



AN APPRAISAL OF THE EXERCISE DISCRETIONARY POWERS BY PUBLIC OFFICERS UNDER SECTIONS 4,5 & 6 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED)

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ABSTRACT

The study critically appraised the discretionary powers exercised by Public Officers under sections 4, 5 and 6 of the 1999 Constitution of the Federal Republic of Nigeria 1999. The Study emphasized the significance of discretionary powers within the legislative, executive and judiciary, tracing the evolution, necessity and the various modes of conferment of discretionary powers through legislation. It further explores the constitutional foundations upon which those Public Officers exercise such powers. A detailed appraisal revealed that discretionary powers have often been grossly abused across the three arms of government. Consequently, the study proposed several recommendations: First, the need to clearly define the ambit of discretionary powers to prevent abuse, the amendment of sections 175 and 212 of the Constitution 1999 to allow for judicial review; and the amendment of sections 174 and 211 of the Constitution to enable the court to review the powers of the Attorney-General were exercised arbitrarily against public interest. Additionally, the study recommended the amendment sections 143 and 188 of Constitution which confer legislative powers of impeachment, to provide precise and flexible definition of “gross misconduct”, similar to the U.S. model, thereby closing gaps that permit political manipulation. Also the need to separate the office of the Attorney-General from the office of the Minister for Justice was also recommended. Finally, it advocated for the establishment of judicial guidelines on sentencing, bail, injunction, and adjournment to minimize abuse of discretion by judges.

KEYWORDS: Public Officers, Discretion, Discretionary Powers, Constitution

1. INTRODUCTION

Public officers are the drivers of government and public administration. Public officers are central to the activities of government as they are the decision makers that act across the various sphere of government. In carrying out their duties in line with the overall objectives of government, they are allocated powers that enable them function pursuant to the relevant laws that create their offices. Although Statutes regulate Public Officers’ duties, they often lack specific details due to the limitations of legislation predicting future circumstances. To this end the Public Officers are saddled with the responsibility of filling the gaps and using their discretion for effective running of governance.

The 1999 Constitution no doubt provides for separation of powers of the three arms of government - the legislature, executive and the judiciary. In the exercise of their respective powers donated by the Constitution, the implementations or decisions are usually carried out through the respective



heads or public officers of the three arms of government or through Ministries, agencies, parastatal and government institution with a view to achieving the overall objective of government provided under section 13 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The limitation of the legislature to adequately provide for foreseeable circumstances in the future that will guide the public officers in carrying out their duty gives room for the need for the exercise of discretionary powers. The limitation of the legislature in law making it aptly capture by Lord Denning in the following words:

“... it is not within human powers to foresee the manifold set of facts which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity.”¹

Since law enacted by the legislative body is devoid of divine presence and perfect clarity that is able to address foreseeable circumstances, discretionary powers becomes an effective tool that avails the public officers in the running the affairs of governance. Discretionary power is a recurring feature in administrative law, it is an interplay between powers, duties and discretion.² In the absence of perfect laws that will provide for the nitty-gritty of governance, discretionary powers are given to public officers to use their sense of judgment and reason to fill in the lacuna in the laws in decision making for the best interest of governance.

In the light of the indispensability of the of the exercise of discretionary powers by Public officers, this work shall periscope and appraise the exercise of discretionary powers by Public Officers who occupy Public offices provided under sections 4, 5 and 6 of the Constitution.³ Public officers for the purpose of this research and clarity refers to the Persons who occupy the offices of the President, Vice President and their Cabinet Members, Governors, Deputy Governors and their Cabinet Members as well as Judicial officers provided by the Constitution.

2. CLARIFICATIONS OF TERMS

2.1 Discretion

It implies power to make a choice between alternative course of action⁴. Discretion in a literal sense, means choosing among various alternatives⁵. It also refers to the individual judgment; power of free decision making.⁶

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¹ Lord Denning, *The Discipline of Law* (Billing & Sons Ltd Worcester 1983) 12.

² *Secretary of State for Education v Tameside* (1977) A.C. 1014.

³ Constitution of the Federal Republic of Nigeria 1999 (As Amended).

⁴ Sameer Shama, 'Discretionary Powers' <<http://www.layersclubindia.com/articles/discretoinary> power accessed 4/8/2025> Accessed 22 April 2026.

⁵ M B Khan, A.N and Ahmadu,N 'Necessity of Discretionary Powers : A Critical Appreciation as a Necessary Evil' *Global Regional Review* (2020)V(III)19.

⁶ B A Garner, *Black Law Dictionary* (9th Edn, 2009) 534.



2.2 Discretionary Power

It refers to the power that a person may choose to exercise or not, based on the person's judgment.⁷ it also means the authority granted to government officials and agencies to make decision based on their judgment and expertise rather than following strict rules or guidelines.⁸

2.3 Public officer

The interpretation Act defines a Public officer as a member of the Public service of the federation within the meaning of the Constitution of the Federal Public of Nigeria or of the public service of the State.⁹ According to Malami, a Public officer is a civil servant irrespective of his position or rank. The public officer is any person who is directly employed in government/ public service, civil service of any public agency.¹⁰ The 5th Schedule of the Constitution defines a public officer as a person who takes upon himself the duties of a public office, he becomes not only responsible for their faithful performance but may be liable to individuals for any injury resulting from his act or omission.¹¹ A public officer has also been defined by the Court as a holder of a public office. He is in the public sector of the economy as distinct and separate from the private sector. He is entitled to some remuneration from the public revenue or treasury. He has some authority conferred on him by law. He also has a fixed tenure of office which must have some permanency or continuity. Above all, a public officer has the power to exercise some amount of sovereign authority or function of government.¹²

3. THE EVOLUTION OF DISCRETIONARY POWERS

The concept of discretionary power evolved with the concept of the state. The establishment of the state necessitated leadership to administer the affairs of the state. Accordingly, no leadership or government can function without administrative discretion.¹³ The concept of modern welfare state necessitated the delegation of wide discretionary powers on the officials to address modern day complex problems.¹⁴

Historically, the emergence of discretionary power can be traced to legal and administrative system that recognized the limitations of strict rule based governance. As society became more complex, the need for officials to adopt their decision to specific circumstances led to the formalization of discretionary powers with legal framework. This is with a view to achieve fairness, efficiency and

⁷ Ibid, 1288.

⁸ 'Discretionary Powers' <<https://library.fivables.ms/key-terms/ap-gov/discretionary-powers>> accessed on 5 May 2025.

⁹ Interpretation Act Laws of the Federation 2004, s 18(1).

