

Nigerian Judiciary and the Challenge of Corruption: Islamic Options as Panacea

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Abstract

Nigeria is organized on a tripod of Legislature, Executive and the Judiciary under the doctrine of separation of powers. The three arms of government are expected to work under a symbiotic relationship where they are equal partners. As the body saddled with the responsibility of interpreting the laws and determination of disputes between individuals inter-sect and between states and other levels of government, it is expected to live above board. In Nigeria, the complaints against the judiciary is deafening on the issue of corruption as it appears this body is in the view of Nigerians not living to expectation especially on the issue of corruption. A number of reasons have been advanced for the state of affairs and there is need to put a searchlight on this cankerworm afflicting the Nigerian judiciary. The paper seeks to answer the questions why and how this body has fallen into this abyss and what the institution is doing to reduce or exterminate this challenge. This paper will investigate and interrogate the challenge of corruption in the justice sector, proffer solutions with a view to ensuring that the sector is freed of the debilitating phenomenon. The implication of the effects of corruption in the judiciary on other arms of government will be addressed. The paper will conclude with the way forward prescribing the options provided by Islam as the way out of the abyss that the institution is currently bedeviled with.

Introduction

A functional, independent and impartial justice system is crucial to addressing corruption effectively, which in turn is important for sustainable development. But judicial institutions are themselves corruptible. Corruption and perceptions of corruption in the judiciary undermines the courts' credibility as corruption fighters. More generally, it erodes trust in the courts' impartiality, harming all the core judicial functions, such as dispute resolution, law enforcement, protection of property rights and contract enforcement. In addition, it harms the

broader accountability function that the judiciary is entrusted with in democratic systems – upholding citizens’ rights, securing the integrity of the political rules of the game, and sanctioning representatives of other branches when they act in contravention of the law.

Corruption is deeply rooted in every facet of the Nigerian polity it is phenomenon that exists in innumerable forms, knows no cultural boundaries, operates in the private as well as the public sector and defies comprehensive definition. Despite the adverse impact of corruption on democratic governance in Nigeria, the focus on the phenomenon has received little attention especially from Islamic perspectives. Accordingly, this paper will analyze the Islamic perspective on corruption, in particular as it affect judicial institution which is last hope for common man as well as common form of corruption under Islamic criminal law. Islam looks to a significant degree to moral development within the individual to strengthen resolve and foster self-restraint. The focus is upon shaping the higher-order preferences elaborated in the *Qur’an* and the *Sunnah* through the law of *Shari’ah*, reinforced by a powerful spiritual incentive system. Instructively, the Nigerian legal system though recognizes *Shari’ah* and can learn from the system.

This paper explores the Islamic rules governing judicial function, specifically those prohibiting corruption in dispensation of justice. The rules for Muslim judges are more restrictive in the sense that judicial functions cannot be totally divorced from judges’ moral and religious duty. Many countries are facing the challenges of corruption; this being an issue demanding holistic and proactive action to combat the menace. The goal of this paper is to identify the Islamic legal framework for regulation of judicial functions from corruption.

It is instructive to note that most countries have a utilitarian view of the role of judges in society. Notwithstanding, the function of the judiciary is to serve the people through impartiality in decision making and protection of individual rights without fear or favoritism. It is pertinent to note that while it is certain that dealing with the “issues of corruption” are recognised, the vast majority of laws governing corrupt practices in society are citizen-made, created for specific purposes, and reflective of the overall interests and values of the people.¹

¹ For instance apart from the provisions of Criminal Code and Penal Code dealing with issues of corruption, the Nigerian National Assembly has enacted several legislations to deal with the issues among which are Corrupt Practices and Money Laundering Act 2004, Independent Corrupt Practices and other related Offences Commission (ICPC) 2002, Economic and Financial Crime Commission, 2004, Advance Fee Fraud and Other Related Offences

While the law regulating crime of corruption under Islamic Law are basically divine thus, while society may enact, amend, or repeal its laws, as it deems necessary same is not applicable to Islamic law. So while modern Western societies typically draw a bright line between things sacred and secular, allowing government to regulate public matters, same is not applicable in *Shari'ah*. The broad body of Islamic Law, known as *Shari'ah*, draws no distinction between sacred and secular. In addition to setting forth God's laws for prayer, fasting, and professing faith, *Shari'ah* also deals with politics, economics, banking, trade, family law, evidence and procedure, sexuality, dress, hygiene, dietary laws, and criminal laws.

