


# CROSS-CUTTING ISSUES IN NIGERIAN LAW



ESSAYS IN HONOUR OF  
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# CHAPTER 10

## THE GALE OF IMPEACHMENT IN NIGERIA: A THREAT TO SUSTAINABLE DEMOCRACY\*

### INTRODUCTION

The Nigerian political scene is at a very critical epoch making period of its existence and this paper work focuses on the way and manner at which we can maintain a democratically elected government and the continuous developmental projects started by the present administration in order to have a sustained economic and political system both for the present and future generations.

The word "Democracy" was gotten from a popular government as practiced in Ancient Greece with the combination of the Greek words "demos" meaning "people" and "Kratos" meaning 'rule', and this concept emphasizes the rule of the people".

The modern use of the word of democracy was conceived in 1863 by Abraham Lincoln when he said "that this nation under God shall have a new birth or from, and that government of the people, by the people, for the people shall not perish from the earth"<sup>237</sup>.

This brought the common definition of democracy to be, the government of the people, by the people and for the people<sup>238</sup>.

The concept of democracy itself was popularized by Ancient Greeks who usually met in town halls to discuss the affairs of their community and arrive at decisions collectively, although this form of direct democracy had a basic representative feature due to the large number of the populace. It could therefore be said that government was by the many not by all the people<sup>239</sup>.

Apart from the general opinion on democracy, it would also be of help to consider the opinion of learned writers and jurists.

One of such is Joseph Schumpeter<sup>240</sup> opines that "Democracy is a political method, that is to say, a certain type of institutional arrangement for arriving at political, legislative and administrative decisions. It is a method by which the individual acquires the power to participate in decisions by means of a competition for struggle for the people's vote.... It is this competition for votes that is the distinguishing character of the democratic method".

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\* Yekini Abubakri Olakulehin & Owolabani Mausi Olufunmilayo

<sup>237</sup> Democracy: what is it all about? The honourable Chukwuditu Oputa; Democracy and the Law. Papers presented at the second conference of the Body of Attorneys-General in the Federation Held in Abuja, 9<sup>th</sup>-12<sup>th</sup> September, 1991. pg 36.

<sup>238</sup> Abraham Lincoln's Gettysburg speech 1863; Dedication of a soldier's cemetery on the Gettysburg Battle Ground on the 19<sup>th</sup> day of November, 1863.

<sup>239</sup> Dorothy Pickles Democracy (London Matheun & Co. Ltd 1990) p. 32

<sup>240</sup> Capitalism, socialism and democracy (London, Geo and Unnin 1943) p 242; see Generally Democracy and Classical Greece by J.K. Davis (Fontana History of the ancient world) 1978.

His main proposition was that the basic requirement of democracy is that, 'people have the opportunity of accepting or refusing the men who are to rule them'.

Harold Lasswell<sup>241</sup> holds, the view that accountability is the hallmark of democracy, even if power is exercised by a small number of leaders, while Robert Dahl<sup>242</sup> said that exercise of power need not be equal but access and opportunity to power need be equal and sufficient.

Also, E.E. Schattschneider<sup>243</sup> submits that, "democracy is a competitive political system in which competing leaders and organizations define the alternatives of public policy in such a way that the public can participate in the decision making process. i.e. involving the highest number of people to participate in the decision making process.

The idea of democracy is also made ambiguous by considering the ideas of capitalism and socialism. A capitalist democratic system emphasizes political freedoms but does not emphasize economic justice, social democracy on the other hand is a system of government found in socialist societies and this guarantees political freedom of speech, movement, association, belief, religion as well as freedom to vote and be voted for. They also tend to have one dominant political party and the organs of government such as the national and state assemblies are composed of representatives elected by mass organizations like trade unions and professional groups<sup>244</sup>.

Austin Ranney and Wilmore Kendall<sup>245</sup> mentioned the following points as important; in democracy.

- a. Popular sovereignty: that is "those who hold office must stand ready in some sense, to do whatever the people want them to do, and refrain from doing anything the people oppose".
- b. Political equality: that is "each member of the community should have, in some sense, as good a chance as his fellows to participate in the community's decision making no better and no worse....."
- c. Popular consultation and majority rule: that is, there must be "man understanding that when the enfranchised members of the community disagree as to what ought to be done, the last word lies, in some sense, with the larger number and never the small. i.e. the majority of the electorate and not the minority should carry the day.

