

The Decline of Judicial Activism in Nigeria: A Comparative Reflection on the Past and Present Judiciary

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1.0 Introduction

Judicial activism has long been a cornerstone of democratic societies, serving as a mechanism to uphold justice, safeguard individual rights, and maintain the delicate balance of power among the branches of government. In Nigeria, the judiciary once stood as a bastion of independence and integrity, fearlessly challenging political overreach even during the turbulent era of military regimes. The judgments of the pre-1990s era are a testament to the courage and commitment of justices who prioritized the rule of law over personal or political interests.

However, in recent decades, there has been growing concern about the erosion of this activist spirit. Allegations of judicial compromises and perceived alignment with the executive have cast a shadow over the judiciary's independence. High-profile cases have sparked debates about whether the judiciary still functions as a check on power or has become a tool for political convenience.

This article seeks to explore the death of judicial activism in Nigeria by comparing the judiciary's past and present. Through an analysis of landmark cases and systemic challenges, we aim to understand the implications of this shift and the urgent need to restore the judiciary's critical role in upholding justice and democracy.

2.0 Judicial Activism in Nigeria's Past (Pre-1990s)

The pre-1990s era of Nigeria's judiciary was marked by remarkable displays of judicial activism, where judges fearlessly interpreted the law to uphold justice and maintain the sanctity of the constitution. This period, often described as the golden age of Nigeria's judiciary, showcased the resilience and independence of the bench, even in the face of immense political pressure from military regimes.

Judicial activism refers to the willingness of judges to depart from strict adherence to precedent or textual interpretation of laws to achieve what they perceive as just outcomes. It often involves bold decisions that uphold individual rights, check governmental overreach, and affirm the supremacy of the constitution.

2.1 Landmark Cases

➤ Lakanmi v. AG Western Region & Ors. (1971)

In this landmark case, the Nigerian Supreme Court, led by Chief Justice Taslim Elias, ruled against the confiscation of property by military tribunals. The court held that such actions violated the constitution and affirmed the supremacy of constitutional law over military decrees.¹

➤ State v. Ilori (1983)

Justice Kayode Eso emphasized the importance of judicial independence, ruling that the judiciary must remain unyielding in protecting citizens' rights, even when confronted by political interference.²

➤ Olafisoye v. Federal Republic of Nigeria

A bold decision by the judiciary invalidated actions that contradicted constitutional guarantees, demonstrating the courts' commitment to upholding the rule of law despite the overarching powers of the military.³

➤ Onuoha v. Okafor (1983)

In this case, the Supreme Court of Nigeria, led by Justice Kayode Eso, declined jurisdiction over political party nominations, emphasizing the principle of non-interference in political questions. This decision reinforced the judiciary's role in upholding democratic processes without overstepping its bounds.⁴

➤ Attorney-General of Bendel State v. Attorney-General of the Federation (1981)

¹ (1971) 1 UILR 201

² (1983) 2 SCNLR 155

³ (2004) 4 NWLR (Pt. 864) 580

⁴ (1983) 2 SCNLR 244.

This case involved a dispute over the allocation of revenue between the federal and state governments. The Supreme Court's decision, delivered by Justice Chukwudifu Oputa, affirmed the principles of federalism and the autonomy of state governments within the Nigerian federation.⁵

2.2 Notable Justices

➤ **Justice Kayode Eso**

Often referred to as the "Father of Judicial Activism in Nigeria," Justice Eso was a staunch advocate for an independent judiciary. He is well-known for his fearless judgments and unwavering commitment to justice.

➤ **Justice Chukwudifu Oputa**

Renowned for his profound legal reasoning and dedication to human rights, Justice Oputa played a pivotal role in promoting judicial activism in Nigeria. His judgments often emphasized the protection of individual liberties and the importance of judicial independence.

➤ **Justice Mohammed Bello**

As a key figure in Nigeria's judiciary, Justice Bello was instrumental in asserting the supremacy of the constitution over autocratic decrees. His decisions often reflected a commitment to upholding the rule of law, even in challenging political climates.

➤ **Justice Andrews Otutu Obaseki**

Justice Obaseki was known for his principled stance on judicial matters, contributing significantly to the development of Nigeria's legal system. His judgments often reinforced the importance of an independent judiciary in a democratic society.

➤ **Justice Augustine Nnamani**

Justice Nnamani's tenure was marked by a series of decisions that underscored the judiciary's role in checking governmental excesses. His legal opinions frequently highlighted the necessity of maintaining a balance of power among the branches of government.