¹⁰ E Malami, *Administrative Law in Nigeria* (3rd Edition, Prime Publication 1999) 440

¹¹ B A Garner, *Black Law* (Tenth Edition West Publishing Company 2014) 1425

¹² *AbdulRauf Abduilkadir Modibo v Mutstapha Usman & 2ORS* (2020) 3 NWLR (Pt 7212) 470

¹³ Bakht Munir and others, *Principles of Administrative Discretion: A Case Study of Pakistan* [2020] 4 (111) *Pakistan Social Science Review*, 1023-1035.

¹⁴ Ibid .



justice in administrative outcome which also allows smooth running of governance.¹⁵ The increase responsibility of the state in governance and the complexity in administering state affairs, makes the legislature to realize the importance of discretionary powers being conferred on the administrators¹⁶ for the smooth running of the state. Also, the escalations of state function further compelled the legislature to confer discretionary powers on the administrators because it was not always possible to lay down standards and parameters for the exercise of administrative powers in novel situations of complex affairs. It was observed that if government officials are not clothed with discretionary powers in carrying out state functions; running the affairs of government will become rigid and unworkable which will adversely affect the running of the State.¹⁷ It can gainfully be said that the government cannot function without public officers exercising discretionary powers.

4. THE NECESSITY OF DISCRETIONARY POWER

Discretionary power may proceed from two sources; it may be conferred on a person or a body of persons by the action of the legislature by Statute or it may be based on Convention¹⁸. It cannot be overemphasized that the herculean task of government administration, makes the necessity of discretionary power incumbent. Since the legislature cannot contemplate and provide for every situation in a legislature, discretionary power is necessary tool that avail public officer to be able to attend to issues of governance that has not been expressly provided by the law.

Secondly, the allowance that await public officers or administrative officers to employ or use discretionary powers in carrying out their task is not unconnected with the fact that they possess experience and specialization that they have garnered over the years which will enable them to have a good sense of judgment and opinion that will impact positively on the administration of governance and to achieve legislative objectives.¹⁹

The use of discretionary power allows the public officers to adopt flexible approach in handling state affairs especially where the law did not contemplate. Thus, it allows public officials and administrators to adapt their approaches based on specific circumstances, promoting more effective regulations.²⁰ In recent times, the legislature as a law-making body is compelled to confer discretionary power, because it is not always realizable to lay down all the standards and norms for the exercise of discretion²¹. This is because the administration is always asked to solve a problem whenever it arises and the legislature is not always sure how it can be solved. It therefore behaves

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Bool Chand, 'Need for Discretionary Power in Government' <<http://journals.sagepub.com>> accessed on 5 August 2025.

¹⁹ 'Discretionary Powers' <<https://www.addtoary.com>> accessed 5 August 2025

²⁰ Ibid.

²¹ B Munir and others (n 13), 186.



on the administration that is competent to do, and therefore, power is left within broad term²². The conferment of discretionary powers assumes that power should be exercised independently by the authority concerned according to its own assessment²³

One of the major objectives of discretionary powers is to promote justice by grasping a variety of facts in individual cases so as to avoid general complications in the application of the rules and the provision of the law since it is an admitted fact that government cannot function without the exercise of discretionary powers by its officials because it is impossible to lay down a rule for every conceivable eventuality in the complex act of modern government²⁴

6. MODES OF CONFERRING DISCRETIONARY POWERS

It should be borne in mind that the legislature does not seldom make comprehensive legislation in all respect; this is due to the fact the legislative is devoid of divine presence and perfect clarity that is able to address every foreseeable circumstance. The legislature more often makes sketchy legislation and leave gaps and confer powers on the administrators concerned to act in a way it deems “necessary” or “reasonable”, or it is “satisfied” or is of the opinion²⁵. Also, where the legislation uses the word ‘may’ the decision maker is given the discretionary power to deal with a matter and has a choice to input his sense of judgment or opinion²⁶. A legislation confers discretionary power when it refers the decision maker for the use of his power to beliefs, expectations, or tendencies instead of facts or where such terms as ‘adequate’, ‘advisable’, expedient, ‘equitable’, ‘fair’, ‘fit’, ‘necessary’ are use, it imputes discretion. The preceding adjectives when used in a Statute lacks the degree of certainty and enlarges the element of future probability over the present conditions.²⁷

7. THE CONSTITUTIONAL CONTEXT OF PUBLIC OFFICERS PROVIDED UNDER SECTIONS 4,5,6 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) AND THE EXERCISE OF DISCRETIONARY POWERS.

Governance is one of the cardinal duties and responsibilities of the three arms of government as provided under sections 4, 5 and 6 of the Constitution.²⁸ By implication the three arms of government all are expected to attain the overall objective provided in section 13 of the Constitution to wit, to conform, observe and apply the provisions of the Constitution.

Public officers for the purpose of this research goes beyond the definition provided under 5th schedule of the Constitution. It is restrictive only to the definition provided by the Code of Conduct.

²² Ibid.

²³ Ibid.

²⁴ I, P, Massey, *Administrative Law* (4th Ed. Easter Company New York 1951)

²⁵ Bakht Munir and others (n 13).

²⁶ Ernest Freund, *Administrative Powers Over Persons and Property: A Comparative Survey* (University of Chicago Press 1928).

²⁷ A.T. Shedu, ‘Constituency Control of Legislators: Lesson from Nigeria’ <<http://papers.ssrn.com/So13/papers.cfm?abstractid=1678535>> accessed on 18th May, 2015.

²⁸ CFRN 1999 (n 3).



The Public Officer Act²⁹ failed to define who a public officer is, therefore for the purpose of this work, we shall resort to the definition provided by the Black Law Dictionary earlier as earlier discussed³⁰ and which same was fortified by the Supreme Court in the case of *Abdulrauf Abdulkadir Modibbo v Mustapha Usman & 3 Ors*³¹ which refers a Public Officer to a person who is the holder of Public Office. With the preceding definition in mind and reckoning also the context of this work, public officers herein refer to the person holding the office of the President, Vice President and the cabinet and members that form his cabinet of the government of the Federation, the Governor, Deputy Governor and members that form the cabinet of the State it also entails the Governor. It also refers to all the Legislators in the National Assembly, State Houses of Assemblies and the Judicial Officers provided under the Constitution.³²

It is an undisputed fact that the above Public officers form the nucleus of governance and are critical stakeholders that chart the affairs of governance in Nigeria in line with the mandate of their oath of office. They make decision that shape the course of governance. Discretion is an important part of decision making in the public sector and it exist at all level of public policy.³³ The growing demand on the States makes the discretionary power a tool in decision making which is critical for the much needed solution in every area of governance and public administration. The State by its nature and function is called upon to intervene through flexible approach in many arrears of governance with a view to solving complex issue which arise in governance³⁴

Arising from the foregoing, it is evidently clear that the necessity of discretionary powers in the day-to-day act of government cannot be overemphasized. Thus, the inability to provide specific laws or rules in cases arising in different situation has made discretionary power a necessary tool in such situations. Discretionary powers have become an easy vehicle for changing the consideration to be applied to problems over time.

