



The Concept Of Justice And Its Application In A Developing Country Such As Nigeria

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ABSTRACT

Justice is the ultimate and supreme aim of the law; it is what every legal system seeks to achieve. The law seeks the actualization of justice in all its ramifications. All citizens in a society yearn for justice in all their endeavours. Therefore, the institutions saddled with the responsibility to ensure real justice as well as social justice must strive to live above board. In this article an attempt is made to posit the concept of justice, types or perspectives of justice in all its known ramifications and offer a critique as it's applied in developing countries of Africa and some Countries of the Third World and draw conclusions on how realistic or practicable the concept of justice has been applied in solving societal problems. Law without justice is a mockery, if not a contradiction, for it is justice attained that calls for the fulfillment of the law. Justice is an aspiration on how to live honorably, not to harm your neighbour and to give everyman his due. Justice may be tied to morality as to what is right and not right, or what is just and not just. What is just should ordinarily be right and to render or give what is due to somebody naturally may be just. Funding, corruption, lack of rule of law, political interference, and technicality are problems that confront the realization of true justice. Justice is a measuring rod for the goodness of laws for as St Augustine noted, without justice; States are nothing but organized robber bands. The actualization of justice in Nigeria has been a mirage, individuals yearn for it and it is never fully attained. The lack of social justice especially in Nigeria is one cause of the troubles and agitations in this country. The analysis of social justice and its recommendation for actual realization by judicial activism and good governance for the overall attainment of justice in our society in very necessary for today's Nigeria.

Keywords: Concept of justice, Legal theories of justice, Legal justice, Social justice

INTRODUCTION

The reign of justice is what every Government would strive to attain. A government is said to be good in the assessment of the people when the people of the country are happy. They have hope in the judicial system and even in the future, that is, tomorrow that even though certain amenities are not provided immediately, that in the course of time they would be provided based on available resources and with every changing government seeking to satisfy the populace. One of the functions of law in the society is the keeping and achievement of law and order. Law needs to be related to the system of values recognized in the particular community in which it operates. Morality may be one of such value as well as justice, which at this stage may be referred to as giving to every man/woman his due and worth, this may be an approximate description of how law tends to function at least in enlightened communities which enjoy a far degree of harmony and peace as to their basic aims, but there is a general purpose that the law everywhere aims or should aim at achieving, and that is justice.

According to Dennis Lloyd,¹

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¹Dennis Lloyd, *The Idea of Law*, (Penguin Books 1987)116

“the idea of law it may be argued, has always been associated with the idea of justice and if it is agreed that this represents the ultimate goal to which the law should strive, then we can arrive at the purpose of law more directly, without becoming entangled in the values of particular societies with all their conflicts and uncertainties. For, after all, are not those value themselves, so far as they seek to be embodied in the law of the community merely an individual expression of the general striving towards justice itself?”

Justice is the first virtue of social institutions therefore every society would always strive to achieve this very important virtue. Everybody who is not well treated one way or the other would complain of injustice. So the attainment of justice becomes very vital, it should not be a mere aspiration, it should be a task to be achieved. For as Friedrich Nietzsche² puts it and observed “*justice is never given, it is always a task to be achieved*”. It is very true that law is the means of achieving just government, for the maximum liberty of action is best guaranteed by legal limitation. The essence of natural law is about fairness, justice and reason, where the laws are just and humane taking into consideration the aspiration of the people before enactment, the populace and by extension the society would be justified in the just and simple application of these laws.

The Concept of Justice

How do we define justice? If there is any concept that lacks a universal definition in law, it is the concept of justice. Justice is rather defined from its various perspectives. For this work we have to adopt a definition so as not to derail into what would be difficult to control. Justice is derived from the word just; an adjective for what is legally right, lawful and equitable. Black’s Law Dictionary the Tenth Edition³ defines justice this way:

“The fair treatment of people; the quality of being fair or reasonable; the legal system by which people and their causes are judged especially the system used to punish people who have committed crimes; the fair and proper administration of law”

The above definition especially the first and last part seem to be the focus of this paper as it talks about fair treatment of all persons and punishment of offences and the proper administration of laws which would naturally involve compensation for aggrieved citizens too. Justice in one sense is derived from ethics of who should receive benefits and burdens, good or bad things of many sorts, given that others might receive these things. Although discuss about justice is often influenced by models of law, the ethics of justice is a subject in itself.

The Chambers Dictionary⁴ presents a simple and literal definition of the concept of justice: “*The quality of being just; the integrity; impartiality; rightness; the awarding of what is due; the administration of law; a judge; a magistrate the quality of justice of the peace*”. This definition demonstrates the quality of what is just and fair, it talks about integrity and what every party to a case admire most which is impartiality⁵. The person dispensing the justice must be straight forward and upright and then go ahead to award what is right, just and due to the parties without fear or favour as it is always in the Oath of Allegiance of judges. A man ought to shape his life in an honourable and dignified manner, one might add as a truthful and law abiding citizen. Justice is tied to morality in that what is moral may be just and it is equally just to give every man according to what he is worth or due.

