is the money in the accounts that are used in the management and maintenance of the institutions and it is also the accounts where their students pay in their school fees. Thus, the aforesaid behavior of the respondents has caused the applicants undeserved embarrassment and pecuniary losses. The foregoing conduct of the respondents is abhorred by the society and it has been held that whatever compensation is awarded should truly reflect not only the pecuniary loss of the victim but also the abhorrence of the society and the law for such violations.*

The landmark decisions of the courts in the cases discussed above leaves no one in doubt of the great role the judiciary is playing in upholding the rule of law and combating impunity. But such a great role can only be sustained where the judiciary fully asserts its independence. For the judiciary to fully assert its independence, the concept of separation of powers enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) must be fully applied in governance in our modern day Nigeria. This is why the next issue for discussion in this paper is on separation of powers as a check on impunity and a boost for rule of law.

Separation of Powers as a Check on Impunity and a boost for Rule of Law

One of our greatest challenges as a nation has been the evolvement of a culture of impunity which has engendered unbridled corruption, endemic crime, violence, infrastructural deficit and general malaise in the polity and all these constitute a direct manifestation of disrespect for the rule of law. This culture of impunity has evolved because the concept of separation of powers enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is not fully applied in governance in our modern day Nigeria. In *Governor, Ekiti State v. Olayemi*[47] the court acknowledged that the concept of separation of powers is enshrined in the Constitution thus:

> *It is beyond doubt that the amended 1999 Constitution not only eloquently or clearly recognizes the concept of separation of powers but makes elaborate provisions in relation thereto. In this regard the amended 1999 Constitution recognize three arms of government at both the Federal and State levels. The three arms are: the executive, the legislature and the judicature or courts and also provides for the powers of the arms respectively.*

The doctrine of separation of powers is a concept of constitutional law which would appear to have been expounded by John Locke and improved upon by Monsieur Montesquieu. John Locke as far back as 1690 opined that sacred liberty and good government can only be assured if the legislative and executive powers of government are vested in different organs. Montesquieu in his own treatise proposed that:

> *Political liberty is to be found only when there is no abuse of power. But constant experience shows that every man invested with power is liable to abuse it, and to carry his authority as far as it will go…… to prevent this abuse, it is necessary from the nature of things that one power should be a check on*

[47] (2016) 4 NWLR (Pt. 1501) 1, the Court of Appeal (per Lokulo – Sodipe, JCA) at p. 38.

> *another……. when the legislative and executive powers are united in the same person or body……. there can be no liberty …….. again, there is no liberty if judicial power is not separated from the legislative and executive…… There would be an end of everything if the same person, body whether of noble or of the people, were to exercise all three powers.*

The foregoing postulations of Montesquieu were given judicial nod by the Supreme Court in the case of *Attorney-General of Abia State v. Attorney-General of the Federation*[48], where Belgore, JSC (as he then was) stated thus:

> *The principle behind the concept of separation of powers is that none of the three arms of government under the Constitution should encroach into powers of the other. Each arm – the Executive, Legislature and Judiciary is separate, equal and of coordinate department and no arm can constitutionally take over the functions clearly assigned to the other. Thus the powers and functions constitutionally entrusted to each arm cannot be encroached upon by the other. The doctrine is to promote efficiency in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction.*

The concept of Separation of powers was captured by the Supreme Court in the case of Governor of Lagos State v. Ojukwu,[49] where Eso, JSC held thus:

> *Under the Constitution of the Federal Republic of Nigeria, 1979, the Executive, the legislature (while it lasts) and the Judiciary are equal partners in the running of a successful government. The powers granted by the constitution to these organs by S. 4 (legislative powers), S. 5 (Executive powers) and S.6 (Judicial powers) are classified under an omnibus umbrella known under Part II of the Constitution as 'Powers of the Federal Republic of Nigeria.' The organs wield those powers and one must never exist in sabotage of the other or else there is chaos. Indeed there will be no Federal Government. I think, for one organ, and more especially the Executive, which holds physical powers, to put up itself in sabotage or deliberate contempt of the other is to stage an executive subversion of the Constitution it is to uphold.*