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<sup>241</sup> A preface to Democratic Theory (1967)

<sup>242</sup> Robert Dahl; Power pluralism and Democracy: A modest proposal, paper delivered to American Political Association (1964).

<sup>243</sup> The semi sovereign people. Pp 141-142

<sup>244</sup> A. Downs, An Economic Theory of democracy (New York: Harper and Brothers 1957); see also Sam Oyovbare; Democratic Experiment in Nigeria; see also, Towards a free and Democratic Society, Political Education Manual, MAMSER 1989.

<sup>245</sup> Basic principles for a model of democracy in Cmusde and Neubauer, eds., Empirical Democratic Theory, pp 41-63

The above exercise therefore, has been able to unravel the concept of democracy from the view point of various jurists, but these attempts are quite different from Thomas Jefferson's opinion of an "equal voice for all citizens and his notion of decisions "which embodies the will of the people-not government by the people, but government approved by the people."<sup>246</sup>

## COMPONENTS OF DEMOCRACY

The foundation of all democracy or what makes a government democratic is the particular fact that the government has been voted in through an electioneering process which is free and fair. The foundation of all democracy therefore is the right to vote.

As Winston Churchill once put it: "At the bottom of all the tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross, on a little bit of paper-no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of that point."<sup>247</sup>

The vivid picture painted through the words of this great sage is that the people make the choice and their choice is respected and adored, that is when we can say that the democratic principle is in force.

Also, it is important to note that democracy is characterized by individual freedom and autonomy. We have to understand and crave for a new nation conceived in liberty and dedicated to the proposition that all men are created equal" .i.e. that every man has the right to vote and be voted for.

Franklin Delano Roosevelt<sup>248</sup> in a speech delivered, when the world was struggling to free itself from Nazi tyranny, cruelty, oppression and slavery highlighted four basic freedoms which forms the crux of democracy, he said, "In the future days which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression-everywhere in the world. The second is freedom of every person to worship God in his own way every where in the world. The third is freedom from want which translated into world terms, means economic understanding which will secure to every nation a healthy peace time life for it inhabitants everywhere in the world. The fourth is freedom from fear, which translated into world terms, means a worldwide reduction of armaments to such a point and in such a fashion that no nation will be in a position to commit an act of physical aggression against any neighbour- everywhere in the world."

1. Freedom of speech and expression.
2. Freedom of worship.
3. Freedom from want.
4. Freedom from fear

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<sup>246</sup> Jurisprudence of Democracy p 13; Dr. Epiphany Azinge-Democracy and the Law; papers presented at the second conference of Body of Attorney Generals in the Federation. Abuja, 1991.

<sup>247</sup> House of Commons, October 31, 1944

<sup>248</sup> Speech Delivered 6<sup>th</sup> of January 1941

Without these four necessary freedoms no government will deserve to be called a democracy.

Clara Smith Reber<sup>249</sup> was right when she described "freedom" as a man's birth right, a sacred; living rampant a pulse beat of humanity, the throb of a nation's heart. The battle for democracy is a battle for freedom and it has to be fought by all and sundry. The basic principles to be upheld are the principles of freedom, equality and justice. Once these principles are upheld these would be great development and well being of a free society which will enable its continued growth. It is of note that if one destroys a free market. You create a black market; it is the same with the society.

If you destroy or hinder a free society, you create a black society. Therefore, democracy implies diversity of outlook, a variety of points of view on politics, economics and world affairs.

Every form of freedom comes with it a form of responsibility. Unfettered freedom is license; therefore, freedom imposes its own restraints. Every form of freedom that has been highlighted imposes a duty to be absolutely careful and scrupulously responsible.

Another vital trait of a democratic system is the independence of its judiciary. It is the reflection of a true democratic nation and also the title deed of freedom. Freedom means the courts of justice exist, that these courts are independent of every other arm of the government.

They are independent of the exclusive unbiased to any political party; administer laws which have been duly passed by the legislative assemblies and signed by the president or state governor or else customary laws consecrated by time, that these courts are free from executive violence, free from the threat of mob violence and free of all association with particular political parties.

The independence of the judiciary is perhaps the deepest gulf between a democratic government and every other form of government; it is the proud badge of any genuine democracy.

This therefore is a clarion call to members of the noble legal profession to hold sacred the hammer of justice and to avoid interference from any quarters, so that we don't put the final nail on the coffin of democracy rather than on the coffin of injustice with the hammer, a symbol of power of the judiciary.

