INTERROGATING THE RELEVANCE AND SUSTAINABILITY OF JUDICIAL PRECEDENT IN NIGERIAN JURISPRUDENCE*

Abstract
This article focused on 'Interrogating the Relevance and Sustainability of Judicial Precedent in the Nigerian Jurisprudence.' The objectives were to examine the nature and practice of judicial precedent, to assess the position of the Supreme Court on stare decisis, and to analyze the prospects of judicial precedent in the Nigerian jurisprudence. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were literatures from physical library and e-library. This research found, among others, that certainty and consistency are paramount in the judicial system and they enable a speedier judicial process to be effectuated through previously decided case law called the judicial precedent. Also, that judicial precedent is an unavoidable practice in the legal parlance because it also saves time, cost, and stems the tide for judicial rascality by keeping judges in check to reduce wanton exercise of discretion, though with some shortcomings. Sequel to these, the recommendation, among others, was that the National Assembly should enact law for strict adherence to judicial precedent, and judges who dissuade from judicial precedent should be sanctioned to deter others, also lawyers should take leverage on judicial precedent and avoid duplication of matters.

Keywords: Court, Judicial Precedent, Jurisprudence, Nigeria

1. Introduction

The idea of judicial precedent started in Common Law practice. Its essence is to save time, energy, cost, ensures consistency and certainty. It stems the tide of judicial rascality, that is to say judicial precedent has a way of keeping judges in check and reduces wanton exercise of discretion. On the other hand, the major problem of judicial precedent is that it does not easily respond to the dynamic nature of the society. Also, judicial precedent sometimes perpetuates injustice; that is, it prolongs injustice. Furthermore, the doctrine of judicial precedent slows down judicial activism. Its strict applicability leads to unwarranted injustice because no two case is the same and a times the law is applied wrongly even when the court is aware that the previous decision was made *per incuriam* or there are two conflicting decisions of the Supreme Court, it is still being followed hook line and sinker. Obviously, there are many inherent drawbacks in the doctrine, such as the unnecessary restrictions that are placed upon judges to follow previous decisions. This could prevent the law from keeping up-to-date with advances in society as many of the principles may be somewhat outmoded. Furthermore, it may also be time-consuming and difficult to understand the law as a result of the number of cases that exist. It is also a problem in judicial precedent as the researches and findings can be reported only on media and public lectures without having any effects on the judiciary because of reliance on judicial precedent. Thus, for judicial precedent to be effective there must be the hierarchy of court and decisions must be reported. However, since the Human Right Act was enacted, the doctrine of judicial precedent also appears to have been weakened, yet as new case laws are established, the doctrine is being restored. Therefore, the problems in judicial precedent will still remain. This background has necessitated this article to focus on interrogating the relevance and sustainability of judicial precedent in the Nigerian jurisprudence

2. Meaning of Judicial Precedent and Related Concepts

Judicial Precedent

Judicial precedent is legal experience. In ordinary life, people rely on past experiences when embarking on any venture. These experiences are nothing but precedents. It is not different with law especially under the Nigerian legal system. In effect the concept of judicial precedent is nothing but reliance by a judge deciding a case today on the experience of yesterday. Judicial precedent is a decision establishing a principle of law that any other judicial body must or may follow when called upon to decide a case with similar issues.[1] Precedents can be binding or persuasive. Precedent that must be applied or followed is known as binding precedent. According to Sanni[2], decisions of lower courts are not binding on courts higher in the hierarchy. Precedents are persuasive when the court is not under obligation to follow it. Persuasive precedents under Nigeria legal system arise out of a number of contexts:

(a) Decisions of lower courts on higher courts
(b) Recent decisions of the Supreme Court of United Kingdom
(c) Decisions of other courts within the Common Law world
(d) Higher Courts in other Jurisdictions or Circuits
(e) Coordinate or Horizontal Courts

***By Pius OSUNYIKANMI, LLB, LLM, PhD**, Formerly Adjunct Lecturer, Department of Private and Public Law, Faculty of Law, Adekunle Ajasin University, Akungba Akoko, Nigeria. Email: <osunyikanmi2000@gmail.com> Phone No: +2348034711143, +2348148022385

[1]Nigerian courts and text book writers use judicial precedents and stare decisis inter changeably as if the two are synonyms, e.g. *Nigeria-Arab Bank Ltd v Barri Engineering (Nig) Ltd* (1995) 8 NWLR (Pt. 413) 257 at 289; A O Sanni, *Introduction to Nigerian Legal Method* (Ornate Publishers Ltd., 2006) p. 21, Though in a broad sense they may be so used, but technically they are not the same.