Corruption in Nigeria

The reverberating effects of the failure of leadership, corruption and bad governance are being felt across all sectors and segments of Nigeria polity; unemployment, insecurity, crude oil thefts, dearth of infrastructures, problems in education, health services, transportation, accommodation, communication, to mention a few. Nigeria has remained a laggard in social, political and economic developments as well as achieving fair and equitable justice from courts of law.² Nigeria's social politico-economic history has revealed that many of its leaders over the years have been using the "iron law of oligarchy" and 'judicial manipulation' which explains the triumph of the leaders' ambitions for office over the citizens' revolutionary goals.³

The official figures recently placed in the public domain by the Nigerian Bureau of Statistics (NBS) capture and underscore the paradox of the Nigerian situation. The figures show the copious inflow of proceeds from oil and reveal, even to a casual observer, the very sharp contrast between available resources and the living conditions of the populace. The Bureau's report has, like many others, drawn public attention to the oft-repeated problem of mismanagement and failure of leadership.⁴

Act, 2006 etc. Despite the successes achieved by these measures, the situation remains unacceptable as corruption continues to permeate and pervade every facet of national life in Nigeria.

² See generally; Pogoson, A.I., Globalization and Anti-Corruption Reform in Nigeria: 2003-2007". In D.U, Enweremadu and E.E, Okafor (eds) *Anti-Corruption Reform in Nigeria Since 1999: Issues, Challenges and the Way Forward*, (Ibadan: IFRA Special Research Issue vol. 3, 2009)

³ Tignor, R. "Political Corruption in Nigeria before Independence", (1993), 12(10), *Journal Modern African Studies* pp. 175 – 202.

⁴ The Tribune 4th April, 2003, p. 17

Nigeria has remained hanging in social, political and economic developments. Corruption thus, is a deep-rooted age-old phenomenon that exists globally in innumerable forms, knows no cultural boundaries, operates in the private as well as the public sector, applies to rich and poor countries, and defies a comprehensive definition. The universality of this phenomenon perhaps is not surprising however; the attention it has received in the literature particularly from Islamic point of view is scanty. Consequently, many of the Nigerian leaders have tended to plunder, defraud, embezzle, corrupt, and mismanage in the process.⁵ The judicial arm of government has over the years been drawn into the arena of corruption and appears to be deeply engrossed in excessive acts of corruption, impropriety and mismanagement of judicial power. In addition, all available means were employed by Nigerian political leaders to 'grab' power at all cost including the blatant rigging of elections, mismanagement of public fund, manipulation of census figures, violence, thuggery, arson, vandalism, gangsterism, corruption, religious ethnicity, regionalism, tribalism, ethnic sentiments, judicial corruption and acts of brigandage.⁶

Nevertheless, the forms of corrupt activities prevalent in Nigeria can be summed up to include political corruption, bureaucratic corruption, electoral corruption, embezzlement and bribery.⁷ Political corruption, which takes place at the highest levels of political authority, is a 'corruption of greed.' It affects the manner in which judicial decisions are made, manipulates and distorts impartial function of judicial institutions and rules of procedure. Bureaucratic corruption, which occurs 'in the public administration' or 'the implementation end of politics,' is the 'low level' and 'street level' corruption.⁸ This is the type of corruption the citizens encounter daily at places like the hospitals, schools, local licensing offices, encounters with the police, taxing offices, etc. It is 'petty' 'corruption of need' that occurs when one obtains a bribe from litigant and the public sector through inappropriate procedure. However, judicial corruption includes improper use of judicial discretion, favouritism, promises of office

⁵ Falola, T, Mahadi, A. Uhomoibhi M. & Anyanwu, U. *History of Nigeria: Nigeria in the twentieth Century*, (Ibadan: Longman Group Limited, 1991) pp. 23-40

⁶ Ugochukwu, B., *Democracy by Court Order: An Analytical Evaluation of the 2007 Election Petition Tribunals in Nigeria* (2009), Lagos, Legal Defence Centre, pp.18-24

⁷ Ribadu, N., *Corruption: The Trouble with Nigeria*, A paper presented at the 3rd Annual National Trust Dialogue, (2006), p 19

⁸ See generally, Gloppen, S., Gargarella, R. and Skaar E. (eds), *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. (London: Frank Cass; 2004)

or special favors, coercion, intimidation and interference with freedom of election.⁹ Corruption in the offices involves sales of legislative votes, administrative, or judicial decision, or governmental appointment. Other forms of corruption include embezzlement (theft of public resources by public officials) and bribery (persuade to act improperly by a gift of money, etc).¹⁰

Consequently, neglect of significance of judicial calling as independent and impartial arbiter, malpractices of all forms in judicial act, corruption of every description, readiness to pervert justice cheat, ethnic and sectional or religious inclinations have been the order of the day in judicial institution of government in Nigeria for many years. These have in turn precipitated erosion in public confidence in judicial arm of government. A society that its judicial is engrained with injustice and devoid of equality and fairness in its function is inherently contributing to instability in society. Instructively, Nigeria has three distinct legal system constitutionally recognised, however the Islamic legal system which is one of the customary legal system has played little role or given due consideration in addressing issues particularly corruption in the country. This paper thus, posits to present an Islamic perspective on corruption insofar as its definition, causes, and remedies are concerned, and to compare and contrast this perspective with the understanding reached within the western paradigm. But first we begin with a brief survey of the definition of corruption, changing views on the significance of corruption and its causes.

