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A Critical Appraisal of the New Bail Regime Under the Administration of Criminal Justice Act, 2015 – An Examination of American Experience

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Abstract
When the Administration of Criminal Justice Act,2015 was enacted, the purpose among others, was the protection of the rights of the suspect/defendant and the society from crime. In the prosecution of its purpose, the Act provides for the defendant's right to bail subject to the discretion of the court to stipulate deposit of money among other terms as a condition for the bail. Furthermore, the Act provides for the establishment of professional surety regime whereby registered bondsmen are allowed to stand surety for defendant on the payment of fees to be determined on agreement with the defendant. The consequence is the growth of bail industry at Abuja and other cities of Nigeria, where bondsmen force relations of defendants to contribute money in payment of their charges in the same manner as ransom is contributed to kidnappers for the freedom of their loved ones in detention. In this paper, the writer appraised the security implication of the new bail regime on Nigeria and its implication on the right of the defendant to presumption of innocence enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In the course of so doing, the writer uses the doctrinal research method and drew from the American experience on the subject before arriving at conclusion.

Keywords: Criminal Justice, Sanction Model, Children, Conflict, Bail

1. Introduction

It is a matter of common knowledge that the Administration of Criminal Justice Act, 2015, was enacted for the purpose of ensuring the effective and efficient management of the criminal justice institutions in Nigeria, ensuring the speedy dispensation of justice, protection of the society from crime, the protection of the right and interest of the suspect, the defendant and the victim of a crime (Section 1(1), Administration of Criminal Justice Act, 2015)
In the prosecution of its purpose, the Act provides for the right to bail for every person suspected or accused of having committeed an offence, particularly non capital offences subject to certain exceptions and the fulfilment of certain conditions that may be imposed by the court or other authorities in custody of the person (Sections 161,162, 163, 164 & 165, *Administration of Criminal Justice Act*, 2015).

This idea of bail, stems from the entitlement of every person to the right to personal liiberty and to the right to presumption of innocence (i.e. a presumption which recognizes the importance of the individual in the hierarchy of values under the Constitution of the Federal Republic of Nigeria, 1999 as amended). It means that the dignity of individual must not be demeaned by infringement on his liberty unless he is proven guilty beyond reasonable doubt for an offence (*Paul vs The State* (2019).

Before the advent of the Administration of Criminal Justice Act, 2015, bail enjoyment was seen as free and therefore, no court was allowed to stipulate deposit of money as a condition for bail (Sections 345, 346 & 347, Criminal Procedure Code Cap. C6, *Laws of the Federation of Nigeria*, 2004.). The law did not allow such stipulation because, doing so, would be inimical to the purpose of the Constitutional presumption of innocence (*Eyu vs The State* (1988). This wisdom of the law notwithstanding, the Administration of Criminal Justice Act, 2015 now provides for a bail regime which allows court to stipulate deposit of money as a condition for bail (Section 165(2) & 181(1), *Administration of Criminal Justice Act*, 2015).

The consequence of this development is the growth of bail industry at Abuja and other states of the Federation where bail agents charge scandalous fees to stand surety for suspects or defendants as the case may be. Depending on the nature of the case, these bail consultants, who seem very well known to the courts, charge between ten to a hundred Million Naira to stand surety for suspects and defendants. With this development, several families whose loved ones have the misfortune of been associated with offences, have to contribute money to those bail contractors to secure the freedom of their relations almost in the same manner as contribution is made to pay ransom to kidnappers (Olusegun A., (2019). Those who lack capacity to pay for the charges, usually stay in detention centres to suffer the indginity of imprisonment pending the hearing of their case on a charge of which they may be innocent.

In view of the foregoing development, this paper critically examines the security implication of the introduced money bail system to Nigeria in relation to the purpose of the Act, the right of the defendant to the presumtion of innocence and fair hearing under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In the course of so doing, the paper drew from the American experience on the subject before arriving at conclusion. The paper then makes recommendations for the review of the Act to enhance fairness of the bail system in the overall interest of the Nigerian society.

2. Meaning, Nature and purpose of Bail

The term bail has not been defined by any of the rules of criminal procedure in Nigeria, including the Administration of Criminal Justice Act, 2015. However, the term has been defined by the Black's Law Dictionary as a recognizance or bond taken by a duly authorised person to ensure the appearance of an accused at an appointed place and time to answer the charge made against him. In other words, it is the art of obtaining the release of oneself or another person from custody by providing security for a future appearance in court (Bryan A.G., (2014)).

