

## THE RULE OF LAW AND GOOD GOVERNANCE AS ELIXIR TO SUSTAINABLE DEMOCRACY\*

### Abstract:

*The concepts, Rule of Law and Good Governance are necessary evil and indices of a sustainable democratic government. Without these ingredients, the society will be brutish, unsafe as life may not be guaranteed and full of caprice and oppression. It is the phenomenon for law and Order<sup>1</sup>. For without the Rule of Law there would be no order, as anarchy, caprice and impunity will take the front seat. There would be rule by might and not by right, hence this article. Democracy has become a global phenomenon which everyone and every community, local or international needs, whether super powers or weak nations. Good governance includes the capacity of the government to design, formulate and implement good policies which are development oriented and committed to improvement of the quality of life of the people. Elimination of mal-governance through the processes of the rule of law is another aspect of good governance. Democracy is therefore dynamic and inevitable as the rule of law and good governance are Siamese twins that guarantee sustainable democracy, society would be guaranteed because the former is an index of good governance. A state that has good governance obeys the rule of law, ensures adequate security network. This paper therefore focuses on these principles, their characteristics, legal perceptions, gains and problems/effect comparative analysis with recommendations proffered.*

**Keywords:** Rule of Law, Good Governance, Sustainable Democracy, Elixir

### 1. Introduction:

Rule of law is a sine qua non. A society without rule of law is doomed. Lack of it would lead to capricious oppression of tyranny. Where there is the rule of law, good governance, freedom of expression, openness are guaranteed, the rule of law being adequately obeyed, would lead to a sustainable democracy. A society that abuses its constitution, with poor election laws, corruption, disobedience to court orders, illegal killings, rule of impunity, border problems, cybercrimes, budget failure, banditry, military terrorism and kidnapping, abuse of rule of law, crave for power and distaste for vacating after serving, cannot secure good governance and sustainable democracy. This article therefore addresses all these malaises and suggests some palliatives to ameliorate these problems. The Siamese twins, the rule of law and good governance, no doubt ensure a sustainable democracy.

### 2. Operative words:

Law is the regime that orders human activities and relations through systematic applications of the force of politically organized society, or through social pressure backed by force<sup>2</sup>. Rule of Law, according to AV Dicey<sup>3</sup> means the supreme or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness of prerogative or even use of discretionary power on the part of government. The rule of law means the equality before the law, or equal subjection of all classes to the ordinary laws of the land, administered by customary law courts. Social and economic inequalities in society tend to affect directly or indirectly accessibility or extent or outcome of the sub-section of persons to the operation of the law<sup>4</sup>. Rule of law are general maxim formed by the Court, who having observed what is common to many cases, announce the conformity by a maxim, called rule, because in doubtful and enforceable cases, it is a rule for their decision, it embraces particular cases within general principles<sup>5</sup>. Thirdly, rule of law means the existence and enforcement of certain minimum right usually guaranteed by the constitution. For rule of law to exist in a society, there must be in place<sup>6</sup>:

- a. Supremacy of written regular law made by the law makers.
- b. Certainty and regularity of law.
- c. Absence of arbitrary or wide discretionary views of government or its agencies.
- d. Equality of all persons before the law
- e. Administration of the law by the ordinary law courts.

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<sup>1</sup> Kehinde Mowoe: *Constitutional Law in Nigeria*, Lagos, Malthouse Press Ltd, Lagos, (2018), p. 16.

<sup>2</sup> The Law.com, the law guide application license

<sup>3</sup> A.V. Dicey: *The Law of the Constitution*, 10<sup>th</sup> edn., p. 202.

<sup>4</sup> See the Legal Aid Scheme provided under Section 46 (4) (b), 1999 Constitution (As amended) to deal with the problems of the legal representation and the concept of Natural justice and requirement of certainty and predictability of the constitution.

<sup>5</sup> The law.com, the law guide application license

<sup>6</sup> A.V. Dicey: *The Law of the Constitution*, (ibid), *Aoko v. Fagbemi* (1961) ALL NWLR 12., *Tofi. v. U.B.A* (1987) 2 NWLR (Pt. 62) 707, CA.

- f. Enforcement of some rights, etc<sup>7</sup>.