Concept of Corruption

In common usage, the word corruption is associated with a range of acts such as bribery, extortion, buying influence, nepotism, favoritism, fraud and embezzlement. Nevertheless, it is at root, evidence of a moral failure. The word corruption comes from the Latin verb *rumpere*, to break. It may be argued therefore that the phenomenon of corruption indicates a presumably decadence prevailing in the ethical, moral, social, or administrative code of conduct of society. In this respect, corruption can be thought of as the betrayal and abuse of trust for private benefit. Scholars have described corruptions from different perspectives. Annan posits that corruption hurts the poor disproportionately by diverting funds intended for development,

⁹ *ibid*

¹⁰ Abimbola, J.O and Adesote, S.A., "Good Governance and National Development in Nigeria: A Critical Analysis". In D.A Falade and Gbade Ikuejube (eds), *Nation Building and Sustainable Development in Nigeria*, (Ibadan, Alafas Nigeria Company, 2012), pp. 23-33

undermining a government's ability to provide basic services, feeding inequality and injustice and discouraging foreign investment and aid.¹¹ To Osoba, corruption can be defined as anti-social behaviour conferring improper benefits contrary to legal and moral norms, and which undermines the authorities' capacity to secure the welfare of all citizens.¹² Corruption is the perversion of integrity or state of affairs through bribery, favour or moral depravity.¹³ Lodge observes that political corruption is located within the institutions of government legislatures, courts, bureaucracies and statutory bodies such as parastatals, corporations or commissions. It is constituted by transactions or exchanges of public resources and benefits between actors, some or all of whom are officials or public representatives.¹⁴

A number of similarities can be inferred from the above definition; in a perspective, there can be no clear distinction between perpetrator and victim. If ethics are good, then corruption must be corrosive to the perpetrator, along with society as a whole. There is also cultural dimension inferable from the definition to the extent that actions such as officials demanding bribes are considered corrupt in virtually all societies, whereas attitudes to gift-giving and cronyism, for example, vary from country to country. In another perspective, the definition makes clear that corruption takes place not only by public officials but also by those in a position of trust in private enterprises or non-profit organizations. Indeed, most government corruption involves a private sector entity.

Corruption in the Judiciary/Judicial Corruption

Corruption in the judicial arm of government in a democratic society appears to be a global problem. It is not restricted to a specific country or region.¹⁵ Yet manifestations of corruption seem to be at their worst in developing countries and countries in transition. It is now an undisputable fact that corruption is one of the main obstacles to peace, stability, sustainable development, democracy, and human rights around the globe. International and regional human rights instruments recognise as fundamental the right of everyone to due process of law, including to a fair and public hearing by a competent, independent and impartial tribunal

¹¹ Annan, K. Cited in UNDP, (1997) 20 Governance: Nigeria and the World

¹² Osoba, S. Corruption in Nigeria: Historical Perspectives, (1996) 23(69) *Review of African Political Economy*, pp. 371-386.

¹³ Otite, O. *Sociological Study of Corruption in Nigeria*. (Ibadan: University Press, 1986)

¹⁴ Lodge, R., Political Corruption in South Africa, (1998), 97, *African Affairs*, p. 66

¹⁵ Iyoha, F.E and Enabunene, S., Corruption and Crime in Nigeria: Impact on National Development. In O Arowolo S. I Fabarebo (eds) *Nigeria: (2005), Contemporary Issues*, pp.59-67

established by law.¹⁶ The importance of this right in the protection of human rights is underscored by the fact that the implementation of all other rights depends upon proper and fair administration of justice. An essential element of the right to a fair trial is an independent and impartial tribunal. Another inherent element of a fair trial is the procedural equality of parties, the so-called “equality of arms”.