The stages at which a person may be granted bail in his sojourn within the administration of criminal justice system in Nigeria, are basically three. The first stage is the stage of arrest and interrogation of a suspect at the police station or any other authorized place of detention for the purpose of investigation. The type of bail granted at this stage, is granted pending the conclusion of investigation and is generally known as administrative bail within the judicial cycle (Akin I., Clement N. (1992). The second stage, is a stage where someone suspected of an offence has been charged to court for the purpose of trial. At this stage, the person so charged or his relations and friends, may apply for his bail pending trial. In both mentioned stages above, bail is a basic Constitutional right subject to the discretion of the court to be exercised in the light of the facts and the circumstance of a particular case (*Abacha vs The State* (2002).)

This is so because at those stages, a person accused of a crime is presumed innocent until proven guilty in a court of law (*Obekpa vs. C.O.P.* (1980).

The third stage in which a person may be granted bail, is the stage after trial, conviction and sentencing. Here, the law allows any person so convicted and sentenced to appeal against his conviction or his sentence or both and subsequently apply for a bail pending the hearing of the appeal. This kind of bail is not normally granted as of right but, upon the satisfaction of certain special conditions acceptable under the law. This is so because, at this stage, an applicant for bail has lost his right to the presumption of innocence due to his conviction and sentence for an offence (*Meregini vs F.R.N.* (2018)).

The purpose of bail, whether granted pending trial or pending appeal, is not to set the accused person free for all times in the criminal process, but to release him from the custody of the law and to entrust him to appear at his trial or appeal at a specific time and place (*Suleiman vs. The Commissioner of Police* (2008)). For the bail pending trial, the object is to grant a pre -trial freedom to an accused whose appearance in court can be compelled by a financial sanction. The freedom is temporary in the sense that it lasts only for the period of the trial. It stops on the conviction of an accused or his acquittal as the case may be. Therefore, the idea of bail, particularly pending trial, is the creation of a balance between the public interest in ensuring that persons who commit offences are punished and the accused right to personal liberty. In other words, the grant of bail to an accused, is aimed at the preservation of his fundamental human right to personal liberty, to the presumption of innocence and his overall right to fair hearing pending the outcome of a case against him.

3. Considerations for the Grant of bail

In the consideration of an application for bail, the court usually considers certain factors which where not expressely stated by the law before the advent of the Administration of Criminal Justice Act, 2015. However, the factors are now provided by the Act to include – whether the accused will not commit another offence while on bail, whether the accused will not attempt to evade his trial, whether the accused will not attempt to interfere or influence the investigation of the case or intimidate witnesses, whether the accused will not attempt to conceal or destroy evidence, whether the accused will not jeopardise the purpose of investigation and or the objectives, purpose or functions of the administration of criminal justice system (Sections 162 & 163, *Administration of Criminal Justice Act*, 2015). As the grant of bail is at the discretion of the court, the court may still consider factors such as the nature of the charge, the nature of evidence against the accused,severity of the punishment, the previous criminal record of the accused, if any, the probability of guilt, detention of an accused for his protection, the necessity to procure medical or social report pending the final disposal of the case, and the security of the state *etceter (Metuh vs F.R.N. (2020)).*

Prevalence of an offence at a particular time and place, used to be a factor of consideration in deciding application for bail pending trial. But, the consideration of the same as a factor, was disapproved as unconstitutional by the Supreme Court in the case of *Suleiman vs. C.O.P (*(2008)) and the Court of Appeal in *Sule vs. The state (*(2007)). In the view of the courts, the consideration of that factor in deciding bail application will be inimical to the purpose of the Constitutional presumption of innocence and will allow the use of sentiment in making judicial decisions. In Sule's case, the appellants who were students of Kwara State polytechnic were denied bail by the trial High Court on the ground that the offence of cultism of which they were accused was prevalent at tertiary institutions in Nigeria and same needs be controlled. On appeal to the Court of Appeal, the Court of Appeal set aside the ruling and granted the accused/applicants bail. Delivering his ruling, Ikongbeh J.C.A., held that the menace of cultism and illegal possession of fire arms amongst the youth of tertiary institutions in Nigeria is no doubt worrisome and same needs be controlled. However, such ideal should not be the reason why constitutionalism should be abandoned in the fight against crimes. In the view of the learned law lord, abandoning the path of constitutionalism in a bid to curtail a perceived anti social behavior, is as dangerous, if not more dangerous than the anti social behavior sought to be curtailed. In such a situation, according to the lord, the nation risk enthroning the Rule of Man, or, rather, the Rule by sentiment, rather than the Rule of Law.