### **Sustainable Democracy.**

The concept of sustainable democracy, just like the concept of "sustainable development"<sup>250</sup>, which has to do with meeting the needs of the present without comprising the ability of future generations in meeting their own needs, has to do with a system where we have a viable political economy without compromising that of future generation i.e. political stability for the present and the future.

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<sup>249</sup> Democracy, What is it all About? Hon. Justice Chukwudifu Oputa. (Democracy and the Law p.38)

<sup>250</sup> Brundtland Report entitled "Our Common future" published in 1987 by the World Commission on Environment and Development (WCED) This commission was established during the UN Assembly in Nairobi in 1982.

his dream rests upon basic principles which would be discussed as follows:

## 1. Supremacy of the constitution

This concept gives rise to the belief that the constitution is supreme and should be followed by all. **Section 1 (i) of the 1999 constitution of the Federal Republic of Nigeria**<sup>251</sup> provides that, "This constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria".

Therefore, it is of note that everyone should be guided within the ambits of the constitution and that in interpreting the constitution, the Judiciary should carry out its duties without fear or favour. Every arm of government should be guided and should act in accordance with the provisions of the constitution. For instance, the recent trends of impeachment of State Governors, most of them are not being done in accordance with the laid down provisions of the constitution which in essence is a great threat to the democratic process.

This principle has been highly abused and taken for granted in the present day democratic process. A major and very glaring instance of his breach is **Section 188 of the 1999 constitution** which provides for the removal of Governor or Deputy Governor of a state from office.; **Section 188 (2)** provides that there has to be a notice of allegation in writing signed by not less than one-third of the members of the House of Assembly which has to be presented to the speaker and stating that the holder of such office is guilty of gross misconduct in the performance of the function of his office, detailed particular of which shall be specified.

## 2. Separation of powers.

This concept is to avoid a tyrannical government. This doctrine stemmed from John Locke<sup>252</sup> that it was convenient to confer Legislative and executive powers on different organs of government. He argued that it was foolhardy to give law-makers the power of executing the law, because in the process they might exempt themselves from obedience and suit the law to their individual interest.

Today's understanding of separation of powers was from the French Jurist, Baron de Montesquieu<sup>253</sup> he was basically concerned with the preservation of political liberty i.e. a situation where there is no abuse of power, and that one power should be a check on the other and there would be no liberty, if the judicial power is not separated from the legislative and executive, these would be an end of everything if the same person or body, whether of the nobles of the people, were to exercise all three powers<sup>254</sup>

<sup>251</sup> Adediran V Interland Transport Limited (1991) 9 NWLR (Pt 214) p 155 at p179 para G-H. The basic Law of Nigeria os the constitution of the Federal Republic of Nigeria, 1999 and this provisions makes it supreme so that failure to follow its provisions renders whatever was done contrary to it is unconstitutional. (I.O Smith; The Constitution of the Federal Republic of Nigeria, Annotated p 3.).

<sup>252</sup> 17<sup>th</sup> Century England

<sup>253</sup> Based on 18<sup>th</sup> Century English Constitution

<sup>254</sup> L'esprit des Lois, Chap XI

In Nigeria, this is basically spelt out in Section 4, 5 and 6 of the 199 constitution, and another important point to stress here is that these provisions should be followed to the letter.

The judiciary without much doubt stands as the fulcrum for the viable democratic process we desire in Nigeria. There are clearly spelt out in Section 6 of the 199 constitution<sup>255</sup> and it gives powers to various courts and states their boundaries as to the cases or matters they can sit on.

The judiciary itself has to be independent to avoid misconduct and miscarriage of justice. The courts are meant to be the last hope of the common man who does not want or know how to take the laws into his hands.

This therefore creates a sacred cover on the judiciary.

### 3. The Rules of Law

This is the major fulcrum which the sustainability of democracy stands. As far back as 2000 B.C, the great Greek philosopher, Aristotle<sup>257</sup> had preached that the Rule of Law is preferable to the rule of man, and the English legal philosopher, Bracton<sup>257</sup> has asserted that man is governed by either human or divine law and that although the King might not be subject to man but he is subject to God and the law because it is the law that made him King.

Professor A. V Dicey<sup>258</sup> in reducing the "Rule of law to precise legal form said":

- A. That every person must be equal before the law.
- b. That all laws are the same.
- c. The rule of law excludes arbitrary powers.

At this point, it is of importance to consider what impeachment means and how it constitutes a threat to sustainable democracy.