Against the above background it is argued that where the judicial system is corrupt, no such elements will exist. Judicial corruption influences undue access to and outcome of judicial decisions. The decisions will remain unfair and unpredictable and consequently the rule of law will not prevail. If one of the parties has bribed the judge or other court official and obtained access to documents to which the other party has no access, or caused documents to disappear, there can be no equality of arms. A judge who has taken a bribe cannot be impartial or fair. When a party to judicial proceedings offers a bribe to a judge or other officials, and the bribe is accepted, that party immediately acquires a privileged status in relation to other parties who have not offered, or are not in a position to offer, a bribe or inducement. The preferential treatment secured and the resulting discrimination, then, obliterates objectivity and neutrality from the judicial process.

In view of the fact that corruption is no longer a local or regional matter but rather has evolved into a transnational phenomenon with potential negative effects on the socio-economic development. There has been international and regional cooperation in combating the menace of corruption. It needs be said therefore that the act and conduct amounting to corruption has been covered by international and regional instruments and the African Union Convention in combating and preventing in its Article 4 (1); enjoins State Parties to undertake and adopt legislative and other measures that are required to combat corruption and related offences. No thought and in line with the above, the imperativeness of having in existence and recognition legal framework to combat corruption in Nigeria metamorphous to the enactment of Corrupt Practices and other Related Offences Act, (ICPC) 2003, Economic and Financial Crimes Commission Act, (EFCC) 2004, and the Money Laundering Act, Advanced Fee Fraud Act. It

¹⁶ Mauro, P., Corruption and Growth, (1995), *Quarterly Journal of Economics*, pp. 681-712, see also Mauro, P. 1997. Why Worry about Corruption? Washington, D.C.: International Monetary Fund National Performance Review Office, Office of the Vice President of the United States. Putting Customers First: Standards for Serving the American People (Report of the National Performance Review). Washington, D.C., Sept. 1994. Pope, Jeremy (ed.). 1997. *National Integrity Systems: The TI Source Book* (second edition). Washington,

may be argued that the legislations only compliments the existing Criminal and Penal Codes which have some sections among others dealing with the crimes of corruption.

It is argued that the clear evidence of corruption in the judiciary posed a great danger for the Country. This is especially true when one view the role of judiciary as interpreter of legislation and guardian of the Constitution in connection with the enforcement of the anti corruption legislations. This role placed the judiciary in a higher and stronger position than the executive and, or the legislature. It thus may amount to wasted government's efforts to fight corruption if the judiciary which alone can pronounce legislation or the acts and deeds of the legislature and executive unconstitutional, is itself embroiled in corruption.¹⁷

In spite of the galloping rate of corruption in the other arms of government in Nigeria, corruption in the judiciary is still relatively manageable. More importantly, the judiciary through the NJC has been working with sincerity of purpose in dealing with the issue of corruption in the institution. The evidence of this fact is shown from disciplinary action meted out against some judges found unworthy of remaining in the position of judge by the NJC. For instance, members of Akwa Ibom Election Tribunal indicted for accepting bribe were dismissed by NJC and former Chief Judge of the Federal Capital Territory, alleged to have taken exhibit money from his court when he was serving in Sokoto prior to his resumption at the Federal Capital Territory was equally dismissed by the NJC.¹⁸ Similarly, in 2005 Justices Okwuchukwu Opene and David Adeniji, both of the Court of Appeal, were removed from their posts for well-proven acts of corruption. In 2005, arising from their handling of the appeal in a senatorial contest in Anambra state, infact, their judgment ended in a bizarre drama when members of the audience, in an expression of anger when the judgment was being read, forced the judges to flee in different directions. A committee set up under the auspices of the National Judicial Council and chaired by a retired Justice of the Court of Appeal established that Opene took 15 million naira (US\$100,000) in bribes while Adeniji accepted 12 million naira (US\$80,000). The third judge, Kumai Bayang Akaahs, was said to have rejected the amount which was offered him and thus, instead delivered a dissenting judgment.¹⁹

¹⁷ Aka-Basorun, The Supreme Court and the Challenge of '90s" in Akinseye George (ed.), *Law, Justice and Stability in Nigeria: Essay in Honour of Justice Kayode Eso*, (1993) p.113.

¹⁸ Justice Observatory Journal July, 2004, Vol. 2 No. 1pp. 4-6, 57-63 and the Justice Observatory Journal May, 2007, Vol. 5 No.1 p. vi

¹⁹ See generally Ibrahim Imam et al, *Corruption in Nigeria: A call for an Aggressive Legal Solution*, (2010) UNIZIK JIL, pp. 134-n145

The Islamic Perspective on Corruption

Globally and for many people, religion is an important influence that shape moral conduct, societal values and concepts of social justice and this is the overriding consideration on Islamic faith. Instructively therefore, Muslims do not, in good faith, compartmentalize their behavior into religious and secular dimensions only, because their actions are considered bound by Islamic law which embodies an encompassing set of duties practices including morals and behavior in all facets of life, public and private. In view of Muslims attachment to Islamic principle as all encompassing, what then is the Islamic perception on corruption?