7.1 The Executive Arm of Government and the Exercise of Discretionary Powers

The Executive arm of government is vested with Executive powers to among others implement policies in tandem with governance and the laws enacted by the legislature. Under the Nigeria Constitution, the President is vested with Executive powers as enshrined in section 5(1) of the Constitution. Similarly, the governors of the States are also vested with executive powers.³⁵ The genesis of discretionary powers under the Nigeria Constitution can be gleaned from a close

²⁹ Public Officer Act Laws of the Federation 2004.

³⁰ Garner (n 11).

³¹ 2020 3 NWLR (Pt 1712) 470.

³² CFRN 1999 (n 3).

³³ Bakht Munir and others (n 13).

³⁴ Ibid.

³⁵ CFRN, 1999 (n 3), s 5(2).



examination of section 5(1) and 5(2) of the Constitution which vest Execution Powers in the President and the Governors respectively.

The President is given discretionary power to exercise the Executive powers of the Federation either by himself or through the Vice President and Ministers of the Government of the Federation or officers of the Public service of the Federation.³⁶ In the same vein the Governors can exercise the executive powers of the State by himself or either through the Deputy Governors and Commissioners of the Government of the State or officers in the public office service of the State.³⁷ Given the onerous responsibilities and the task of governance that the Executive is saddled with, the executive arm of government constitutes the Cabinet, government Department and Agencies³⁸. However, the President and the Governor as the Head of the Executive arm of government of the Federation and the State respectively given the nature of the duties and responsibility; the law enabled them to exercise discretionary power in the overall interest of the State.

The President in the exercise of his power pursuant to section 147 of the Constitution, is given the discretionary power to exercise in the appointment of the Minister of the Federal Capital territory. The said provision provides thus:

In the exercise of the powers, conferred upon him by section 147 of the Constitution appoint for the federal capital territory, Abuja a Minister who shall exercise such powers and perform such functions as may be delegated by the President from time to time.

Also, section 148 (1) of the Constitution also provides that the President may in his discretion assign to the Vice President or any Minister of the Government responsibility for any business of government which may include the administration of any government department. The President and the Governors are also enabled by the Constitution to exercise discretionary powers by exercising the power of prerogative of mercy to persons as provided under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The provision of Section 175 (1) provides thus: The President may:

1. a. Grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions;
- b. Grant to any person a respite, either for an indefinite or for a specified period of execution of any punishment imposed on that person for such offence.
- c. Substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or

³⁶ Ibid.

³⁷ Ibid, s 5(2)(a).

³⁸ M M Gidado and S S Shikyil, *The Province of Legal Method*(Jos University Press 2016) 63.



- d. Remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the state on account of such an offence
2. The Powers of the President under this section shall be exercised by him after consultation with the Council of State.

The above provision of the law is also replicated in section 212 of the Constitution which grants the Governors discretionary powers to exercise same.

The powers of the Attorney General provided under the Constitution is one of the areas that the Executive exercise discretionary powers via the office of the Attorney-General. The Constitutional provision gives powers to the Attorney-General of the Federation or of the State to:

- i. Institute criminal proceedings;
- ii. Power to take over; and
- iii. power to discontinue proceedings.³⁹

The powers of the Attorney General of the Federation to commence criminal proceedings as well as other powers as contained in the section 174 of the Constitution of the Federal Republic of Nigeria are only exercisable with respect to federal offence while the powers of the Attorney General of the State are exercisable as a general rule with respect to State offenses⁴⁰

8. THE LEGISLATURE AND THE EXERCISE OF DISCRETIONARY POWERS

Having regard to the nature of the legal duties vested on the legislature, it is the legislature that enacts laws that enables the Executive, Judiciary and the decision makers to act in a particular way. Where the words “shall” or “must” are used in a legislation, there is usually no discretion that is available to the decision maker or public officer⁴¹ Where the legislature used the word “may” in a Statute, the public officer is given discretionary power to deal with a matter and has a choice to make. This choice will often involve an element of judgment about the decision⁴². Discretionary powers do not emanate vacuously, they are created expressly or implicitly directly or indirectly and conferred on the person or agency for the said purpose and mostly done by the legislature⁴³

Beyond the principal of law making, the legislature has another function which involves the exercise of powers. It should be noted that it is not every exercise of powers by the legislature under

³⁹ CFRN 1999 (n 3), s 174.

⁴⁰ James Atta Agaba, *Practical Approach to Criminal Litigation in Nigeria* (4th edn: Renaissance Law published Ltd 2017).

⁴¹ Shedu (n 27).

⁴² ‘Exercise of Discretion in Administrative Decision Making’ <www.ombudsman.> accessed 10 March 2025.

⁴³ Bakht Munir and others (n 13).



the Nigeria's law that involves law making. The National Assembly is also vested with powers by the Constitution to exercise various other powers, not by legislation but by resolution⁴⁴ or simply by approval without substantive motion⁴⁵

In exercising its powers pursuant to the relevant provision of the Constitution, the legislators exercise discretionary power. It has been established earlier that discretionary power is a tool used by public officer or decision maker to carryout decision in the overall interest of the organization. Also, discretionary power also exist to avoid the burden of excessive bureaucracy in the running of the state.⁴⁶ The provision of section 9 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) contemplates an exercise of discretionary powers by the National Assembly. The said provision provides that the National Assembly may subject to the provision of this section, alter any of the provision of this Constitution

Also, the provision of Constitution for the establishment of contingency fund for the Federation can only made by the National Assembly pursuant to the exercise of discretionary powers. The said provision provides that:

The National Assembly may by law make provision for the establishment of a contingencies fund for the Federation and for authorizing the President, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the fund to meet the need (emphasis mine

Another area the National Assembly and the State House of Assembly employ exercise discretionary powers is the area of impeachment of the President or the Governor as the case may be. The entire provision of sections 143(1 – 11) and 188 (1 - 11) of the Constitution⁴⁷ provide that the impeachment of President/Vice President and the Governor/Deputy Governor lies squarely on the definition of what amounts to “gross misconduct.” The basis for the impeachment of the President, Vice President, Governor or Deputy Governor lies in the opinion of the legislature.⁴⁸ The Legislature also exercises discretionary power by deciding on the formulas and polices in which appropriation function should be dispensed of⁴⁹. The foregoing explores some of the provisions provided in the Constitution that enshrines the exercise of discretionary powers by the legislature.

⁴⁴ Benjamin Nwabueze, *The President Constitution of Nigeria* (C.Hurst 1982).

⁴⁵ Ibid.