Legal Theory of the Concept of Justice

Theoretically, legal pundits and jurists have differently in their own rights defined or described the concept of justice. Most definitions are not straightforward as they tend to describe or compartmentalize the concept of justice instead of defining it. Tracing it to the old Roman jurist Ulpian in his famous

²Friedrich Nietzsche *Justice: The Just Political Act* ‘6 Nomos’ Justice at 34

³Bryan A. Garner, *Black’s Law Dictionary* (Thomson Reuters 2014),995

⁴*The Chambers Dictionary* Ed by Ian Brooks (Chambers Harrap Publishers Ltd., 2006) 10th Ed p 810

⁵Impartiality is one of the hallmarks of the doctrine of the Rule of law. For the law to rule, judges or arbiters in Court must be seen not to be partial.

definition of justice, he said: *To live honourably, not to harm your neighbour, to give everyone his due (Honeste vivere alterum non laedere, suum cuique tribuere)* all three rules are of course moral precepts, but they can all be made to apply to law in one way or another. The first for instance which seems pre-eminently ethical in as much as it lays down rules for individual conduct implies some legal connotation. A man has to shape his life in an honourable and dignified manner – one might add as a truthful and law abiding citizen⁶. This sage theorist simplified the concept of justice into the simple tortuous concept of your neighbour as do not harm your neighbour, give every person what he truly deserves and to live a good life which he terms to live honourably. This may mean contentment or being contented as against what we truly observe today of personal aggrandizement of public wealth which denies others what they should justly get from the common purse.

For Dennis Lloyd his opinion is that law without justice is a mockery or a contradiction. His attempt to define justice leads to an argument based on morality. On defining what is justice he wrote:⁷

“One point must be plain at the onset of this inquiry and that is that justice whatever its precise meaning may be is itself a moral value, that is one of the aims or purposes which man sets himself in order to attain the good life. If all the moral purposes of human life are classified as “the good” then the idea of justice is no more than one of the various “good” which morality sets before mankind. A particular good may function either as a means or an end in itself”.

To him what is the ultimate good is a matter not of demonstration but of choice and we could if we wished place justice itself upon this pinnacle. He linked justice to the utilitarian concept of seeking the greatest or maximum happiness of the greatest number as the ultimate good, and used the platonic concept to place justice at the summit of the moral world. He then went on to compartmentalize justice into platonic justice, formal justice, substantial justice, legal justice, legal injustice. These would be taken later in this paper.

Aristotle⁸ wrote that the quest for justice has been as challenging as quest for the Holy Grail and as elusive. Aristotle’s mastermind was superior to most peoples’ and his pioneer analysis still serves as a crucible into which modern craftsmen continue to pour problems of the 20th Century in the hope that an acceptable brew will emerge. His discussion provides a starting point on particular justice, universal justice, distributive justice and corrective justice. Distributive justice is based on the principle that there has to be equal distribution of resources and all goods among equals. While corrective justice seeks to restore equality when this has been disturbed e.g. by wrongdoing which assumed that the situation that has been upset was distributively just. He spoke of the distribution of honours or money or the other things that fail to be divided among those who have a share in the constitution. He highlighted the criterion of equal distribution among equals and unequal cases to be treated differently.

Dias in his book⁹ criticizes the concept of equality in Aristotle’s justice, thus another difficulty is that equal treatment in law of things unequal in fact such as power, talent etc. may widen or create inequalities. Thus for the law to insist on sanctity of contract on the ground that contracting parties stand on an equal footing when in fact there is inequality in their respective bargaining positions has led to various forms of injustice e.g. between employer and employee or public authority and individuals. To take account of inequalities in fact there has to be unequal treatment in law which means that the question when the law should depart from equality has to be determined on some principle other than equality”.¹⁰ To him justice is not synonymous with equality; equality is one aspect of it, no more. Justice is not

⁶Ulpian’s thought about justice is cited by Paul Vinogradoff, *Common Sense in Law* 19-20 (H.G. Hanbury ed 2nd Ed 1946).

⁷Dennis Lloyd, (n.1) 117

⁸*Nicomachean Ethics* V. (trans Rackham) see also Will Durant *The Story of Philosophy* (Washington Square Press, New York 1961).49

⁹RWM Dias, *Jurisprudence* (Butterworth’s London, 1985) 65

¹⁰*De Funis V. Odegaard*, 40 L Ed (2d) 164 (1974) and *Regents of the University of California V. Bakke*, 438 US 265 (1978)

something which can be captured in a formula once and for all; it is a process, a complex and shifting balance between many factors including equality. Therefore, the task of justice is the allocation of advantages and disadvantages, preventing the abuse of liberty, the just decision of disputes and adapting to change.