The primary goal of separation of powers is to enable the three arms of government to be functionally independent of each other. But this goal is yet to be attained in Nigeria due to encroachment of the executive arm of government into the powers and functions of the other arms of government. It is pertinent to point out that the encroachment of one arm of government into the power and functions of another is more pronounced during Military regime. This is because the Military Government exercises both the executive and legislative functions as they govern by promulgating decrees at the Federal level and Edicts at the State level. They also usurp judicial functions by promulgating decrees or Edicts that oust the jurisdiction of the court to hear or entertain matters challenging the validity of the Decrees or Edicts. For instance after the Supreme Court had declared Decree No. 45 of 1968 unconstitutional, null and void in the case of Lakanmi & Anor v. Attorney-General, Western State & Anor,[50] the Military

[48] (2003) 4 NWLR (Pt. 809) 124.
[49] *Supra*.
[50] *Supra*.

Administration in a swift reaction passed another Decree called Decree No. 28 of 1970 nullifying the decision of the Supreme Court in that case. Even though the encroachment of one arm of government into the functions or powers of another is more pronounced during the Military Regime, it still occurs in our present democratic dispensation albeit in less proportion.

A major reason why the encroachment of the executive into the powers and functions of the other arms of government has persisted in the present democratic dispensation is due to the non-implementation of the financial autonomy of the legislature and the judiciary especially in the thirty six states of the Federation. As a result, these two arms of government cannot functionally be independent of the executive as they depend on the piece meal payments/allocation of funds by the executive through the States Ministry of Finance. It is pertinent to point out that financial autonomy for the judiciary is provided for in Sections 81 (3), 121 (3) and 162(9) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Section 81 (3) provides that the amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to it and such amount shall be paid to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State. Section 121 (3) provides 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 courts concerned, while Section 162 (9) provides that any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Council for disbursement to the heads of courts established for the Federation and the states.

In *Judiciary Staff Union of Nigeria v. National Judicial Council (NJC) & Others*,[51] the Federal High Court (presided over by Ademola, J) after considering the provisions of the said sections of the Constitutiondeclared that the failure, neglect and/or refusal to pay the amount standing to the credit of the states' judiciary and the piece meal payment allocation of funds through the States' Ministry of Finance to the states' judiciary at the 2nd – 7th defendants' pleasure is unconstitutional, *null* and *void* and be abated forthwith. The Federal High Court also made an order mandating the 2nd – 74th defendants to comply with the provision of Section 162 (9) of the 1999 Constitution in the disbursement of funds to the heads of court forthwith. However, despite the aforesaid constitutional provisions granting financial autonomy to the judiciary and the said judgment of the Federal High Court, almost all the states have failed, neglected and/or refused to implement these provisions and obey the court order. This is the height of impunity and executive lawlessness which not only undermines the concept of separation of powers but is an affront to the rule of law. This has resulted in the doctrine or concept of separation of powers not being fully implemented or applied in governance in today's democratic experiment in Nigeria. This in turn has led to disrespect for rule of law because the doctrine or concept of separation of powers is anchored on rule of law. But the judiciary should rise to the occasion because it is the custodian of the rule of law. As Nnamani, JSC once said:

> *The judiciary is the protector of our cherished governance under the rule of law, the guardian of our fundamental rights, the enforcer of all the law without which the stability of society can be threatened, the maintainer of public order and public security, the guarantee against arbitrariness and generally the only insurance for a just and happy society.*

[51]Unreported case of Suit No. FAC/ABJ/CS/667/13.

Infact, from a good number of decisions (including the decisions in the cases discussed above), the judiciary have safeguarded the supremacy of the Constitution; upheld the principles of separation of powers among the arms of government and the division of powers among the tiers of government; protected the fundamental rights of citizens against State infringement etc. However, in view of the impunity and lawlessness that pervades the Nigerian society today, so much still needs to be done in order to restore the rule of law.

