IOSR Journal Of Humanities And Social Science (IOSR-JHSS)
Volume 24, Issue 11, Series. 5 (November. 2019) 15-31
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

The Bail Procedure and Constitutional Protection in Nigeria

Njoku, Donatus Ikechukwu
Department of Law, Ebonyi State University PMB 053, Nigeria.

Abstract: The concept of bail is related to constitutional responsibility of the state to the individuals to ensure the enjoyment of the fundamental human rights of the citizens. Hence, the right to personal liberty is one of such. Thus, in enjoying it, one should not forget public safety, order, health, morality, good conscience and the rights of other people. Consequently, laws are put in place to ensure that the personal liberty is not abused as an accused person faces charges brought against him/her. Similarly, such a person is required to satisfy certain bail conditions to regain his/her freedom pending the determination of the case before a court of competent jurisdiction. Bail as a legal procedure is said to be free, constitutional and it is a process of the law. Owing to ignorance, and unscrupulous activities of some persons, there have been various abuses of power on the part of the police and other judicial authorities in bail procedure resulting inmuch corruption, miscarriage of justice, mischievous acts in the process of attaining police or court bail by the accused persons. This work will be divided into five chapters; each will deal with an important segment of this topic for better understanding of the readers of it. Chapter one is the general introduction, chapter two will be the review of related literature, chapter three will be the methodology, chapter four will look into bail reforms and chapter jive will be the conclusion and the recommendations for improvement.

Keywords: Bail procedure, constitutional protection, human right, personal liberty, Nigeria

I. INTRODUCTION

Any person accused of a criminal offence can be arrested and detained by the police. Such a person would have to go through bail procedure in the police or courts in order to regain his personal liberty or else, there is a breach or an abuse on such a person's fundamental human right as contained hi *Chapter IV of 1999 Constitution of the Federal Republic of Nigeria (as amended).* Hence, the law requires that the accused person may be granted bail within the period he/she is answering the allegations of crime charged against him/her depending on the factors affecting the nature of the offence. The state is also enjoined by law to ensure proper administration of criminal justice in order to avoid miscarriage of justice and avoid being a clog in the wheel of justice. Thus, the criminal law presumes an accused person innocent until he is proved guilty by virtue of the *Section 134 of the Evidence Act* which corroborates with the provisions *of Sections 35, 36(1), (5), (6) and (7) of the 1999 Constitution of the Federal Republic of Nigeria*[3].

Therefore, if an accused person's fundamental human right of personal liberty must be infringed upon, it must be in a manner permitted by law. However, such law does not permit an indefinite detention of accused under awaiting trail list. The accused person has a right to bail. This right has therefore enabled the accused to enjoy his personal liberty while answering the criminal charges brought against him on the satisfaction of certain bail rules. Upon such doing, the accused can be released on bail pending the time he would be adjudged guilty by law in a court of competent jurisdiction.

Against this background, this study shall highlight the meaning of bail in relation to personal liberty as follow; that bail is a legal process designed by law to obtain the release of an accused person pending the determination his/her case in court.

---

1 chapter IV of 1999 consitutition of the federal republic of Nigeria (as amended)
2 section 134 of the evidence act
3 section 35, 36 (1) , (5),(6) and (7) of the 1999 constitution of the federal republic of nigeria

1.2 Statement of the Problem

The problem of this study is to find out the various abuses committed by judicial authorities and the police against an accused whose case is yet pending or yet to be determined by a court of competent jurisdiction.

Taking reference from events that lead to the inception of bail and how some defaults by King Charles (I) was check mated in England, the researcher wants to examine cases of violation of human rights in the process of bail grant or refusal as well as make recommendations considering the many evils that have been done to persons accused of committing offence not minding the presumption of innocence accorded them by our statutes.

This study would therefore, identify the bail procedures and constitutional protection of human rights in Nigeria in relation to personal liberty. This is so because, the researcher has observed some lopsided practices in the bail process amounting to violation of human rights; inhuman treatment, and undue procedural delay in the judiciary arm of government. All these seem to counter the provision of *Section 134 of the Evidence Act, and S. 35 (Ic) of the 1999 Constitution (as amended*[4]*)* which provides that personal liberty shall never be deprived safe '... in accordance with the provision of the law' for the purpose of bringing an accused before a court at the order of the court upon reasonable suspicion of having committed a criminal offence or to such extent as may be necessary to prevent his committing a criminal offence.

1.3 Objectives of the Study

The general objective of this study is to have an overview of bail in a critical point of view as this study will be relevant to law students, scholars, law offices, the courts, the police, to members of the public as it relates to knowing their rights, duties, obligations they owe to one another.

II. REVIEW OF RELATED LITERATURE

2.1 Conceptual Review

2.1.1. Meaning of Bail

Bail has been variously been defined by scholars, jurists and judges as a recognizance or bond taken by a duly authorized person to ensure the appearance of the accused at an appointed place and time to answer to the charges made against him. According to the Oxford Concise Law Dictionary, bail is expressed as when an accused person is admitted to bail and released from the custody of the law enforcement agency upon giving security or accepting certain specific rules or requirements.

By virtue of *S. 134 of the Evidence Act,* a person is presumed innocent and has a right to fair hearing and should be brought to court within a reasonable time and tried within a period of;

(a) Two months from the date of arrest or detention in the case of someone who is in custody or is not entitled to bail.

(b) Three months from the date of his arrest or detention in the case of a person who has been released on bail shall and without prejudice to further proceedings that may be brought against him, be released, either unconditional or conditional requirements necessary to ensure that the offender appears for trial at a later date.

Also, the S. 35(c) provides that such a person charged with an offence and also who is awaiting trial shall not continue in detention for a period longer than the maximum period of imprisonment prescribed for the offence. Today, what do we see? The actual meaning of all these provisos has over-heated our polity giving rise to conflicting judicial decisions where some detainees have stayed in prison for more than ten years awaiting trial.

Besides, *S. 35(7) of the 1999 CFRN (as amended)* recognizes the fact that it is not in the public interest to release on bail a person charged with the commission of a capital offence or culpable homicide punishable with death pending his trial. However, it protects pretrial bail.

In his own contribution, *Okagbue (1996)* sees bail as the process by which a person awaiting trial or sentence or the hearing of an appeal is released from custody on entering into a bail bond (recognizance) with or without a surety/sureties, for a sum or sums of money conditioned for his appearance at the time and place required.

Again, *the Black Law Dictionary (2009)* defines bail as to obtain the release of oneself by providing security for a future appearance in court. Or to release somebody after receiving such security. Whereas the *New Lexicon Webster's Dictionary* defines bail as to secure someone's temporary freedom of movement by putting up security for him/her, to bail out, to get someone out of prison on certain terms.

To this end, the researcher is of the view that bail means the procedure by which a person arrested for an offence is released on security been taken by his surety/sureties for his appearance on a specific day and place.

2.1.2 History of Bail

In the 17th century, King Charles (I) detained some noblemen who refused to give him loan. These men petitioned for habeas corpus arguing that they should not be detained indefinitely without trial or bail. This case was considered an imprisonment of persons without just cause. Hence, the *Bill of Rights of 1628* was enacted to limit the powers of the king. The king aggrieved by this enacted, frustrated the petition of right and denied liberty through procedural delay in granting the habeas corpus. Subsequently, the *Habeas Corpus Act of 1679* was enacted.

4 s. 35(1c) of the 1999 CFRN (as amended

The king on his part, devise a means of being a clog in the wheel of justice by imposing exorbitant bail rate and stringent conditions on the accused persons whom he did not intend to release. This however, caused the then parliament to make a proviso that in the *Bill of Rights of 1628* , that; "... excessive bail should not be required". Hence, there came into existence, the *Bill of Right Amendment Act of 1828 and 1835.* This repealed all existing laws on bail and consequently the laws on bail and the factors conditions/principles influencing the grant or refusal of bail. There are many type of bail such as listed below; (1) Bail by the Police. (2) Bail by the Court pending trial. (3)Bail by the court pending appeal.