2.3 Context of the Era

⁵ (1981) 10 SC 1

The judiciary's courage during this time is particularly noteworthy given the challenges posed by military regimes that often sought to suppress dissent and consolidate power. Judges faced immense risks, including threats to their careers and personal safety, yet many remained steadfast in their commitment to justice.

3.0 The Decline of Judicial Activism

The post-1990s era has witnessed a troubling shift in Nigeria's judiciary, marked by a decline in judicial activism and an increase in allegations of executive interference. Once celebrated as an independent arm of government, the judiciary is now often criticized for rulings that allegedly align with the interests of the executive and powerful political actors. This section examines the systemic factors contributing to this decline, with examples of controversial cases and judicial decisions.

3.1 Factors Contributing to the Decline

➤ Executive Influence on Judicial Appointments

Judicial appointments have increasingly been viewed as a tool for consolidating executive control. Allegations of favoritism and politically motivated appointments undermine judicial independence.

For instance, the removal and replacement of Chief Justice Walter Onnoghen in 2019 sparked widespread criticism about the executive's interference in the judiciary.

➤ Corruption Allegations

Corruption within the judiciary has eroded public confidence. Cases of judges being allegedly bribed to deliver favorable rulings highlight systemic issues that compromise the integrity of the bench.

Notably, the arrest and prosecution of judges in 2016 by the Department of State Services (DSS) raised questions about the judiciary's susceptibility to external pressure.

➤ Financial Dependence of the Judiciary on the Executive

In Nigeria, the judiciary's financial autonomy is limited, as its budget is managed and disbursed by the executive branch despite the constitutionally guaranteed financial autonomy under the Consolidated Revenue Fund as provided in Section 81(3) of the 1999 Constitution of the Federal Republic of Nigeria. This dependence gives the executive significant leverage over the judiciary.

For example, state governors often fund judicial infrastructure, pay judges' allowances, and provide material incentives such as houses, cars, or other gifts. While these gestures are officially framed as improving judicial welfare, they create the appearance—and sometimes the reality—of undue influence. When judges benefit materially from the executive, their impartiality can be called into question, as there may be an implicit expectation to rule favorably in cases involving the government.

➤ **Lack of Judicial Courage**

Unlike their predecessors, many judges today are perceived to lack the courage to make bold, activist rulings that challenge executive actions. This reluctance is attributed to fear of political or professional repercussions.

3.2 Controversial Recent Cases

➤ **Hope Uzodinma v. Emeka Ihedioha (2020)**⁶

In this case, the Supreme Court overturned the election of Governor Emeka Ihedioha of Imo State in favor of Hope Uzodinma. The ruling sparked widespread criticism, with many alleging that the judiciary acted under political pressure.

➤ **Nnamdi Kanu's Bail Applications (2017–2022)**

Despite multiple court rulings ordering the release of the IPOB leader Nnamdi Kanu, the executive allegedly ignored these orders, and the judiciary appeared powerless to enforce its decisions.

This situation underscores the judiciary's diminished ability to check executive overreach.

➤ **Dasuki v. Federal Republic of Nigeria (2015–2020)**⁷

Former National Security Adviser Sambo Dasuki's continued detention despite court orders for his release highlighted the judiciary's struggle to assert its authority against the executive arm.

⁶ (2020) 2 NWLR (Pt. 1702) 528.

⁷ (2020) 2 NWLR (Pt. 1713) 338.

3.3 Implications of the Decline

- **Erosion of Public Confidence:** Citizens increasingly view the judiciary as a compromised institution, unable to protect their rights or ensure justice.
- **Weakening of the Rule of Law:** When judicial decisions are ignored or perceived as biased, the rule of law suffers, leading to greater impunity.
- **Undermining of Democracy:** The judiciary's failure to act as a check on the executive risks consolidating power in one branch, destabilizing the democratic framework.

4.0 Comparative Case Analysis: Then vs. Now

This section contrasts the golden era of judicial activism in Nigeria (pre-1990s) with contemporary times, highlighting how judicial decision-making has shifted over the years. By analyzing landmark cases and judicial attitudes, we can trace the trajectory of the judiciary's role in upholding the rule of law and maintaining its independence.

4.1 The Golden Era of Judicial Activism

During the pre-1990s era, Nigerian judges were celebrated for their bold decisions, which prioritized justice and constitutional supremacy over political or executive interests. Examples of such landmark cases include:

➤ **Lakanmi v. Attorney-General, Western Nigeria (SUPRA)**

In this case, the Supreme Court declared the Military Government's Assets (Validation) Decree No. 45 of 1968 unconstitutional, asserting that no government—military or civilian—was above the law.