Professor Honore¹¹ suggest that it is refreshing to look at justice not so much from the Aristotelian point of view of the just man, but from that of the citizen to whom just treatment is due. It is true that persons with grievances are those who would normally raise the issue of injustice; therefore, justice also tries to prevent sense of injustice. It is not enough to work out a just scheme of distribution from whatever point of view, but there is the further problem of getting it accepted and keeping it acceptable; which requires constant-distribution according to changing circumstances. Both initial acceptance and continued acceptance will then depend on the peoples' feeling that the scheme is at least not unjust. So a just law is one which enables individuals to achieve the fullness of their nature in society. He further advocates for a welfare state in the quest for justice so that there would be a serious and conscious effort at providing the basic needs for the society. To promote and maintain a successful scheme of justice requires the promotion of a sense of obligation requiring among other things, a curb on the appetite for right especially when this leads to abuse of liberties.

Professor Alf Ross¹² idea of justice is worth reproducing here too for us to see how he equated it with virtue ...

“to invoke justice is the same thing as banging on the table; an emotional expression which one's demand into an absolute postulate. That is no proper way to mutual understanding. It is impossible to have a rational discussion with a man who mobilizes justice because he says nothing that can be argued for or against. His words are persuasions not argument. The ideology of justice leads to implacability and conflict, since on the one hand it incites to the believe that one's demand is not merely the expression of a certain interest in conflict with opposing interests, but that it possesses a higher, absolute validity; and on the other it precludes all rational argument and discussion of a settlement. The ideology of justice is a militant attitude of a biological emotional kind to which one incites oneself for the implacable and blind defence of certain interests”.

He agreed with Aristotle that legal justice is the impartial application of general legal rules and strict compliance with the virtues of the rule of law. That equity though a higher thing than other forms of justice is itself just and is not generically different from justice. Thus so far as both are good, they coincide, though equity is to be preferred. What puzzles people is the fact that equity though just, is not the justice of the law courts but a method of restoring the balance of justice when it has been tilted by the law. So while it is true that equity is just and in some circumstances better justice, it is better than absolute justice. All we can say is that it is better than the error which is generated by the unqualified language in which absolute justice must be stated¹³.

John Rawls¹⁴ a Professor of law fashions a concept of justice which gives priority to the otherwise least advantaged members of society. In so far as there is an underlying economic unfairness implicit in our legal system, his concept should be absorbed into the concept of justice. He prescribes a model which attempts to combine the notion of social justice¹⁵ with that of individual freedom. This rests on the hypothesis of a social contract entered into by men from whom are concealed by a veil of ignorance certain facts of life which motivate men away from equality. He arrives at two basic principles which are

¹¹T. Honore “Social Justice” in *Essays in Legal Philosophy* (ed Summers) 62.

¹²Professor Ross, *On Law and Justice* (Berkeley, 1959) 274

¹³Equity as a branch of the law developed from the hardship perpetrated by the rigid rules of common law. John Farrar & Anthony Dugdale in *Introduction to Legal Method* (Sweet & Maxwell, London, 1990)34-38 explains the origin of equity.

¹⁴John Rawls: *A Theory of Justice* Oxford University Press, Oxford, England,1971)

¹⁵Tom Tyler et all: *Social Justice in a Society* (Westview Press, Colorado, 1997).

(in order of priority), first, each person is to have an equal right to the most extensive system of basic liberties compatible with a similar system of liberty for all and, secondly, social and economic inequalities are to be arranged so that they are attached to positions open to all, under conditions of equality of opportunity and are to the greatest benefit of the least privileged.

Rawls theory of justice is fairness, accepting those principles that would result from an original position. In this original position, the parties set out, subject to conditions considered reasonable and fair to agree to the principles by which the society should be organized. To him justice is the first virtue of social institutions in the same way as truth is the first virtue of thought. And like truth, justice is uncompromising. Justice is prior to happiness. It is only when we know that happiness is just that we regard happiness as having any positive value. He believes that justice represents the framework within which different individuals have a fair opportunity to pursue their own goals and values. He summarized his original position this way: each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system for all. Social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged consistent with the just savings principles and attached to offices open to all in conditions of fair equality of opportunity.

According to Edgar Bodenheimer¹⁶ justice is identified with a certain attitude of the human mind, a willingness to be fair and a readiness to give recognition to the claims and concerns of others. The just employer is willing to consider the reasonable demands of his employees; the just judge is determined to eschew partiality and bias towards one party in a lawsuit. The just law giver is disposed to pay attention to the interests of the people, persons and groups whom he is under a duty to represent. The willingness to give everyone his due is an important and generally valid ingredient of the concept of justice. In its absence justice cannot flourish in society. Justice is a social virtue which is concerned with relationship between persons. Justice alone is the good of others because it does what is for the advantage of another¹⁷. In order to function effectively, justice calls upon men to liberate themselves from their exclusively self-regarding impulses. The goodwill to do justice must be implemented by practical measures and institutional means designed to achieve the goals of a just society. When St Thomas Aquinas described justice as “*a habit whereby a man renders to each his due by a constant and perpetual will*”¹⁸ he improved on the Justinian definition by making it clear that justice presupposes a pattern of behaviour as well as certain mental predisposition.