2.1.3. Bail by the Police

Application for bail in the police need not be in writing even for applications that are made before the court. But as a matter of practice, it is usually in writing by the suspect, his counsel or even the surety. The applicant normally undertakes to secure attendance of the suspect whenever required either at a police station or in any court. It is free. When the Police grants bail, it lasts for as long as the matter remains with the police. As soon as the matter is charged to court and the suspect appears in court, the bail by the police lapses and a fresh application has to be made before the court. In not to serious cases, counsel could simply inform the court (upon arraignment of the accused) that the accused is on police bail and urge the court to let the bail continue. The court may grant such application.

Police bail is provided for in the Criminal Procedure Act[5], the Police Act[6] and the Criminal Procedure Code[7]. Thus, Section 17 of the Criminal Procedure Act[8] provides that:

"If a person is taken into custody without warrant[9] for an offence other than an offence punishable by death, the

officer in charge of the police station may in any case, and shall, where it is not practicable to bring such person before the magistrate having jurisdiction with respect to the offence charged within twenty four hours after his arrest, inquire, into the case, and only if the offence appears to be of serious nature, discharge the person upon his entering into a recognizance with or without sureties for a reasonable amount to appear before a court at the time and place named in the recognizance but where such person is retained in custody he shall be brought before court or justice of the peace having jurisdiction with respect to the offence or empowered to deal with such person by *Section 454*[10] of this Act as soon as practicable whether or not the police inquiries are completed".

This, therefore, means that the police are now constitutionally bound not to detain a suspect beyond twenty four hours where there is a court of competent jurisdiction within forty kilometers of radius or a minimum of two days or a longer period in circumstances which the court would consider reasonable. The twenty four hours rules is re-enforced but for geographical consideration, the constitution allows a little extension for there are geographical locations in Nigeria where, it would be difficult to arraign a suspect before a court in two days or even more. Even at that, the period of time, which elapses before the person is charged, must be considered in the opinion of the court taking into account the prevailing circumstances as reasonable.

Finally, the police have the discretion to grant bail under *Section 23*[11] *of the Police Act.* Police bail is of right except where the charge is one punishable with death. But in a greater number of cases, the police may refuse bail to a suspect as a means of compelling the accused to comply with certain police directives. This is the view of the court in *Augustine Eda v. C.O.P (Supra)*[12].

2.3.2 Bail by the Court pending trial

Court bail involves the granting of bail by courts at the various hierarchies ranging from the Magistrate courts to the Supreme Court of Nigeria. In order to discuss court bail clearly, it would be necessary to do so in the various hierarchies namely 'Magistrate Courts, High Courts, Court of Appeal and the Supreme Court. Where the suspect is arrested with a warrant, it is not unusual to find an endorsement that the suspect be released on bail after arrest upon satisfying the conditions for bail specified in the said warrant. In such a case, the suspect needs not appear in court before proceeding on bail. This is no less a court bail. Where a person is arrested without a warrant or with a warrant that has no endorsement for bail, then an accused person needs to apply for bail after his arraignment.

5 criminal procedure Act.
6 the police Act
7 criminal procedure code
8 section 17 of the criminal procedure Act.

2.3.3 Bail by the Court pending appeal

This could be bail pending conviction or bail pending trial. The court must satisfy itself that the following preliminarily conditions have been met:

(a) That the applicant has lodged an appeal to the appellate court which appeal is still pending.

(b) That the applicant has complied with the conditions of appeal imposed which would show the seriousness of his application.
(c) If he was granted bail during the trial, that he did not attempt or try to jump bail.

Application for bail pending appeal is done by motion and not summons. This is obvious. Unlike in the case of bail pending trial, the applicant in application for bail pending appeal is not calling on the state to show cause why he should not be granted bail. Rather, he is coming by way of prayer stating why he should be released on bail and that is why he should come by way of a motion rather than summons,

2.1.4 How Bail is done in Different Places

2.1.5 Bail by Magistrate Courts

The criminal jurisdiction for the magistrate courts is limited to certain categories of offences. What then determines the criminal jurisdiction of a court generally is the nature of punishment prescribed by law for that offence. Offences attracting capital punishments for instance, are not tried by magistrate courts. Other offences that are of serious nature may also by excluded from the jurisdiction of a magistrate court. Moreover, for all offences which a magistrate court has jurisdiction to entertain, *Section 118(2) and (3) of the Criminal Produce Act, Section 340(1) and*

21

(2); and Section 341 (2) and (3) of the Criminal Procedure Code[13] *and of Section (35(4) of the 1999 CFRN*[14] empower a magistrate court to grant bail in such cases. The provisions of the sections of the law mentioned would be discussed here in details. Thus, *Section 118(2) of the criminal procedure Act*[15] provides that:
"Where a person is charged with any felony other than a felony punishable with death, the court may if it thinks fit, admit him to bail".
Section 118(3) provides that:
"When a person is charged with any offence other than those referred to in the two last preceding subsections, the court shall admit him to bail unless it sees good reason to the contrary.

2.1.6 Bail by the High Court

The High Court has the criminal jurisdiction to hear cases involving; offences either on information from a magistrate or an appeal from magistrate court. In any case, the High Court is empowered to grant bail to the accused person. The provisions that so empower the High court to grant bail are to be found in the *Criminal Procedure Act, the Criminal Procedure Code and the 1999 CFRN.*
Moreover, from these provisions, there appear instances where the High Court may grant bail to an accused person charged before it. They are as follows:
(a) Cases appearing before it after preliminary inquiries by a magistrate as under *Section 124 of the Criminal Procedure Act.*
(b) Cases before it on appeal from the magistrate court as under *Section 123 of the Criminal Procedure Act and Section 342 of the Criminal Procedure Code,*

---

9 Ibid
10 section454 CPA
11 section 23
12 police Act
13 section 118 (2) and (3) of the criminal procedure Act, section 340 (1) and (2) and section341
14 section (35 (4) of the 1999 CFRN
15 section 118 (2) of the criminal procdure

2.1.7 Bail by the Court of Appeal

The Court of Appeal has no original jurisdiction to hear cases involving application for bail. On the types of application for bail, there are two types of application for bail that come to the court of Appeal for determination and they are:
(a) Application for bail pending trial court and
(b) Application for bail pending the determination for appeal in the court of Appeal.

The statutory authority empowering the court of Appeal to grant bail in its appellate jurisdiction is contained in *Section 29*[16] *(1) of the Court of Appeal Act 1990*[17] *and it* provides that;

"The court of Appeal may, if it thinks fit, on application of an Appellant, admit the appellant to bail pending the determination of his appeal"

In *Jammal v. State*[18] *(1996),* it was held that the ground of bail by court of Appeal is usually governed by its own special rules for consideration, namely: the gravity of the offence for which the appellant was tried, convicted and sentenced, the weight and length of sentence passed on the appellant, the proportion of the sentence already served and the probable duration of tune it will take for the record of appeal for hearing.

2.1.8 Bail by the Supreme Court

Like the Court of Appeal, the Supreme Court can only entertain an application for bail in its appellate jurisdiction. Thus *Section 31(1) of the Supreme Court Act*[19] empowers the Supreme Court to admit an appellant to bail. It provides as follows:

"The Supreme Court may, if it thinks fit, on application of an appellant, admit the appellant to bail pending the determination of his appeal"

Finally, the issue of grant of bail by a trial court calls for due exercise of discretion which entails the application of a common sense based on a given set of facts and attendant circumstances in accordance with justice. The discretion must be exercised not only judicially but judiciously as well.

2.2 The Practice of Bail in Nigeria

Here, attempt would be made to examine the practical attitude of the administrators of criminal justice in matters relating to bail.

2.2.1 The Practice of Police Bail

One of the cardinal principles of fair hearing is that an accused person must be accorded a fair trial within a reasonable time by a competent court or tribunal duly constituted by law. An accused person is not denied his rights because of a pending criminal action instituted against him by the state or government agencies. The age long principles that an accused person is presumed innocent until the contrary is proved makes it imperative that pending the final determination of his case in court, his cherished liberty and freedom should not be denied. Consequently, bail should be granted when the trial of the accused person could not be commenced within a reasonable time.

The striking feature of fundamental human rights provision of the constitution must not be violated on the basis of holding a person suspected of committing a criminal offence indefinitely; it is an affront on the liberty of the suspect.