## NATURE AND SIGNIFICANCE OF IMPEACHMENT

In a democratically elected government like ours, those elected into the office of the President, Vice President, Governor and the Deputy Governor cannot be removed except in the manner prescribed by the *grundnorm* i.e. the constitution<sup>259</sup>. One of the ways laid down by the constitution is the impeachment process.

<sup>255</sup> Ude V Ojechemi (1995) 8 NWLR (Pt 412) p 152 at pp171 para F-G, 172 173 para H-F, the power of each organ are expressly stated and one cannot usurp the functions of the other. Ojukwu V Governor of Lagos State (1985) 2 NWLR (pt 10) p 806

<sup>256</sup> Politics. Vol III pg 16

<sup>257</sup> De L'egibus et Consuetudinis Angliae

<sup>258</sup> Law of the Constitution (10<sup>th</sup> Edition)

<sup>259</sup> Sections 143 and 188 of the 199 Constitution of Federal Republic of Nigeria

The constitution provides for the procedure to be taken whenever anybody who holds any of the offices mentioned above, if found wanting of any gross misconduct, is to be removed. The Impeachment proceeding is the process while the end product is the removal.

The significance of Impeachment proceedings in every jurisdiction where presidential democracy is practiced can never be overemphasized. This is so because it plays no less a role an electioneering process plays. This is ultimately the institution of a new President or Governor as the case may be. Hence, it is one of the processes where constitutionalism must be doggedly upheld. Impeachment proceeding is a serious business. In the United State of America it has only been commenced against the president for three times only in the past two hundred years, the last of it being that of President Bill Clinton over the Monica Lewinsky affairs.<sup>260</sup>

The situation in Nigeria has called for a suspect. In the last four years, we have had about six impeachment moves against the office of the Governor of which three have been successful.<sup>261</sup>

A critical review of these successful proceedings will pose a big question mark of whether or not the impeachment process is a constitutional or political matter. This paper is aimed at looking at the impeachments as we have had it in Nigeria vis-à-vis what is obtainable in other jurisdiction. The attitude of the Judiciary as it affects the impeachment proceedings will also be considered.

## **THE ESSENCE OF IMPEACHMENT PROCEEDING**

It is axiomatic that absolute power corrupts absolutely. Where an organ of government is given so much power to the extent that no checks are placed on it in whatever form, there is every tendency that we would be leading to a despotic system of government where we would inevitably have an authoritative Executive that would at least not be answerable to anybody, not even the electorate on the misdeeds of the government.

The essence of the impeachment proceeding is primarily to serve as a check on the excesses of the Executive which stems out from the age long principle of checks and balances. This principle is part of our constitutional law as we could see from a lucid classification of the governmental powers under different sections of the constitution.<sup>262</sup>

In an ideal democratic society, the legislative arm of government's most effective check on the executive is the power to remove them from office if they are found wanting of gross misconduct. Even in the United State, this power is extended over the Judiciary. A judge may be impeached where he is found to be biased or partial with the law. This however is not the law<sup>263</sup> in Nigeria.

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<sup>260</sup> Others are: In 1868 against President Andrew Johnson for his removal of Secretary of War, Edwin Stanton in Violation of the Tenure of Office Act. In 1974 President Richard Nixon was impeached for the Watergate cover-up (106 years after Johnson). In 1998-99 President Clinton was attempted to be impeached for concealing an extramarital affair (24 years after Nixon).

<sup>261</sup> It has been generally carried out in Bayelsa, Oyo and Ekiti and Anambra and Plateau States.

<sup>262</sup> The legislative powers in section 4, executive in section 5 and judiciary in section 6

<sup>263</sup> William A. McClenaghan, American Government: (1993) Texas Edition

## IMPEACHMENT PROCEDURE IN NIGERIA

The following process has been constitutionally laid down to be adopted by the legislative house for the purpose of removing a Governor or President and their Vice or Deputy as the case may be. This process is governed by s.188 and s. 143 for the office of the Governor and President respectively. The constitution provides thus:

*188 (1). The Governor or deputy Governor of a State may be removed from office in accordance with the provisions of this section.*

- (2) *Whenever a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly-*
- (a) is presented to the speaker of the House of Assembly of the State;*
  - (b) stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified,*

*the speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and each member of the House of Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the House of Assembly.*