⁴⁶ 'Exercise of Discretionary Powers' <<https://www.scribid.com>> accessed on 11 August 2025

⁴⁷ CFRN 1999 (As Amended) (n 3).

⁴⁸ Ibid, s 143(11) & 188.

⁴⁹ Ibid, s 58 and 59.



9. THE JUDICIARY AND THE EXERCISE OF DISCRETIONARY POWERS

Unlike the Legislature and the Executive, the provision of Section 6(1-6) of the Constitution that provides for the judicial powers of the Court did not manifestly provide for the discretionary powers for Judicial officers in carrying out judicial functions. However, in carrying out its primary duty of adjudicating between individual and persons and the government,⁵⁰ the Court also exercises discretionary powers. The Court of Appeal in *Translantic Mortgage Ltd & Anor v Proff John Offem*⁵¹ defines judicial discretion as:

A term applied to the discretionary action of the judge or court and means discretion bounded by the rules and principles of law and not arbitrary, capricious or unrestrained. Discretion is a legal term to be exercised in discerning the course to be prescribed by law and it is not according to the whims and caprices of the individual judge but that of the law. Discretion of the court is not Tea, bread and butter business. It is the law that a proper exercise of discretion should be done according to law not humour.

Judicial discretion presupposes that the court enjoy power to act at pleasure without external influences and constraint.⁵² By the principles of separation of powers, it is the basic responsibility of the Court to interpret statutes. However, an unquantifiable power lies in the judges' hands where the law is silent on a matter before the Court.⁵³ This offers ample discretion to the judge to give life to the legislation. In the exercise of judicial powers, the Court also exercises discretionary powers in granting injunctive and equitable reliefs. The judge equally enjoys enormous powers in the grant or refusal of such reliefs.⁵⁴

The decision to grant or refuse to grant an application for bail lies at the discretion of the Court even though it must be exercised judicially and judiciously having regard to the right of the accused person to his liberty as provided by the Constitution.⁵⁵ Moreover, the judge has power to grant discretionary sentencing in a situation where the law simply provides penalty without stipulating its minimum; or where the law prescribes a statutory minimum above which the Court has discretionary power to impose and when the law so provides a range between minimum and maximum leaving the Court to exercise the discretion in a manner it deem fit and appropriate

⁵⁰ CFRN 1999 (n 3), s 6(6).

⁵¹ Legalpedia (2025-05) 45761 Per Ntong Festus Ntong JCA went further to add in the said decision that; 'Discretion is not to be arbitrary. Discretion is not vague. Discretion is not fanciful. A proper exercise of Court discretion should and ought to be legal and regular. Discretion of Court must be exercised upon facts, peculiarity and circumstances before the Court of Law from which the Court must draw a conclusion governed by law'

⁵² A A Kana, 'Perspective and Limit of Judicial Discretion in Nigeria Courts' (2014)(1) <www.Iiitse.org> Accessed 8 March 2025.

⁵³ Ibid .

⁵⁴ Ibid.

⁵⁵ Ibid.



within the prescribed range.⁵⁶ The Court also exercises discretionary powers in considering whether or not to grant adjournment.

Another area that the judiciary exercises Judicial discretion is through the exercises of judicial review. The Court also exercises discretionary powers by subjecting the action or inaction of the other arms of government to judicial review. The action of the Executive and Legislative arm of government are subject to judicial review. Judicial Reviews are discretionary powers of the Court to review decision of the Executive and Legislative arm of government that is reckless, excessive and outside the bound of the law. Mandamus, *Certiorari*, Prohibition, Injunction form the *corpus* of judicial review upon which a person may simply to seek the review of any government action by the Court. A person employing means aforesaid for judicial review must first obtain leave from the Court by way of an ex-parte order. It is the law that any person who seeks leave for the purpose of judicial review must show sufficient interest in the matter.⁵⁷ In determining whether or not to grant the application for a party for judicial review, the Court exercises its discretionary power. Judicial review is also used by the Court to tame the abuse of discretionary powers by the executive or the legislature.

10. ABUSE OF DISCRETIONARY POWERS BY PUBLIC OFFICERS

It has been established earlier that discretionary power is necessary to enable the public officers bring their experience, expertise and knowledge to bear in taking decision in governance. Discretion is a powerful tool in decision making in governance as it enables the public officer to use his sense of judgment to take crucial decision. Thus, he brings to bear his experiences, expertise and knowledge to exercise his discretion. However, despite the multiple benefits of the exercise of discretion in decision making, it also confers the risk of misuse or arbitrary misuse.⁵⁸

One of the challenges of the use of discretionary powers by public officers is the abuse or wrongful use of discretionary powers. Such abuse or wrongful use of discretionary powers may reinforce the perception of corruption, lack of transparency, lack accountability, lack of integrity of the public sector and may also lead to the breach of law and the abuse of the rights of the citizen and the interest. Discretionary powers which ought to be a vital tool for enhancing governance have surreptitiously been used as a tool for political manipulation, oppression, corruption, abuse of power and infringement of the rights of citizen. Public officers in the context of this work usually take oath to carryout out their functions in the overall interest of the Nigerian state. However, they have employed their discretionary power to feather their nest to promote and pervade corruption at the expense of the Nigerian state. Rather than discretionary power to become a tool to enhance

⁵⁶ Yomi Okubole: 'Current on Sentencing, Custodial Reforms & The Criminal Justice Administration in Nigeria'.
Written in Honour of Justice Lawal Hassan Gummi OFR.

⁵⁷ High Court of Plateau State (Civil Procedure Rules), 2020, Order 44 Rule 3; Similar Provision are also
contained in the Rules of Court in the various High Court Rules in Nigeria

⁵⁸ 'Exercise of Discretionary Powers' <<https://www.scribid.com/> accessed on 11 August 2025



efficiency and promote government business, it has become a weapon of political manipulation in the hands of public officers.

10.1 The Abuse of Discretionary Power by the Legislature

The legislature, apart from carrying out the traditional function of making laws also exercise discretionary powers in carrying out its responsibilities. The Constitution empowers the National Assembly to impeach, remove the President or Vice President⁵⁹ and also empowers the House of Assembly to remove the Governor or Deputy Governor⁶⁰ where they are found wanting for gross misconduct.

A clinical audit of the provision of sections 143 and 188 of the Constitution which provides for the removal of the President or Vice President, Governor and Deputy Governor respectively reveals that the President or Vice President or the Governor or Deputy Governor can only be removed where such public officers are guilty of gross misconduct. However, there is no precision as to what amount to gross misconduct as the Constitution defines gross misconduct as a grave violation or breach of the provisions of this Constitution or any misconduct of such misconduct such nature as to amounts in the opinion of the National Assembly to gross misconduct.⁶¹ The foregoing definition of gross misconduct is subject to the opinion of the legislature which means that it gives the legislature the discretionary powers to defined same, that is to say what amount to gross misconduct lies at the mercy and domain of the legislature which may give room for political manipulation.