Furthermore, though the law allows the police or the court the discretion to determine sufficiency of surety or sureties, it does not suggest of sex discrimination with respect to such surety. In practice, the police do discriminate against women standing as surety or sureties for suspects. It is argued for in this practice that women are of the weaker sex and cannot go through the trouble of securing the appearance of suspect or cope with the reactions of the police or the court, should the suspect or accused person abscond. However, this practice is unconstitutional as it contravenes

Section 42 of the 1999 CFRN, which prohibits discrimination against any citizen based on the grounds of sex. In Nigeria, there are many women of substance in the society who are well equipped to produce the suspect(s) or accused person(s) for whom they act as surety or sureties at the police station or in court.

2.2.2 The Practice of Court Bail

The courts at the various hierarchies are empowered to admit accused person to bail in accordance with relevant sections of the statutes. The nature of the offence determines whether it would be bail- able or non bail-able offence. An offence is bailable if the court has the discretion to admit an accused person to bail. It is non-bailable when admission to bail is restricted to the discretion of the High Court and above in cases involving capital punishment. The High court can only grant bail here in exceptional circumstance. All known offences attracting capital punishment are non -bail-able offences. Granting of bail by the court is also influence by the stage of trail where bail is applied. In *Ogbhemhe v. C.O.P* It was held that the granting of bail to an accused person is pending. However, the exercise of that discretion must be judicially applied.

Finally, bail granted before trial is known as pre-trial bail while that granted after conviction and on appeal by the accused person is known as post-conviction bail or bail pending appeal.

16 section 29
17 Court of Appeal Act
18 Jammal V state (1996), 6 NWLRPT. 472 @ 352.
19 section 31 (1) of the supreme court Act

2.2.3 The Practice of Bail Pending Appeal

The law empowers courts at their appellate jurisdiction to admit to bail convicted persons who appeal against their convictions. Thus, in *Boardman v. Sokoto Native Authority*[20], it was settled that:

"An offender refused bail can legitimately appeal up to the highest court in the land notwithstanding that he is on remand, convicted or has already been convicted."

It is to be noted that since a convicted person has lost his innocence, in practice, he is required to show the existence of special circumstance that would entitle him to bail. The courts have held that the following amount to special circumstances, which could entitle a convicted person to bail pending his appeal.

(1) Doubt in the mind of the trial court as to the representation of its decisions. For instance, doubt, as to the representation or otherwise of a serious question of law or as to the character of evidence which justify conviction.

(2) The health or extreme age of the appellant this makes his continued stay in custody hazardous to his life.

(3) The good character or reputable standing in life of the accused. If the accused is a man of substance and not of straw and he is not likely to abscond or otherwise interfere with due process of law.

(4) The nature of the offence for which he is convicted if the offence is political in nature, he is likely to be admitted to bail pending appeal.

(5) Shortness of a sentence and quickness of an appeal.

[62] Boardman v. Sokoto Native Authority (1965), All NLR.

(6) Where the hearing of the appeal is likely to be unduly delayed.

(7) If the legality of the sentence is challenged as in *Fawehinmi v. State*[63]. Where Awogu J.C.A has this to say:

"... It is my view, however, that where a sentence is manifestly contestable as to whether or not it is a sentence known to the law, it constitutes a special circumstance for which bail should be granted to an applicant pending the determination of the issue on appeal..."

The various magistrate courts law provide that if the accused has been sentenced to imprisonment, the magistrate shall release him from custody but in the following cases there is discretion to deny him bail, if:

(1) The appellant has previously served a prison sentence of not less than six months, or

(2) There is evidence on record that he is likely to commit other offence, if released, or

(3) There is also evidence on record that he likely to evade justice by absconding,

2.2.4 Court Bail in Capital Offences

The Criminal Code prescribes capital punishment for murder and treason the offence of armed robbery also attracts capital punishment. Bail in capital offences is very restrictive. It is only granted by a judge of the High Court in exceptional circumstances.

What would amount to exceptional circumstances would depend on the facts of the case. In *Anaekwe V. COP*[21] *(*Anakwe v. Police (1996), 3 NWLR (PT. 320) @ 331*.),* on when a person charged with murder will be granted bail, per Tobi, JCA (as he men was) put it thus:

"When the prosecution merely parades to the court the word "murder" without trying it with the offence, a court of law is bound to grant bail and the only way to intimidate the court not to grant bail is to proffer an information and proofs of evidence to show that there is a prima facie evidence of commission of the offence. A situation where there is no material before the trial court to show that the appellant is facing a charge of murder, including proofs of evidence, certainly qualifies as a special circumstance in which the court can grant bail."

In practice, notwithstanding the exceptional circumstances clause, the courts very rarely grant bail to a person charged for a capital offence. In *Olugbusi v. COP* Taylor C.J (as he then was) has rightly a point out that the rule is that:

"Where a crime is of the highest magnitude and the evidence in support of the charge is strong and the punishment is the highest known to law, the court will not interfere to admit bail. Consequently, short of the appellant showing convincing affidavit, that he was not at the scene of the crime at the relevant tune, bail was to be denied him"

20 Boardman v. sokoto Native Authority (1965), All NLR

21 Anakwe v. police (1996), 3 NWLR (PT.320) @ 331

Finally, since the whole essence of bail is to secure the appearance of the accused in court at appointed date that he would not abscond or jump bail, he should be admitted to bail instead of keeping him in custody for an offence he has not been found guilty.

2.2.5 An examination of the Extent to which the Right to Personal Liberty has been respected in Nigeria from 1999 till date show the following

As reported by Mpamugo, VA. in a work entitled 'The Role of the Nigerian Police in Human Rights Protection and Enforcement in Abia State University Law Journal, 1996, p. 34 , and the decision of the Court of Appeal (Nigeria) in *ACS v Okonkwo (1997) 1 NWLR 195*[22] was remarkable. Notwithstanding the constitutional provisions safeguarding the right to personal liberty and the retreat of the military to the barracks in May 1999, the right to personal liberty of Nigerians continued to be violated. These violations are not only perpetrated by

the police but also by government sponsored vigilante groups as well as members of the armed forces. Violations also result from the long delay in the criminal trial process.

In the year 2000, many cases of police brutality and illegal detentions were reported. One of the cases was that of one Vitus Obi. The offence for which he was arrested was alleged to have been committed by his younger brother Benjamin Obi but it was Vitus who was detained and tortured until he became paralyzed and later died as result of torture. Benjamin Obi had been sent to the bank by his employees, Shoetide Nigeria Limited, but claimed that he had been attacked and robbed by motor-cycle riding armed robbers. His telephoned report to his employer was met with disbelief and they threatened to hand him over to the police. Benjamin told his mother, Mrs Justina Obi a petty trader, and three of his siblings that he was afraid to go to the Police Station because they were sure to torture him for an offence he did not commit. Fearing that the police might come for his mother and sibling he advised them to stay away from their Idi Mangoro apartment for a while. However, on Sunday the 3rd December 2000, Adindu Chikezie, one of Benjamin's cousins was arrested by the Rapid Response Squad (RRS) when he went to the deserted apartment at Idi Mangoro. The next day, Adindu was taken to SARS and detained. The following Wednesday Adindu led the SARS operatives to Vitus Obi's workplace at Ogba where he was arrested and detained in place of his brother. Applications for bail by Vitus relations and his Umuluwe Mbano Local Government Town Union were turned down by IPO Ugwu, who insisted that Vitus' mother be brought to the station before he could release Vitus and Adindu. On December 14, Mrs Justina Obi reported to the police and was detained. Adindu was released the same day after the IPO had demanded and received the sum of N14,000.00 but Vitus was not released as promised by the IPO. On the same night, while in detention, Mrs Obi heard her son's voice screaming in anguish and shouting for help from an Inner Chamber of the station. It was clear to her that he was being mercilessly tortured, but when she attempted to go to him, the policeman guarding her restrained her. Vitus died the following day. Upon examination, the doctor on duty discovered that Vitus's hipbone and spinal cord were broken and that there was a deep wound next to his anus which was rotting internally.