- (3) *Within fourteen days of the presentation of the notice to the speaker of the House of Assembly ( whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice), the House of Assembly shall resolve by motion, without any debate whether or not the allegation shall be investigated.*
- (4) *A motion of the House of Assembly that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-third of all the members of the House of Assembly.*
- (5) *Within seven days of the passing of a motion under the foregoing provisions of this section, the chief judge of the State at the request of the Speaker of the House of Assembly, appoint a pane of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party to investigate the allegation as provided in this section.*
- (6) *The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented, before the panel by a legal practitioner of his own choice.*

*A panel appointed under this section shall-*

- (a) have such powers and exercise its functions in accordance with the procedure as may be prescribed by the House of Assembly; and*
  - (b) Within three months of its appointment, report its findings to the House of Assembly.*
- (8) *Where the panel reports to the House of Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.*
- (9) *Where the report of the panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, the House of Assembly shall consider the report, and if by a resolution of the v supported by not less than two-third majority of all its members, the report of the panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.*
- (10) *No proceedings or determination of the panel or of the House of Assembly or any matter relating thereto shall be entertained or questioned in any court.*

## **HISTORY OF IMPEACHMENT IN NIGERIA**

The first case of impeachment that was recorded in Nigeria was instituted in Kaduna State which led to the removal of the State Governor, Alhaji Balarabe Musa in the popular case of **Balarabe Musa v. Hamza**

The next case of impeachment we had was that of the Deputy Governor of Abia State, Mr. Abaribe in the case of **Abaribe v Abia State House of Assembly** In this case, the deputy governor was served with impeachment notice by the speaker of the House for alleged acts of gross misconduct. Meanwhile, before the response of the appellants, the *House of Assembly* resolved by a resolution to investigate the matter. The Deputy Governor considered this as an infringement of his fundamental right to fair hearing in contravention of s.36 of 1999 constitution of Federal Republic of Nigeria. The court however, rejected his argument and refused his ex-parte application to stay the impeachment proceeding.

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<sup>264</sup> (1982) 3 NCLR

<sup>265</sup> (2002) 14 NWLR pt 788 CA

In more recent times, the country has witnessed a series of proceeding which could only be described as a legislative sham. The first one was the removal of **D.S.P Alamaiseigha**, the erstwhile Governor of Bayelsa State. He was alleged of money laundering and some other financial misconduct. Although there was no much irregularity in the proceeding but the hasty job done by the investigating panel in less than seventy two hours raises some eye brows on the impartiality and uprightness of the panel. The House of Assembly finally adopted the report of the panel which found the governor guilty of the charges.

Not too long after this came the ugly situation in Oyo State which saw the exit of **Rashidi Adewolu Ladoja**. In his own case, the House of Assembly was divided between the pro-Adedibu<sup>266</sup> (those in support of the removal of the Governor) and the pro-Ladoja (those who are against the removal).

A number of constitutional aberrations were committed in this matter. The speaker and other pro-Ladoja's lawmakers were shot out of the proceeding. The impeachment notice was not served on the pro-Ladoja's lawmakers in contravention of s.188 (2) of the constitution. Secondly, the resolution of the House directing the Acting Chief Judge of Oyo State to set up a panel to investigate the allegation of misconduct against the governor must be supported by 2/3 majority. It was only the 18 lawmakers that passed the resolution, in other words, the resolution was not passed by 2/3 majority of the members of the House as compulsorily prescribed by the s.188 (4) of the constitution. Although the Supreme Court in its landmark decision on the 7<sup>th</sup> December 2006 held that the Impeachment of Governor Rashidi Ladoja is not in accordance with the provisions of the constitution, therefore null and void.

The most unspeakable one of these legislative jamborees called impeachment proceeding was that of the **Mr. Ayodele Fayose** of Ekiti State and his deputy Mrs. Olujimi. The situation in the case portrays the highest level of legislative ignorance, usurpation and lawlessness. In this case, the Governor was indicted and was duly served by the House of Assembly. The Governor responded to the allegation. The Chief Judge of the State was requested to constitute a Panel of Inquiry, which under forty eight hours exonerated the Governor.

This did not go down well with the House of Assembly. The house therefore, removed the Chief Judge and appointed an acting Chief Judge who constituted the panel that eventually found the Governor guilty of the allegations. The House in consequence impeached him and the Speaker of the House was sworn in as the acting Governor on the same day.

The latest of these arrays of proceeding was the one of Anambra State in which the Governor of the State, Mr Peter Obi. The case was not that different from the ones we have discussed earlier. The Legislative House was divided and the impeachment proceeding was carried out by just one faction with the exclusion of the others.