[2] A O Sanni, *Introduction to Nigerian Legal Method* (Ornate Publishers Ltd., 2006) p. 21.

(f) Statements made in Obiter Dicta
(g) Dissenting Opinions
(h) Treatises, Restatements, Law Review Articles

Ratio Decidendi

The decision of a court may fall into two parts; the reason for the decision and that which is said by the way. *The ratio decidendi* of a case is the principle of law on which the decision is based. Goodhart defined *ratio decidendi* (reason of deciding) of a case as the material facts of the case plus the decision thereon.[3] It has also been defined negatively as the principle without which the court would not have reached its decision.[4] While every decision refers to some past event, the ratio for it serves as a norm for the future.[5] Determining the ratio of a case has not been without difficulty. This is more so, as sometimes a judge may give more than one reason for his decision. Also, it is possible for the judge to make some other statements, which in future may be argued to be the ratio.

Obiter Dictum

Obiter Dictum (remark in passing), something said by the judge while giving judgment that was not essential to the decision in the case.[6] It does not form part of the *ratio decidendi* of a case and therefore creates no binding precedent, but may be cited as persuasive authority in later cases. The judge deciding a case may speculate about what his decision would be or might have been had the facts been different. The value attached to obiter dictum depends on the court and the eruditeness of the judge who made it.

Per Incuriam

Per incuriam means that a court failed to take into account all the relevant and vital statutes or case authorities and that this had a major effect on the decision. *Per incuriam* does not simply mean the earlier court got things wrong. It only means there was a significant oversight, not only must there have been a failure to take account of relevant authorities; that fault must also have been such a major defect that it seriously affected the reasoning in the case and would have affected the outcome. Decisions said to be reached *per incuriam* were actually reached *per ignorantium*, but it is uncomplimentary to say that the court is ignorant of the law. In the hierarchy of courts, a lower court is bound to follow the decision of a higher court even though it might believe that the decision is reached *per incuriam*. It is not for a lower court, to question or say that a decision of a higher court was reached *per incuriam*. That is the privilege the higher court if after reconsidering its former decision, it is satisfied that the previous decision, had been reached *per incuriam*. In distinguishing between obiter dictum and *per incuriam*, the Supreme Court per Iguh J.S.C. had this to say:

> It is indisputable that in the judgment of the court, the legal principle formulated by that court which is necessary in the determination of the issues raised in the case, that is to say, the binding part of the decision is its *ratio decidendi* as against the remaining parts of the judgment which merely constitute obiter dicta, that is to say, what is not necessary for the decision...Where however, an *obiter dictum* in one case has been adopted and becomes a ratio decidendi in a later case, such obiter dictum will been taken to have acquired the force of a *ratio decidendi* and would therefore become binding...The question whether a decision or pronouncement of this court is binding on the court of appeal depends on whether that decision or pronouncement is an *obiter dictum* or was made *per incuriam*. If the pronouncement is a mere obiter dictum then, of course it is not binding, but if it was made *per incuriam*, it will nevertheless be binding on the court of appeal in accordance with the principle of *stare decisis* until the error in the judgment has been corrected.[7]

Stare Decisis

In the case of *Osakue v Federal College of Education (Technical) Asaba*,[8] the Supreme Court per Ogbuagu J.S.C. defined *stare decisis* thus '*stare decisis* means to abide by the former precedents where the same points came again in litigation. It presupposes that the law has been solemnly declared and determined in the former case. It does preclude the judges of the subordinate courts from changing what has been determined. Thus, under the doctrine of *stare decisis*, lower courts are bound by the theory of precedent.''[9] Simply put, it is clear that *stare decisis* is the doctrine of Nigeria legal system laying an obligation on lower courts to stand by precedents.