The case of Josiah Nwachukwu was also very pathetic. One Kojo had falsely reported to the police that Josiah Nwachukwu stole US $2,000,000.00 (Two million US Dollars) which he claimed that his sister had brought back from USA. Nwachukwu was arrested and the next thing, he and others were paraded as the alleged confessed killers of Alhaji Kudirat Abiola, Pa Alfred Rowane, Mrs Tejuosho and other pro-democracy activists assassinated during the regime of late Sanni Abacha. He remained in detention for four months without trial before he was released for want of evidence.

The culture of violations of the right to personal liberty of Nigeria by the police continued even till today. According to the Committee for the Defence of Human Rights (CDHR), there were no fewer than one thousand five hundred youths who were Awaiting Trial Inmates across the different prisons in the country. Most of them had been in detention for years without appearing in court once. A good38

example was the observations made by the EBSU Law Students recently who went on 'Prison Project' at both the Afikpo and Abakaliki Prisons.

Again, one Saheed Adeyi who has been held without trial as a robbery suspect for over ten years. The CDHR Report disclosed that there were about 45,000 persons in the various prisons in the country and that 70% of this number were Awaiting Trial Inmates, even juveniles are not left out. In a 2003 Report of Field Visits to Prisons, Police Cells and Juvenile Detention Centres in Nigeria, it was discovered that there were 902 juveniles in custody with most of them Awaiting Trial Inmates. Also, on December 20, 2001, John Akujuobi (83 years) and his wife were arrested and detained by the police in connection with the allegation of a bank fraud involving their son.

22 ACB v. OKonkwo (1997) 1 NWLR 195

One aspect of the violation of the right to personal liberty during the Olusegun Obasanjo era (1999 to 2007) was the emergence of Vigilante groups. These vigilante groups emerged in communities and cities across the

country as a result of the failure of the police to provide adequate security for the people. The Vigilante groups as

reported in CDHR 2001 Annual Report on the Human Rights Situation in Nigeria.

Also is the Juvenile Justice Administration hi Nigeria: Report of Field Visits to Prisons, Police Cells and Juvenile Detention Centres in Nigeria 2003, p. 33; included the Bakassi Boys of Aba, Abia State, the O'dua Peoples Congress (OPC) in the South West, the Onitsha Traders Association (OTA), Operation Zaki in many parts of the North East and the Niger Delta Avengers and the Egbesu Boys of the Niger Delta. Although these Vigilante groups were credited with more success than the police, they nevertheless engaged in various forms of violations of the right to personal liberty of Nigerians. Cases of arrests, detentions and torture by vigilante39

groups abound. In some cases, they kill innocent citizens without recourse to the court of law. Politicians also used them to fight their perceived political enemies or to settle some scores.

III. AN APPRAISAL OF BAIL ADMINISTRATION IN NIGERIA

3.1 Research Methodology

This study will be in doctrinal legal research methodology according to Barr. Faga and Barr. Nwode (2015) Legal Research Class Mimeograph[23], doctrinal legal statutory provisions is the application of power of reasoning. It also uses interpretative methods to examine cases, statutes and other sources of law in an attempt to seek out, discover, construct, or reconstruct rules and principles. It then systematizes and employs them to conduct descriptive analysis and normative evaluation of the process of decision-making".

While Banakar and Travers were of the view that the process of doctrinal methodology in legal research alnown as "Black-letter Method" involves the following;

(1) Organization of the study or research around legal propositions;

(2) Use of court reports and other conventional legal materials as principal sources of data readily accessible in a law library;

(3) Drawing conclusion from these legal materials.

In the light of the above, the researcher has noted that there are two types of doctrinal methodology in legal research. They are (1) the analytical doctrinal methodology (2) Comparative Doctrinal Methodology.

In this study, the analytical doctrinal methodology shall be employed to give a detailed report on this topic. Analytical doctrinal methodology aims primarily at an exploration of what is the existing law. It involves an analysis of a specific legal problem, such as a specific provision of the statute or code or a specific case or line of cases. But in order to achieve originality, there has to be more than a mere summary of the statutory provisions or the line of cases. Rather, a new solution to the particular legal problem, a new way to interpret a particular statutory provision or court decision or a new way to evaluate a particular legal rule is to be adopted.

On the other hand, comparative doctrinal methodology seeks to use comparative method, comparing norms across different legal system or different jurisdiction within the same legal system or even comparing legal norms with norms in other disciplines for better understanding of one's own legal system by contrasting comparative system. In addition, it searches for a unified law, test legal theory; seek to understand the forces that cause change in legal systems and societies or to make normative claims which may lead to law reform proposals.

This goes to show that comparative legal research methodology assumes that there is a certain degree of "transferability" of legal norms from one country's legal system/legal culture/time period/jurisdiction to another.

3.2 Police Statutory Right to Arrest and Detention of the Accused, Suspect or Convict

Section 10, of the Criminal Procedure Act, and 25 of the Police Act provides for the police powers of arrest respectively, *Section 10(1)* provides that "any Police Officer may, without an order from a magistrate and without a warrant, arrest -

(a) Any person whom he suspects upon reasonable grounds of having committed an indictable offence against a federal law or against the law of any state, unless the written law creating the offence provides that the offenders cannot be arrested without a warrant.

(b) Any person who commits any offence in his presence.

(c) Any person who obstructs a police while in the execution of his duty, or who has escaped or attempt to escape from lawful custody.

(d) Any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing.

(e) Any person whom he suspects upon reasonable grounds of being a deserter from any of the armed forces of Nigeria.

Any person found in the state taking precautions to conceal his presence in circumstance which afford reason to believe that he is taking such precaution with a view to committing an offence which is a felony or misdemeanor.

Section 24(1 f of the Police Act provides that it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant in the following case:

(a) Any person who he finds committing any felony, misdemeanor or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanor or breach of the peace.

(b) Any person whom any other person charges with having committed a felony or misdemeanor;

(c) Any person whom any other person -

(a) Suspects of having committed a felony or misdemeanor or

(b) Charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and to enter into a recognizance to prosecute such charge.

(2) The provision of this section shall not apply to any offence with respect to which it is provided that any offender may not be arrested without warrant". *Section 25 of the Act* provides that any warrant lawfully issued by a court for apprehending any person charged with any offence may be executed by any police officer at any time not withstanding that the warrant is not in his possession at that time, but the warrant shall, on the demands of the person apprehended, be shown to him as soon as practicable after his arrest.

Moreover, *Section l(r of the Criminal Procedure Act* confers very wide powers on the police to arrest without a warrant any person who commits an offence in his presence notwithstanding that the law creating the offence provided that the offender cannot be arrested without warrant.

However, there is no doubt to the fact that the Nigeria police abuse these wide powers of arrest by indiscriminately arresting without warrant innocent persons for the purpose of either extorting money from them before granting bail or serving the selfish interest of enemies who must have paid certain sums of money to the police for that purposes. The wide discretional powers of arrest granted the police in Nigeria have attracted judicial remarks. Thus, in *IGP* v. *Duffus T.M* remarked; "the powers of arrest given to a police officer in Nigeria are very wide.

Finally, it is more disturbing when one realizes that as soon as a suspect is taken to the police station, his chances of getting bail or being released on time are not particularly favourable. It is likely that if the suspect or surety under the situation above cannot grease the palms of the police officer in the police station, he is mostly likely to remain in cell for a much longer time than he would have spent in prison custody if he was charged for the offence and sentenced accordingly. However, this is contrary to constitutional provision of *Section 35(4) of the 1999 CFRN* on the right
to personal liberty; the right to bail. This is highly unfortunate.

3.3 Bail and Holding Charge

As earlier discussed in the practice of police bail in Nigeria, the police appear reluctant to respect the constitutional rights of the citizen by devising a novel means of keeping suspect in custody beyond the constitutional reasonable time of one or two days as the case may be under the guise of holding charge. A holding charge is brought about when the police are investigating a capital or other serious offence and bring the suspect before a court of summary jurisdiction i.e. magistrate court which, in law is incompetent to handle a capital crime.

The terrible effects of pretrial incarceration have been eloquently stated in the case *QfHartage v. Hendric* as follows:

"The imprisonment of an accused prior to determination of guilt is a rather awesome thing. It cost the tax payers tremendous sums of money; it deprives the affected individual of his most precious freedom and liberty, it deprives him of his ability to support himself and his family; it quite possibly cost him his job; it restricts his ability to participate in his own defense; it subjects him to the dehumanization of prison, it separates him from his family and without trail it cast over him aura of criminality and guilt"

Over - congestion of prison in Nigeria is extremely acute. Convicted prisoners and these awaiting trials are all lumped together in the same cells. The greater proportions of prisoners in Nigerian prisons are those awaiting trial; remanded by the orders of the courts.