It should be noted at this juncture that of all the mentioned factors of consideration in the bail decision pending trial, the most important factor is whether the accused, having regard to the facts and the circumstances of a given case, will be available to stand for his trial if released on bail. This was stressed by the decision of the Supreme Court in the case of *Sulaiman vs C.O.P (*(2008)) :as follows:

> The main function of bail is to ensure the presence of the accused at the trial. That is the cynosure of all the criteria. It is the centre piece. And so this criterion is regarded as not only the omnibus ground for granting or refusing bail but, the most important. The second criterion … is the nature or gravity of the offence. It is the belief of the law that the more serious the offence, the greater the incentive to jump bail, although this is not invariably for all times true. For instance an accused person charged with murder as in this case, is more likely to flea from the jurisdiction of the court than one charged with affray. The distinction between capital offences and non capital offences in one way 'crystallized from the realization that the atrocity of the offence is directly propotional to the probability of the defendant absconding'… The above is subject to the qualification that there may be less serious offence in which the court may refuse bail, because of its nature.

Where therefore, the court is satisfied that an accused is entitled to bail having regard to any of the above mentioned factors, the law requires the court to release him on a non excessive or liberal term that could be satisfied having regards to the facts and the circumstance of a particular case (Section 165(1) of the *Administration of* Criminal Justice Act, 2015).

For the bail pending appeal, the court considers factors such as whether there is existence of special circumstances that will justify the release of the convict on bail (*Bamaiyi vs. The State* (2001)). These special factors include the nature of the appeal, the physical or mental health of the applicant, whether the trial, conviction and or the sentence is or are manifestly contestible, the length of the sentence passed on the appellant, whether the appellant is a first time offender, and whether the appellant had earlier jumped bail *etcetera (Meregini vs F.R.N.* (2018)).

In any application for bail, the most important decision is the determination of the criteria to be used or invoked by the court in considering the application before it. This is so because, the bailability of the applicant depends largely upon the weight the court attaches to one or several of the criteria open to it as explained above (*Suleiman vs. The Commissioner of Police* (2008)). The determination of the criteria is quite important because the liberty of the individual concerned stands or falls by the decsion of the court. In performing that judicial function, the court wields a very extensive discretionary power, which must be exercised judicially and judiciously. In exercising discretion to grant bail, the court is bound to examine the bail application, which is usually in writing, together with the affidavit in support to understand the grounds upon which the application is based. The court is then expected to consider the evidence on the affidavit only without considering any extraneous matter. The court cannot exercise its whims indiscriminately. There is similarly no room for the court to express its sentiments. It is a hard matter of law, facts and circumstances which the court considers without being emotional, sensitive or sentimental (Section 179(1), *Administration of Criminal Justice Act*, 2015).

4. Conditions for Bail

Conditions here means the stipulations upon which an accused may be granted bail. As opposed to the factors of consideration before the grant of bail, conditions are the terms upon which an accused may be released on bail. They are the terms of a tripatite bail contract entered between the accused, his surety and the court for the purpose of ensuring his appearance before the court for his trial. A person may be granted bail on self recognizance in minor offences. In more serious cases, an accused may be granted bail upon the condition that he executes a bail bond in certain fixed sum of money to be forfeited to the court if the bail conditions are breached (Section 179(1), *Administration of Criminal Justice Act*, 2015). At the discretion of the court, the court may require the accused to deposit a sum of money as a condition for his bail. In addition, an accused may be required to provide reasonable and respectable sureties to stand for his bail. The sureties may be required to be resident owners of properties within the jurisdiction of the court *etcetera* (Section 345, Criminal *Procedure Code Cap. C42,* Laws of the Federation of Nigeria, 2004). As the right to bail aims at granting an accused the unhampered opportunity to the preparation for his defence, and serves to prevent infliction of punishment on him before conviction, what ever bail condition placed by the court shall not be excessive (Section 165(1), *Administration of Criminal Justice Act*, 2015). This is so because an accused is presumed innocent until proven guilty, and is entitled to the enjoyment of his freedom pending trial. Therefore, a bail condition set at a figure higher than an amount reasonably expected to ensure the presence of the accused before the court, does not enjoy the approval of the law.