3. **Assessment of the Position of the Supreme Court on Judicial Precedent**

The Supreme Court is in the apex position in the hierarchy of courts in Nigeria. It derived its existence under the current dispensation via Section 230 (1) of the CFRN, 1999 (as amended). The decision of the Supreme Court binds all other courts in Nigeria. The Supreme Court itself articulates the position lucidly in *Dairo v U.B.N. Plc*. thus:

---

[3]M R Justus, 'Determining the Ratio Decidendi of a Case', *Essays in Jurisprudence and the Common Law* (N. P., 1931) p. 47.
[4] Sanni (n2)180.
[5] R W B Dais, *Jurisprudence*, 5th edition (Butterworths, 1985) p. 181.
[6] E A Martin, 'Obiter Dictum.' *Oxford Dictionary of Law*, 9th edition (Oxford University Press, 2018) P. 911.
[7] Per Iguh J.S.C., *Dairo v U.B.N. Plc*. (2007) 16 NWLR (Pt.1059) 99 at 159.
[8] (2010) 10 NWLR (pt.1201) 1 at 34.
[9] *Ibid.*

> ... it is not proper for a lower court to defy the decided authority of a higher court otherwise it may border on or amounts to judicial impertinence. In the case, the case of *Osho v Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157 was referred to, to the effect that the legal position in this country, it that the Court of Appeal and other courts are bound by the decision of this court.[10]

Unlike the English House of Lords (presently United Kingdom Supreme Court) which for many years considered itself bound by its previous decision; the Nigeria Supreme Court has never considered itself not free to depart from its previous decision. The English House of Lords was not strictly bound to always follow its own decision until the case of *London Tramways v London County Council*[11]. After this case, once the law Lords had given a decision on a point of law, the matter was closed unless and until parliament made a change by statute. This is the strictest form of the doctrine of *stare decisis*. This was changed by Practice Statement, where it was said that though the doctrine of being bound had many commendable points: 'too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law'[12]. However, the situations in which the House of Lords will overrule itself are rare. The Practice Statement stated that the Lords would be especially reluctant to overrule themselves in criminal cases because of the vital need of certainty in that area of law. In *Food Corp. of India v Antclizo Shipping Co.*[13], Lord Goff stated that the House of Lords would not depart from a previous House of Lords decision unless:

(a) It felt free to depart from both the reasoning and the decision of the earlier case and
(b) Such a review would affect the resolution of the actual case before them and not be of mere academic interest.

In contrast with to the House of Lords, the Judicial Committee of the Privy Council, (the predecessor to the Nigerian Supreme Court) has in its advisory capacity to the Sovereign of the British Empire since 19th century given repeated expression to the fact that it will not be bound by the erroneous previous of the court and that for good and compelling reason it will depart from such decisions and overrule them in the interest of justice and the law. These previous decisions must be clearly shown to be Vehicles of injustice, given *per incuriam*, and/or clearly erroneous in law.[14]

The Nigerian Supreme Court is entitled to depart from or overrule its previous decisions in the interest of justice, where the decisions are shown to be:

(a) Vehicles of injustice;
(b) Given *per incuriam*;
(c) Clearly erroneous in law;
(d) Impeding the proper development of the law;
(e) Having result which are unjust, undesirable or contrary to public policy;
(f) Inconsistent with the provisions of the Constitution; or
(g) Capable of fettering the exercise of judicial discretion by a court.[15]

The Nigerian Supreme Court has in a number of cases overruled its earlier decision. In *Johnson v Lawanson*[16], the Supreme Court overruled the Privy Council decision of *Mauria Gaulin Ltd v Wahab Atanda Aminu*[17]*;* in *Amudipe v Arijodi*[18] it overruled its decision on *Babajide v Aisa*[19].