Hans Kelsen¹⁹ views justice as the maintenance of a positive order by conscientious application of it. Justice is the correct application of a law as opposed to arbitrariness. It is just for a general rule to be firmly applied in all cases where according to its content, it should be applied. The idea of justice resolves itself into the demand that a decision should be the result of the application of a general rule; therefore, the enforcement of an abhorrent law is just as long as this law is applied consistently without respect of person. It is possible to say that justice is a measuring rod for the goodness of laws, it is not the only criterion used in determining whether a particular enactment is desirable or undesirable. The fashioning of a legal system presents many technical problems which must be solved chiefly on grounds of expediency, utility and practicality. The postulates of justice comprise, among other things vigilance against unreasonable discriminations, prohibition of injury, recognition of basic human rights, providing opportunities for occupational self-fulfillment, imposition of duties to safeguard the general security and the effective discharge of necessary governmental functions, a fair system of rewards and penalties.

David Hume²⁰ presents a theory of justice which owed far more to a sense of community and fellowship than it did any notion of intrinsic goodness. He suggested that any morality including an idea of justice is derived from taste and sentiment. Every man has within “some spark of friendship for human kind” and as a matter of both sentiment and political expediency the relative happiness and misery of others cannot

¹⁶Edgar Bodenheimer, *Jurisprudence* (Universal Law Publishing Co. Delhi 2009)

¹⁷*Nicomachean Ethics* (n.8)17

¹⁸*Summa Theologica*, Pt II 2d pt, qu 58, art 1

¹⁹Hans Kelsen's view is reproduced in Edgar's book *Jurisprudence* cited above at p. 213.

²⁰Hume, David: *Enquiring Concerning The Principles of Moral* (La Salle Open Court, (1996) 2

be a spectacle of indifference to the political community. Community though itself an “artifice” is unavoidable, even desirable and the interest of the individual lies in the interest of their ‘fellows’. Justice is also an artifice legitimated solely in terms of being useful to society and laws should be calculated in terms of their public utility. The virtue of justice lies in its necessity for the support of the society. It is its sole foundation and there is no deeper morality of law than justice. Moreover, its validity is dependent purely upon effecting popular acceptance which can only be achieved if civil laws are seen to tend towards the good of mankind.

To H.L.A Hart,²¹ the idea of justice is that individuals are entitled in respect of each other to a certain relative position of equality or inequality. This is something to be respected in the vicissitudes of social life when burdens or benefits fall to be distributed; it is also something to be restored when it is disturbed hence justice is traditionally thought of as maintaining or restoring a balance or proportion and its leading precept is often formulated as treat like cases alike and treat different cases differently. Hart reflects on the rules of natural justice²² – *nemo iudex in causa sua and audi alteram partem*, let no one be a judge in his own case and hear or listen to both sides of the cause or matter as key requirements of justice. This is so because they are guarantees of impartiality or objectivity, designed to secure that the law is applied to all those and only those who are alike in the relevant respect marked out by the law itself. Hart asserts:

“the connexion between this aspect of justice and the very notion of proceeding by rule is obviously very close. Indeed, it might be said that to apply a law justly to different cases is simply to take seriously the assertion that what is to be applied in different cases is the same general rule without prejudice, interest or caprice. This close connexion between justice in the administration of the law and the very notion of a rule has tempted some famous thinkers to identify justice with conformity to law”.

Therefore, the connexion between justice and natural justice is very important especially to the litigant whose case is before a judge. The arbiter should be seen as neutral and impartial.

Professor Elegido²³ writing on justice opines that justice is the constant and unceasing will to render to each one his due. This definition depicts justice as a specific area within morality in line with the views of Jacqueline Martin²⁴ who drew an intersection between law, justice and morality. Justice is probably the ultimate goal towards which the law should strike, but it is unlikely that law will ever produce justice in every case. Norms of justice are those moral norms that tell us how we should behave towards others in order to avoid wronging them. A given law is in itself either just or unjust according to whether or not it complies with those objective principles of justice. He further argued that it is not the duty to endeavor to incorporate all aspects (whether they seem good or bad) of the so-called spirit of the people into law, that the mere fact that some laws can be traced back in a formally valid manner to an originally valid constitution does not automatically create duty of justice to obey these laws; that there is a duty of justice to use one’s own goods for the benefit of those in need once one’s own reasonable needs and those of one’s dependents have been satisfied and that it is an injustice to punish somebody for the commission of a crime when there was no culpable choice to break the law on his part²⁵. Law is to him the instrument for the achievement of justice and so good and just laws are to be enacted for true justice to be achieved.