Retrospectively, impeachment was borne out of the English parliament by struggle to strip the king and his ministers of their absolute powers and expand the rights of the people. It was originally conceived as a tool to make the executive accountable in view of the doctrine of separation of power and reduced executive recklessness and rascality.⁶² The implicit discretionary power given to the Legislature by virtue of section 143(1) and (2) and section 188(1)(2) of the Constitution has become a weapon of oppression, intimidation harassment of a President or Governors⁶³ whose face the Legislature does not want to behold.⁶⁴ It is established that impeachment is a mechanism for checking the executive arm of government, impeachment seeks to ensure that executive authority is not in conflict with the with the provision of the Constitution.⁶⁵ In as much as impeachment is a vital tool in preserving democracy, it can equally be destructive particularly when it is abused.

⁵⁹ CFRN 1999 (n 3), s 143.

⁶⁰ *Ibid*, s 188.

⁶¹ *Ibid*, s 143(11) and 188 (11) that relates to the removal of Governors or Deputy Governors

⁶² 'The Role Of Legislature In Impeachment Proceeding Under The 1999 Constitution Of Nigeria' <projectlist.com.ng>accessesed 4 February 2026

⁶³ CFRN s 188 (1) & (2).

⁶⁴ (n 46).

⁶⁵ Ibrahim Mohammed, Kazeem, A. Oyinwola, Dauda Umaru Dewan & Asmau Muhammad Sulaiman, 'An Evaluation of Judicial Intervention in Impeachment Process in Constitutional Democracies: A Case of Nigeria' <<http://www.eajournals.org>> accessed on 15 August 2025.



From the inception of democracy in Nigeria, the National Assembly has not used their discretionary powers to impeach the President pursuant to the provision of section 143 of the Constitution of the Federal Republic of Nigeria. However, there have been catalogue of cases of impeachment of Governors which started from the first republic with the case of *Adegbenro v Akintola*.⁶⁶ Impeachment/removal also rear its head in the second republic in the notorious case of *Balarabe Musa v Auta Hamza*.⁶⁷ The third republic witnessed the impeachment/removal of the Governors of Plateau State, Oyo State, Anambra State, and Bayelsa State among the States that were visited with the legislative sword of impeachment/removal of the Governors in office.⁶⁸

One common thread that runs through all the impeachments that took place in Nigeria's democratic history was the political manipulation and the abuse of the discretionary power vested in the House of Assembly to ventilate their personal and political grievances against State Executive. Impeachment became a tool employed by the legislature to deal with Governors who are on the wrong side of political affection and presidential calculation.⁶⁹

The Court of Appeal in *Barabe Musa v Kaduna House of Assembly*⁷⁰ held that the impeachment of a State Governor was a purely legislative/constitutional affairs which was outside the jurisdiction of the Court hence declined jurisdiction in the face of the illegal removal of Governor Balarabe Musa by the Kaduna House of Assembly. The issue before the Court of Appeal for determination was the effect of section 170 (1) of the 1979 Constitution which oust the jurisdiction of the Court which is in pari material with section 188 (1) of the 1999 Constitution. The Court of Appeal in a unanimous judgment declined jurisdiction to entertain pursuant to the provision of section on the premise that 170(10) of the Constitution and that the matter is purely a legislative and constitutional affair which has squarely within the domains of 59 the legislature to determine same.⁷¹

The impeachment/removal of Governors in the fourth republic were politically inclined as the legislature of the various Houses of Assembly weaponized their discretionary powers to undermine democracy and the rule of law. The strict compliance of the provision of section 188 (1) – 9 Constitution were not complied with.⁷² As a result, the Courts were compelled to intervene to save our democracy from the misuse of the discretionary power of the legislature to impeach the Governors. Notwithstanding the provision of section 188 (10) of the Constitution which oust the jurisdiction of the Court to dabble into such matters. Unlike the case of *Balarabe Musa v Auta Hamza*⁷³ which the court shy away from interfering with the powers of the legislature.

⁶⁶ (1963) All NLR 305

⁶⁷ (1982) 3 NLLR

⁶⁸ (n 62).

⁶⁹ *Ibid*

⁷⁰ (1982) 3 NCLR

⁷¹ *Ibid*

⁷² (1982) 3 NCLR

⁷³ *Ibid*



The case that change the annals of history of non intervention of the Court to impeachment/removal proceeding was the case of *Inakoju v Adeleke*.⁷⁴ ‘The 2nd Respondent was elected Governor of Oyo State for a period of 4 years which commenced from May 2003 to May 2007. The 1st and 2nd Respondent were speaker and Deputy Speaker of the House of Assembly of the Oyo State House of Assembly. A political mishap inflicted the Oyo State House of Assembly which led to the “factionalization” of the House of Assembly members into two, consisting of 18 appellants on one faction and the 2nd Respondents together with the remaining 12 members of the House on the other faction.

On the 13th December, 2005, the 18 legislators opposed to the 3rd Respondent met and sat at D’rovon Hotel in Ibadan where they raised a motion of gross misconduct against the 3rd Respondent without the involvement of the 1st and 2nd Respondent who were the speaker and deputy speaker. The notice was served on the 3rd Respondent via a Newspaper advertisement and thereafter requested the Acting Chief Judge of Oyo State to set up a seven member panel to investigate the allegation. The Acting Chief Judge inaugurated the panel on 4th January 2006. The panel sat for two days without any oral evidence from anybody and thereafter submitted its report to the faction legislation early on the 12th January 2005. The factional group of 18 members passed the resolution by which they impeached the 3rd Respondent. The Supreme Court gave a holistic approach in the interpretation of the ouster clause. The Court held that when examining the provision of the ouster clause in a statute, including the Constitution, the Court are entitled to scrutinize every as of such provision to ensure that everything done under such statute is done strictly in compliance with the statute⁷⁵. In the words of per Katsina – Alu, JSC (Rtd) at page 66 of the judgment which held thus:

I think it is only right that in interpreting it, the whole section must be taken into account. Subsection 1-9 states clearly what must be done before a Governor may be removed from office. It is only when these conditions are religiously fulfilled will a Governor be said to have been removed from office. When the Governor has been constitutionally removed then and only will sub-section 10 come into play. It oust the jurisdiction of the Court to question such valid removal from office.