As held in *A.G. Federation v. A.G. Abia State*, the Constitution is the supreme law and fountain of all law in Nigeria as amended.<sup>8</sup> Under the Rule of Law, fundamental rights provisions are guaranteed by the body of government, all authorities are also persons. Good Governance refers to a list of admirable characteristics of how government ought to be carried out<sup>9</sup>. Democracy is a form of government in which sovereign power is exercised by people in a body as was the practice in some of the states in Ancient Greece. The term representative democracy has been given to a Republican value like that of the U S A<sup>10</sup>. Siamese Twins, they are two babies, born physically connected to each other. Two brothers, co-joined, called Chang and Engbunker (1811- 1875). They are from Siam, hence the name Siamese and they had Chinese parents<sup>11</sup>.

### 3. Factors that Promote the Rule of Law:

For the Rule of Law to survive in any society, some conditions must be put in place. They are amongst others<sup>12</sup>,

- i. A written and democratic constitution setting the powers and functions of government and rights and duties of the citizens.
- ii. A constitutional and democratic system of government
- iii. A disciplinary selfless, patriotic and visionary leadership.
- iv. Good, responsible, and open government
- v. Mass education and enlightenment of the citizenry
- vi. Sustainable economic growth
- vii. Fairness and mutual respect
- viii. Love for ones neighbour
- ix. Right to fair hearing under section 36 of the constitution.
- x. Evidence of peace and public order
- xi. Obedience to fundamental rights<sup>13</sup>.
- xii. Separation of powers in government
- xiii. That government should be responsible and responsive
- xiv. Regular laws and not by decrees.
- xv. An independent and upright judiciary with full autonomy.
- xvi. An expanded Public Legal Aid to assist indigent persons
- xvii. Interpretation and application of locus standi with respect to public interest litigation.

Wade<sup>14</sup> opines that the Rule of Law connotes:

1. Supremacy of Law
2. All acts of government must be conducted within the framework of defined rules and regulations.
3. An independent judiciary to make pronouncements on legality of government actions.
4. Equality before the law with recognized exceptions.
5. No punishment outside the authority of the law.
6. No deprivation<sup>15</sup>.

### 4. There are three conceptions of the Rule of Law in Nigeria and other Jurisdictions

i.) That the organs of government must be subject to legal rules. This demands that all actions of government officials be justified in law and that no government official, however exalted in rank or office, be entitled to disregard the law in the name of reason of states. Dicey says every man, whatever being his rank or condition is subject to the ordinary law, of the realm and amenable to the jurisdictions of ordinary tribunals<sup>16</sup>. The rule of law is to protect the freedom of the ordinary citizens by allowing government officials to encroach upon it only

<sup>7</sup>See Section 1 of the 1999 Constitution (As amended), also *A.G. Bendel v. Aideyan* (1989) 4 NWLR (Pt. 118), 646, SC, see also *Ereku v. Military Governor Lagos State* (1974), ALL NLR, 695, SC, *Obeya Memorial Hospital v. A.G. Federation*, 62 (1987) 3 NWLR (Pt. 60) 325, SC.

<sup>8</sup>*A.G. Abia State v. A.G. Federation* (2002) 17 WRN 1, *Agbai v. Okogbue* (1991) 7 NWLR (Pt. 204) 567, *Government of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt. 18) 621, SC, *Director SSS v. Agbakoba* (1994) 6 NWLR (Pt. 351) 475 CA, *Ubani v. Director* (1999) 1 NWLR (Pt. 625) p. 129, C.A., *Okojie v. A.G. Lagos State* (1981) 1 NCLR 218, *Sadiku v. A.G. Lagos State* (1994) 7 NWLR (Pt. 355) 235, CA.

<sup>9</sup>Merileb Grindle, good governance, 'the inflation of ideas'. (2010) Research Working Paper Services RWP. 10 – 023.

<sup>10</sup>The Law.com the law guide application license

<sup>11</sup><https://journals.sagepub.com.pdf>, accessed 23 May, 2020.

<sup>12</sup>Ese Malemi, (Ibid) at 1220.

<sup>13</sup>See Chapter iv of the 1999 Constitution (As amended).

<sup>14</sup>Wade, *Administrative Law*, 411, p. 21, 52.

<sup>15</sup>Kehinde M. Mowoe . *Constitutional Law in Nigeria* (Ibid) p. 19.

