

ACCESS TO JUSTICE VN THE MODERN NIGERIAN FAMILY: PROBLEMS AND THE WAY FORWARD

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ABSTRACT

The term Justice is every day phenomenon in man's like. It is as old a man and even has biblical inclination, otherwise¹ why heaven and half not to ensure justice. This work therefore has tried to look at justice in the Modern Nigerian Family, paying particular attention to access to justice, problems that inhibit access to justice and the way toward.

Introduction

Access to justice in the, "Modern Nigerian family" leaves much to be desired especially now that there is on-going campaign against corruption in and outside the Nigerian family circle. Be that as it may, the whole essence of this paper is to look at the justice institutions in Nigeria, x-ray the problems militating against access to justice in the modern "Nigerian family and the way forward. To achieve the above purposes or goals, this paper focuses on the operational definition of key terms, types of justice, access to justice based on social circle, justice according to custom and culture, justice institutions in Nigeria, problems militating against the access to justice in the Modern Nigeria Family and way forward

Access to Justice in the modern Nigerian family: The Problems and the way forward

Clarification of Some Key Concepts

In order to fully understand this topic, a few concepts need to be clarified and in the context. Access to justice— means a way or nearly a way through which justice is attained; be it in the family outside the family circle.

Justice the word "justice" as a concept in law has different-meaning to different people and culture world over Its meaning therefore depends on the various way from which each, culture and nation look at it, what in essence a particular society i-e. regards as justice may be otherwise in another society, since for example social background, culture, national, interest,, education, religious, belief, and peer influence to a great extent determine what is justice in a given society.

Family - it is the smallest social unit in every society. The term family does not lend itself to easy and precise definition in that in one sense it may connote a nuclear family while in another sense it may be defined to include all persons with common ancestor¹.

Modern - Chambers Universal Learners Dictionary defines modern as belonging to the present or recent not old.²

¹ D. I. Nwaogugu (1999) Family law in Nigeria reversed edition Heniman Nigerian educational books

² Chamber Universal Dictionary (2007) E. M. Kirkpatrick ed. Spectrum house, Ring road P.M.B. 5612

Types of Justice

Aristotle divided justice into distributive and corrective justice. Distributive justice deals with equal distribution among equals while corrective justice aims at the restoration of equality when it has been violated. This concept has been criticized- as lacking in precision and unjust because of inequality³.

Formal justice - this deals with the application of law as it is without any resort to extra legal consideration. It is justice according to law.

Substantive justice - here liberal interpretation is taken into consideration to remove some absurdity where it occurs to achieve justice. Lord Denning was a notable jurist to this type of justice. According to him "Justice is the constant and perpetual purpose of rendering each man his due"⁴.

Personal justice - this is justice between parties to a dispute, regardless of any large principle that might be involved⁵.

Social justice - this is justice that conforms to a principle such as all people are equal⁶

Natural justice - this focuses on moral as opposed to a legal sense. Paul Jackson says that "fair hearing encompasses rule of natural justice but not conterminous with them"⁷.

More Insight on Justice

Among the Northern Nigerian Moslem family for example, a man marrying up to four wives but desiring a fifth one can achieve such desire by divorcing one of the four wives and to this part of the society, it is no injustice. In the same vein, among the Igbo family, a male child is accorded more status than the female most often and in this particular ethnic group, it is no injustice, because of the value the culture attached to a male child. The woman who ought to feel aggrieved over the disparity is not even comfortable where she is yet to get a male child in her husband's place.

Justice is the true basis for the existence of a society. "Justice means given to each individual his due". Without justice society will be in chaos. Justice be it in or outside a particular society as a term has universal face and it is always frowned at whenever it is violated, as was witnessed in the Libya, Rwanda, Yugoslavia and Nuremberg war crime tribunals.

Justice Based on Social Circle

Webster in Okere defined social control as the rules and standard of society that circumscribe individual actions through the inculcation of conventional sanctions and imposition of formalized mechanism⁸.

Any process that limits and constraints the actions of family member within a society is known as social control. Where there is pattern of social control, there is always justice present to checkmate deviants from various families.

³ Bias jurisprudent 1985 5th edition Butterworths London, p.66

⁴ Denning: What next in law, 4th edition. Butterworths London 1982 p.13

⁵ Black law dictionary 1999, 7th edition Co & St. Paul Niun West grey Publisher.

⁶ Ibid

⁷ Jackson: Natural justice (Swit & Maxwell) p.6

⁸ Linx C. Okere (1995) Law in culture and society (socio-anthropological jurisprudents) Owerri, Chin and Chisp. 31

Justice According to Custom

Custom is rightly described as a mirror of accepted usage. The dictum of Bacon in Nnabue states:

*Men commonly think according to their inclination, speak according to their learning and imbibed opinions, but generally act according to custom*⁹.