Given the above decision of the Apex Court and the attitude of the Court in resolving the abuse of the discretionary powers by the legislation in invoking the provision of section 143(11) and section 188 (11) of the Constitution. It cannot be said that this has fully addressed or tamed the exploitation of the discretionary powers being exercised by the legislation in carrying out their legislative duty. In an attempt to cure uncertainty and obscurity of the definition of gross misconduct, the Court has defined gross misconduct to include grave violation or breach of the

⁷⁴ (2007) 4 NWLR (Pt 1028) 423

⁷⁵ (n 74)



provision of the Constitution, breach of oath of allegiance, corruption and false declaration of assets, breach of an oath of office and so on⁷⁶.

It is our firm submission that the said definition given by the Court is not exhaustive, as it still gives the legislature room to enlarge and manipulate the meaning of gross misconduct in line with the definition given by the court⁷⁷ which is in tandem with the relevant provision of the Constitution. It still follows that the definition of gross misconduct still lies at the whims and caprices of the National or State Assembly as the case may be⁷⁸ as the said definition goes beyond the list enumerated by the Court in the case of *Inakoju v Adeleke*.⁷⁹

On the contrary, the provision of Article II, Section 4 of the US Constitution which specifies the ground of impeaching the President, Vice President and all Civil officers of United States shall be removed from offenses on conviction of treason, bribery or high crimes and misdemeanors⁸⁰. Nigeria political system has been inflicted with 'godfatherism', corruption and political manipulation; as such impeachment which is a political weapon that ought to be exercised discretionary as a tool for accountability has become a weapon for political intimidation, harassment and a tool to further the selfish interest of some political godfathers. There is still need to give precision and elastic definition for what amount to gross misconduct provided under Section 143(11) & 188 (11) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) without giving room for the opinion of the legislature.

10.2 The Abuse of Discretionary Powers by the Executive

The Executive arm of government be it at the Federal or State level has a onerous and responsibility to ensure that it exercise its powers to in accordance with the provision of the Constitution⁸¹ while exercising its discretionary power as provided by the Constitution.

Nonetheless, there has been a hue and cry in the Court of public opinion in the manner the President has exercise the power of prerogative of Mercy recently, this has cast aspersion on integrity of the government in the light of its effort to fight corruption. State pardon is a discretionary power which ought to be exercise judicially and judiciously and not meant to be used as an instrument of patronage for political benefactors of self enhancement aggrandizement but must be exercised in a reasonable manner devoid of bias and public umbrage strictly in consonance with the letters and the spirit of the law.⁸² A meticulous review of the provision of section 174 (1&2) and section 212

⁷⁶ *Inakoju v Adeleke* (2007) 4 NWLR (Pt 1025) 423

⁷⁷ *Ibid*

⁷⁸ *Ogbuagu v Ogbuagu* (1981) 2 NCLR 658; *Anyia v A. G. Borno State* – FCA/K/141/82

⁷⁹ (n 76).

⁸⁰ Article II Section, Constitution Annotated library of Congress' <<https://constiutoincongress.gov/browser/article/2/section/>>accessed 14 September, 2020

⁸¹ CFRN 1999 (n 3), s 13

⁸² Chief Agbede, 'The Presidential Pardon Under the Constitution' <<https://thenationonline>> (March 19 2013)



(1& 2) of the Constitution, concede the fact that the discretionary powers of the President or the Governors as the case may be is a sacred duty which ought to be exercised with the highest sense of responsibility and circumspection by such public officers.⁸³

The, exercise of such powers by the President of Nigeria has call to question the justiceability of the exercise of such discretion. One of the controversial cases was the Presidential pardon granted to the former Governor of Bayelsa State, Chief Diepreye Alamieyeseigha by President Goodluck Jonathan in March, 2013,⁸⁴ Also, President Muhammadu Buhari's grant of pardon to some former governors⁸⁵ rages the controversy of the exercise of the discretionary power and the abuse of same thereof by the President or Governors accordingly. The said pardon has been trailed by both domestic and international outrage⁸⁶ as well as many floodgate of criticism⁸⁷. Many view it as an abuse of such power as it was exercise in bad faith given the affront it has to the responsibility of Government to fight against corruption as provided for in Section 15 (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides that the state shall abolish all corrupt practices abuse of powers. The trio of Alamieyeseigha, Joshua Dariye and Jolly Nyame were all convicted for corruption and enriching themselves with public funds while they were in office as Governors of their states.

A meticulous evaluation of the provision of section 175 and 212 of the Constitution uncovers that, even though the Council of State of at the Federal and State level are expected to play an advisory to the President or Governor to help him to decide how to invoke his power of granting prerogative of mercy. However it is his unilateral power to exercise same and not that of the Council of state⁸⁸ Ogunye lamented on the abuse of the exercise of discretionary power when he averred that:

⁸³ *Ibid.*

⁸⁴ Olusola Babatunde Adegbite, 'Presidential Pardoning Power Judicial Review and New Face of Mercy. An Examination of Pardoning Power in Nigeria and India' ><https://www.researchgate.net/publication.36435422> accessed on 30/9/2025

⁸⁵ Kala Esq., 'Grant and Exercise of Power of Prerogative of Mercy of Pardon by President Muahammadu Buhari <<http://nigeriaksketch.com>> accessed on the 30/9/2025. Similarly, the recent pardon granted by President Tinubu has attracted public opprobrium, out of the 175 beneficiaries of the said clemency, 41 are illegal miners, 28 drug traffickers and 22 murderers made the list. The former Vice President of Nigeria, Condemning the exercise Atiku Abubakar, averred that the Clemency must not be confused with complicity; according to him, when the government begins to absolve the offenders of the very crime it claims to be fighting, it erodes the moral authority of leadership and emboldens lawlessness. In a similar development, Joel Ighalo a legal practitioner submitted that the list betrays a lack of good judgement and poor exercise of discretion. 'It is a bastardization of the prerogative of mercy. This is inexcusable'. However in response to public criticism, the government had reviewed the list but it still did not make a significant change from the initial list ><https://guardian.ng/news/criticism/-outrage-suspicion-trial-presidential-pardon-of-175> accessed on 4/2/26.

⁸⁶ N Ibeh, 'US Condemn Pardon for Alameyeseigher, Bulama', Premium Time Newspaper (Lagos 15 March 2013)

⁸⁷ M Nosike, A. Egole and O. Ajayi, 'What Nigerians say About Alamieyeseigh Pardon' Vanguard Newspaper (Lagos 22, March 2013)

⁸⁸ Nosike, Egole and Ajayi (n 87).



the presidential pardon is unwise, unjust, promoting of corruption in Nigeria, public life and does amount to violation of the provision of section 15(5) of the Constitution and the violation of the Oath of office of the President, where he swore that they would strive to preserve the fundamental objectives and directive principles of state policies, that would not allow his personal interest to influence his official conduct or official decisions, that he would to the best of his ability preserve, protect and defend the constitution abide by the code of conduct contained in the fifth schedule to the Constitution and that he would do right to all manner of people, according to law, without fear and favour, affection or ill will”⁸⁹.