<sup>16</sup>J.M. Elegido *Jurisprudence*, edited by Akinola Aguda (Spectrum Law Publishing, Ibadan, 1997) p. 181.

on the bases of clear legal authority<sup>17</sup>. The Supreme Court of Nigeria re-enforced the doctrine of the rule of law in the case of *Governor of Lagos State v. Ojukwu*<sup>18</sup>. The government that is expected to protect the law most times unfortunately breaks or infringes on the rule of law. During the advent of the corona virus pandemic in Nigeria, the President embarked on a State of Emergency under the Quarantine Act, while the state imposed Executive Orders which saw the government ordering a lockdown of all persons. Unfortunately, the same government ended up breaking the law both on lockdown and on social distance rules put in place by the Nigeria Centre for Disease Control<sup>19</sup>. The government and its officials were inconsistent with the orders on lockdown and their exemptions. Some governors took laws into their hands and giving orders of locking and unlocking. Some exceeded the laws they ought to be models and use as a guide, some of them willfully and maliciously demolished peoples' buildings, auction the citizens' cars without due process<sup>20</sup>. Security officials who were to ensure the obedience to the lock down order harassed, threatened, assaulted maimed, illegally detained and killed many innocent people whom they were asked to protect and ensure they obeyed the rules appurtenant to the lock down order. The rules on border closure and inter-state travels were disobeyed particularly by the Police. Many state governments, including the Federal Government Agencies could not account for and transparently distribute funds and palliatives to the citizens to cushion the Covid-19 lock down pains and trauma, even those exempted by the emergency rule, like doctors and other health workers and journalists and others were overtly harassed and detained. There is hunger on the land as a result of fear to go out to avoid assault by the Police.

(ii) That not only should government respect the law in all these actions, but also the law minimizes arbitrariness on the part of the government and make it possible for the citizens to effectively take the law into account in planning what to do. In Nigeria, there seem to be arbitrariness by the government in making appointments, as there is total disregard to the Federal Character Constitutional requirement as appointment most times are sectional, discriminatory and a display of nepotism and corruption. Many court judgements are abused with impunity, contrary to the rule of law.

(iii) The rule of law creates and maintains the conditions which oppose the dignity of man and individual. Flowing from the above, the rule of law demands three characteristics; that:

- i. That officials must respect the legal rules in their actions
- ii. The legal rules are such that they minimize the possession of unchecked discretion by the officials.
- iii. The legal rules are such that people are able to calculate in advance the legal consequences of their action.

It follows therefore that in order to observe these guiding principles, the following are germane: First, the law should be prospective in their effect and not retrospective<sup>21</sup>. Secondly, the law should be such that it is possible to comply with, for if the law is impossible to comply with, the people are bound to break it through no fault of their own. The government is therefore advised not to promulgate a law that will be impossible to comply with. Thirdly, the rule of law should be certain, clear and publicly known or advertised. If law is to guide people in their conduct, they must be able to find out what it requires them to do, as an imprecise, vague, obscure and an ambiguous law will definitely mislead and confuse the citizens rather than direct them. Another principle is that the law should be general and the making of particular legal order should be guided and constrained by general laws in *Lakanmi v. A.G Western Nigeria*<sup>22</sup>. In Nigeria today, in the Covid-19 pandemic era, Courts are no longer as accessible as one expects. There is emphasis on virtual proceedings which are computer based, with efforts to introduce it for filing of cases and adjudication as directed by the Chief Justice of Nigeria and the State High Court Judges. Many judicial officials and lawyers are handicapped and not computer literate, and are still learning, with some very difficult to teach. The new Practice Directions emphasis is on the courts hearing only few matters a day, like interlocutory applications, like motions, adoption of addresses, urgent bail applications and judgements. Access to justice has suffered a setback and has nose-dived, e-filing is not easy amidst obeying social distant rules. All these are set back to the rule of law. It is a truism that judges are expected to be upright and knowledgeable. These qualities are however not guaranteed or sustained where there is desperado and influence of very influential to get their children appointed as Judges and Justices even where not upright and knowledgeable enough or exposed. Some have little or no experience, yet they are appointed Judges. Such behaviour or practice is devoid

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<sup>17</sup>See the case of *Jideonwo & Ors. v. Governor Bendel State & Ors.* (1981) 1 NCLR, *Orisakwe v. Governor Imo State & Ors.* (1981) 2 NCLR, 337.

<sup>18</sup>(1986) 1 NWLR, p. 621, Per. Oputa JSC, (as he then was) at p. 639.

<sup>19</sup> NCDC.

<sup>20</sup>It was reported that Governor Wike of Rivers State demolished two Hotels in Port Harcourt over disobedience to the lock down order over covid 19 pandemic.

<sup>21</sup>The Exponent is Prof. B.O. Nwabueze, *Judicialism in Common Wealth Africa*, London (1977) p. 215. See also *Adegbenro v. Akintola* (1963) 3 ALLGR, 544.