In *Mercer v Denne* (1905) proof showed that though the defendant owns a particular portion of land near the sea where the local fishermen¹⁰, have for long dried their nets. But witnesses proved that the custom of drying their net there has dated back to some decades and raised the presumption of antiquity. It was held that the defendant must not build their house on the land, thereby upholding the customary rights of the fishermen. The above case implies justice according to the custom of the people emanating however from their family.

Justice Institutions in Modern Nigeria

These structures are the major justice institutions in modern Nigeria.

1. Judicial justice institutions
 - a. The judiciary
 - b. The ministry of justice
 - c. The Police
 - d. The Prison
 - e. The Legal Aid Council
2. Quasi judicial justice institutions
 - a. The Civil Service Commission
 - b. The Universities
 - c. The Professional Bodies
 - d. The Commission of Inquiry
 - e. The Tribunals
 - f. The Human Right Commission of Nigeria
3. Traditional Justice System
The following are the basic few known and accepted in traditional justice system;
 - a. Administration of oath
 - b. Native Arbitration / Council of Elders
 - c. Age Grade System.
 4. Non-Governmental Organization / the Civil Society.
 - a. Legal Resource consortium
 - b. Society for Welfare of Women Prisoners (SWEWP)
 - c. Women Aids Collection (WACOL)
 - d. Alternative Dispute Resolution (ADR) etc.

Problems Militating Against Access to Justice in the Modern Nigerian Family and the Way Forward

Traditional problems

1. Lack of knowledge of the family members about what access to justice entails.
2. Some cultural presumptions requiring large family members or even elders to dispense justice.
3. The traditional rulers setting up mini courts in their palaces to try offenders.

⁹ See Nnabue USF (1999) Law and legal process, Owerri, No. #43 Christ Street, Global Press Ltd. p36

¹⁰ Ibidp.35

4. The thinking that courts are not for settling problems or that only very severe matters are taken to court.

5. Avoiding of court messengers at the tune, who were exploiting potential litigants at the traditional times.

The following factors, militate against access to justice in the modern Nigerian family

- a) Fear of bribery and corruption by the police
- b) Unnecessary delay by lawyers
- c) Type of homes
- d) Prison Reform
- e) Judicial officers lateness to court
- f) Inadequate manpower
- g) Inadequate and dilapidated court rooms
- h) Corruption of family heads and elders
- i) Influence of culture
- j) Lack of awareness of assistance of Legal Aid Council on the part of indigent litigants from various families,
- k) Poverty on the part of the litigants
- l) Poor condition of service
- m) Long time spent in court in the dispensation of justice

a. Fear of bribe asked by the police

Police force shall be for maintenance of peace and tranquility in the society as was stated in section 214 of 1999 constitution of Federal Republic of Nigeria. A situation where bribery and extortion of money from the families and populace is now the order of the day, pose problem to the access to justice. Other logistics problems include poor means of transportation, poor communication system and poor scientific crime control equipment.

b. Unnecessary Delay by the lawyers - Some lawyers inhibit justice by asking for unnecessary adjournment especially where they are not well prepared for a case or to force their client to settle their professional fee. While some clients would not pay this fee for reason that the lawyer lost his case as was the case in *Rondel v. Worsley*

c. Type of Homes - Access to justice in the family depends on the type of homes. For instance a democratic homes will always give members of the family fair hearing while an autocratic home will most often Lord it on their members and what often results in such family is denial of justice since the opinions of such aggrieved members are immaterial.

d. Prison Reforms - The ideal of prison can be traced to the Bible and to the family in the olden time to reprimand deviant behaviour. However, a situation where a provision made for 147 prisoners houses 20,000 inmates in the modern time is abuse of human right of the prisoners on one hand and to the families whose person are imprisoned.

e. Judicial officers lateness to court - Some judicial officer slow down the administration of justice through their habitual lateness to court. A judicial officer who fails to sit punctually loses precious time, again sends wrong signal to the litigants that their quest for justice may not matter. Once a judicial officer sets his standard for punctuality both families and legal practitioner who appears in his court will have confident in getting their justice.

f. Inadequate Manpower - The number of judicial officers to man the court does not match the large volume of cases before them. Fresh appointment is not made in time for replacement for dead, retired or removed judicial officer. This in turn makes the work load of existing judicial officers to be tedious, laborious and delay in dispensation of justice, which is also justice denied to any Nigerian family needing it.

