# THE RULE OF LAW IN NIGERIA: A CRITIQUE OF BABANGIDA'S MILITARY ADMINISTRATION (1985-1993)

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**Abstract**

The basic premise of this paper is to show that military rule is a violation of the rule of law and the rule of law obtains not when people obey whatever law exists in a country since people may be compelled as it were under military rule, to obey undemocratic, unjust and oppressive laws. Examples in history have shown that the rule of law ought to be understood only within the context of democratic rule. Given this analysis, the rule of law exists only when human rights of all the citizens are obeyed. Against this backdrop, this paper examines the rule of law in Nigeria under the Babangida military regime from 1985-1993. As an institution, the military is irrational and intolerant; it cannot safeguard the rights of citizens. It is better known for the management of human rights violation. Human rights cannot be defined accurately in a military regime since military intervention is a violation of the constitution. The ban on private newspapers, the denial of the citizens[1] right of speech and the annulment of the 1993 Presidential election are examples of such violations.

The concept of the rule of law is not new to any legal system. It is the supremacy of the law to make and defend the law of the land. The subordination of the act means that all official acts must strictly comply with the procedures and requirements of the established law. In more specific term, Nwabueze (1992:92) averred that:

> *The rule of law entails government executing and administering the law according to the ordinary courts which are independent of the disputants and the ordinary law applied to execution of government and the adjudication of disputes are made according to some basic fundamental rules which regulate both the permissible context and the forms of such laws, as well as the procedures of making them. The aim is to limit, check the arbitrary oppression and despotic tendencies; to ensure equal treatment to all irrespective of sex, class, status, religion, place of origin or political ideology.*

The rule of law will be inadequate unless the legislature is also bound to exercise its law making discretion in accordance with some basic fundamental rules which define the permissible content, form and procedure of making them. Nwabueze (1992) further opined that the military government in Nigeria has resorted to the erosion of the rule of law by the supreme constitution. The erosion of the rule of law by various decrees and other military legislations are repressive to individual liberty.

Shyllon and Obasanjo, (1990:28) also noted two points. They argued that under the military rule, the rule of law suffers. This is because the military promulgates decrees and those decrees usually oust the jurisdiction of the court. Odozie, (1990:16) stated that since the judiciary is one of the three arms of modern government, the custodian, and the defender of the virtues of justice, a country cannot claim to be democratic if the judiciary is not independent. He stressed that the problems confronting the judiciary in Nigeria are multiple and complex. He emphasized that justice in the country has been determined by market forces. If the political leadership of Nigeria is also subjected to market forces, then the national currency, university admissions and courses are determined by market forces and justice should be equal for everybody. But in the case of Nigeria, justice is for the highest bidder.

Various military decrees were promulgated under the Babangida regime. Examples of such decrees are the State Security (Detention of Persons) Decree, Recovery of Public Property {Special

Military Tribunal) Decree, Public Officer "Protection Against Fake Accusation" Decree, etc. These decrees according to Abida, (1987:258-259) violated or compromised some fundamental rights to fair hearing, freedom of movement, right to freedom of expression, etc. Some of these decrees concerning some provisions of military decrees which infringe on human rights would constitute the basis of our analysis in the next section.

**Some Obnoxious Military Decrees Decree 2 of 1984**

*No suit or legal proceeding against any person for anything done or intended to be done, in pursuance of this decree. Chapter IV of 1979 Constitution is thereby suspended.* Banding (Freezing of Account) Decree No, 6 of 1984

> *The question whether chapter IV of the 1979 Constitution is contravened cannot be inquired into by any Court of law and no provision of the Constitution shall apply in relation to any such question, and no Court or person shall be concerned to inquire whether the circumstance justifies any other direction or required under this decree.*

The Federal Military Government (Supreme and Enforcement of Power) Decree 13 of 1984 *No Court proceeding shall be in respect of any act done or purported to be done in pursuance to any decree and edict, any such proceeding before or after the commencement of this decree shall be made void; chapter IV of the 1979 Constitution and any provision of the Constitution relating thereto are thereby suspended.*

When we look at these provisions, it is evident that certain provisions of the constitution are incompatible with military rule. There are also some that were suspended outright while others were modified to accommodate the military dispensation. Mojeed (1993:205) stated that military decrees do not only render the constitution invalid but made ultimate source of all laws in such a way tha: where there is a conflict between a decree and the constitution, decree takes precedence.

**The National** Electoral Commission **Decree No.** 33 of 1987

The decree states in section 2(2) that the Commission's Chairman must have attained fifty (50) years of age, but Professor Humphrey Nwosu at the time he was appointed had not attained the mandatory fifty years of age, but when the issue was raised by Professor Jerry Gana, the Chairman of Mass Mobilization, Social and Economic Reconstruction (MAMSER) reportedly replied "Well, it is illegal but we can amend to accommodate". Then, in the National Electoral Commission (Amendment) Decree of 1989, the government changed the required age to 45 years in order to legalize Nwosu's appointment - a violation of the rule of law.