Those remanded on the orders of the court accounted for about sixty-seven percent of prisons population. Due to many administrative reasons such as: lack of transportation to take the prisoners to court, absence of counsel, unwillingness of magistrates to go on with the case because of lack of jurisdiction; many of these remand prisoners remain in prisons for prolonged period of time without trail. Consequently, the prisoners are incarcerated indefinitely under harsh and inhuman conditions even where they have not been found guilty.

Apparently, the practice of holding the accused persons indefinitely before being tried at a competent court with jurisdiction offends against the personal liberty of the accused person as enshrined in the constitution. In effect, observations by the writer show that the magistrate area courts are aware of this menace but are handicapped as a result of superior directions not to strike out cases. This goes a long way to show that this is one of the social problems facing us as a nation in the administration of justice. The magistrate courts only deliver terse ruling that the suspect be remanded in custody pending arraignment at the appropriate court. Meanwhile, the case file has to be sent to the office of the director of public prosecution for legal advice by the police.

The importance of the rights of the accused persons have also been recognized universally and incorporated into our laws. The efficacy and applicability of the *Africa Charter on Human and Peoples Rights (ACHPR)*[24] have been acknowledged by our court in several cases. In the case of *Enwere* v. COP[25], The Court of Appeal (Port-Harcourt Division) condemned the practice of holding charge syndrome and stated that it is

unknown to Nigerian law and accused persons detained there under is entitled to be released on bail within reasonable tune before trail, more so, in non-capital offences

However, in the recent case of *E.A. Lufadeju V. Evangelist Bayo Johnson*[26] the Supreme Court held that remand charge is not unconstitutional, that it is well known and recognized under our laws by virtue of *Section 236(3) of the Criminal Procedure Law Cap 33 Vol. 2, Laws of Lagos State, 1994*[27] which fully compliment *Section 35 of 1999 CFRN*[28] and all other relevant sections and that it further ensures controls and order as regards the movement of suspect who may possibly face trail shortly.

Thus, in the instant case, Per *Walter Samuel Nkanu Onnoghen, JSC,* eloquently held as follows:

"I hold the view that *Section 236(3) of the CPL Lagos State*[29] is not unconstitutional and that the lower court was in error when it held it is. If anything, the said section clearly complements the provision of *Section 32 of the 1979 Constitution* and is designed to aid the administration of criminal justice in the country".

Finally, though, whatever is the meaning of a holding charge is not necessarily the bone of contention; the crux of the matter is the employment of this term as a pretext of keeping accused persons in police or prison custody indefinitely in contraventions of the law.

3.4 The Use of Excessive Bail

The court at times do admit accused person to bail at very excessive condition. The purpose is to discourage prospective sureties from standing for the accused person because of the huge sum of money involved in the amount of bail so that such accused right to liberty as it negates his constitutional presumption of innocence. However, *Section 120 of the Criminal Procedure Act*[30] provides as follows:

"The amount of bail to be taken in any case shall be in the discretion of the court by which the order for the taking of such bail is made, shall be fixed with due regard to the circumstance of the case and shall not be excessive".

In *Eyu v. The State*[31], the appellant was arraigned before an Enugu Chief Magistrate Court charged for issuing dishonored cheque of four hundred thousand naira (W 400,000), obtaining by false pretence under *Section 419 of the Criminal Code*[32] stealing under *Section 390 of the Criminal Code*[33] applicable in the then Anambra State (now Anambra, Ebonyi, and Enugu State). Appellant was granted bail to the amount of four hundred thousand naira (W400, 000) and surety to that amount.

However, that was an indirect way of denying her bail for no reasonable person would accept to stand as surety at that amount. Even if she would find any such surety, it would take a long time before success could be made. The accused/appellant appealed on the judgment among other grounds up to the Supreme Court. *Oguntade JSC* elaborately explained as follows:

---

23 2015 Legal Research Class Mimeograph
24 Africa Chapter on Human and people's Rights
25 Enwere v. COP (1993), 6 NWLR (PT. 299).
26 E.A. Lufadeju v. Evangelist Bayo Johnson (Supra)
27 section236 (3) of the criminal procedure law Cap 33 Vol.2, Laws of lagos state, 1994.
28 section 35 of CFRN.
29 section 236 (3) of the CPL Lagos State.
30 section 120 of the Criminal Procedure Act.
31 Eyu v. the state (1988), 2 NWLR (PT.78) 602
32 section419 of the criminal code
33 section 390 ibid

"since there is a presumption in law in favor of the liberty and innocence of the subject until he is found guilty in an application for bail by an accused, the onus is on the prosecution to show upon the facts disclosed in a given case that an accused on bail is not one that should be released on bail. A liberal approach should be adopted in the consideration of an accused person's entitlement to bail in non capital offences having regards to *Section 32(1) of the 1979 (CFRN)*[34] *(same as Section 35(1) of the 1999 (CFRN)35.* It is only when there are strong and weighty reasons suggesting that an accused will not come back to take his trial or that there is a strong likelihood of his committing more offence if granted bail that bail should be withheld. This is, of course not laying it down that at all events, bail should be granted. There are cases hi which even if a liberal approach is followed, discretion may still indicate that it is better to refuse. As the sole purpose of granting bail is to enable an accused to come back to face his trial, it is not necessary to introduce pecuniary consideration to attain that end".

The court not only considered the bail as excessive but also described it as an indirect way of refiising bail to the accused person. In comparison with *U.S.A Bail Law Section 29 of Virginia's 1776 Constitution* similarly provides as follows:

"Excessive bail should not be exacted for bailable offences".

However, the accused may be required to abide by one or a combination of the terms of bails. For instance, an accused may be required to enter into a bond as well as provided surety/ sureties whatever the terms upon which an accused is granted bail they must not be excessive. The term bail must not be so difficult for the accused person to ftilfil as to amount to denial of bail. Thus, if the accused person is not satisfied with the terms upon which the court has admitted him to bail, he may exercise his legal right by applying for a review of the terms by a higher court. Thus, *Section 125 of the Criminal Procedure Act* provides that;

"Notwithstanding the provision of section 119 and 120 of this Act, a judge of the high court may in any case direct that any person in custody in the state be admitted to bail or that the bail required by a magistrate's court or police officer be reduced".

A similar provision is contained in *Section 344 of the C.P.C.* It therefore means that an accused person who is granted bail by a magistrate on excessive or onerous terms may apply to the High Court for a review of the terms of bail It also goes without saying that an application for the review of the terms of bail granted by High Court lies to the court of Appeal and further appeal lies to the Supreme Court.
However, whether or not the court will decide that the terms of bail are excessive depends on the circumstances of each particular case.

3.5 Bail Jump

When a person on police or court bails fails or refuses to attend the police station or the court on the date fixed by the bail bond, he is said to have jumped bail. When a suspect jumps police bail, the police may re-arrest him and there after refuse him further bail until he is charged to court, unless he shows good causes to the contrary. When an accused person jumps court bail, the court may:

(i) Revoke his bail;
(ii) Issue a bench warrant for his arrest.
(iii) Order the forfeiture of bail bond.
(iv) And upon forfeiture of bond, order the surety to pay the sum stated in the bond into the court registry.

However, *Section 354 (1) and (2) of the CPC* provides that before the bail bond, executed by a surety, is forfeited the surety must be given a fair hearing. Thus, in *Amadu Tea v. Commissioner of Police*[36], the appellant was a surety of an accused person in a Magistrate Court. The accused did not attend to stand trial. The recognizance was forfeited, and the Magistrate there upon orders the surety to pay a penalty of N200.00 or to be imprisoned for six months. On appeal, the appellate court held that:

(a) Before a bail bond is forfeited by the trial court, the bail bond and the facts causing the forfeiture must be proved;
(b) The surety must be given a fair hearing; and
(c) This is to enable the trial courts and the appellate court to determine if there has been a breach of the terms of bail.