4. Interrogating the Relevance and Sustainability of Judicial Precedent in the Nigerian Jurisprudence

Judicial Appraisal

There are many advantages to the doctrine of judicial precedent with one of the main advantages being the ability to save time when making a decision on a case.[20] If a Court is already provided with an answer to a problem in which they face, it will not take as much time to reach a reasoned conclusion. This is because the Court will not be required to analyze the case and make a decision as they will already have the answer before them, which is a significant benefit within the judicial process. An example how effective judicial precedent can be is exemplified in the case of *Hunter and Others v Canary Wharf Ltd and London Dockland Development Corporation*[21]**.** Here, the Court did not have to form an original precedent was could merely apply a previously established principle to the issue at hand. Another advantage, which has already been mentioned, is the consistency between cases. Also, it promotes certainty in law. By looking at existing

[10] *Dairo v U.B.N. Plc*. (2007) 16 NWLR (pt. 1059) 99 at 159.
[11] (1898) AC 375.
[12] *Practice Statement* (Judicial Precedent) 1966 1 WLR 1234.
[13] (1988) 2 All ER 513.
[14] *Odi v Osafile* (1985) 1 NWLR (Pt. 1) 7 at 34, 35.
[15] *Adisa v Oyinwola* (2000) 10 NWLR (Pt. 674) 116.
[16] (1971) 1 All NLR. 57.
[17] Appeal No. 17 of 1957 decided on 24/7/1958.
[18] (1978) 2 LRN 128.
[19] (1966) 1 All NLR 254; *Oladejo v State* (1987) 3 NWLR (Pt. 61) 419.
[20] C Duxbury, *The Nature and Authority of Precedent* (Cambridge University Press, 2008) p. 23.
[21] *Hunter and Others v Canary Wharf Ltd and London Dockland Development Corporation* [1997] UKHL 14.

precedent the lawyer can reasonably advise his client. Another argument is that it minimizes the incident of bias. The doctrine restrains judges from exhibiting partiality by insisting that they decide like cases alike, it thereby promote legal equality between parties.

It also makes for uniformity, for like cases will be decided alike. Benjamin Cardozo stated:

> It will not do to decide the same question one way between one set of litigants and the opposite way between another. 'If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look for the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights.' Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts.[22]

Injustice will also be prevented as it would certainly be unjust for different outcomes to be reached in two cases with similar facts. This would be unfair and society would most likely lose confidence in the justice system. Judicial precedent also prevents judges from producing prejudicial decisions since a judge will often be bound to follow a previous decision even if he disagrees with it.[23] This is important in ensuring that the rulings of judges remain as consistent as is reasonably possible so as to prevent confusion and unfairness.

The doctrine of judicial precedent can also be flexible in that judges are able to make decisions on a case-by-case basis according to the individual facts and circumstances.[24] However, this flexibility is restricted by the judges' obligations to follow previously decided cases. Because there is a centralised legal system, it is much easier for judges to follow.[25] Arguably, there are many advantages to the doctrine of judicial precedent, yet is unclear whether these outweigh the disadvantages which will be discussed in the next section.

Judicial precedent has cankerworm disadvantages to the judiciary. Judicial precedent is obviously rigid and requires strict compliance by the lower courts. Its rigidity may lead to injustice in some particular cases. Lord Denning, the former Master of the Rolls has argued:

> If lawyers hold to their precedents too closely, forgetful of the fundamental principles of truth and justice which they should serve, they may find the whole edifice comes tumbling down about them. Just as the scientist seeks for truth, so the lawyer should seek for justice. Just as the scientist takes his instances and from them builds up his general propositions, so the lawyer should take his precedents and from them build up his general principles. Just as the propositions of the scientist fail to be modified when shown not to fit all instances, or even discarded when shown in error, so the principles of the lawyer should be modified when found to be unsuited to the times or discarded when found to work injustice.[26]

Also, due to its rigidity it has the tendency of perpetuating bad precedents. The argument is that 'treating a party wrongly is no justification for treating another so.'[27] Where a decision of the Supreme Court is decided *per incuriam*, lower courts are still bound to follow it, notwithstanding the fact that it will lead to injustice. Difficulties can arise in deciding what the *ratio decidendi* is. The judge may give multiple reasons for his decision. Also, in the appellate courts the justices do give separate judgments thereby compounding the problem of determining the ratio. However, the existence of judicial precedent often prevents judges from developing legal doctrine in accordance with societal developments.[28] This demonstrates how the judicial system is somewhat outmoded as reliance upon date case law decisions will be made. This may not be appropriate in modern society and it seems as though further advancements may need to be made. This has a negative impact upon the role of judicial precedent and highlights the complexity of the system. This is because a certain area of the law may have developed over time, yet judicial decisions may not reflect the changes that have been made.