The way forward

The culture of impunity has become so firmly entrenched in Nigeria that our dreams of building an egalitarian society based on rule of law will forever remain a mirage unless serious, concerted and sincere efforts are made by Nigerians themselves to rout it out. The routing out of the culture of impunity in Nigeria is a herculean task that requires the re-enforcement of institutions of justice to wit, the judicial arm of government. Where the Nigerian authorities and their subjects understand that their actions and/or inactions are seriously manned by the gates of the judiciary, all persons knowing that they will be accountable for their actions will act right. It wouldn't be farfetched to observe that Nigeria is in dire need of accountability as a panacea to impunity in her polity. Consequently, predictability in the administration of our justice system is essential to the fight against impunity. Once there is a level of certainty in the judicial system on the conduct of government and the governed, all state actors will act in self-preservation from the corrective fangs of the judiciary. In his Article titled "Impunity within the arms and tiers of Government", a lawyer and human rights activist,[52] stated that some of the key performance index/benchmark in measuring the certainty of the justice system in Nigeria are:

(a) Certainty of Judicial Independence and Impartiality
(b) Certainty of the speedy adjudication and punishment of impunity and
(c) Certainty of the enforcement of judicial orders.

Certainty of Judicial Independence and Impartiality

The importance of independent and impartial judiciary in preserving and upholding the rule of law cannot be over emphasized. There is no doubt that public confidence in the independence of the courts, the integrity of the Judges that man the courts and the impartiality and efficiency of the administration of justice as a whole play a great role in sustaining an efficient judicial system of a nation. This is why Mr. Justice Frankfurter of the United States Supreme Court once stated that "the court's authority possessed of neither the purse nor the sword but ultimately rests on sustained public confidence in its moral sanction."

For certainty of judicial independence and impartiality, there is also the urgent need to fully implement the financial autonomy for the judiciary guaranteed by the Constitution and the conditions of service for Judicial Officers reviewed and improved upon.

Certainty of the speedy adjudication and punishment of impunity

To achieve certainty of speedy adjudication and punishment for impunity, we must put in place the day to day hearing and efficient adjudication of civil and criminal cases that is technology driven by which the society knows the determination of the rights and liabilities of parties shall not exceed a particular time frame. Since adjudication in Nigeria is generally not technology driven, much more number of Judges should be appointed so that on the average a Judge should not have more than fifty cases in his docket. The present situation in which a Judge in a litigious state like Anambra State has between four hundred to one thousand cases in his docket does

[52]Ebun Olu Adegboruwa, SAN.

not augur well for certainty of speedy adjudication and dispensation of justice. It must be borne in mind that Judges are human beings and not machines. The number of Judges serving in Nigeria now (particularly in litigious states like Anambra State) is grossly inadequate. The present situation in which adjudication is not technology driven, expecting certainty of speedy adjudication and dispensation of justice when there are thousands of cases pending in the courts is wishful thinking as the few serving Judicial Officers cannot be worked to death.

Certainty of the enforcement of Judicial Orders

The draconian practice of the Executive picking and choosing which order of the courts it would comply with has been the focal point of impunity undermining the rule of law and socio political stability of the nation. As all governments of the day are bound by the final decision of the Supreme Court, so also should every authority, entity and government agency slavishly comply with subsisting orders and directives of any court of law. Once there is certainty as to the enforcement of judicial orders or severe punishment for disobedience of same, the impulsive nature to disregard orders of court will be highly resisted by the general public and government agencies.