Sadly, the exercise of the prerogative of mercy as exercisable by the President or Governor as the case may be, is not subject to any judicial review by the Court once it has been exercised after the person has exhausted his right of Appeal⁹⁰ and it also serve as a complete defence for the defendant which also bars the Court from entertaining any trial on the said subject matter, the accused has been pardon⁹¹

The discretionary power vested in the Attorney General of the Federation and the States pursuant to the relevant provision of the Constitution⁹² is expected to be exercised having regard to public interest and the need to prevent the abuse of legal process.⁹³ The function and the role of the Attorney General of the Federation and of the State has surreptitiously transited from being apolitical to political which has affected their responsibility contrary to the provision of sections 174 and 211 of the Constitution. A community study of the said section reveals that the office of Attorney General both in England and Nigeria, is a repository of public trust. In the discharge of his duties, the Attorney-General has absolute discretion to decide what is the best interest of the society.⁹⁴

Where two or more persons commit an offence or series of offenses the Attorney General has the discretion as to who to prosecute⁹⁵. This discretion is not fettered in any way.⁹⁶ Similarly, the Attorney – General also has discretionary power to take over proceedings from any authority or person as well as discontinue proceedings that have been instituted by any persons or authority. The exercise of such powers is not subject to any judicial review.⁹⁷

⁸⁹ J Ogunye, 'Legal Implication of Jonathan's Pardon in Contending Issues in the Exercise of Prerogative of Mercy by Executive Under the Nigerian Law by K.O Mrabure>opinion/125017-legal-implication-of-Jonathan's Pardon>premium Times accessed on 23/5/2025

⁹⁰ CFRN 1999 (n 3), ss 175 & 212.

⁹¹ *Ibid*.

⁹² *Ibid*, s 174 & 211.

⁹³ *Ibid*, s 174 (3) & 211 (3).

⁹⁴ *Ilori v State* (1983) 2 SC

⁹⁵ James Atta Agaba, *Practical Approach to Criminal Litigation in Nigeria* (4th edn: Renaissance Law 2022)

⁹⁶ *Ibid*

⁹⁷ *Ilori v State* (1983) 2 SC



The Nigerian political milieu has call to question abuse of the discretionary power vested in the Attorney-General of the Federation and the State as the Attorney-General who is appointed by the President or State Governor as the case may be, is a political appointee of his principal and will always do the bidding of his principal to justify his appointment. Failure of the Attorney General to do the bidding of the person that appoints him may lead to the loss of his office, as the case of who pays the piper dictates the tune aptly describes the case: Osita Uba opined that:

The Nigerian Constitution provides for an Attorney General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of Government of the Federation and confers on him powers to start or stop prosecution in the public interest. The officer usually styled Attorney General and Minister of Justice” and invariably appointed on the basis of political considerations; has typically proved to be more of a political minister than an officer of the law committed to upholding the demand of criminal justice, thereby making prosecution of political opponents upon trumped up charges and the discontinuance of prosecution instituted by the police against government party activist a common phenomenon.⁹⁸

The above development accounts to the replete of abuse of discretionary powers by the Attorney-General(s) in Nigeria.

A case in point where the arbitrary disgraceful use of the power of the Attorney-General happened in 2nd Republic in Kwara State where the Governor of the State removed the Attorney-General and did not appoint another. The Governor himself a lawyer, then appointed himself Attorney-General and entered a *nolle prosequi* in respect of a case pending before a Chief Magistrate Court against his Political supporters.⁹⁹ Also, another incident in Imo State was the case of embezzlement of public funds. The Attorney General has appeared for the accused person while still at the private bar before his appointment at the Attorney-General. Upon his appointment as the Attorney General, he used the opportunity to enter a *nolle prosequi* in favour of his client.¹⁰⁰

A case of Murder came up before the Akure Judicial Division of the High Court of Ondo State where the Attorney-General of the State succumbed to political pressure from the ruling Party and entered a *nolle prosequi* to discharge of the accused.¹⁰¹ The Office of the Attorney-General of the Federation on June 7, 2019, entered a *nolle prosequi* to terminate the trial of Senator Danjuma

⁹⁸ Osita Mba, ‘Judicial Review of the Prosecutorial Powers of the Attorney General in England and Wales and Nigeria; An Imperative of the Rule of Law’ <<https://oucif.law.ox.ac.uk/>> accessed 2 October 2025

⁹⁹ Osita (98).

¹⁰⁰ M.A. Ajomo (1990) ‘Nolle Prosequi, An Unquestionable Tool in the Hand of Attorney General’ in Yemi Osibanjo (ed), Towards better Administration of Justice in Nigeria Federal Ministry of Justice Law Review Series (1990 Vol 4.) P. 16. 1919

¹⁰¹ *Ibid*



Goje who was being prosecuted by the Economic Crime Commission for Offence of forgery, financial embezzlement and ancillary corruption charges.¹⁰² Mr. Aandokaa who was also the Attorney General of the Federation during the days of President Umaru Yaradu'a discontinued criminal proceedings against Orji Uzoh Kalu and Jimoh Lawal.¹⁰³

The enumerated examples clearly establish the arbitrary abuse of the discretionary powers of the Attorney – General in favour of political pundits and corrupt politicians against the interest of the state and public interest. The Attorney General who enjoys public trust in the administration of justice, is a law unto himself, as he remains the only public officer whose action cannot be judicially reviewed irrespective of how injurious it is to the citizen that he has sworn to protect, defend and uphold their rights¹⁰⁴. The Attorney – General is not answerable to any person, not to the Court, unfortunately, not because the Constitution places him above the Court because the Supreme Court has held that he is not subject to the Court's jurisdiction as far as the exercise of his power of public prosecution¹⁰⁵. From Nigerian experience, the exercise of discretionary powers of the Attorney-General is unfettered. It can be gleaned that the said discretionary power has been grossly abused as it is only a window of political advantage to serve the interest of the political class at the expense of public interest, the interest of justice and the interest of the state. This runs antithetical to the provision of section 15 (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

10.3 The Abuse of Discretionary Powers by Judicial Officers

The Nigerian judicial officers have also been found wanting in the abuse of discretionary powers which Lord Atkin aptly described when he asserts that power corrupts and absolute power corrupts absolutely. A clear example of the abuse of discretionary power by some judges is the granting of injunctive order indiscriminately.

In 2007, the Federal High Court Port Harcourt granted a perpetual injunction restraining the Economic and Financial Crimes Commission (EFCC) from arresting, investigating and prosecuting former Governor Peter Odilli. The decision of Court was shocking to many Nigerians¹⁰⁶. This ruling of the Federal High Court is a complete antithesis to the provision of section 15(5) of the Constitution which enjoined state to abolish all forms of corruption.