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<sup>266</sup> Adedibu is an highly influential politician in the South Western part of Nigeria. He has his political base in the ancient town of Ibadan, Oyo state Nigeria.

The panel was inaugurated by the chief judge who even asked the policemen to bungle out a legal practitioner who was questioning the legality of the panel as a result of the fact the number of lawmakers required for the resolution for the constitution of the panel was not met. The Panel barely spent up to 48 hours before they concluded their findings and the faction of the Law makers that are impeaching the governor conducted a sitting at 5 am in the morning to impeach the governor.

## DICHOTOMY AS TO JUDICIAL REVIEW

There is no gainsaying that the society is divided as to the extent the Judiciary could interfere with the impeachment proceeding of the legislative house. This dichotomy is held by everybody including public analysts, commentators even the street urchins are not left out.

This controversy arises as a result of the ouster clause provided in s188(10) of the constitution which provides that

*“No proceedings or determination of the panel or of the House of Assembly or any matter relating thereto shall be entertained or questioned in any court”*

One school of thought posits that the ouster clause must be given a strict interpretation. Whatever is done within the four walls of the legislative building with respect to impeachment is not within the jurisdiction of the court to entertain and nothing more. Where perceived injustice was done, the letters of the constitution must be strictly adhered to. The judiciary appears to have pinched its tent to this school of thought of strict construction. It was on the basis that the case of **Balarabe Musa v. Hamza**<sup>267</sup> was decided.

In dealing with this section in the case of **Abaribe vs. Abia State House of Assembly**<sup>268</sup>, **Ikongbeh JCA** was emphatic when he declared as follow:

*“the language here seems to me too clear and direct to brook any equivocation. It forbids all courts from allowing any proceedings or determination of the 2nd respondents or its panel to be challenged before it. For the avoidance of doubts and, to drum in the message regarding the depth and breath of the matters prohibited, it also forbids all courts from allowing any matter relating to such proceedings and determination to be entertained before it”*

The second school of thought advocates for a liberal and purposeful interpretation of the ouster clause provision of s.188 (10) This school has it that, fine, there is ouster clause but the ouster clause could only be resorted to when the House had acted *intra vires* or put in another term, where they had scrupulously followed the due process.

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<sup>267</sup> Balarabe Musa V Hamza (supra)

<sup>268</sup> Abaribe V Abia State House of Assembly (Supra)

In other words, the court could be asked to determine if the House has followed the proper procedure in arriving at its conclusion.

The second argument is that, the sections of the constitution are not read in isolation. It must be read in conjunction with other sections that have conferred rights and jurisdictions to the court<sup>269</sup>. So, these sections must be juxtaposed and balanced. At the end where perceived injustice would ensue, then according to Aristotle, the spirit of the law could be resorted to since the framers of the constitution could never have intended injustice to prevail in the land.

The third argument has it that once the proceeding gets to the stage of panel of inquiry, then the House of Assembly has no much say on it any longer. To put it in the words of the Olisa Agbakoba, once the panel is constituted, it becomes an administrative panel and therefore must be subject to judicial review. On the aggregate, preponderance of legal opinions favour the second school of thought and We also agree with it.

Recent judicial authorities seem to be deviating from the strict interpretation approach. Uwaifo JSC (as he then was) has observed in the case of *A.G, Federation v. Guardian Newspapers Ltd*<sup>270</sup> as follows:

*“Ouster of jurisdiction of a court does not preclude it from exercising jurisdiction to interpret the ouster clause itself or to determine whether or not the action in question comes within the scope of power of authority conferred by the enabling statute”*<sup>25</sup>

In a more recent case, Tsamiya JCA summed it up in the case of *A.N.P.P vs. B.S.I.E.C*<sup>271</sup> thus:

*“I think it can be said that a court would be obliged to respect and uphold the ouster provisions of a legislation. But the court reserves to it the right to consider whether the ouster clause ought to be obeyed, having regard to other surrounding facts and the law relevant to the provisions ousting its jurisdiction.”*

Happily, the Court of Appeal sitting in Ibadan has declared recently that it is wrong for the High Court to have decline jurisdiction in an impeachment application brought to it without looking at the merit of the case. I think I must join other commentators that this is not only a victory for Democracy but also for Justice and Rule of Law.

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<sup>269</sup> This include section 6(6)(b) which gives the judiciary a wide power of over virtually all issues and section 46(3) which provides that any individual whose right has been, is been or is to be infringed upon can go to the High Court of the State for redress.