Kingsley Izedomwen was arrested in Benin City on March 1985 and convicted of illegal possession of firearms. He was sentenced to 10 years imprisonment or a fine of N20,000 (Twent) thousand Naira). Izedomwen paid the fine on 30 May, 1987 and was subsequently released from custody. However he was rearrested on $10^{1}$ January, 1988, this time on charges of armed robber}'. The Benin Armed Robbery and Firearms Tribunal acquitted him on 23rd February, 1988. While the case was still pending, Izedomwen was transferred from Benin Prison "Awaiting Bail". The prison's authority explained to Izedomwen that the Military Governor of Bendel State had given orders to the Prisons Authority not to release him on the basis of his previous firearms conviction. The Prisons warder refused to release him even after his acquittal on the charges of armed robbery.

Izedomwen took his case to the Federal High Court in Benin City. In a judgment delivered on 19th September, 1988, Justice Ogutalayo held that the Military Governor had no such power under the Armed Robbery and Firearms Decree of 1984 as (Amended) to increase Izedomwen's fine from N2,000 to N20,000. Thus the judge ordered that Izedomwen should be released unconditionally Despite the judge's ruling, Izedomwen was transferred to the Port Harcourt prison where he served up to 1992. This is certainly one of several cases of a violation of the rule of law.

In February 1990, G.A. Lawogbade and Sons Limited got engaged in a protracted legal tussle with the Oyo State Government over a contract dispute and obtained a judgment against the State for N52.5 million. On February 18, 1990, the High Court in Ibadan ordered that the sum of N2,105,295.50 be paid by the Oyo State Government within two weeks from the date of the ruling. Upon application for extension of time for payment by the state Government, the payment period was later extended to May 14, 1990. In spite of this indulgence, the state government refused to comply with the court's order. Rather, it filed an application in the Court of Appeal in Ibadan, praying it for an order for leave to amend their Notice of Appeal. All this happened while the state government was still in contempt of the order of the High Court. In delivering the judgment, the Court of Appeal presided over by a three-judge panel frowned at the attempt by the Oyo State Government to expose the judicial process to ridicule, thereby eroding the confidence of the citizens in the judiciary. In a ten-page unanimous judgment delivered by Justice Kolapo Suiu-Gambari, the Court held that the Governor of Oyo State, Colonel Adedayo Oransanya deliberately refused to obey the Court's order. Justice Sulu-Gambari noted as follows:

It is very wrong for one including the executive to flout a positive order of the court

> and proceed to taint the same court by seeking further equitable remedies when such a person or governor is still in contempt of court. It is unfortunate if the impression is created that there is a separate law binding on the citizens and another binding on government. It's all more intolerable and dangerous if the Governor tends to create a posture indicating that it may choose not to obey certain orders of the Court. That will tantamount to executive recklessness which may lead to lawlessness.

The situation can be likened to a drunken man as Maurice Diverger humorously summarized who lost his watch in a dark alley but who insisted on finding it at the entrance of the alley because that is the only place he can find some light.

Ezejiofor (1996:87-102) observed that in a situation whereby the executive are lawless, there will be a rise in the scale of repression. If citizens'whose rights the federal government seeks to protect follow the government's bad example and refuse to obey Court orders, it will lead not only to the disruption of the administration of justice but a chaos, anarchy and ultimate dismemberment of the Federal Republic of Nigeria.

In the case of *Lagos State Development and Property Corporation (L. S.D. C.) Vs. The Duwole Market Traders,* it was first heard on 15th February,. 1991 when the LSDC issued a quit notice to traders at Duwole Market in Central Lagos. The quit notice gave the traders 15 days to evacuate their stalls. Nevertheless, bulldozers arrived at the market on Sunday, February 24, and began a demolition exercise on the stalls. Traders later estimated that the damages totaled N20 million.

Also, in March 19, 1990, a Shagamu High Court in Ogun State restrained the State Military Government from installing one Mike Sonariwo as the Akirigbo of Shagamu. The government countered the ruling by promulgating the edict which-' outlawed or superseded the High Court order; this action was widely criticized. According to Kensington (1990:14):

> *What the Ogun State Government did was a contempt of the judiciary, where a party to a dispute, disagrees with the decision of any court, it has a right of appeal. The court of Appeal recognizes and entertains urgent matters. By flouting the order of the High Court with its own legislation, the Ogun State Government merely demonstrated the lack of faith in the rule of law.*

The common features of these arbitrary decrees and edicts are that they not only ousted the relevant sections of the constitution which were in conflict with their emergency military laws, they also ousted the judiciary from enquiring into actions done in pursuance of them.

**Ouster Clauses and the Rule of Law**

Ouster clauses are provisions in a decree or enactments to the effect that the constitution has diverted the jurisdiction to entertain any matter or cause therefore. In *Attorney General of Lagos State Vs. Dosumu,* the Court is of the view that "Ouster of jurisdiction is a condition which exists when a court which once had jurisdiction over a matter ceases to retain the jurisdiction". Fawehimi, (1991:12) is of the opinion that ouster of court jurisdiction cannot and indeed demote the exclusiveness of the court's jurisdiction by legislature enactment whether such exclusion is that of non-access or that of nullification of court decision after access. These ouster clauses may be classified into:

1. Those which constitute or purport to constitute a bar to judicial review;
2. those which bar or challenge military competence to legislate any mater whatsoever;
3. those which exclude the application of the fundamental rights provisions of the constitution;
4. those which exclude the right of appeal (Hayatu, 1992:99).