g. Inadequate and dilapidated court rooms - Most of the court rooms that are being used today in Nigeria were built during colonial days. Some of them were built in such a way that they do not give room for proper ventilation. So whenever there is power outage, judges find it inconvenient to sit because of the overbearing heat and inadequate sunlight in such court rooms which makes reading and writing strenuous. It is therefore the usual thing for the judge to adjourn cases whenever there is power outage.

h. Corruption of some family heads and elders - Some family heads and elders are corrupt. With the result that whenever there is dispute to settle, the confidence of the family concerned are lost because of the jungled justice such personalities will dispense. This attitude frustrates the more, the hope of the common man from various families who seeks this justice.

i. Influence of custom and culture - Custom and culture to some great extent influence access to justice in Nigerian modern family. Situation where a certain culture and custom allows a man marrying four wives to divorce any of the four without cause but for the simple reason that he desires a fifth one is injustice. However the affected person in this family cannot seek redness from court or elsewhere because custom and culture allow it¹¹. Until recently, the Ecuador women and children are violated against and denied access to justice because their culture and custom allow it.

j. Lack of awareness of the assistance of the Legal Aid Council on the part of the indigent litigants

The Legal Aid Act 1976 which became operative on 2nd May 1977 established the Legal Aid Council as a body corporate and charged with administration of legal aid under the Act. Its major objective is to bring justice to indigent Nigerian families and citizens. As a result of unawareness of this assistance, many indigent families are yet to explore the services.

k) Poverty on the part of litigants - Many families, especially in the present time are yet to have three (3) square meal place on their tables let alone having money to hire legal practitioner to assist him obtain justice.

1) **Poor condition of service** - Poor condition of service, both salaried non-salaried is a clog in the vehicle wheel of justice to modern Nigerian family. Judicial officers should be well paid to have high morals in dispensation of justice and this will reduce a situation where litigants coming to seek justice are asked to provide transport money for the bailiff to serve his opponent necessary writ.

M) **Long time spent in court in dispensation of Justice** - Efforts should be made to reduce the long time spent in court in the dispensation of justice in our courts should be reduced, to restore the hope of common man because justice delayed is justice denied.

Way Forward for Accessibility of justice in the Modern Nigeria family;

1. The remuneration of the police should be attractive while trust fund should be set up to cater for the children of the police who died in active service. To motivate them and reduce boost their moral.

¹¹ See the Moslem Koran

2. Money should be provided by the government to construct new police barracks and rehabilitate the existing one.
3. Modern facilities like good vehicles and suffocated scientific weapon should be provided to track down criminals and protect innocent members of families and citizens.
4. More policemen should be provided to raise the low ration of policemen to the citizens.
5. Lawyers should be crusaders in the corridor of justice. Therefore unnecessary delay of client's matter should be minimized.
6. Parents should make the homes democratic than autocratic in order to give members of the family fair hearing whenever access to justice is sought.
7. Our prisons should be rehabilitated and properly funded. This will impact positively on the living condition of the inmates from different families who may for no fault of their found themselves in the prison custody. Therefore overcrowded prison should be minimized to reduce the suffering of the inmate to reflect the reforms of justice¹².
8. Alternative dispute resolution should be encouraged for fast dispensation of justice.
9. Judicial officers should be models to lawyers and litigants coming from various families to seek justice in court of law to avoid seeking for jungle justice elsewhere. This will reflect the act that established them to dispense a justice¹³.
10. Adequate manpower is quite necessary to tackle over increasing litigants found in our modern courts.
11. Corrupt family heads and elders should be called to order in order so that peace and tranquility should reign.
12. Culture and custom that are repugnant to natural justice equity and good conscience be discountenance with.
13. Awareness campaign to seek assistance of the Legal Aid Council for indigent litigant is paramount.
14. The police shall be for the maintenance of peace and tranquility as it is stated in the act establishing them¹⁴.

Conclusion

When we talk of "justice we mean more than just the court system. Justice cut across our homes, families as this work has shown. The notion of justice is a universal one for it connotes fairness, equity, good conscience and balance of competing interest in the family. Whenever justice or access justice is hindered in the family often times chaos results. If access to justice is to be maintained especially in modern Nigerian families, there is need to adhere to the solutions enumerated in this work for a better family.

¹² See draft of national action plan on the reforms of justice sector administration in Nigeria by access to justice program sponsored (DFID) Department for International Development 2000

¹³ See section 6 of 1999 constitution. See also section 2 30-284 of 1999 constitution

¹⁴ See section 214 1999 CFRN See also section 1 (3) and 14(2) 1999 CFRN.

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