<sup>22</sup> See *Lakami v. A.G Western Nig.* (1971) 1 UILR 201.

of uprightness and transparency which is a great challenge to rule of law. It is not hidden that much criticism greeted the last appointment of the Judges of some State High Courts and the Federal High Courts FCT, including a strong voice from the Nigeria Bar Association, National. Surprisingly, the Law Courts can no longer be said to be independent with the above instances<sup>23</sup>. Many court officials influence the decisions of court, and where the court becomes pro-active and courageous, the Judges are not spared for by the government. A situation where the Chief Judge of State would need the Governor of a state to purchase vehicles for them needs much to be desired. Many persons cannot afford the means to go to court for litigation and the Pro-bono Lawyers and the Legal Aid Scheme Lawyers are insufficient answers. There is usurpation of judicial powers<sup>24</sup>.

Another salient point is that the principles of natural justice must be respected. The ingredients of the rule of law, and if not obeyed, it is unlikely that citizens will effectively assert their rights thus the courts and the rule of law will be a sham<sup>25</sup>. Incidentally, the rule of fair hearing were expressed in the following cases, which are an abbatross to the rule of law:

- a. *S & D Construction Co. Ltd. v. Ayoku*<sup>26</sup>
- b. *Ovunwo v. Woko*<sup>27</sup>
- c. *PHCN v. Alabi*<sup>28</sup>
- d. *Victino fixed Odds Ltd. v Ojo*<sup>29</sup>

Flowing from the above can one rightly posit that the rule of law and good governance are flourishing in Nigeria? Do we have a disciplined, selfless, patriotic and visionary leadership, a good responsible government with incorruptible legislature, transparent executive and impeccable judiciary, with undiluted, educated, enlightened citizenry, sustainable economic growth, a government with mutual respect for fair hearing, peace and public order, obedience to fundamental rights with an independent and up right judiciary. I submit that the answers to the jurisprudential questions may require real proof.

In Nigeria, there is total deprivation of lives, liberty, property and dignity without due process many people were killed by government officials, including the Police and the Army during the Covid-19 lock down.

In Rivers State, the demolition of two hotels were done without due process of law, as the alleged offenders were neither charged to court, prosecuted nor sentenced before the demolition. In Nigeria, Court judgement are often disobeyed or delayed before being obeyed. Many private citizens are clamped into detention and jailed for indefinitely by influential persons. There are cases of bandits, Fulani Herdsmen, maiming, killing, corrupt EFCC, ICPC and NAFDAC, nepotism, terrorism, banditry, failed elections rubber stamp legislature, compromised executive and weak government. A pertinent question would be is, Nigeria a democratic nation practicing the rule of law? Nigeria since independence in October, 1960 has via successive regimes canvassed for a government of rule of law as can be gleaned in the 1979 and 1999. The constitution under its Fundamental Objectives and Directive Principles makes elaborate provision for government obligations to the people, as provided by the rule of law<sup>30</sup> and support of the three arms of government<sup>31</sup>. The military government of Nigeria also overtly abused the rule of law in no small measure, banned freedom of the press, clamped many people into detention in pursuance of dictatorial and anti-democratic rule as they suspended the constitution and challenged the judiciary with decree 38 as revealed in:

- i. *Lakanmi & Anor. v. A.G. Western State*<sup>32</sup>
- ii. *Jackson v. Gowon*<sup>33</sup>

<sup>23</sup>The Pitiabie Prosecution and sack of former Chief Justice of Nigeria, Walter Onnoghen by the Code of Conduct Tribunal was a show of shame, judicial embarrassment and an example of affront on and violation of the judiciary and the Rule of Law. The African Chatter on Human and Peoples' Right, by Article 26 provides that States must make sure that the Law Courts are independent.

<sup>24</sup> I.E. Sagay, *a Legacy for Posterity: the works of the Supreme Court (1980 – 1988)* Lagos, 1988, p. 60.

<sup>25</sup>Section 36 of the 1999 Constitution (As amended) provides for right to fair hearing, i.e. the *Audi Alteram Partem* Rule (Hear the other party), and *Nemo Judex Incausa Sua* (You cannot be a Judge of your own cause). See also *Ezemwaji v. University of Nigeria* (2018) ALL FWLR (Pt. 933) 909, SC. *Omoniyi v. Alaba* (2015) ALL FWLR (Pt. 774) 181 SC, *Oranezi v. Ngige* (2014) ALL FWLR (Pt. 760) 1350 CA, *Onokuwojo v. FRN* (2013) 3 ALL FWLR (Pt. 681) 1 SC, *Aiyedun v. Registrar Upper Area Customary Court, Ilorin* (2018) ALL FWLR (Pt. 979) 964,CA.