Robert Nozick is another theorist on justice. He wrote a book *Anarchy, State and Utopia*²⁶ in which he developed a conception of justice which he calls “entitlement theory” according to which economic goods arise already encumbered with rightful claim to their ownership. Nozick extols the virtues of individualism and capitalism. The state is necessary or is the best instrument to achieve distribution of justice. In the entitlement theory a person’s holdings are justified as just if acquired through just original

²¹H L A Hart: *The Concept of Law* (ELBS Oxford, 1986)156

²²Natural justice is captured by Section 33 1999 Constitution of Nigeria

²³J.M Elegido: *Jurisprudence, A Textbook for Nigerian Students* (Spectrum Books Ltd, Ibadan 2002)360.

²⁴Jacqueline Martin, *The English Legal System* (Hodder Arnold, Oxon 2007)11

²⁵Elegido (n.23) p, 362

²⁶Robert Nozick, *Anarchy State and Utopia* (1974)

acquisition or just transfer or through the rectification or ratification of injustices in the first two series. He claims that if each person's holdings are just, then the total set (distribution) of holdings is just. He attacks the state action to promote equality and argued that the state should confine itself to enforcing contracts, prohibiting thefts and taking such measure to secure holdings to those entitled to them.

Theories or Forms of Justice

There are many theories or forms of justice as propounded by various jurists. Some of them are summarized below:

- i. **Formal or Legal Justice:** It is the impartial application of the law to the facts of a case. This is also called positive justice; it is the justice as concerned, recognized as obtained by the courts of law. Judgments handed down by a magistrate, judge in court after a thorough appraisal of the facts and addresses of counsels in civil law, criminal or some other form of human law.
- ii. **Distributive Justice**²⁷. This is justice owed by a community to its members, including the fair allocation of common advantages and sharing of common burdens. Distributive justice is based on the principle that there has to be equal distribution among equals. It is primarily concerned with the allocation of rights, powers, duties and burdens to the members of a society or group.
- iii. **Retributive Justice:** This is derived from criminal law where offenders are punished in line with the main object of criminal law that is sanctions and punishment. It is also termed punitive justice. However punitive, in common parlance can mean "excessive", retributive justice is therefore a more satisfactory term. Retribution means that an offender is rewarded or paid for the offence or crime he has committed by imprisonment. This is in line with the law and order question.
- iv. **Corrective Justice:** Corrective justice seeks to restore equality when this has been disturbed e.g. by wrong doing which assumes the situation that has been upset was distributively just. It is from the Aristotelian notion that the exclusive function of law is to require those who have caused harm to remedy the consequences of their fault. It will then become necessary to make amends for a wrong or deprive a party of an unjustified gain. Corrective justice is always administered by a court or other organs invested with judicial or quasi-judicial powers. Its chief fields of application are contracts, torts and crimes.
- v. **Social Justice:** This means the elimination of institutionalized domination and oppression. Social justice requires explicitly acknowledging and attending to those group differences in order to undermine oppression. Social justice addresses injustices. It is justice that conforms to a moral one or more equitable resolutions sought on behalf of individuals and communities who are disenfranchised, under represented or otherwise excluded from meaningful participation in legal, economic, cultural and social structures with the ultimate goal of removing barriers to participation and affecting social change.²⁸
- vi. **Substantial Justice:** This is commonly used by legal practitioner it is justice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights. It means a fair trial on the merits.
- vii. **Popular Justice:** This is aptly captured by Professor C.K Allen²⁹ in his book. This is demotic justice which is usually considered less than fully fair and proper even though it satisfies prevailing public opinion in a particular case. He wrote "nothing is more treacherous than popular justice in many of its manifestations, subject as it is to passion, to fallacy and to the inability to grasp general notions or to distinguish the essential from the inessential" All parties to a case should be heard and that no party should also be a judge in the same case. Natural justice is one of the hallmarks of formal or legal justice as it must be observed in litigation.

²⁷See Dias *op cit* p. 65. See also Adaramola Funso: *Jurisprudence* (LexisNexis Butterworths. Durban 2008) 197, see also Bodenheimer, 209

²⁸Iris Marion Young: *Justice and the Politics of Difference* (1990)15

²⁹C.K. Allen, *Law in the Making* (1964) 7thEd 387

- viii. **Commutative Justice:** This category of justice is concerned with the relations between persons and especially with fairness in exchange of goods and the fulfillments of contractual obligation, it attempts to equate what one derives with what one gives out.
- ix. **Functional Justice**³⁰. By functional justice is meant the application of the rules and principles of legal justice to social everyday problems that are brought before the courts and quasi-judicial and administrative bodies. It connotes justice in the perpetual, precarious and inevitable balancing of jural relationships between individual's citizen's interest, on one hand and citizens and communal institutions such as government and it agencies on the other.