34 section 32(1) of the 1999 CFRN
35 section 35(1) of the 1999 CFRN.
36 Amadu tea v. Commissioner of police (1963), NWLR 77.

3.6 Discrimination of Sureties Based on Sex

It is the practice of the police and the courts to refuse women or female to stand as surety, or sureties for suspects or accused persons. The reason always given is that they cannot withstand the rigors or embarrassment that follows the suspects or accused person jumping bail. The argument is irrational and cannot stand the test of time. The Nigerian society is made up of many women who have distinguished themselves in every aspect of life. There are distinguished academics, doctors, pharmacies, politicians and legal humanities. These accomplished women had withstood many rigors of their professions and there is no reason why they should not be able to deal effectively with any difficulties, which may arise from the absconding of a suspect or an accused person that they have stood surety or sureties for. This practice as earlier mentioned is unconstitutional as it is discriminatory based on sex which is contrary to Section 42 of the 1999 CFRN.

3.7 Attitudes of the Courts towards the Right to Bail

The *Criminal Procedure Act and the Criminal Procedure Code* confer discretionary powers on the court to admit accused person to bail. The court are to exercise the power as they deem fit. However, a court may refuse to admit an accused person to bail in practice if the circumstances of the case are such that the court considers them not to be in the interest of justice. If the factors weigh against the accused person, he is remanded in custody pending the completion of the trial. This is the general attitude of our court to matters of bail.

In Nigeria, criminal trials last very long with the effect that the accused persons may remain in custody for a longer period than he would have stayed in prison if tried and sentenced for the offence charged within a reasonable time.

This practice is unconstitutional as it is contrary to *Section 35(4) a-b) of the 1999 CFRN. It is submitted that the internment of Section 35 (4) (a) of the 1999 Constitution* is not to leave the issues of bail indefinitely at the discretion of the courts. As properly interpreted, it is clear that after periods in the detention as described earlier, and the accused trial is not completed, he is entitled to constitutional right to bail as *Idoko J*. rightly held in *Obekpa V. C.OP*[37]. In a similar vein, the Appeal Court sitting in Abuja in the case *of Nwude* v. *F.G.N*[38], made very illuminating and far-reaching pronouncements on the bail phenomenon. Also, the case *of Anajemba* v. *F.G.N39* is another important recent case on the grant or refusal of bail by the court.

3.8 Jurisdictional Issues on Bail

In our Criminal Justice system, Jurisdictional issues arise in matters of bail. It is still not clear the rational behind the holding charges and remand orders issued by magistrates on accused persons in offences beyond their jurisdictions. It seems by assuming jurisdictions in such case where they are incompetent to do so, magistrate courts unwittingly aid the police to continue the unlawful detention of suspects under a different nomenclature in prison custody and for the fact that they cannot try such cases but still remand accused persons in such cases.

Since the accused is constitutionally presumed innocent, his liberty should not be sacrificed for the convenience of the administrators of criminal justice. Proper arrangements are not made on good time to arraign the accused person in the proper court and as such he does not enjoy his liberty.

Obviously, matters of jurisdiction over bail are seen more from the view of constitutionalism, the right of personal liberty, the presumption of innocence, the time and facilities available for the accused to prepare his defence with respect to its provision on bail and not a violation of the human rights of the suspects or accused persons.

IV. BAIL REFORMS IN NIGERIA

The issue of bail and its administration in Nigeria has attracted the attention of notable persons and legal writers. Almost everybody in Nigeria call for reforms in our system of bail[40]. The pertinent question therefore is; why reforms? It is stating the obvious that the protracted military dominance in the political system of Nigeria has left a lot of sores in all sectors of the Nigerian system and our legal jurisprudence is not left out.

The Nigerian bail procedure being an aspect of our criminal law system came with the reception of English law in Nigeria[41]. In pre-independence and early post independence era, the Nigerian bail system was tailored along the line of the English bail law (Bill of Right).

---

38 obekpa v. C.OP (1981), 2 NCLR 420 @117

38 Nwude v. F.G.N (2004), WRN124 @145

39 Anajemba v. F.G.N (2004) 13 NWLR (pt. 890),267.

40 see okagbue I. E. (1996), Bail reforms in Nigeria; Amadi G.O.S (2000), the police power in Nigeria (Enugu Afro Orbis Publishing Co. ltd, 2000 p.8.

41 As Demonstrated in chapter one of this research study.

The First Military Coup in Nigeria, followed by counter coups. There are two coups in 1966 and subsequent ones in 1973, 1977, 1983, 1994, there are a lot of unsuccessful coups and a military Transition in 1998. See Abioa Ojo; Constitutional Law and Military Rule in Nigeria (Ibadan: Evans Bro 1987) for discussion. See also Ben Igwenyi Modern Constitutional law in Nigeria (Abakaliki, Nwamazi printing & Pub. Co. 2006) p. 167-194.

Notably, the very first move of the military regime was always the constitution (suspension and modification) Decree. These decrees formed the grundnorm of the regime (in the order of Kelsen's normative hierarchy). The Decree suspends and, or modifies the constitution. The portion of the constitution not tinkered with technically remained in force. The supremacy of the constitution as amended by this or any other decrees is not safeguarded. The citizens are therefore governed with draconic laws which mostly lead to violations of the fundamental rights of the citizens. The jurisdiction of courts also, were not left out, they were thinned down by the restrictive issues under these decrees such as the ouster clause[42].

Apart from legislative encroachment, the military regimes diverted trials of certain offences from the Regular Courts to Military Tribunals or Court Martial[43]. These tribunals were headed by high court judges (retired or serving) and officers of the armed forces as members. Offences were tried summarily. No rights of appeal existed. The regular courts were divested of their jurisdictions relating to rights and denial of rights, pursuant to the action of these military tribunals. This implies that questions of improper exercise of discretion to refuse bail by these tribunals cannot be entertained in the regular courts[44].

4.2 Fundamentals of Bail Reforms in Nigeria

4.2.1 Jurisdiction of Bail Determination

It is certain that we are living in the generation when human rights seem to occupy the centre stage of our social, political, economic and legal systems. A pertinent question is; what should be the objective of bail determination in this era? Bail (as demonstrated in this study) has been predicted on the objective of securing the appearance of the accused to stand trial. This has remained the main objective of bail for a long time now. It was not until the 20th century that the notion of using bail to prevent the commission of further offences became articulated[45].

Nwadialo (1985) is also of the popular view that using bail to stop further commission of crimes was generally borne out of the need to protect the society from crime. The denial of bail to dangerous criminals was therefore hoped to reduce crime rates significantly[46]. This was however exaggerated.[47] This notion was therefore, first repudiated expressly in USA. Jackson J. expressing the view of the court posited that:

Imprisonment to protect the society from predicated but unconsummated offences is so unprecedented in this country, and so fraught with danger of excess injustice that I am loathe to resort to it.

Also, there is the question of whether it is the risk of commission of any further offence or any further serious offence that should justify refusal of bail. This question becomes imperative considering the difficulty in predicting accurately, a recidivist. Hence, denial of bail on the risk of commission of any further offence, will R.V.Philips(1947)32CR.App.R47;Rv. Pegg(1955) CAR 308, R v. Wharton (1955) CLR 565.

Nwadialo F. (1985), The Criminal Procedure Act of the Southern States of Nigeria. no doubt, lead to incarceration of almost all offenders of any degree[48]. The lawyer's question therefore is: what then should form the main jurisprudence of bail determination in Nigeria?

Mandatory or Discretionary Bail

The general question here remains; where should bail be granted as a matter of course (mandatory bail) and where should it be discretionary?

In Nigeria, it seems the grant of bail is mainly influenced by nature and seriousness of the offence. Where the offence is punishable for less than three years (misdemeanor) bail is mandatory. It appears that in all other cases, apart from the above, bail is discretionary.

42 see constitution(suspension& modification) degrr1 of 1966. See also Lakanmi v. AG west (1971, WLR 71.
43 these tribunals deal with various offences
44 see I>E> okagbue of op.cit p.56-61
45 R. V Philip (1947) 32 CR. App. R47; Rv.pegg (1955) CAR 308,Rv. Wharton (1955)CLR 565
46 Nwadialo F. (1985), the criminal procedure Act of the Southern states of Nigeria
47 Op. Cit. p. 432-436.