Impact: This judgment emphasized the judiciary's role as the protector of constitutional rights, even in the face of military regimes.

➤ **Attorney-General of Bendel State v. Attorney-General of the Federation (SUPRA)**

This case reaffirmed federalism and the constitutional limits of federal powers over states.

Impact: It showcased the judiciary's willingness to stand against central government overreach.

➤ **Onuoha v. Okafor (SUPRA)**

This decision reinforced the principle that political party matters, such as candidate nominations, were non-justiciable, respecting the autonomy of democratic institutions.

➤ **4.2 Judicial Attitudes in Contemporary Nigeria**

In contrast, the judiciary today faces widespread criticism for decisions perceived to favor the executive and powerful interests. Allegations of corruption, executive interference, and judicial timidity have characterized this era. Key examples include:

➤ **Hope Uzodinma v. Emeka Ihedioha (SUPRA)**

The Supreme Court controversially overturned the election results in Imo State, declaring Hope Uzodinma the winner despite discrepancies in evidence.

Criticism: The ruling faced accusations of political bias and undermined public confidence in the judiciary.

➤ **Dasuki v. Federal Republic of Nigeria (SUPRA)**

Despite court orders for the release of former National Security Adviser Sambo Dasuki, the government ignored the rulings, with minimal consequences from the judiciary.

Criticism: This situation highlighted the judiciary's inability to enforce its authority against the executive.

➤ **Kanu v. Federal Republic of Nigeria (SUPRA)**

The courts repeatedly ordered the release of Nnamdi Kanu, leader of IPOB, on bail or for trial, but the government allegedly defied these orders.

Criticism: The judiciary appeared powerless to assert its independence, raising questions about its role as a check on executive power.

4.3 Key Observations

➤ **Judicial Philosophy Shift**

Earlier judges embraced a philosophy of judicial activism, interpreting the law expansively to promote justice and protect rights.

Contemporary judges tend to adopt a more conservative or cautious approach, often deferring to executive or legislative authority.

➤ **Public Confidence**

The bold judgments of the past inspired public trust and demonstrated the judiciary's independence.

In contrast, recent judgments have often led to skepticism about the judiciary's impartiality and integrity.

4.4 Commendable Exception

While there has been a noticeable decline in judicial activism, it is essential to highlight instances where judges have risen above external pressures to deliver judgments rooted in fairness and justice. These cases serve as a reminder of the judiciary's potential to uphold the rule of law and restore public confidence.

The Case of the Ogba Magistrate and Seaking

In a rare but inspiring instance of judicial courage, a magistrate in Ogba, Lagos State, dismissed a case brought against a popular TikToker known as Seaking. The young man had gained attention for his scathing criticisms of the police and politicians in his videos, using language that many found harsh but resonated with widespread frustrations among citizens.

The police, determined to make an example of Seaking, filed charges against him, accusing him of defamation and incitement. However, the magistrate, in a principled decision, dismissed the case, emphasizing the importance of freedom of expression and the right of citizens to voice their grievances.

This judgment is a beacon of hope and deserves recognition. It demonstrates that even in challenging times, there are members of the judiciary who prioritize justice and uphold the rights of the people. Such acts of courage should be celebrated and emulated, as they remind us of the judiciary's critical role in maintaining a balance of power and protecting citizens from state overreach.

4.5 A Wake-Up Call, Not Vilification

It is important to clarify that the purpose of this article is not to vilify the judiciary or paint every judge with the same brush. Rather, it is a call to action—a reminder of the judiciary's immense power to shape society, inspire confidence, and safeguard democracy.

The Ogba magistrate's decision illustrates that the judiciary can still side with the people when it chooses to. Decisions like these resonate with citizens and stand as testaments to the principle that the judiciary should be a voice for justice, even against the odds.

4.6 The Role of Posterity

Judges should always remember that posterity will be kind to those who stand for justice and the people. While immediate pressures may tempt judges to bow to external influences, history remembers and celebrates those who rise above. Landmark judgments from Nigeria's judicial past are remembered because they aligned with the people's aspirations and upheld the ideals of justice.

The people are watching, and trust can be rebuilt. Courageous decisions like the one by the Ogba magistrate show that the judiciary can reclaim its position as the custodian of hope and justice in a society that desperately needs it.