Institutions of Justice

The institutions of justice are the courts in a legal system. In England from where we borrow our legal tradition there is a developed hierarchy of courts which was replicated in Nigeria apart from changing the names and the non-observance of the leap frog procedure³¹ Nigeria's hierarchy of courts is akin to the English Legal System. The Supreme Court, the 16 Divisions of the Court of Appeal, the various Federal High Courts and State High Courts, National Industrial Courts, Sharia Courts of Appeal, Customary Courts of Appeal, Election Tribunals under Section 285 of the 1999 Constitution and other Tribunals and courts both in and outside the constitution even down to the Area Courts, Customary and Magistrates court are institutions of justice. Special Tribunals and recognized Administrative Panels of Inquiries are also institutions of justice and they must apply the principles of natural justice in their adjudication over cases before them. The travail of justice starts after a judge has delivered a judgment. Is the judgment obeyed by the parties or what happens next will be answered by the successive paragraphs on application of justice in a developing world such as Nigeria?

Application Of The Concept Of Justice In Nigeria

Nigeria is a developing country in the Third World and is the leading black nation in Africa. Though the country is rich in oil yet the citizens cannot truly feel the effect of the rich resources which the country is endowed with. Oil has turned United Arab Emirates, Qatar, Brunei etc into countries that compete with the developed world of USA, Britain, France, Germany, China, Japan yet "our development" to use that modestly has not reflected that oil is the main stay of our economy. The question before us here is; has Justice been dispensed in this country according to law?³²The main problem is: Do we truly have justice according to law? Justice in this sense demands that the law should be applied impartially and consistently³³. In some cases the method or mode of application of the law itself may be prescribed by statute but in the majority of cases recourse is often had to judicial decisions. To a greater extent one can categorically say that in formal justice in this country in the courts the rules of natural justice are obeyed. Advocates in court today are no longer cowed as they speak boldly and protect their clients in court on the application of rules of natural justice. Our courts should strive to achieve proper balance between competing social and individual interest. The justice of our laws is measured by the extent it fulfills the common purposes of our society. We shall take some critical sections of our society to feel if justice has been truly dispersed or whether to use the parlance whether there has been justice according to law. Some cases would be looked into – *Chief Gani Fawehinmi V. The State*³⁴ this is one case that the judiciary lived up to expectation and decided a case in accordance with the law. Here Chief Fawehinmi was faced with

³⁰Adaramola,(n.27) 207

³¹Leap Frog Procedure operates in England where a case could be leapfrogged from the High Court straight to the House of Lords in Nigeria every case must move from High Court to the Court of Appeal before getting to the Supreme Court, except where the Supreme Court exercises its original jurisdiction under S. 232(1) 1999 Constitution as amended.

³²Section 6 of the 1999 Constitution as amended vests judicial powers i.e. power to dispense justice in the courts created by the constitution and other laws.

³³I.O. Agbede, *Perspectives in Law and Justice* in (*Judicial Excellence : Essays in Honour of Hon Justice Anthony Iguh* JSC CON, Snaap Press Ltd, Enugu 2004)178.

³⁴1990 5 NWLR (Pt 148)42. (2001) 11 NWLR (Pt 725) 689

contempt *ex facie curae* in that the Acting C.J of Lagos preferred a charge against him under Section 133(4) & 9 of the Criminal Code Law and was sentenced and convicted to 12 months imprisonment. The appellant Gani Fawehinmi appealed to the Court of Appeal and the Court of Appeal Panel led by Justice Akpabio were able to suppress the natural inclination of outrage and hostility against an appellant who was up against one of its own.

Another strategic case where justice was dispensed in accordance with the law is the onshore/offshore oil dichotomy case between the *A.G. Federation V.A.G. Abia State & 35Ors*³⁵ over revenue allocation and the ownership of oil flow stations on land and those in the continental shelf. The case also finally decided on the meaning of states and littoral states in international law. The Supreme court justices were stern and firm and truly interpreted the constitution and applied justice according to law and declared all oil fields offshore as those owned & controlled by the federal government.

The Rule of law and its observance is an attribute of whether justice is truly applied or not in a society. The vestiges of rule of law remain impartiality, equality of all men before the law, supremacy of the law and independence of the judiciary. In Nigeria though we have not truly operated completely the tenets of the Rule of law but the courts whenever the opportunity arises, usually live up to their bidding. The courts of the superior courts especially have always risen to the occasion to declare unconstitutional acts of government if need be³⁶. The state agencies are not immuned nor are they protected by judgments of courts which are given against them. For instance, when the Federal Government withheld the revenue accruing from the Federation Account to Lagos State for what the government called illegal creation of Local Governments Areas. The Supreme Court held³⁷ that Lagos State has a right and is entitled to the accumulated arrears of revenue from the federation account due to it and ordered the Federal Government to pay same. In the field of Human Rights, this paper may not be able to fully appraise justice according to law with respect to human rights because Human Rights itself is a very wide terrain in law. Can we say that the rights of Nigerians are respected by our Courts, the Police, the Security forces from the Fundamental Rights in Chapter 4 of the 1999 Constitution to other social economic rights as well as the Developmental Rights? I will hasten to say that where Human rights are respected; we do not hear them, we only hear of cases of abuses of Human Right and the cases that get to the Superior Courts which are reported in our law reports. Other cases of Human Rights transgressions at the High Courts of various States of this country are not known and by that not reported. They remain consigned to history.