Legal Appraisal

The existence of a judicial precedent may also prevent a Court from making a mistake as guidance will be provided as to how a case ought to be dealt with. Therefore, a judge will be less likely to make a mistake when reaching a conclusion and a decision will be deemed to be a lot stronger. It will make it difficult for a Court's decision to be contested as there will be case law in place that will back up the Courts decision as shown in *Kadhim v Brent London Borough Council*.[29] This is important in preserving the integrity of the justice system and maintaining Judges' confidence.[30] Another

[22] B N Cardozo, *The Nature of the Judicial Process* (Yale University Press, 1921) p.33-4.
[23] J Martin, *Key Facts English Legal System* (Routledge, 2014) p.48.
[24] J O'Riordan, *AS Law for AQA,* (Heinemann, 2002) p.78.
[25]L Betten, *The Human Rights Act 1998: What it Means: The Incorporation of the European Convention on Human Rights into the Legal Order of the UK* (Martinus Nijoff Publishers, 1999) p.98.
[26] L Denning, *The Discipline of the Law* (Butterworths, 1979) p.292.
[27] *Ibid*, 293.
[28]P Plowden and K Kerrigan, *Advocacy and Human Rights: Using the Convention in Courts and Tribunals*, (Routledge, 2002) p.47.
[29] (2001) 2 WLR 1674.
[30] J Ashcroft, *Cengage Advantage Books: Law for Business* (Cengage Learning, 2010) p.47.

advantage that exists is the ability to develop the law even further. Making law in decided case provides an opportunity for growth and legal development and ensures that the law is able to keep abreast with the continuous advances in society.[31] Courts are able to lay down legal rules and principles a lot quicker than Parliament and because there are constant societal and technological advances, it is necessary that new legal rules and principles can be established more conveniently. Succinctly put, legal practitioners lay much credence to judicial precedent. They have no alternative than following the precedent. Thus, the rascality and adversary that ordinarily exist among lawyers in strife for superiority of argument is cautiously stemmed down.

Another argument against the doctrine is that it is undemocratic, in the sense that it allows an 'undemocratic' (better put unelected) body to usurp the function of the parliament, i.e. the function of law making. It is beyond doubt that judges do make law for the law is what the judge say it is. Furthermore, there are too many precedents and they are growing daily, surfing through these cases can be time consuming and very complex for lawyers. Sadly, most lawyers do not have the gadgets to easily access the cases. Law Pavilion, for instance, is overburdened on legal practitioners and compelled to consistently subscribe. Another disadvantage is that the volume of cases may result in too many precedents, causing confusion.[32] Because there is significant amount of case law decisions, it can be extremely difficult and time consuming to understand the law. It has also been put forward that judges may look for reasons not to follow a decision and therefore produce an illogical decision.[33] This can have dangerous consequences and is not what the doctrine intended. Judicial precedent may also cause injustice as the overruling of an earlier case may spark outrage if individuals have conducted their affairs in accordance with a decision.[34] This weakens the importance of the judicial precedent doctrine and seems to counteract its original objectives.

A counter-argument (in favor of the advantages of *stare decisis*) is that if the legislature wishes to alter the case law (other than constitutional interpretations) by statute, the legislature is empowered to do so. Critics sometimes accuse particular judges of applying the doctrine selectively, invoking it to support precedent that the judge supported anyway, but ignoring it in order to change precedent with which the judge disagreed.[35] Since the Human Rights Act 1998 was enacted, the doctrine of judicial precedent has in fact been weakened. This is because legal rules and principles must be read and given effect in a way that is compatible with the rights that are contained under the European Convention of Human Rights of 1951. Any legal rules or principles that appear to conflict with such rights must therefore be amended to ensure adequate protections are being provided to individual human rights.[36] This has a significant impact upon the judicial precedent doctrine since lower courts may be able to overturn previous decisions if it can be shown that they are incompatible with the rights under Convention.