<sup>26</sup> (2011) ALL FWLR (Pt. 604) 1

<sup>27</sup> (2011) ALL FWLR (Pt. 587) 596

<sup>28</sup> (2011) ALL FWLR (Pt. 557) 698

<sup>29</sup> (2010) ALL FWLR (Pt. 524) 25.

<sup>30</sup> Section 13 – 21 of the 1999 Constitution (As amended).

<sup>31</sup>C. Nwokeaku: 'The Rule of Law Democracy and Good Governance in Nigeria' (2004) 2 (1), *Global Journal of Political Science and Administration*, p. 26 – 35.

<sup>32</sup> 1971 UILR 201.

<sup>33</sup> NLJ, Vol. 8, 1967, p. 87.

iii. *In Balewa v. Doherty*<sup>34</sup>.

In *Governor of Lagos State v. Ojukwu*<sup>35</sup>, it was held to the effect that the Nigerian Constitution is founded on the rule of law, the primary meaning of which is that government should be conducted within the framework of the recognized rules and principles which restrict discretionary powers.

### 5. Highlights of the Rule of Law in other Jurisdictions

In Britain, the rule of law is practiced by the unwritten constitution through the common law as interpreted by the courts, for everything must be done according to the rule of law, to prevent arbitrariness on the part of the supreme parliament<sup>36</sup>. In South Korea<sup>37</sup> the recent failure to adhere to international norms can be found in the Internal Fleet Review. There is free market economy but weak legal system. Corruption flows and pervades every part of daily lives<sup>38</sup>. The Rule of Law here makes a strong case for legal reforms that provided understanding on the importance of the individual showing that not enough attention has been paid to the sanctity of the individual person to the rule of law debt. The function of the rule of law is to protect the individual's right. Education alone is not sufficient, and exemplary behaviour from political leaders is essential to move forward towards the rule of law<sup>39</sup>. Sound prosecution is crucial for a democratic rule of law to ensure a qualitatively sound democracy. Some of the challenges of implementing the rule of law in South Korea are fledgling democracy and market economy like corruption, in political and corporate governance and a dip-rooted cultural indifference to the rights of the individual<sup>40</sup>.

In North Korea, the Rule of Law is incredible as many people struggle for basics, such as food, medicine, and face brutal reprisals for breaking the regime's draconian laws. North Korea is described as a paranoid nation that tightly controls what the outside world sees. One of the countries' most brutal laws is the 'three generation of punishment' rule, wherein if one person is convicted of a serious crime and sent to prison, any member of their immediate family can also be sent with them<sup>41</sup>. Although North Korean Constitution theoretically guarantees freedom of speech, all media outlets are owned by no other party state, and no reporting is allowed that is not sanctioned by the government. The regime goes to great lengths to stop outside media reaching its population. Listening to unauthorized foreign broadcast, watching foreign TV shows and possessing dissident publications are considered crime against state. Those caught face execution or as are sent to labour camps. The country does not have a State-run version of internet that is open to all citizens; however, government's permission is needed to own a Computer which cost as much as a worker three months average salary. Websites are censored. It is equally a criminal offence in North Korea to leave the Country without permission<sup>42</sup>. It is a totalitarian state with the Kings in power for 3 generations. Torture, false labour and public execution in the camps are common place according to escapees. Many prisoners are guilty by association. The United Nations has repeatedly condemned what it calls the systemic human right abuse in North Korea<sup>43</sup>, the most repressive country on earth. All these infractions are not in consonance with the rule of law. She does not respect international treaties.

The American Rule of Law provides predictability and stability. Here, the rule of law establishes authority created expectations for behaviour and establishes redress for grievances and penalties for deviance. Governance of conflict and the attainment of peace among the governed are primary goals of rule of law system. For example, securing peace is a goal within the U S Rule of Law System<sup>44</sup>. In the U S Constitution and the English Bill of Rights of 1689, the power is derived from the people<sup>45</sup>. South Africa was a British Colony and its constitutional set up was modeled along the West Minister System. Before 1993, South African Constitution had deviated from proper application of the rule of law. The judiciary has neglected the application of basic right, due process and legality. Under apartheid, with horrendous discrimination, pro-executive and legislative attitudes and the judiciary continued, although some courts were anxious to safeguard the judicial functions against the Executives and Legislative Organs. Although some Judges were determined to their guns in maintaining the rule of law, many

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<sup>34</sup> (1961) ANLR , 604, 120.