Distributive justice as highlighted above has not been truly dispensed in Nigeria. The resources available in the country have not been fairly allocated and distributed. This may be due to the fact that those in charge of the distribution and allocation are not from where the resources come from. So the kleptomaniac approach is used, that is the sharer keeps more to himself (arrant conversion to avoid the word stealing) before he would even attempt to share, he has kept a substantial chunk from the "booty". This lopsided distribution is not only limited to oil revenue but also applies to other facets of the society such as appointments to positions (political) in the country even up to appointment to the Bench. The Federal Character enshrined in the constitution by virtue of the Federal Character Commission in Section 7 of the third schedule to the constitutions leaves much to be desired the minority tribes of the south-south cry out every day for justice, do they get it, when will there be justice for them. Most times mediocrity and sycophancy is preferred to quality and integrity as every appointment is also seen as a way to share the national cake to loved ones and old acquaintances.

Appointments of judges/justices are still political. Merit has never been the main yardstick. Without saying more, the politically appointed judges as far as their masters are in power for the 4 or 8 years, they tend to deliver rulings and judgments in favour of their political masters. As late Chief Gani Fawehinmi

³⁵ (2001) FWLR (Pt 64) 202. See Also *A. G. Bayelsa State V. A. G. Rivers State* (2006) 18 NWLR (Pt1012) 596, *A. G. Lagos State V. AG Fed* (2014) 9 NWLR (Pt 1412) 217

³⁶ *Shugaba Abdulrahman Darman V. Minister of Internal Affairs & Ors* (1981) 2 NCLR 459.

³⁷ *A.G. Lagos State V. A.G. Fed* (2004) 18 NWLR (Pt 904)1 In this case the Obasanjo led government refused to pay the money until President Yar'adua came in 1999 and paid the backlog of revenue to Lagos State in this spirit of rule of law.

stated in an affidavit in the case cited above³⁸. “That I have observed seriously that since Ayorinde J became the Acting Chief Judge more of the cases filed by my chambers against either the Federal Government or Lagos State Government have been assigned to himself ... and all his Lordship’s decisions had been in favour of the government”.

In Nigeria: *Limits to Justice*³⁹ I quote “persons selected for judicial office according to principle 10 of the United Nations Basic Principles on the independence of the judiciary, shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments from improper motives. Critics of the appointment procedure in Nigeria insist that the abuse of the power to appoint judicial officers has become rife, with the effect of that such appointees have performed below the expectation of the public ... some are appointed on political grounds against the constitution” The Legal Aid Council⁴⁰ has also assisted in the applicability of justice in Nigeria. Access to justice is very important. Justice should not be only for the rich, the poor also should be freely represented by a lawyer even though it is not a lawyer of his choice. The Constitutional Rights Project⁴¹, asserts “events have shown that the judiciary has become the protector of the rich and an instrument to be used by those who have to trample upon the have-nots”

According to Aguda⁴² for law to have any meaning it must have as its goal the attainment of justice. Law is not an end in itself, but justice is and this is the reason why in the context of Nigeria we must strive to direct our laws towards that “goal” therefore every case before a court should be decided in accordance with the law so as to attain justice. Aguda went on to reassert that it is good for a good judge to attempt whenever possible to make justice prevail over law, not the law over justice. He reiterates that the reason for the very existence of law is justice; law is under justice not above it⁴³

Justice would be attained where equals are treated equally and unequal’s treated unequally, that is in line with the dictates of social justice. In criminal law the courts have tried using the penal remedial technique⁴⁴ of pursuing offenders. Our criminal justice system has been above board although there are still rooms for improvement. In the sphere of Human Rights, the level of justice applicable is neither here nor there. Human rights are broad and its horizons expand every day. The courts through a litany of cases have tried to dispense justice⁴⁵ equally to parties before it as the court continue to adopt the doctrine of judicial precedent which is a constant feature of our common law.