V. SUMMARY OF FINDINGS, RECOMMENDATION AND CONCLUSION

5.1 Summary

Justice and the rule of law demand that a citizen should be punished for a distinct breach of the law and for nothing else[48]. The right of a person has become a fundamental issue under human rights. This has inspired the encapsulation of these rights in the constitution of most civilized states[49]. But the issue of rights cannot be interpreted fanatically to frustrate, thus, crumble the intendment and operation of the criminal law enforcement in our country.

A correct approach to bail therefore, is the one that strikes a balance between the interests of the state (safety, peace and public policy) on the one hand, and that of the accused in the other. The courts in Nigeria have been left in a lurch by insufficient legislative enactment in area of bail in the country. They however desire commendation for, at least, improving something that gives them a- foundation in bail cases through case laws. Bail at pre-trial stage shall not be conceived as a device for detaining persons in custody, even before investigation is concluded: The US court was very specific when it warned[50];

The practice of admission to bail...is not a device for keeping a person in jail upon mere accusation.... On the contrary, the spirits of the procedure is to enable them stay out of jail until a (fair) trial has found them guilty[50].

In as much as bail safeguards the liberty of the accused pursuant to his appearance to stand trial, it should not be placed as a priority subject to the fears of flight of the accused as contemplated by the law.

Moreso, the classification of offences into bail-able and non-bail offences appears to have created a presumption that certain offences are not bail-able. The categorization of offences into felonies and misdemeanor should better be sustained. Felonies should also have to be classified into felonies of lower degrees and felonies of higher degrees for the purpose of bail. All offences falling into the first and second categories should be bail-able but the conditions attaching to bail in these cases should, however, depends on the magnitude of offences[51]. The mandatory and discretionary bail has not been clear cut. The courts have certain

degree of discretion in each case. In the end, the court can refuse bail hi mandatory instances of bail. Bail is free but not granted without conditions. The courts should have discretion in all cases to attach such conditions as would practically compel the appearance of the accused for trial. The legislature should guide the courts through statutory instructions as to what conditions should attach to certain crimes. Recourse may be had, in fixing

Murder, Armed robbery, terrorism, child trafficking may however remain non-bailable Higher conditions of Bail should be imposed in violent crimes, crimes punishable with life imprisonment, any felony where at accused has bad criminal record with life record of bail default, any specific serious offence i.e. punishable with 10 years imprisonment In American see 1C USCS. 3142 (p) (1) (c). these conditions, to the nature and gravity of the crime,[52a] and the risks placed upon the accused by the law[52b].

When the above is done, stringent or excessive bail should be defined relative to the magnitude of the accused offence and risks posed to the society. This will enhance the litany of factors how considered by the courts in bail cases to a more cardinal but effective ones. Thus, the courts should, prima facie, consider bail on self recognizance before surety bond. Where surety bond is required, the acceptability of the surety/sureties and their qualification should be fixed relative to the magnitude of a crime.

Even in higher offence, certain measures need also be introduced. For instance, the society is living in the generation of computer; our bail system ought to be computerized. The mass media (both print and electronic should be detailed on persons released or bailed by pretrial service agency[53]. This will help them track down any slightest unusual movement of such a person within and outside jurisdiction.

Delving into the police bail system is tantamount to opening Pandora's Box. The police have used itself as instrument of oppression of law, they even go on private recovery of debts only to carry the debtor and dump him into police cell. This person cannot gain liberty without paying through his nose for bail. The police so extorts money from people. The police sometimes, arrest indiscriminately, citizens going on their lawful business and dump them in cells. These persons are never released without paying a handsome amount for their bail.

4a Misdemeanor will attract less conditions, felonies or lower degree (those punishment for not more than three years) will follow while felonies of higher degrees for 4 or more years, etc, (or death} distill conditions attaching thereto.

4bI.e. risks of flight of danger etc.

48.I.A.V. Dicey on law of the constitution (10th edition) p. 202.

49 the UDHR 1948, ICCPR,ACHPR and chapter iv CFRN 1999; particularly SS 34,35 and 36;
Bearing on right to diginity bail and fair hearing in criminal proceedings; Starck VUS.342.
US 1 at 7-8, 72s.ct1 at 5-6-l-ED 3 (1951)

50 The UNDR 1948,ICCPR, ACHPR and Chapter iv CFRN 1999; particularly SS 34, 35 and 36; bearing on right to dignit, bail and fair hearing in Criminal proceedings.

5.2 Recommendations

Bail is aimed at reducing the number of pre-trial incarceration predicated on the presumption of innocence[53]. It ensures that the accused is given opportunity and facilities to defend him in the criminal charge leveled against him. It also ensures that scale of justice has not acted slightly against the accused before he comes to stand trial. It has, to this end, remained effective tool of achieving justice.

However, it appears these fantastic ends of bail have been defeated in the Nigerian bail system, owing to insufficiency of the most essential ingredients (which are sine-qua-non) for efficient bail system.

The researcher bearing these in mind, therefore humbly recommends the following;

(a) That, in order to protect the citizens from the brutality, and insecurity posed upon them by the police force, the police should be divested of any power to impose financial condition or conditions at all in any bail case. The police bail should be without condition where they have power to bail. Where otherwise, accused should be taken to court without much ado[55]

(b) That the pre-trial service agency is very imperative at this level of our civilization and should be established. This agency should help save the poor citizens from the hands of all imposing Nigeria police force.

Dambazau, A. B. (1999). Criminology and Criminal Justice. Ibadan, Spectrum Books Limited; See Erl Azi of Benue State High Court in Paulina Thomas v. Op. (1984) unreported; suit noAD/SCA/84.

Not demanding the purchase of papers, ink, pen, tissue papers, detol or any other material or its money equivalent from the suspect or his relative.

(C) That the system of legal Aid[56] should be reinforced to avail legal services to the accused. This is very pertinent, given the economic conditions of the country. Both the legal Aid scheme and Pre-trial Service Agency should be made to form part of the Ministry of Justice and Ministry of Social Welfare respectively for optimum performance.

(d) That the citizens be properly educated on what their rights are. Many accused do not even know they have right to bail. Others do not even know that police can be sued for breach of rights of ordinary citizens.

Mass awareness should be created to equip the citizens with the proper knowledge of the legal aid system especially on their rights.

(e) That procedural measures be carried vis-a-vis substantive ones. Adjectival law measures like;

(i) Specifying the time for adjournment of bail hearings, (ii) Ruling out any resort to technicalities hi bail cases.

(iii) Getting a counsel ready for accused who cannot afford one before such accused is arranged for bail hearing.

(iv) Articulating the border between the burden of the prosecution and the defense in bail hearing.

(v) Giving reasons, which must be recorded why certain conditions of bail were imposed and not others by judges.

The Indian Supreme court sums it up thus "legal Aid is nothing but equal justice in action (and ...is intended to extend justice to the common man), see Hussainara Khartoon v. State of Bilhar (1979) CRL1036 at 1155.

(vi) And specifying time limit for charging the accused to court for bail hearing.

(f) That bail hearing in form or preliminary hearing be determined first in any case before the substantive trial. It is the bail hearing (summarily) that should
determine the grant of bail and conditions thereto.

(g) That the Nigeria police force be re-oriented to Jettison its colonial mentality and face the challenges of civilized Nigeria. Both administrative and judicial control should be available to curb the excess of the police.

(h) That present proliferation of criteria should be thinned down. The predictive criteria should be the one that ensure the appearance of certain accused based on the magnitude of his crime and possibility of risks.

(i) Accused should never be detained without bail hearing. It is the bail hearing that will authorize his detention where he fails to meet bail conditions. Holding charge is nowhere contained in our law and therefore unknown to our laws. It shall never be resorted to detain the accused.

(j) Excessive condition of bail should not be imposed. Bail should not be Hobson's choice. But excessiveness of a condition should be defined relative to the magnitude of offence charged.

(k) The legislature is hereby called on to review our laws which have gone sour owing to long usage. Most of our statutory laws are archaic they should be retouched or reviewed.

---

51 see IC USC S. 3142 (P) (1) (C).

52a misdemeanor will attract less conedition,felonies or lower degree.