<sup>270</sup> (1999) 69 LRCN

<sup>271</sup> (2006) 11 NWLR pt 992 @ pg 585

Although it seems we have not had the last word on this issue of jurisdiction of Courts in impeachment proceedings because the defendant has assured that they are going to the Supreme Court.

We want to appeal to the Judges of the Supreme Court that the future of Democracy and Rule of Law in Nigeria is now before them and it is time they laid this perennial issue to final rest in the affirmative.

## JUDICIAL ACTIVISM

Historically, the role of the judiciary is practically the interpretation of the law and nothing more. This task is not an easy one at all. This is so because; the judge must perform the onerous task of deciding the intention and feeling of the framers of the laws or the intention of the legislatures. Traditionally, the judge in interpreting a law is not expected to go outside the intention of the lawmakers. It is trite that even the devil does not know the intention of man. In recent times, judges are used to embarking on judicial activism occasionally in the interpretation of laws or deciding cases.

Judicial activism could be described as a phenomenon whereby a judge allows the spirit of times, the wishes of the people, precedent and the interest of justice to influence his judicial decisions more heavily than the founder's opinion or the law itself. In other words, it is a means of giving life to our laws. The laws must develop with current trends and the desire to achieve justice must at every point in time bear upon the mind of judges in interpreting the laws.

One judge that we must salute in this respect is the legendary Lord Denning of blessed memory. He was an advocate of justice to the core. He had used this concept of judicial activism most effectively in developing modern equity. Among the notable instances of his activism include the establishment of the Anton Piller Order when none had existed whether in law or equity prior to that case.

## NEED FOR JUDICIAL ACTIVISM IN IMPEACHMENT PROCEEDING IN NIGERIA

Need we say again that impeachment proceeding particularly as we have it in Nigeria is a misnomer. The whole process has been so abused to the extent that one day we may have about eight senators actually removing the President or Governor as the case may be. Some have argued that it was because the issue is more of a political one rather than legal. As realistic as this position seems to sound, it is doubtful if it is correct.

<sup>272</sup> Edington V Fitzmaurice (1885) 29 Ch.D 459

<sup>273</sup> Anton Piller Order is an order that allows the applicant to seize, detain and preserve any infringing material or contrivance relating to an action found in the premises and to inspect any document in the custody or under the control of the defendant relating to an action (Anton Piller K.G V Manufacturing Processes Limited (1976) Ch. 55, (1976) 1 All ER 779.

Prof Ademola Yakubu<sup>274</sup> posited that since the issue of impeachment has been provided in the constitution, it then becomes a constitutional issue as well.

This must be given preference as it is what forms the basis of our existence as a State. Hence, we don't have any option than to tenaciously follow the laid down process.

The ouster clause in the impeachment proceeding is a 'legislative bullet proof'. In effect, we may not effect any meaningful changes through legislative means because they profiteer from it. The last resort for justice is inevitably the court. In the light of what is obtainable today, it is going to be a twenty-first century heresy to hold that judges should sit back, fold their arms and watch injustice thriving on the land. Let's even take a glimpse into other jurisdiction to know what is in operation. For the purpose of clarity, below is a summary of the impeachment proceeding in the United State of America<sup>275</sup>.

- (1) *Impeachment resolutions made by members of the House of Representatives are turned over to the House Judiciary Committee which decides whether the resolution and its allegations of wrongdoing by the President merits a referral to the full House for a vote on launching a formal impeachment inquiry.*
- (2) *The entire House of Representatives votes for or against a formal impeachment inquiry, needing only a simple majority (a single vote) for approval.*
- (3) *If approved, the House Judiciary Committee conducts an investigation to determine (similar to a grand jury) if there is enough evidence to warrant articles of impeachment (indictments) against the President. The Committee then drafts articles of impeachment pertaining to specific charges supported by the evidence. The Committee votes on each article of impeachment, deciding whether to refer each article to the full House for a vote.*
- (4) *If the House Judiciary Committee refers one or more articles of impeachment, the entire House of Representatives votes on whether the article(s) merit a trial in the Senate, needing only a simple majority for approval.*
- (5) *If the full House approves at least one article of impeachment, the President is technically impeached and the matter is referred to the U.S. Senate. The House then appoints members of Congress to act as managers (prosecutors).*

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<sup>274</sup> This was his position in an interview he granted on NTA, which was televised on *Weekend file* on 21<sup>st</sup> October 2006.