It remains to be said that there must be a sincere and unflinching resolve by the Nigerian government and Nigerian citizens to totally eradicate impunity from our country. The Hon. Chief Justice of Nigeria, Hon. (Dr) Justice Ibrahim Tanko Muhammad CFR[53] has shown this resolve at the Special Session of the Supreme Court of Nigeria to mark the commencement of the 2021/2022 legal Year and Swearing in of the newly conferred Senior Advocates of Nigeria on 8th December, 2021 while deprecating the brazen impunity exemplified by the invasion of the official residence of the second most Senior Justice of the Supreme Court of Nigeria, Hon. Justice Mary Peter-Odili on 29th October, 2021 by men suspected to be security operatives. On that occasion, the Hon. Chief Justice of Nigeria had this to say:

> *I must make it known to all and sundry that we have had enough dosage of such embarrassments and harassments of our judicial officers across the country and we can no longer take any of such shenanigans. The silence of the Judiciary should never be mistaken for stupidity or weakness. By the nature of our work, we are conservative but not conquered species and should not be pushed further than this by any individual, institution or agency of the government …… No one irrespective of his or her status or position in the country, should test our will because the consequence of such unwarranted provocation will be too dire to bear. We shall begin to resist any clandestine attempt to silence or ridicule us to oblivion. Nigeria, to the best of my knowledge, is not a lawless society. We should begin to do things that will project us favourably, and rightly too, to the international community. No law permits anyone to invade, subdue or overawe any Nigeria citizen in his or her residence with a flimsy, fraudulently obtained search warrant. We are making efforts now to ensure that henceforth, every search or arrest warrant must be issued with the knowledge and approval of the Chief Judge of the respective State/Federal High Court, as the case may be.*

It is important to note that the invasion of the official residence of Hon. Justice Mary Peter-Odili is just a microscopic speck of the deluge of acts of impunity being perpetrated by agencies of the government, institutions and individuals in Nigeria. These deluge of acts of impunity are

[53] As he then was.

being visited on the citizens and the common man in Nigeria every day, every hour, every minute and every second. Indeed, a state of emergency on war against impunity must be declared in Nigeria if we can ever dream of totally eradicating impunity in Nigeria. By the nature of the calling of Lawyers(as Ministers in the temple of Justice), their umbrella body in Nigeria, the Nigerian Bar Association, should be in the vanguard of the war against impunity. To this end, I recommend that the association should set up committees at the national, state, local government and community levels to monitor and expose the minutest act of impunity committed therein with a view to tackling it headlong through judicial and other legal means. It suffices to say that it is only when impunity is kicked out of Nigeria that rule of law will be enthroned. Once the rule of law is enthroned, there will be justice. Once there is justice, there will be peace. Nigeria, is a country where the government and everybody is always clamouring for peace. But we cannot have peace without justice. As the Legendary Reggae Star, **Peter Tosh** sang: "everyone is crying out for peace, but no one is crying out for justice. I do not want peace. I need equal rights and justice."

Conclusion

There will be justice when the response to peaceful agitations is dialogue and not guns and armoured tanks. There is no doubt that the response to peaceful agitations with guns and armoured tanks smacks of impunity, while the response with dialogue upholds the rule of law. If we allow impunity to thrive with guns and armored tanks, it means the impunists[54] will forever benefit from their wrong doing. But it is a time honoured jurisprudential maxim and indeed settled law that *"Nullus commodum capere potest de injuria sua propria."*[55] However, if we kick out impunity from our polity and embrace dialogue in resolving peaceful agitations, the rule of law will hold sway and justice would have been done. In such circumstance, peace will pervade the land and there will be no sit at home in the South East. In the words of Ebun Olu Adegboruwa, SAN: "whereas the hope of impunity is the greatest inducement to do wrong; the certainty of immediate sanctions is the panacea to sustainable rule of law and justice system."

We cannot fold our arms and allow impunity to continue to thrive in Nigeria. We must make concerted efforts to stem the tide of impunity and entrench the rule of law else we are risking the destruction of Nigeria. This makes me recall the words of **Albert Einstein**: the world will not be destroyed by those who do evil, but by those who watch them and do nothing." In the same vein, Nigeria will not be destroyed by those who brazenly indulge in acts of impunity by undermining the rule of law, but by those who watch them and do nothing. The time for us to do something is now.

[54]Permit me to use that word.

[55] No one should be allowed to benefit or profit from his own wrong doing. See: First Bank of Nigeria PLC v. May Medical Clinic (1996) 9 NWLR (Pt. 471) 195 at 204.