From the outset, it is pertinent to note that the conception of corruption like any other aspects of Muslim life can be traced to the primary sources of the Islamic law that is the Qur'an (the revealed word of God) and the Sunnah (the practices and approvals of Prophet Muhammad and his Companions based on thousands of statements about what was said or done, and found in the literature of the Hadith). Therefore under Islamic law, corruption refers to a broad spectrum of human behavioral digressions which are not compatible to Islamic principles and threaten the social, economic and ecological balance of society and individuals. The example of which can be understood from the following Quranic verses:

*Oh my people! Give full measure and full weight in justice, and wrong not people in respect of their goods. And do not do evil in the earth causing corruption.*²⁰

*Faraon exalted himself in the earth and made his people castes. A tribe among them he oppressed, killing their sons and spearing their women. He was of those work corruption.*²¹

*But seek the abode of the hereafter in that which Allah has given you and neglect not your portion of the world, and be kind even as Allah has been kind to you and seek not corruption in the earth, Allah loves not corrupters.*²²

²⁰ Quran 11 verse 85

²¹ Quran 28 verse 4

²² Quran 28 verse 77

As for that abode of the hereafter we assign it to those who seek not oppression in the earth, nor yet corruption. The sequel is for word off (evil). And lot! (Remember) when he said to his people you commit lewdness such has no creation deed before you. For do you not come into males, do you not the road (travelers), and do you not commit abomination in your meetings? But the answer of his people was only that they said bring Allah doom upon us if you are truth/teller! He said my Lord! Give me victory over people who work corruption.

23

Corruption appears on the land and seas because of (the evil) which men hands have done, that he may make the taste a part of that which they have done in order that they may return.²⁴ 89 vs 12; And multiplied in equity in it²⁵?

From the above Quranic verses, corrupt acts are explained in plain language, in terms of being just or unjust, with reference to their detrimental impacts on societal organization and/or interrelationship among people in accord to the universally respected standards of moral behaviours. A distinctive negativity of such actions is that corruption distorts a harmonious relationship among all people coming from a diverse religion, ethnic, cultural, knowledge base inclination's differences and affect socio-economic development. Understanding corruption in Islamic law perspectives demonstrate that the term corruption extends to abuse of public office for private gain or mismanagement of public fund. The significance of this is explained in Qur'an 2:188 thus;

And eat not your property among yourself in vanity, nor seek by it the hearing of the judges that you may knowingly devour a portion of the property of others wrongfully.

Islam prohibits political leaders, rulers, judges, decision-makers, and common or poor citizen from engaging or facilitating the unjustified appropriation of the property of others or public property by obtaining because of the privilege he/she enjoys as leader or procuring a favorable ruling in exchange for bribery. In the Islamic law terminology, such behavior is referred to as

²³ Quran 29 verses 28-30

²⁴ Quran 30 verse 41

²⁵ Quran 89 verse 12

batil (false or deceptive) on the one paradigm and *ithm* (criminal, sinful, inappropriate) on the other perspective. This proposition is explained in Quran 28:4 and 89: 10-12 thus: condemned are those in authority who spread corruption and mischief (*fasad*) on land by conspiring racial divisions among people, bestowing benefits on some and oppressing others.

Islam takes issues of corruption seriously because of its effect on human being and therefore admonishes the rich/wealthy in society to seek with their wealth lawful bounties and not engage in actions that spread corruption (*fasad*) on land.²⁶

In Islam the exemplary life of the Holy Prophet Muhammed of his practices, teachings, actions and sayings fondly called Hadith/Sunnah are significant and usually put in focus when discussing issues particularly relevant to events that took place in the early years of Islam, during the life of the Prophet and the early caliphs (rulers, successors, vicegerents). Thus when discussing corruption, the prophetic Sunnah becomes important to provide illustrations of what is considered to be appropriate behavior. There are Hadith that described or condemned corruption through a general sanction that censures the givers and the receivers of bribe and those that engage in acts of corruption or dishonesty. For example: *It was narrated by Abdullah ibn Amr ibn al-As: that the Apostle of Allah (PBUH) cursed the one who offers bribe as well as one who accepts bribe.*²⁷

Instructively, the concept of corruption through reproaching the abuse of trust placed in officials by the state such as accepting gifts, outright theft of public funds, and undermining rules in exchange for bribes, on recommendation or due to family/tribal considerations are captured in the above Sunnatic quotation.