The above legal requirment on the condition of bail notwithstanding, the sad news in Nigeria is that stringent bail conditions have been identified among factors responsible for prison congestion in the country. For example, in a field survey conducted at Abakaliki Prison, Ebonyi State 90.2 percent of the awaiting trial inmates interviewed responded that they were in detention because they could not satisfy the bail conditions placed on them by the court. This is mostly because huge sums of payment are often included in the bail conditions that scared sureties from attempting to stand for their bail (Okorie Ajah et. al., (2020)). In some cases, an accused charged with commiting misdemeanor or a simple offence is given a bail condition to provide a civil servant of grade level 15 and above as a surety. Sometimes, the accused are asked to provides sureties with three years tax clearance who are also landed property owners in the highbrow areas of the Nigerian cities such as Lagos *etcetera*. These conditions are often pronounced in open court but, waived in the chambers after receiving gratifications.

5. Critique of Issues and Challenges

As mentioned in the introduction to this paper, before the advent of the Administration of Criminal Justice Act, 2015, the Criminal Procedure Act, and the Criminal Procedure Code applicable to the Southern and the Northern States respectively, did not allowed the court to require the deposit of a fixed amount of money as a condition for bail. The Criminal Procedure Act in particular provides:

> Before any person is released on bail under Section 340, 341 or 342, he shall execute a bond for such sum of money as the officer in charge of the police station or the court thinks sufficient on condition that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court and if he is released on bail, the sureties shall execute the same or another bond or other bonds containing conditions to the same effect. When any person is required by any court or officer in charge of a police station to execute a bond with or without sureties, the court or officer may, except in the case of bonds to be executed under chapter VII, permit him to deposit a sum of money to such amount as the court or officer may think fit in lieu of executing such bonds (Section 347 Criminal *Procedure Code Cap. C42)*.

By the above Sections of the Criminal Procedure Code, it can be seen clearly that the court is not allowed to on its own motion order for the deposit of money as a condition for bail because, doing so will be derogatory to the purpose of the presumption of innocence under the Constitution of the Federal Republic of Nigeria, 1999 (Section 36(5), *Constitution of the Federal Republic of Nigeria,* 1999 (as amended)). In *Eyu vs The State ((*1988), the appellant who was charged with the offences of issuing a Dishonoured Cheque for N400,000.00 contrary to the Dishonoured Cheque (Offences) Act No. 44 of 1977, obtaining by false pretence and Stealing under Section 419 and 390 of the Criminal Code respectively, applied for his bail at the High Court of Enugu State. The prosecution opposed the application on the ground that the appellant has a bad criminal record with number of cases involving her still under investigation and the prosecution thought that she might jump bail. Despite this objection, the application was granted by the court on two conditions that the applicant deposit the sum of N400,000.00 Naira into the court and enter into a bond with a surety in the sum of N5,000.00 each to stand for her. The applicant was displeased by these fixed conditions and therefore, appealed to the Court of Appeal for the review of the same. After hearing the appeal, the Court of Appeal ruled as follows:

> As I pointed out earlier, the lower court did not refused bail. It must thus have satisfied itself that the accused would come back to take her trial. But why was the appellant asked to deposit the sum of N400,000.00 in court? This incidentally was the same amount the appellant was alleged to have stolen.
>
> While a court must in the consideration of the question of bail consider the strenth of the evidence against an accused, it must be born in mind that the case is not at that stage been tried. The appellant in this case had pleaded not guilty to charge NoME/323C/88. When an accused pleads not guilty, he is deemed to have put himself upon his trial… Since there is a presumption of innocence in favour of an accused, it seems to me odd and oppressive that the appellant in this case had been called upon to deposit a sum of N400,000.00 as a condition for bail. Is it not possible that she may at the end of the day be found not guilty of the offence? Why ask her then, to deposit the very sum she was alleged to have received under false pretences?
>
> If the sole purpose of granting bail, is to enable an accused come back to face his trial, I do not see that it is necessary to introduce a test of pecuniousity to attain that end. For even an accused who is able to deposit N400,000.00 may still jump bail.