<sup>35</sup> (1986) LPELR , 31, 86, SC

<sup>36</sup> Kehinde M. Mowoe: *Constitutional Law*, Op.cit p. 19.

<sup>37</sup> With Headquarters at Seoul.

<sup>38</sup> Rule of Law in South Korea, ed. by David W. Brady, Jongrujn M.O: Hover Institution Press (2010)

<sup>39</sup> <https://politicalscience.Stanford.edu>. Accessed 24 May, 2010.

<sup>40</sup> <https://www.book.depositary.com>. Accessed 24 May, 2010.

<sup>41</sup> The Edict was Introduced in 1972 by Kim II –SUNG, North Korean's President

<sup>42</sup> Telegraph.com.

<sup>43</sup> See Amnesty International Telegraph News by Mike Wright and David Cobnan, 19<sup>th</sup> Sept. 2017, p. 10.

<sup>44</sup> Notion derived in the English Bill of Rights 1689 and the Code of Hammurabi and the Magna Carta. These rights are derived from religious authority.

<sup>45</sup> <https://www.hg.org.ruleoflaw>. Accessed 25<sup>th</sup> May, 2020.

colluded with the apartheid regime<sup>46</sup>. Section 1 of the South African Constitution provides that Republic of South African is one, sovereign, democratic state, founded on supremacy of the constitution and rule of law<sup>47</sup>.

## 6. Good Governance

Good Governance refers to a list of admirable characteristics of how government ought to be carried out<sup>48</sup>. Kofi Annan describes it as perhaps the single most important factor in eradicating poverty and promoting development<sup>49</sup>. Good Governance is a catalyst to national or state security. It can be realized that abuse in food and energy, environmental degradation, underdevelopment, political discontent and a host of other such critical problems constitute national security issues as they are grave threats to the security of the people and thus threaten the security of states, since they may lead to bloody conflicts between citizens and the government<sup>50</sup>. It is submitted that the fundamental Objectives and Directive Principles of State Policy, contained in chapter 11 covering section 13 - 24 of the 1999 Constitution are clear indices of good governance are rendered non justiceable by section 6 (6) ©. However, some of the economic and social rights under the chapter are also contained in the African Chapter of Human and Peoples Right, which has since been domesticated<sup>51</sup>. Good governance establishes the rule of law, enforces contract and agreement between the individuals, maintains law and order and guarantees security to the people.

Another ingredient of good governance is active participation of the public with the government. Minocha<sup>52</sup> explains the essential criteria of good governance to include political accountability, availability of freedom, law abiding bureaucratic accountability, information available transparently, being effective and efficient and cooperation between government and society. It is pertinent to note that the parameters of good governance according to the World Bank report<sup>53</sup> are as follows:

- a. Political accountability
- b. Regular elections.
- c. Participation by various social economic cultural and professional groups in the process of governance and decentralization of power to local organization.
- d. The Rule of Law
- e. Independence of the Judiciary
- f. Bureaucratic accountability
- g. Freedom of information
- h. Transparency

Where there is good governance, the country must as a fact develop national outlook, have political reforms, fight to curb corruption, develop electoral reforms, administrative reforms, good judicial reforms and autonomy<sup>54</sup>. When the judiciary is free, the Executive and Legislature will be capable of functioning independently and exhibit good governance, as presently the judiciary is beset with menace of politicization, delay, corruption, over load of work and so on.

## 7. Problems and Obstacles to Good Governance in Nigeria

First, there is an obsolete constitution with weak federating unit. Secondly, there is continuous clamour for resource control in Nigeria, and the attendant interpretation given to it by all players, particularly the goose that lays the golden eggs. These have continued to fuel corruption within the country. There is also mutual resentment, leading to outbreak of violence. This of course cannot promote good governance. Thirdly, there is unnecessary centralization of security system which constitutes a Governor as the Chief Security Officer of the state with a police force answerable not to the governor but to a central command in the Inspector General's Office, Abuja. This looks absurd, ridiculous and ludicrous, leading to clamour for state or regional security, like operation *Amotekun*. Furthermore, the expensive governance institution and structures provided by the constitution is another problem. It is basically woolly to have in the National Assembly 105 Senators and 306 Members of the House of Representatives, all full time, leading to very high financial cost on the economy. The interpretation and

<sup>46</sup> See the case of *Minister of Interior v. Lockheart* (1961) 9(2) S A- 587 (A).

<sup>47</sup> [Http://pdfs.semanticscholar.org](http://pdfs.semanticscholar.org). accessed on 26 May, 2020.