In summary, people in general judicial officers in particular are prohibited from making recommendations in exchange for gifts as such behavior falls under *rashwa*. In the Prophet way of fighting and preventing corruption he warn against the appointment of people who sought a public appointment because such are positions of trust that must be given only to those possessing appropriate attributes (merit). The Holy Prophet was reported to have said:

²⁶ Quran 28 verse 77

²⁷ Sunan Abi Dawud: Book 24, Number 3573

*Authority is a trust, and on the Day of Judgment it is a cause of humiliation and repentance except for one who fulfill its obligations and (properly) discharges the duties attendant thereon.*²⁸ (Sahih Muslim).

Corruption is a serious crime under Islamic law and it is considered to be simultaneously religious and criminal offenses because of the serious harm it can occasion in society particularly when viewed from the perspective of those saddled with judicial responsibility. Therefore, they are punished, thus; it is recited in the *Qur'an*:

*But seek, with the wealth which Allah has bestowed on thee, the Home of the Hereafter, nor forget thy portion in this world: but do thou good, as Allah has been good to thee, and seek not occasions for mischief in the land: for Allah loves not those who do mischief.*²⁹

Though it does not mean that judicial corruption is considered in all its forms as a moral offense, notwithstanding it encompasses all offences, including corruption, for which Shari'a does not prescribe a specific penalty.³⁰ Judicial corruption is considered a crime in Islamic law because of the vital role judges play in the achievement of justice within the application of the equality principle between individuals. The judiciary represents one of the most fundamental positions in the Islamic state.³¹ Muslim scholars include within the category of "judges and state governors" prosecutors, decision makers, rulers, and other public officials. The form of corruption of judicial officer thus consists of either paying bribes to hold a judicial position or to facilitate an illegal favored ruling or judgment.³²

In view of the above, Muslim scholars agree upon the prohibition of obtaining a judicial position in exchange for bribes as it represents "eating up" property for vanity, lack of integrity, dishonesty, and abuse of confidence and trust. This prevailing opinion can be inferred from the following Prophetic tradition reported by Abd al-Rahman ibn Samura, who

²⁸ Shahihi Muslim

²⁹ Suratul Qasas verse 77

³⁰ Abu Al-Hussein Muslim Ibn Al-Hajjaj Ibn Muslim Ibn Warat Al-Qushyri Al-Nisaburi, Sahih Muslim, Knowledge, No. 4491, Vol. 1, Book. 20, translated in Univ. So. Calif., Center for Muslim-Jewish Engagement, <http://cmje.org/> [hereinafter SAHIH MUSLIM];

³¹ Yusuf Abdullah Al-Qardawi, Islam Bayn Al-Halal Wal-Haram [The Lawful and the Prohibited in Islam] (Shams Pirzada trans., 1996)

³² 223. Hussein Madkur, Al-Rashwa Fi Al-Fiqh Al-Islami Moukarnan Belkanoun [Bribery in Islamic Jurisprudence: A Comparative Analysis between Islamic Law and Positive Law] (1984).

said that: The Messenger of Allah (PBUH) said to me: ‘Abd al-Rahman, do not ask for a position of authority, for if you are granted this position as a result of your asking for it, you will be left alone without God’s help to discharge the responsibilities attendant thereon, and if you are granted it without making any request for it, God will help you in the discharge of your duties.³³

Similar evidence is the tradition narrated by ‘Abdullah Ibn ‘Amr Ibn al-‘as that: The Apostle of Allah (PBUH) cursed the one who offers bribe as well as the one who accepts bribe.³⁴ Second, *Surat* (Chapter) *Al-Baqarah* verse 188 provides,

And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of other people’s property.

Therefore, within the context of honesty at all times, this verse sounds another warning against usurping other people’s possessions. The verse refers specifically to presenting false and fraudulent evidence before a judge or other arbiter in order to obtain a favorable judgment giving one the right to appropriate another’s property.³⁵ To reinforce the sense of deterrence, this warning follows immediately after reference to the bounds set by God and the call for more consciousness and fear of Him.³⁶

Accordingly, judges in Islamic principles are duty bound to decide on the basis of “*prima facie*” evidence and the onus of honesty on the litigants. Against the above background, corruption in the form of bribery or influencing judges are linked to righteousness or the ideal of being God-fearing. Instructively, under Islamic law judicial rulings should at all times represent parts of a harmonious and divinely ordained way of life, firmly bound together in a common framework of maintaining fear of Almighty Allah (SWT) anything short of this amount to corruption from Islamic law point of view. Therefore, bribes to facilitate an illegal favorable ruling or judgment by accepting gratifications in this paradigm is considered act of