52b i.e. risk of flight of danger etc.

53 Ojukwu, E. (2012) breathing more life int human rights in Nigeria with three New Statutes.
Dambazau, A.B. (1999). Criminalogy and Criminal justice.

(I) Our bail law is in the danger list, legislature should review and enact bail law that will be in tandem with the demands of modernism. It may interested Nigerian parliament to echo the words of one time America senator.[57]

Current bail practice constitutes a major flaw in our existing criminal justice system because they fail to protect the interest of both the community, and the accused ... effective bail reform presents an enormous challenge to those responsible for creating an equitable criminal justice system (and)... we must replace alternatives found wanting with more workable approaches.

(m) The legislature should come to the aid of the courts by providing them with a comprehensive guide (in bail statutes) on the exercise of their discretion in bail cases. This will reduce the neck breaking duties of courts unequivocally.

(n) That more research be conducted in the area of bail in order to discover boiling issues pertaining to bail which the researcher may not have discovered. This is especially important in the development of our law and human learning in general,

(o) In order to avoid impunity and gross violations of the right to personal liberty of Nigerians by the police, urgent reform of the Nigeria Police Force is imperative.

(p) Recruitment of fresh police officers should be streamlined and best practices put in place to ensure that bad eggs do not find their way into the Force. Reform of the police must be real and aggressive and not cosmetic. Such reform must involve a serious programme of human rights education and improvement in the working conditions of police officers.

(q) Accountability for impunity and human rights violators by the police must be ensured. When a police officer is compelled to pay compensation to victims of his brutality and unlawful detention, he and others would be discouraged from committing similar violations in the future. Our law ought to be amended to ensure that damages awarded to victims of human rights violations by police officers and authorities are paid promptly by the police. The present laws on enforcement of judgments in Nigeria are ineffective as far as enforcement against the police is concerned.

(r) The abolition of vigilante groups throughout Nigeria is also recommended. The constitution should be amended to allow the establishment of state police for a state that desires to have one. Such State Police will fill any vacuum in security that might occur as a result of abolition of Vigilante groups. State Police should be made to work under the same operational guideline and discipline of the Nigeria Police Force.
(s) In respect of the fight against terrorism, there is a need for the legal regulation of counter-terrorism measures and the need to respect human right while fighting terrorism. Recently, the Nigerian Army was accused by the Amnesty International of grave human rights violations in Bornu State including detentions, torture, indiscriminate and excessive attacks and killing of innocent civilians.
(t) There is also the need for the reform of our courts. Adequate number of Judges and Magistrates should be appointed. The courts must also be equippedwith modern information technology and recording equipment to ensure speedy trial of cases. When this is done, the Criminal Procedure Law can then be amended to provide for a specific period during which criminal trial must be concluded as in election petition cases.
(u) To ensure the trial of indigent detainees, let there be proper funding of the Legal Aid Council to enable them cope with the high number of Awaiting Trial Inmates who cannot afford to pay counsel to defend them . The Council should employ more lawyers and establish more offices in the country.

55 not demanding the purchase of papers, ink, pin, tissue papers, detol or any other material
56 see hussainara Khartoon v state of bilhar (1979) CRL 1036 at 1155.
57 senator Edwards kennedy a new approach to bail reform. The pr posed Federal Code and bail release (1980). 48 Fordham Law Review 423 at435-436.debate leading to the 1984 American bail reform Act; Aguda, T.A. (1982). The criminal law and procedure Of the Southern States of Nigeria (London): Sweet and Maxwell)

5.3 Conclusion

Mere tinkering with the piece meal laws on bail cannot effectively arrest these situations. A clear, wholesome and comprehensive bail reform statute is long overdo. The statute will collate and canalize all shabby laws on bail. It will inter alia;

(1) Define a clear objective of bail.
(2) Factors that the courts should have recourse to in determining conditions of bail.
(3) Conditions that could be imposed on bail in all situations.
(4) Offences against bail.
(5) Canalize offences in levels of seriousness on which different conditions of bail apply.
(6) Guide the courts in exercise of discretion in bail cases.
(7) Define and empower procedural measures that could operate in our bail jurisprudence.
(8) List which surety is acceptable in certain bail hearing.
(9) Remedies for frivolous detention.
(10) The correct operation of liberty of the accused and how it can better be interpreted not to defeat the end of the bail system and justice. The challenge of effective bail reform is to ensure that the most realizable, effective and reliable measures of release is achieved.

REFFERENCE

[1]. Ademola, T.A (2003),The Police and Holding Charge Syndrome; Issues and : Nigeria Bar Journal I (3).
[2]. Aguda, T.A. (1982), The Criminal Law and Procedure of the Southern States of Nigeria London: Sweet and Maxwell).
[3]. Amadi, G.O.S (2000), Police Powers in Nigeria, (Nsukka: Afro Orbis Publishing Co. Ltd).
[4]. Annan, K. (1999). Global Integrity in a Changing World' Being a Message to the 9th International Anti-Corruption Conference (IACC) Durban South Africa 10th October.
[5]. Annan, K. (2005). 'In Larger Freedom: Towards Development, Security and Human Rights for All; Being a Report presented to the 59th Session of the United Nations General Assembly, March.
[6]. Babatunde, L.A (2003), Handbook of Criminal Law and Procedure (Lagos: L and Procedure (Lagos: Law Breed Ltd.).
[7]. Bryana, A.G. (2009), Black's Law Dictionary, 9th Edition (USA: West Publishing Co.).
[8]. Boderin, M. (2011). Law and Development in Africa: Towards a New Approach. NIALS Journal of Law and Development, No.l, pp. 24-25. CLO Annual Report (2000).
[9]. Dambazau, A. B. (1999). Criminology and Criminal Justice. Ibadan, Spectrum Books Limited.
[10]. Dicey, A. V. cited in Eseni, A. U. (2011). Human Rights in Africa. Lagos: Mbeyi and Associates Ltd.
[11]. Eko, E. (2003), The Law of Bail (Ibadan: Lifegate Press and Publishing Co.). Faga, and Nwode, P. (2015) Class Mimograph.
[12]. Guobadia, D. A. & Azinge, E. (ed) (2005).Globalization ,National Development and the Law. Lagos: NIALS.
[13]. Igwenyi, B.O. (2006), Modern Constitutional Law in Niger (Nwamazi Printing and Publication Co. Ltd.).

[14]. Internet: Available at http: // www.Nigerian Law.org.
[15]. Nwadialo, F (1976), Criminal Procedure of Southern States of Nigeria.
[16]. Ogbu, O.N (1999), Human Rights Law and Practice in Nigeria: Introduction (Enugu: Cidgap Press).
[17]. Ogbu, O.N. (2007), Modern Nigeria Legal System (Cidgap Press).
[18]. Okagbue, I.E (1994), Bail Reform in Nigeria (Ibadan: Caltop Publication Nigeria Ltd.).
[19]. Ojukwu, E. (2012) Breathing More Life into Human Rights in Nigeria with Three New Statutes, in Ngwakwe, E et al (ed) Human Rights, Democracy and Development Revisited. Aba, KDV E- Publishers.
[20]. Okpara .O. (20ne Press 1997)05); Human Rights Law and Practice in Nigeria (Vol. I Chengbo Ltd.).
[21]. Osborne G. ((2000), Criminal Litigation (London: Blackstone Press).
[22]. Schattschneider, E. E. cited in Shishi, S.M., et al 'Globalization, Democracy and Good Governance in Nigeria – The Best Practices in The Council was established by the Legal Aid Act of 2011. The 2011 Act repeals the Legal Aid Act of 1976 Cap L9 LFN 2004. For more on the Legal Aid Act
[23]. Uche Jack Osimiri: The Nigerian Legal Aid Scheme: The 21 years Journey (1998) NLR, 2(1).
[24]. Zannah, K. (2000). Prison Congestion, the Courts, the Police and Abuse of Human Rights: Nigerian Legal System in Crisis, Abia State University Law Journal, vol.7.

Amaechi Uneke Enyi. " Mood Structure in Sermonic Discourse: A Study of Rev. Fr. Evaritus Abu's "The Keys to Overcoming All Temptations"." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 11, 2019, pp. 15-31.