5.0 The Path Forward: Restoring Judicial Independence and Activism

The decline in judicial activism does not signify its death; rather, it highlights the urgent need for reforms to rekindle the judiciary's independence and reinforce its role as the guardian of justice and the rule of law. This section explores actionable steps to restore judicial activism in Nigeria, emphasizing the judiciary's critical role in societal progress.

➤ Ensuring Financial Autonomy

One of the foundational steps to restoring judicial independence is enforcing financial autonomy. While the Nigerian Constitution guarantees this under Section 81(3), practical implementation remains elusive.

Recommendations:

Full implementation of Executive Order 10 (2020) or similar mechanisms to ensure direct disbursement of funds to the judiciary without executive interference.

Strengthening oversight bodies, such as the National Judicial Council (NJC), to manage judicial finances transparently and independently.

➤ Transparent and Merit-Based Appointments

Judicial appointments must prioritize competence, integrity, and independence over political affiliations or executive preferences.

Recommendations:

Reform the appointment process to minimize executive involvement.

Increase the role of independent panels and civil society organizations in vetting candidates.

Publish criteria for appointments and provide opportunities for public input to enhance transparency.

➤ **Strengthening Accountability Mechanisms**

To rebuild public trust, the judiciary must address allegations of corruption and misconduct through robust accountability measures.

Recommendations:

Empower the NJC to investigate and discipline judges accused of unethical behavior swiftly and transparently.

Establish a whistleblower system within the judiciary to report cases of corruption without fear of retaliation.

Provide judges with adequate remuneration and resources to reduce vulnerability to external pressures.

➤ **Encouraging a Culture of Judicial Activism**

Judicial activism thrives when judges embrace their role as interpreters of the law who safeguard constitutional rights and challenge abuses of power.

Recommendations:

Continuing education and capacity-building programs to expose judges to global best practices in judicial activism.

Public recognition and awards for judges who deliver landmark judgments that promote justice and uphold fundamental rights.

Establishing platforms for retired judges known for their activism to mentor younger judges.

➤ **Public Engagement and Advocacy**

Citizens have a role to play in supporting an independent judiciary by holding it accountable and advocating for reforms.

Recommendations:

Civil society organizations and legal practitioners should engage in public education campaigns about judicial independence and its impact on democracy.

Media outlets should report judicial decisions responsibly, highlighting both achievements and areas for improvement.

Increased public participation in judicial matters, such as monitoring high-profile cases, to ensure transparency.

➤ **Safeguarding Judges from Intimidation**

Judges must feel secure in their roles to deliver impartial judgments without fear of personal or professional repercussions.

Recommendations:

Strengthen protections for judges, such as legal immunity for decisions made in good faith and enhanced security for judges handling sensitive cases.

Create a support system for judges facing threats or harassment due to their judgments.

➤ **Posterity and the Legacy of Justice**

The judiciary must remember its role as the cornerstone of democracy. Posterity will remember judges who stood for justice and upheld the rule of law as heroes of their time. By taking deliberate steps to restore judicial activism, Nigeria can build a judiciary that not only inspires confidence but also serves as a bulwark against authoritarianism and impunity.

6.0 Conclusion

The judiciary stands as the cornerstone of any democratic society, entrusted with the sacred duty of upholding justice, protecting the rule of law, and maintaining the balance of power. In Nigeria, the legacy of judicial activism from the pre-1990s era remains a beacon of hope and inspiration, reminding us of the judiciary's potential to serve as a fearless guardian of constitutional principles.

However, the gradual decline in judicial independence and activism in recent years has raised concerns about the judiciary's role in safeguarding democracy. While instances of courage and impartiality still exist, such as the commendable judgment by the Ogba magistrate, these examples are becoming the exception rather than the norm.

The call for reform is not a condemnation but a plea for renewal—a wake-up call to restore the judiciary's integrity, independence, and activism. Judges must remember that their legacy is not determined by short-term gains or executive approval but by their unwavering commitment to justice and the people they serve.

As Nigeria continues to navigate its democratic journey, a reinvigorated judiciary can play a pivotal role in shaping a fairer, more just society. By embracing financial autonomy, merit-based appointments, accountability, and judicial activism, the judiciary can reclaim its position as the vanguard of democracy.

Posterity will always honor those who choose the path of courage and integrity. The judiciary has the power to inspire trust, restore hope, and reinforce the rule of law in Nigeria—an opportunity it must seize for the benefit of generations to come.