³³ 225. Sahih Muslim, Knowledge, No. 4487, Vol. I, Book 20 [The Book on Government: KITAB AL-IMARA / Chapter 3:

³⁴ Abu Dawud, (Sunnah Abu Dawud) Knowledge, No 3573, Vol. 1 Book 24, translated in Univ. So. Calif., Center for Muslim-Jewish Engagement, available online at <http://cmje.org/> [hereinafter Sunnah Abu Daud]

³⁵ Yusuf Abdullah Al-Qardawi, *Islam Bayn Al-Halal Wal-Haram*

³⁶ *ibid*

corruption and Muslim scholars are unanimous in their opinions. Ibn Kathir refers to accounts in Al-Bukhari and Muslim in which Umm Salamah quotes the Prophet (PBUH) as saying:

I am only human. When you come to me for judgment, some of you may have a clearer piece of evidence, and I might be inclined to rule in their favor. If I give someone anything which is not rightly his, it would be as if I have given him a brand of fire; it is up to him to take it or leave it.³⁷

Islam is all encompassing and take care all facets of human life this makes Islam a potent and well integrated system which cannot be fragmented or disconnected, taking some parts of it and discarding others. Judicial corruption is therefore a gross transgression and a most vile offense against Allah as contained in the Quran that: It does not behoove a Prophet to act dishonestly, for he who acts dishonestly shall be faced with his dishonesty on the Day of Resurrection. Everyone will then be paid in full what he has earned, and none shall be wronged.³⁸ The interpretation derivable from this *Surat* is that it refers to the moral qualities in the Holy Prophet (PBUH) and thereby emphasize the imperative of honesty/sincerity and prohibition of any act that is tantamount to deceit and cheating in judicial proceedings.

It reminds people particularly those vested with the power to settle disputes between two contending parties the need to be wary of the fact that they will be held accountable for their deeds and that everyone will be given their fair reward.³⁹ The Prophet (PBUH) is reported to have said, "Anyone who does an assignment for us and conceals even a needle, or anything bigger, acts dishonestly. He will be faced with his dishonesty on the Day of Judgment.

The *Surat* delivers a general statement which makes it clear that no prophet could ever act dishonestly.⁴⁰ Therefore, for a judicial officer to be dishonest is to act against his own nature and those who are dishonest and try to take something which belongs to the public treasury, or keep for themselves what booty they may be able to lay their hands upon, are issued with this fearful warning: He who acts dishonestly shall be faced with his dishonesty on the Day of

³⁷ Hadith Bukhari and Muslim

³⁸ Surat Al-Imran Verse 161

³⁹ Surat Al-Imran Verse 161

⁴⁰ The Holy Quran decried the prophet thus, Indeed in you is the best and exemplary behaviour.

Resurrection. Everyone will then be paid in full what he has earned, and none shall be wronged.⁴¹

Challenges and Implications of Judicial Corruption/Petty Corruption

Systemic petty corruption or bribery in the judicial system is a problem in many developing countries as well as in more developed economies. This can be fathomed from the example given above. Bribes offered by users of the legal system especially as fondly manifest in election petition cases may take many forms, illegal ‘fees’, gift for judges⁴² and intimidation like the incidence that occurred at Ekiti where thugs allegedly invaded the court and beat judges to prevent the hearing of Ayodele Fayose’s case. Court users pay just to get their case through the system, to influence the outcome of a given case, or to delay it. Bribes may be paid to the judge, or to assistant staff or lawyers to remove files or get the case assigned to a particular judge.

Instructively, the clear challenges to the court of justice undermine fairness and impartial decision. Thus, where petty corruption is prevalent it creates an additional barrier for ordinary citizens to access the justice system. Widespread bribery also erodes trust in the courts and distorts their ability to perform their functions as impartial arbiters of disputes.⁴³

Undue Political Influence

Another challenge and implication of corruption to justice system is found in judges political bias. Citizens’ perceptions of such attitude especially in election dispute undermines the role of the judiciary as protector of citizens’ rights as well as credibility of elections vis-à-vis the state in its various manifestations. It leaves ordinary people without effective recourse to justice when the state is the offending party or the petitioner is in power, and with scant protection. The political bias is not necessarily consistent across all types of cases. It tends to tick in when the stakes are high, such as when the executive or other political office holders feel their position threatened. It is thus particularly damaging for the courts’ political

⁴¹ Shahihi Bukhari and Muslim

⁴² Nyamu-Musembi, C., *Gender and Corruption in the Administration of Justice*; In TI (Transparency International) *Global Corruption Report 2007* (New York: Cambridge University Press, 2007), pp. 121–128.