¹⁰² 'AGF Took Over Goje's N4BN Corruption case Evoked Nolle Prosequi' <<https://www.efcc.gov.ng>> accessed on 2 October 25

¹⁰³ Osita (98).

¹⁰⁴ Agada (n 95), 405

¹⁰⁵ *Ilori v State* (1983) 2 SC

¹⁰⁶ Lawal Ogeinabon 'Odili and his 2007 Odd Perpetual Order' <<http://thenationonline.ng.net>> Accessed 10 April 2025



Besides, the unfettered exercise of discretionary powers in criminal sentencing has in some instances given room to the abuse of the very essence of the principles of sentence¹⁰⁷. The disparity of sentences between the rich and the poor has made mockery of Nigerians judicial system in the Court of public opinion. Lucky Igbinedion was charge by EFCC in 2008 for siphoning of more than \$25 million of public fund. He pleaded guilty in 2008 for failing to declare his assets and his company and was convicted on 27 counts of money laundering. But the trial judge handed a light sentence that include no jail term. Lucky Ibinedion paid the equivalent of \$ 25,000 fine, agreed to forfeit some of his property and walked free on the spot.¹⁰⁸

Similarly, Tafa Balogun the former Inspector General of Police was only convicted for six months. Justice Abubakar Talba of the Federal High Court Abuja sentence John Yusuf the former director in police pension office to two years with an option of N250,000.00 fine on each of the three counts. The said judgment angered many Nigerians including lawyers who averred that the granting of an option of the fine for such a monumental fraud will encourage corruption by public officers¹⁰⁹. The National Judicial council in response to the outrageous judgment suspended Justice Abubakar Mahmud Talba for what it termed unreasonable exercise of judicial discretion for 12 months.¹¹⁰

This represent some examples were the judges abuse their discretionary powers when carrying out their judicial function. It should also be observed that where a judge abuses his discretionary powers, the party dissatisfied has the option of seeking remedy in the appellate court, and the National judicial council is also available to handle cases out outrageous abuse of discretionary powers by judicial officers. Justice is rooted in public confidence and perception, when it is lost, then the Court loses its place as an arbiter of law and justice which ushers the society into the realm of jungle justice and self-help.

11. CAUSES OF THE ABUSE OF DISCRETIONARY POWERS

Public officers, no doubt, are trustees and drivers in the affairs of government who are entrusted with discretionary powers for the purpose of carrying out their respective task in line with the terms of governance. Discretionary powers granted either by statute or under delegated authority ought to be exercised promptly impartially and in good faith and in accordance with the purport and intend provided by the relevant instrument or statute¹¹¹. This has not always been the case. Lord Action posits that power corrupts and absolute power corrupts absolutely. Justice Douglas of the

¹⁰⁷ T. Ebe, 'Criminal Sentencing: An Appraisal of Court's Discretionary Powers in the Administration of Criminal Justice System in Nigeria'

¹⁰⁸ Sunday Abraham Ogunodi', 'Criminal Justice in Nigeria: For the Rich or the Poor' (2015)(4)(1) *Humanities and Social Science Review*, 37

¹⁰⁹ 'N23 Billion Pension Case How Justice Talba Tricked Prosecution' <<https://www.kirnigeria.org>> accessed on 8 October 2025

¹¹⁰ 'NJC Suspends Justice Talba Over Pension fund Ruling' <<https://thenationonline.ng.net/njc-suspends-justice-talba-over-pension>> accessed on 8 October 2025

¹⁰³ 'Exercised of Discretionary powers' <<https://www.scribd.com>> accessed 11 August 2025



USA Supreme Court held that ‘where discretion is absolute, man has always suffered...absolute discretion is more destructive of freedom than any of man’s other invention.’¹¹²

This work reveals that certain provision of the Constitution that have vested discretionary powers respectively on the Executive and Legislature has given room for political manipulation and abuse. That being the case, the question that comes to bear is what are the causes of the abuse of discretionary power? For the Judiciary, though the Constitution did not expressly provided for their discretionary power but other legislation like the Rules of Court, Administration of Criminal Justice and other laws also make allowance for the exercise of discretionary powers which same has been abused in some instances.

One of the frequent causes of abuse of discretionary powers that runs through all the public officers is corruption. Corruption occurs when one who is vested with the discretionary power decided to use same to give undue preferential treatment to groups, friends, family or individuals for personal gains.¹¹³ This risk is further exacerbated when the discretionary power is vested on one person alone.¹¹⁴ The abuse of discretion may further lead to the following corruption practices: exercising a discretion power to achieve another purpose other than gratification; avoritism or Nepotism; and using such powers in situation of conflict of interest.¹¹⁵

12. CONCLUSION AND RECOMMENDATIONS

Discretionary power is a tool of decision making entrusted to a public officer for the benefit of the states and its citizens and not for personal aggrandizement and as tool for political manipulation. Discretionary power is an inevitable phenomenon, a choice in the hands of public officers which has to be exercised in good faith for the benefit of the State in accordance with the intend of the Law. Given the matters arising from the abuse of such discretionary powers by public officers the following recommendation are made:

1. To avoid the abuse of discretionary powers by public officers, it is important to identify the ambit of discretion and specifically lay down all the requisite guidelines to guide a public officer when excising his discretionary powers
2. The provisions of Sections 175 to 212 of the 1999 Constitution should be amended to allow for judicial review where the President or Governor (s) exercised his (their) discretionary powers contrary to the Spirit and intend of the Constitution.
3. The provisions of 174 and 211 of the Constitution of the Federal Republic of Nigeria should be amended to also allow the Court to carry out judicial review over the decision of the Attorney-General of the Federation or the State as the case may be where they exercised same without regard to public interest and the interest of justice.

¹¹² New York V United States 1951

¹¹³ *Ibid*

¹¹⁴ *Ibid*

¹¹⁵ *Ibid*



4. The office of the Attorney-General should be separated from the office of the Minister of Justice and the Attorney-General should not be a political appointee.
5. In view of the abuse of the powers of the legislature provided under sections 143 and 188 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the said sections should be amended especially Sections 143(11) and 188 (11) as the definition and limitation of what amount to gross misconduct must be exhaustively spelt out as obtainable in the U.S.. This will close every available gap for political manipulation.
6. The discretionary powers of the judge should be carefully scrutinized, defined and subjected to guidelines especially relating to sentencing, bail, adjournment and other areas. This way, a person whose is dissatisfied with the way a judge exercise his judicial discretionary power can have his day at the Appellate Court.
7. The Public Officers Protection Act should be amended for the purpose of defining who a public officer is as same has not been defined by the said legislation.