Sagay (1988:6) also expressed the view that ouster clause exposed the unhealthy nature of the rule of law under military regime. Nwabueze (1984:9) condemned the idea of ousting court jurisdiction. He is of the view that:

> *Orderly and disciplined administration of government demand, that execution of acts of government which are not in conformity with its own laws should be opened to challenge in court. If the executive acts of military government which are not in conformity with their enabling legislation cannot be questioned in the court of law, then the military government can then go as well to perform functions without an enabling legislation.*

Agbaje (1989:19) is of the opinion that the judiciary has to evolve a powerful approach of checking the activities of these tribunals. The court must do justice to all according to the constitution without fear or favour and taking into consideration the tenets of the rule of law. This is because the judiciary is the last hope of the common man. Chioma (1995:69) stated that:

*The judiciary whether during the democratic or military regime has a very fundamental role to perform. To enable it perform these tasks it must be independent and must be allowed to perform its functions. Nigeria being a developing country in search of a viable and stable government based on social justice, the courts have a great role to play notwithstanding the fact that some military decrees oust their jurisdiction. The court needs to redefine its role in dealing with decrees which purportedly ousted its outstanding jurisdiction.*

Obi (1990:2) also stated that:

*Judges should be broken free from excessive legalism and interpret the law broadly, not according to its literal meaning, but in the light of the dictates of public policy and the ability to reflect... the ideas of the notion its needs and ethical sensitivity and the attitude of the public towards the question of the demand. That like any other human being, judges cannot divorce themselves from the pattern of values implicit in the society, and that the law can move in slowly and piecemeal progressive pattern of values.*

Dakass (1990:30) is of the opinion that this position should be adopted by the judges rather than when confronted with ouster clause, they simply throw their hands up in resignation in the assumption that they have been branded and fouled and their jurisdiction ousted *in toto.*

The fundamental human rights empower the court to proclaim any order whatsoever in the interest of justice. But many judges were reluctant to pronounce ruling unfavourable to the government. Lagos State Chief Judge, Justice Ligali Ayorinde, refused to assign a case involving three universities owned by the Federal Government. He also refused to assign another case involving the detention of two students under Decree 2 of 1984 until he was threatened with court action by the counsel to the students (Ifowodo, 1989:91).

Many judges were however unable to summon the courage to do substantial justice by using the human rights enforcement provisions. Such timidity in the judiciary was a sign of self imposed impotence. One can see that the realization of the rule of law also depends on the performance of the

men and women of the bench. Furthermore, men who do not have confidence in their own ability are more likely to dance to the tune of the government and to the detriment of the common man which they are being called upon to protect (Aguda, 1990:24).

Tawney (1991:74) posited and agreed with Nwanbueze's constitutionalism and argued that the judiciary appoints people of high moral, intelligence/integrity to the bench for the substance of the judicial system. It is necessary for the court to attract and appreciate public confidence. The decision of the judiciary ought to be accepted as based on objective rationality.

**Conclusion**

The major arguments canvassed in this paper have been that the rule of law is sacrosanct and the decision of the judiciary should be accepted as based on objective application of the law following open and free argument. The judiciary should be spared the indignity of playing second fiddle through the appointment by the military of a lame person as president of a tribunal whether for investigation or trial of citizens.

They should not be involved in secret trial or compelled to determine issues of policy for which they are not particularly equipped. Our courts of law exist and function because the public m general has confidence in the body of judicial officers who administer justice and the body of legal practitioners who assist them in discharging their duties which are a delicate task. So, undermining public confidence in the judicial/legal process would lead to a demise of the legal system.

Indeed, a respected Senior Advocate of Nigeria, the late Chief Rotimi Williams admitted that in his career in the legal profession spanning nearly half a century, he had never known anytime when public confidence in our courts of law have been assaulted as it was in the Babangida military era. The judiciary should be constantly aware that the high esteem accorded the executive or the legislature is the degree of public confidence reposed in them. After all, the enforcement of the judicial decision depends on the goodwill of the executive.

Surely, a judiciary that is faithful to its oath of office will remain an effective check over the excessiveness of the legislature and the executive much more than one has a duty to the nation and itself to resist interference from outside and avoid whatever scandal from within (Lyoid, 1993:104). The performance of the judiciary under the Babangida regime left much to be desired. The administration of justice was slow. The problem of court congestion was acute. Frequent adjournment delayed court trials. This in turn, led to prison congestion and long awaiting trial period for thousands of helpless suspects. Bail procedures were corrupt and difficult that many suspects were in detention for more than necessary. There was a ban on private newspapers and the right of speech. The high point of the non-conformity with the rule of law under Babangida's military regime was the annulment of the June 12, 1992 presidential election. Those who clamoured for the actualization of

the mandate freely given to Chief M.K.O. Abiola were thrown into detention. In Nigeria, the Babangida's regime was clearly devoid of the rule of law!

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