<sup>48</sup> Merilee Grindle Good Governance, 'The Inflation of ideas' (2010) Research Working Paper Services, RWP 10 – 023.

<sup>49</sup> Quoted by Abel Adellatif 'Good Governance and its Relationship to Democracy and Geo-political Development' in Global forum on fighting corruption and safeguarding integrity (UNDP) 2003.

<sup>50</sup> Laurie Nathan (Ibid).

<sup>51</sup> See African Charter on Human and Peoples' Right (Ratification and Enforcement Act, Cap A9, LFN, 2004).

<sup>52</sup> Ibid.

<sup>53</sup> The World Bank 1989 Report.

<sup>54</sup> State Legislature, Judiciary attain financial autonomy, as Buhari signs Executive Order granting them direct allocation. Vanguard May, 23<sup>rd</sup>, 2020, p. 4.

application of the Federal Character Principle instituted by the Constitution<sup>55</sup> has led to entronement of mediocrity as there is implication in its application, spanning in administration quota, segregation in employment etc. this is good foundation for good governance and security. Executive immunity provided in the Constitution has led to many cases of corruption and economic crimes and many Governors have gone unprosecuted on grounds of executive immunity. As aptly posited, absolute immunity from criminal or civil proceedings is clearly a recipe for impunity which certainly cannot be accommodated by good governance and national security<sup>56</sup>. However, the term good governance seems a mirage or utopian, also there is no perfect constitution in the world. Corruption, which is misuse of exploitation of public power, position or patrimony for personal or financial benefits, is an abuse of public office for private gain and does not augur well for good governance. The issue of insecurity which has led to the shutting of the borders in Nigeria is not a good signal, as it affects our economy adversely, contrary to the principle of sovereignty and good neighborliness amongst nations. Some have even advocated further closure of border against alien herdsmen<sup>57</sup> and recently to check Covid-19 infection, and is election and insecurity. Another is the constitutional failure to give the Local Governments its rightful autonomy via constitutional amendment. Can we justifiably say we have good governance in Nigeria with the above indices? I do not think so.

## 8. Democracy

Abraham Lincoln defines democracy a government of the people, by the people and for the people<sup>58</sup>.

Democracy is Government of the people, a form of government in which the supreme power is vested in the people and exercised by them or their elected agents<sup>59</sup>.

Any true democracy must possess three ingredients namely:

- i. A government made up of the generality or representatives of the people
- ii. A government formed and installed by the people
- iii. A government that exist for the welfare of the people.

The welfare of the people is a critical factor, this is so for the whole purpose or object of government is the welfare of the people as provided in the constitution<sup>60</sup>.

Democracy therefore is an open government which allows the people to choose their leaders by way of elections.

## 9. Democracy and the Rule of Law

What is important in organizing sustainable democracy is the existence of the opportunity permitted to operate without any hindrance, and the extant of these allowances accorded to the Rule of Law. This is because the concept of democracy itself hovers around the rule of law. A knowledge of what democracy and the rule of law and the relationship between the two will aid governance. Democracy and the rule<sup>61</sup> of law always synchronize.

## 10. Legal Challenges of Environment in Nigeria without Rule of Law and Good Governance

- A. Abuse of power by public officers who don't see the office they occupy as a position of trust. Power is abused at random<sup>62</sup>.
- B. Poor Global image of Nigeria in the Global Peace Index<sup>63</sup>.
- C. Threatened rule of law, under the rule of law no government is stronger than the individual<sup>64</sup>.  
Nwabueze says the alternative to the rule of law is anarchy and chaos<sup>65</sup> and should not be abused<sup>66</sup>.

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<sup>55</sup>See Gabriel Omoshemime: 'Arish, Reconsidering Executive Immunity under the Nigerian Constitution', (2010) Nigerian Current Law Review, 274.

<sup>56</sup>See *Jones v. Clinton*, 520, U S, 681 (1997). However, a Federal Court High recently convicted Senator Orji Kalu, a former Governor of Abia State to 12 years imprisonment for being guilty of Economic Crime. Ironically the Supreme Court has questioned and ordered retrial as the Judge who handed down the judgement lacked jurisdiction to do so.

<sup>57</sup>Ortom advises 'shut borders against alien herdsmen, Ortom tell Federal Government in Vanguard, Tuesday, October, 2019, P. 5.

<sup>58</sup>Kayode Eso. *Further Thoughts on Law and Jurisprudence*. (Spectrum Law Publishing Ibadan, 2003), p. 44.

<sup>59</sup>The Encyclopedic Dictionary of English Language.