<sup>274</sup> [www.historyplace.com/impeachment](http://www.historyplace.com/impeachment).

- 5) *The trial of the President is held in the Senate with the Chief Justice of the U.S. Supreme Court presiding. The President can be represented by anyone he chooses. He may appear personally or leave his defense in the hands of his lawyers.*
- (7) *The entire Senate may conduct the trial or it or it may be delegated to a special committee which would report all the evidence to the full Senate.*
- (8) *The actual trial is conducted in a courtroom-like proceeding including examination and cross-examination of witnesses. During questioning, Senators remain silent, directing all questions in writing to the Chief Justice.*
- (9) *After hearing all of the evidence and closing arguments, the Senate deliberates behind closed doors then votes in open session on whether to convict or acquit the President. The vote to convict must be by a two-third majority, or 67 Senators. If this occurs, the President is removed from office and is succeeded by the Vice President. The Senate's verdict is final and there is no right of appeal.*

This goes to show us that there is hardly any jurisdiction where the matter is left absolutely in the hands of legislature. At the least, there must be one form of check however small it is, from other government. In the proceeding highlighted above, one would clearly see that the proceeding is a simulation of what happens in court. Obviously, the last sentence that *'the senate verdict is final and there is no right of appeal'* is superfluous. This is so because; the President has actually been tried. The trial could be said to be equivalent to what he will have in the Supreme Court, which is the highest court of the land. Why? The Chief Justice is the Presiding Officer, there is examination in Chief and cross-examination and what's more, evidence was also led. It will indisputably become a waste of time to give room for appeals.

With the direction things are moving in this country, there is no gain saying that we are being driven into anarchy. It is incomprehensible where a speaker has gotten power to remove a judge from office all in the name of the sacrosanct impeachment proceeding.

The judiciary will need to come out with a decisive position on this as soon as the opportunity arises. The fate of the rule of law is in their hands. This is the kind of judicial activism we are advocating for. It could never be that they are formulating new laws as some people may want to argue. This is purely a function assigned to the legislative arm of the government. If it will take creating a new right for the Governors and Presidents, I believe with all sense of respect that its time we created such a right on the ground of public policy as this our nascent democracy must be saved from ravaging wind of impeachment proceeding.

It is note worthy to mention the roles some judges are playing in the impeachment proceedings. It is obvious from the scenario of the Ekiti State that some judges have been so engrossed into politics to the extent that they have forgotten the laws that governs the appointment and removal of judges. What should we say of the judge who assumed the position of Acting Chief Judge for the purpose of constituting impeachment panel on the suspension of the substantive Chief Judge by the House of Assembly? The case of Anambra Chief Judge who also ordered the Police to bundle out a legal Practitioner because the latter was asking questions as to the constitutionality of what the judge was doing. It is too obvious that when such matter comes to such judges for adjudication what they will readily say was that their jurisdiction has been ousted because of the interest they have in the whole process. The National Judicial Council will need to intervene and save the integrity of the judiciary from these quack judicial officers.

## CONCLUSION

The advice to the judiciary is that it is high time they held the bull by the horn. They need to save this country from collapse. The country has almost been torn into a lawless society just because they know that the judiciary will not intervene in the matter. The legislatures have decided to rule with their whims and caprices. The judiciary must make our constitution a living constitution even if it will involve creating a new right of appeal against an impeachment proceeding. Happily, there is an opportunity now as the Oyo State saga is now before the Supreme Court.

Happily, there seem to be a light at the end of the tunnel with the December 7<sup>th</sup> judgement of the Supreme Court as regards the impeachment of the Oyo State Governor as this process was held anomalous. The judiciary however, should not be hesitant at any time to uphold the Rule of Law whenever the need arises because it is the fulcrum for sustaining the Nigerian democracy.

In concluding this piece one vital point has to be stressed here, that behind all these principle and ideas, as a nation for us to sustain the democratic system without bloodshed or disorder, we need the "*democratic spirit*,"<sup>276</sup> that invisible and intangible spirit without which the democratic institution cannot be properly run. This democratic spirit is what is behind great nations who have been able to sustain their democratic process, the spirit of patriotism, obedience to laws and respect for constituted authority are some inner strengths the national orientation and our believe in the Nigerian nation and that unfeigned passion to uphold the democratic process.

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<sup>276</sup> Honourable Justice Chkwudifu Oputa: Democracy, What is it all about.