In other areas of law such as land law, Justice is still being applied in accordance with not only the doctrine of *quicquid plantatur solo cedit*, but other known principles of land law with respect to the issue raised by parties. In other areas such as company law, contracts and mercantile law, tort and environment, labour and labour relations, maritime law the judges have lived above board especially at the appellate echelon of the justice sector where better rulings and judgments are churned out weekly. One will opine that in the election cases that come before the Election tribunals under Section 285 of the 1999 Constitution as amended and latter appeals that follow from the Court of Appeal (16 Divisions now) up till the apex Supreme Court, the justice handed down are sometimes edifying sometimes radical as it

³⁸Chief Gani Fawehinmi V. The State, *supra*

³⁹A Publication of the Constitutional Rights Project, 1993 p. 19. The little book identified appointments, security of tenure, working conditions, corruption on the bench, remuneration, congestions in courts, and absence of infrastructures as limits to justice in Nigeria. See Niki Tobi, *The Christian Lawyer* (Christians Lawyer Fellowship of Nigeria, Lagos 2000) 230

⁴⁰The Legal Aid Council was established by the Military in 1976 to give free legal representation to the poor and Penurious in the society.

⁴¹Nigeria: *Limits to Justice* cit .38

⁴²T. Akinola Aguda, *The Crises of Justice* (Eresu Hills Publishers, Akure 1986) 49

⁴³T. Akinola Aguda(n.42)50.

⁴⁴J.H Farrah & Anthony Dugdale, *Introduction to Legal Method* (n.13)15-20.

⁴⁵Cases such as *Muojekwe V. Ejikeme* (2000) 7 NWLR (Pt 657) 400, *Ransome Kuti V. A.G Fed* (1985) 2 NWLR (Pt 6) 211 etc and several other cases on Human Rights which we cannot reproduce here. *Tukur V. Government of Gongola State* (1986) 5 NWLR (Pt 39) 1, *Bello V. A.G. Oyo State* (1986) 5 NWLR (Pt 45) 828; *Mogaji & Ors V. Board of Customs & Exercise* (1982) 3 NCLR 552.etc.

tends to change the political climate⁴⁶, but the amendment to the Electoral Act and the Court of Appeal Act making the Court of Appeal the final court for gubernatorial and National Assembly elections has truly assisted justice in the political sector through some politicians still attempt the Supreme Court who has continuously struck out and dismissed their frivolous appeals.

RECOMMENDATIONS

The following could be recommended for justice to prevail according to law in this country.

1. The courts should continue to strive to ensure that justice prevail over law. Law is not an end in itself; it is justice that is the end because the very essence of law is the attainment of justice.
2. Justice as the first virtue of social institutions must have a foundation made up of infra-structure of law laced with justice in order to have a viable, stable and progressive society.
3. It is highly recommended that the adversatorial system of justice be strengthened to enable courts of law elicit true facts from litigants, parties or witnesses in a dispute before the court.
4. The current trend where Judges or justices are now more alive to their responsibilities as most of them are now above board by avoiding corruption should be sustained. Judicial activism is highly recommended and the enthronement of rule of law.
5. Delay in administration of justice should be minimized by provision of amenities for the courts to work especially light in the court rooms and light in judge's Chambers/Houses to prevent unnecessary adjournment of cases.
6. Social justice should be vigorously pursued by the state and its apparatus geared towards satisfying the yearnings and aspirations of the people in the society. Every effort should be geared up to ensure that Chapter 2 of the 1999 Constitution should be justiciable so that agitations from MOSOP, IPOB etc would be minimal.
7. In the criminal justice sector current effort must be sustained to curb corruption in the judiciary and the society at large, there should be greater respect for the rights of the marginalized.
8. Politically, the operators of the apparatus of the state should imbibe truth in their promises to the government, the entitlements of the people should be given to them for instance the labour force, civil servants or so as to avoid a failed state.
9. The courts should promote more of corrective justice using the *Heydons case* principle.

CONCLUSION

In this paper we have labored to identify the meaning of justice in all its ramifications especially from the point of view of writers. We have also looked at other aspects of justice as it relates to human rights, other aspects of the society, the societal perspective of justice and its applicability in Nigeria as a Third World country. We have also made some recommendations which will assist in attainment of justice as a first virtue which all governments should strive to attain at all cost.

⁴⁶Amaechi V. INEC (2008) 5 NWLR (1080) 227 and several Election Petition cases. The precedents on them are varying and the society are still circumspect on them like the Awolowo V. Shagari (1981) 2 NCLR 399, Yahaya V. Dankwanbo (2026) 7 NWLR(Pt 1511) 284, Udom V. Umana (No 1) (2016) NWLR (Pt 1526) 179, Wada V. Bello, (2016) 17 NWLR (Pt 1542) 374, Shinkafi V. Yari (2016) 7 NWLR (Pt 1511) 340, Nyesom V. Peterside (2016) 7 NWLR (Pt 1512) 452, Ogburo V. Okowa (2016) NWLR (Pt 1522) 84, INEC V. Peterside (2016) 7 NWLR (Pt 1512) 555; Emerhor V. Okowa(2016) 11 NWLR (Pt 1522) I.,Faleke V. INEC (2016) 18 NWLR (Pt 1543) 61 and Lokpobiri V. Ogola (2016) 3 NWLR (Pt 1499) 328 are some notable political cases.