⁴³ Molele, C. and A. Makinana (2012), ANC sets its sights on the judiciary. Mail and Guardian, 17 February 2012. <http://mg.co.za/article/2012-02-17-anc-sets-its-sights-on-the-judiciary> accessed on 10th October, 2014

accountability function, their ability to impartially enforce the rules of the political system, for example in relation to election fraud.⁴⁴

Illegitimate political influence on judges take different forms, some are clearly illegal (bribes, blackmail, threats, violence/murder), while other forms of undue influence stem from the ways in which relations between the judiciary and other arms of government are organized, or reflect a legal culture where judges are expected to defer to political authorities.

Judicial Appointments

Where the government is perceived to appoint deferential judges or friends to the bench, it damages trust in the judiciary, regardless of whether the judges are in fact biased in their rulings. In many countries the executive (is widely perceived to) decisively influence who are appointed as judges – even when there are rules and institutions in place to prevent this from happening. Judicial service commissions like NJC or other bodies designated a role in nominations, are often effectively circumvented or themselves ‘packed’ and politically biased. Rules of ratification or confirmation by parliament have often limited effect, particularly in dominant party contexts.⁴⁵

Regulation of Finances, Including Salaries and Benefits

Control over the purse strings gives many governments a stronghold if not a stranglehold over the courts exposed judicial officer to corruption, by enabling them to strategically regulate not only judges’ salaries and benefits, but also the running costs of the judiciary.⁴⁶ In Nigeria, the judiciary commonly depends on statutory allocation and parliament for budgetary allocations and for regulation of salaries and benefits this implicates insulating the judiciary from undue influence.

⁴⁴ Gloppen, S. (ed.) (2010), Courts and Power in Latin America and Africa, Gloppen, S., R. Gargarella and E. Skaar (eds) *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*. (Basingstoke, Palgrave MacMillan, London, 2010)

⁴⁵ Matei, A. and L. Matei, Assessing the Anti-Corruption Strategies: Theoretical and Empirical Models, (2011), 2(1), *Journal of Management and Strategy*, pp. 23–40. 78

⁴⁶ Ekwueme, E.G. and Daminabo, A.F.D. “Corruption in Education: The Nigerian Experience” (2008) 8*1 *Journal of Vocational Science and Educational Development*, pp. 109-11

Undue Influence via the Internal Judicial Hierarchy

In many cases, undue influence on judicial rulings comes not from politicians directly, but via the judicial hierarchy.⁴⁷ The controversy that accompanied the arrest of Sokoto State Election Petition Tribunal judgment that led to the suspension of the former President of the Court of Appeal, Justice Ayo Salami evidence this scenario. Such influence may be the result of direct pressure from superiors; more subtle incentives based on judges' anticipation that a 'wrong' decision in an important case could have career consequences; or selective allocation of cases to judges who are likely to rule in a particular manner. Besides, internal procedures can be misused to limit individual judges' ability to voice criticism, for example by refusing dissenting judgments. This is another perspective to manifestation of corruption in the judiciary especially, where the judicial leadership and in particular the Chief Justice is (seen to be) close to the sitting regime, this can taint the entire judiciary.

In summary, it is argued that corruption in the judiciary is undoubtedly widespread and perceptions of judicial corruption even more so. These take different forms and sources, and extend to bribery and undue political influence undermining judicial independence. Given the apparent scale and importance of corruption to the cause of justice it is essential to understand the mechanisms at play and examine efforts to address it.

Conclusion

The foregoing expositions suggest that corruption is understood in Islam in terms of the abuse of trust through the misuse of judicial powers, administrative powers, riches, and political authority. As compared to western thought, there is probably less controversy in Islam as to the meanings of the concept. This is due to some of the reasons listed below. Islam perceives a harmony among different conceptions of ethics, thus all corrupt acts are considered to be susceptible to undermining societal harmony (in effect, the maximum good for the highest number) in one way or other and are, therefore, undesirable from a utilitarian perspective, lacking in virtue from a moral perspective, unjust in relation to the principles that safeguard rendering to everyone his/her due, and culpable from a legal standpoint.

⁴⁷ Gloppen, S. and E. Kasimbazi, Elections in Court: The Judiciary and Uganda's 2006 Election Process. In J. Kiiza, S. Mahara and L. Rakner (eds), *Electoral Democracy in Uganda*. Kampala. (Fountain Publishers, 2008), pp. 53–89

Professor Wahab EGBEWOLE, Dr. Ibrahim IMAM, Nigerian Judiciary and the Challenge of Corruption: Islamic Options as Panacea, pp 84-103

The position of Islam on the concept of corruption if effectively utilized is likely to positively reduce the incidences of corruption in the judiciary and indeed in the Nigerian Polity.

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