It is evident that judicial precedent will not always be followed if it can be shown a decision is incompatible with Convention rights. This has also been recognized by Zander who put forward that; 'under the Human Rights Act 1998, the operation if the doctrine of precedent may be set aside.'[37] Therefore, Courts may be free not to follow the decisions of higher courts. This will only be applicable in cases concerning human rights and so the judicial precedent doctrine will still be upheld in the majority of instances. Furthermore, once a human rights issue has been recognized subsequent Courts will then be required to follow the position that has been taken. This re-instates the judicial precedent doctrine further and maintains consistency in judicial system. In effect, any human rights issues that have been dealt with will be subject to the precedent doctrine. [38]

Appraisal of Legal Publicist

Judicial precedent brings about consistency between cases. This strengthens the system and is also likely to reduce crime since those who are aware of the consequences will be less likely to commit a criminal offence.[39] Greater fairness is also provided as cases with similar facts will be treated the same. This is of course unless there is some further fact which is material to the decision as the Court will then be capable of reaching a different conclusion. Therefore, the legal publicists find it easy to publish the decided cases into law reports, case books, online database, like the Law Pavilion, and other documents both in hard copies and softcopies for easy references. These benefits are not just limited to the convenience of publication and easy reference. It also largely benefits the legal publicists in the financial aspect, as the commercial purpose of the publication is prerequisite. Whilst there are many advantages to having a doctrine of judicial precedent, it often said that the doctrine introduces unnecessary restrictions into the law. Because of the fast pace at which society advances, it is necessary for the law to keep abreast with any changes that are made.

---

[31] M Charman, B Vanstone, and L Sherratt, As *Law* (Routledge, 2012) p.71.
[32] S Fafinksi and E Finch, *English Legal System* (2nd edn Pearson Education, 2009) p.76
[33] D Lock, 'Public/Human Rights: Unconventional?' (2009) (17) (27) *New Law Journal,* Issue 7397.
[34] 'Paragraph 21: Power to Determine Ambit of own Authority' *Halsbury's Laws of England* (Lexis Nexis, 2003) p. 65.
[35] J T Loughran, 'Some Reflections on the Role of Judicial Precedent' *Fordham Law Review,* Volume 22, Issue 1, 274-320.
[36]Sixth Form Law. 'Advantages and Disadvantages of the Doctrine of Judicial Precedent' <http://sixthformlaw.info/01_modules/mod2/2_1_1_precedent_mechanics/08_precedent_advantages_dis> Accessed 27 July 2024.
[37] M Zander, *The Law-Making Process* (6th edn Cambridge University Press 2004) p.32.
[38] S Fafinksi and E Finch, *English Legal System* (2nd edn, Pearson Education 2009) p.57.
[39] E Reichert, *Challenges in Human Rights* (Columbia University Press, 2007) p.67.

Not all agree that judicial precedent is that effective, however, and have instead argued that many of the principles are weak and outdated. This is due to the fact that judicial precedent is ageless and so a decision that was made a long time ago by a Court of Appeal, for instance, will still have to be followed until 'it is distinguished by another Court of Appeal or overturned by the Supreme Court.' Judicial precedent's that have been set by higher Courts will therefore be binding upon all lower Courts unless the same Court or the Supreme Court has overturned the previous decision as identified in *Young v Bristol Aeroplane Co. Ltd.* Therefore, whilst judicial precedent does have some drawbacks, it is still an important part of the judicial system and is necessary in the interests of justice.

The disadvantages of *stare decisis* include its rigidity, the complexity of learning law, the differences between some cases may be very small and appear illogical, and the slow growth or incremental changes to the law that are in need of major overhaul. Regarding constitutional interpretations, there is concern that over-reliance on the doctrine of *stare decisis* can be subversive. An erroneous precedent may at first be only slightly inconsistent with the Constitution, and then this error in interpretation can be propagated and increased by further precedent until a result is obtained that is greatly different from the original understanding of the Constitution. *Stare decisis* is not mandated by the Constitution, and if it causes unconstitutional results then the historical evidence of original understanding can be re-examined. In this opinion, predictable fidelity to the Constitution is more important than fidelity to unconstitutional precedent.