<sup>60</sup>See S. 14 (2) (b) of the 1999 Constitution (As amended).

<sup>61</sup>Rule of Law provided justification for NATO's expedition in Kosovo and United Nations not lifting sanctions on Saddam Hussains Iraq.

<sup>62</sup>Dakas C.J, Dakas, SAN 'Nigeria Anti- Terrorism Laws and Practice. The Imperative of Maintaining Human Rights into Counter-Terrorism Administration'. Paper Presented at a workshop of Nigerian Coalition on International Crime (NCICC), Abuja, May 14, 2013.

<sup>63</sup>(2012) Nigeria was considered as unfriendly and dangerous globally.

<sup>64</sup>Sowore, Dasuki and other prominent Nigerians granted bail by the Court were not released by the EFCC and DSSS over flimsy excuses.

<sup>65</sup>Nwabueze B.O.: 'Budgeting for Good Governance and Court Responsibilities'. *The Nigerian Tribune*, No. 13047, 2003.

<sup>66</sup>Nwabueze B.O.: 'Military Rule, Constitutional Imperatives and Rule of Law', 2013, p. 18.

- D. Right to life which a peaceful environment is key. The right to life therefore makes no meaning to any hostile and insecure environment.
- E. Militarization of the Society where citizens illegally acquire arms<sup>67</sup>.
- F. Societal fear.

### 11. Conclusion and Recommendations

Attempt was made in this article to examine the concepts of the Rule of Law and Good Governance which are like Siamese twins as necessary elixir to sustainable democracy. The concepts were defined and examined and instances were given for their operations. It was revealed that the rule of law is necessary for a government, also disobedience to the rule of law breeds anarchy and insecurity. Where there is the rule of law and good governance, they lead to a sustainable democracy. Instances of rule of law and good governance were showcased, including the problems appurtenant to each of them. The beam of light also x-rayed, the rule of law as practiced outside jurisdictions like in U.K, U S A, North, South Korea and South Africa. The problems bedeviling the workability of these three concepts were exposed, with recommendations proffered. It is my contention that even though there is no utopian government, where the rule of law is practiced without infringement or the concept of good governance fully achieved, however, a combination of rule of law and good governance would be ideal as indices for an effective and viral democracy, as both are catalyst to a sustainable democracy in Nigeria and other jurisdictions. The following are apposite:

- The government is advised to adhere strictly to Chapter 11 of the 1999 Constitution.
- She should target and adopt restructuring as a panacea.
- Fight economic crimes and cybercrimes with vigour
- Expunge executive immunity, via a constitutional amendment.
- Reduce the number of the National Assembly and State Houses of Assembly Members to cut cost.
- Reconsider part time representation in the legislature to reduce overhead cost.
- Amend the Electoral Act and the Constitution to check election riggings and culture of impunity.
- To revisit the Revenue Allocation Formula for the sake of equity, with a view to giving more powers to states.
- Total condemnation of disobedience to court order by the government and its agencies.
- To address Border issues as it affects the economy. I advocate reopening of same as hardship, scarcity and inflation are the order of the day, with 2 protocols, including Covid-19 social distance rules obeyed.
- Government should ensure accountability and good governance.
- Need for the Police, ICPC and EFCC to apply caution and avoid taking laws in their hands to ensure rule of law<sup>68</sup>.
- On resource control, let the goose that lays the golden eggs be adequately taken care of.
- There is need for true federalism and restructuring of Nigeria.
- I advocate a clear division of power between federal and state government and local governments.
- I recommend strict obedience to Court orders and respect to Fundamental Human Rights<sup>69</sup>.
- All countries of the World must abide by the rule of law and good governance for a sustainable and *virle* democracy.
- We recommend stringent economic sanctions on countries that breached the rule of law like North Korea, also the International Court of Justice (ICJ) should be more proactive.
- Our superior courts like the Supreme Court should give radical judgement that condemn, abuses an infraction on the rule of law, good governance and sustainable democracy.

<sup>67</sup>The Hausa/Fulani Cattle Rearers are seen moving daily with AK 47 Rifle without being challenged or being prosecuted.

<sup>68</sup>'African Conference on the Rule of Law: a report on the proceedings of the conference, p. 11.'

<sup>69</sup>A situation where Mr. Sawore, the publisher who was released by the Federal High Court was recently disgrace being re-arrested by the EFCC in the Court premises leaves much to be desired and is an embarrassment to the Courts and the Judicial Officers and an affront to the Rule of Law and good governance. See Punch, December, 2019, Vol. 7, 5 & 12, p. 3, 8 & 45.