5. Prospects of Judicial Precedent in Nigerian Legal System

Lawyers and judges contribute their fair share to the development of the Nigerian legal system through case law which is also a primary source of law in Nigeria. Case law is derived from the cases the court decides. In essence, they are judgments of the court. Judicial precedent needs to validate a case law before it can be called a primary source of Nigerian law. It is a general proposition that judges do not have the power to legislate. So if judges cannot legislate, how then is case law a primary source of Nigerian law? The reason why case law is a primary source of Nigerian law is that the law is what the judge says it is. Legislations have different interpretations in the law court, thus lawyers haggling about which interpretation should stand in court. The only interpretation that becomes applied is the interpretation that the court accepts and it subsequently becomes case law. There are also instances where legislation is not clear. In these instances, the court uses the rules of interpretation to clarify the provision of the legislation. In essence, case law is a very important source of Nigerian law. The other primary sources of law can only operate through case law.

In a 1997 book, attorney Michael Trotter[40] blamed over-reliance by lawyers on binding and persuasive authority, rather than the merits of the case at hand, as a major factor behind the escalation of legal costs during the 20th century. He argued that courts should ban the citation of persuasive precedent from outside their jurisdiction, with two exceptions: cases where the foreign jurisdiction's law is the subject of the case, or instances where a litigant intends to ask the highest court of the jurisdiction to overturn binding precedent, and therefore needs to cite persuasive precedent to demonstrate a trend in other jurisdictions. Principles for overturning precedent have evolved significantly from the time of the early judiciary. For example, the Supreme Court rejected until well into the twentieth century the idea that 'the constitutional or statutory nature of a precedent' should 'affect its susceptibility to reversal.'[41] As noted above, the Court now affords greater deference to its statutory decisions. Yet, the most significant change in the Court's approach to *stare decisis* has arguably been the rate at which the Court now casts aside settled case law. This increase has yielded criticism: Justice Scalia alleged that 'the doctrine of *stare decisis* has appreciably eroded' in the modern era.'[42] Legal scholars have critically attributed the trend to an increase in politicization of the Court, claiming that *stare decisis* has been rendered 'a matter of 'convenience, to both conservatives and liberals,' whose 'friends . . . are determined by the needs of the month.'[43] Yet politicization does not provide the only explanation for the increase in overturned precedents. As other scholars note, in its early years the Court had far fewer precedents and 'consistently wrote on a clean slate as it addressed fundamental questions of constitutional law,' whereas 'today's Court routinely is faced with the task of reconciling or distinguishing prior decisions.'[44]

6. Conclusion and Recommendations

From the foregoing, it is recommended that the National Assembly should enact laws for strict adherence to judicial precedent. Also, judges who dissuade from judicial precedent should be sanctioned by National Judicial Council to deter others. Nigerian Bar Association should enforce disciplinary measures on lawyers who deliberately flaunt judicial precedent to wasting the time of the court. In a nutshell, the goal of certainty and consistency in the judicial system is paramount for speedier judicial process. This, holistically, is the effect of judicial precedent. From the interrogation, it is unavoidable practice in the legal parlance for time saving, cost, and stemming the tide for judicial rascality. Thus, despite its shortcomings, it is needed to keep judges in check to reduce wanton exercise of discretion.

---

[40]M H Trotter, *Profit and the Practice of Law: What's Happened to the Legal Profession* (University of Georgia Press, 1997) pp.161-3.

[41]A Scalia, 'Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws'In: G B Peterson (ed.), *18th Tanner Lectures on Human Values* (N.P. 1997) p.79, 87.

[42] *Ibid*.

[43] C J Cooper, 'Stare Decisis: Precedent and Principle in Constitutional Adjudication' (1988) (73) *Cornell L. Rev.* 401, 402.

[44] *Ibid*, 648-50.