The above laudable statement of the law notwithstanding, the Administration of Criminal Justice Act, 2015 has now established a bail regime where the court is allowed to demand for a deposit of money as a condition for bail under the provisions of Section 165(2) which provides that "the court may require the deposit of a sum of money or other security as the court may specify from the defendant or his surety before the bail is approved". To ensure the effectiveness of the introduced system of money bail, the Administration of Criminal Justice Act, 2015 provides for the establishment of surety regime where a person who cannot meet the terms of a money bail imposed on him may secure the assistance of professionally registered bondsman to settle the bail term and act as his surety. The Act also confers authority on the Chief Judge of the Federal High Court and that of the High Court of the Federal Capital territory, to make regulations for the licencing of corporate bodies or persons to act as bondspersons within the jurisdiction of the court in which they are registered. The bonds persons when registered, may undertake recognizance, act as surety, or guarantee the deposit of money as required by the bail condition of an accused granted bail by the court within the division or district in which he or she is registered. The relevant Sections of the Act provides:

The Chief Judge of the Federal High Court or of the High Court of the Federal Capital Territory, Abuja may make regulation for the registration and licencing of corporate bodies or persons to act as bondspersons within the jurisdiction of the court in which they are registered (Section 187(1), *Administration of Criminal Justice* Act, 2015).

> A person shall not engage in the business of bail bond services wihtout being duly registered and licenced in accordance with the Sub Section one of this Section.
> A person who engages in bail bond services without registration and licence or in contravention of the regulation or terms of his licence is liable to a fine of five hundered thousand Naira or imprisonment for a term not exceeding 12 months or to both fine and imprisonment.
> A bond person registered under Sub Section one of this Section may undertake recognizance, act as surety, or guarantee the deposit of money as required by the bail condition of a defendant granted bail by the court within the division or district in which the bondsman is registered.
> A person or organization shall not be registered as a bond person unless the person is, or the organization is composed of persons of unquestionable character and integrity and deposit with the Chief Judge sufficient bank guarantee in such amount as may be determined by the Chief Judge in the regulation, having regard to the registered class or limit of the bondsman's recognizance.
> A registered bond person shall maintain with a bank or insurance company designated in his license, such fully paid deposit to the limit of the amount of bond or recognizance to which his licence permits him to undertake (Sections 187(2)-(7) Administration of Criminal Justice Act 2015).

The above established system of money bail in the view of the writer, is not suitable in a country such as Nigeria – where the judicial process works at a snail rate, where the judiciary is still yearning for independence (Oladele O.O., (2017), where the process of the appointment and removal of judges is not free from political influence, where judges cannot dispense justice free from economic pressure, where poverty is at the highest ebb, where the Police have turned into a debt recovery agency, where corruption has become a persistent cancerous phenominon (Akande I.F., (2021), and where the citizens prefer using the criminal justice process for the settlement of private conflict and the witchunting of their perceived enemies. This last symptom, was reflected in the case of *Kure vs C.O.P (*(2020) *).*

In that case, the appellant a veterinarian entered into contract with the Ministry of Culture and Tourism, Rivers State, through one Mrs. Sokari Davies, the Director of Tourism, to supply a calf giraffe in the sum of 3.5 Million Naira only. The said sum was paid into the account of the appellant domiciled at the United Bank for Africa (UBA). Appellant promised to deliver the calf giraffe in two weeks but unfortunately failed to do so after the passage of several months due to a reason beyond his control. Mrs. Sokari, who stood in for the Ministry of Culture and Tourism, Rivers State then decided to check whether the money deposited into the account of the appellant was still intact. To her surprise, she discovered that the appellant had been making a piecemeal withdrawal of the money leaving a balance of N1, 000,000.00 (one Million Naira) only in to the account. She then went to court and sought for an order *ex parte* where a lien was placed on the account to prevent the appellant from withdrawing the balance.

However, instead of continuing to pursue her grievance against the appellant at the civil court as started, Mrs. Sokari subsequently reported the appellant to the police where he was arrested and prosecuted for the offences of Cheating and Criminal breach of trust under Section 322 and 312 of the Penal Code at the Chief Magistrate Court, Kaduna, where the transaction took place. Upon his conviction by the Chief Magistrate Court, the appellant appealed to the High Court, Kaduna State where the conviction was affirmed. Dissatisfied, the appellant appealed to the Court of Appeal, Kaduna Division which also affirmed the conviction. On further appeal to the Supreme Court, the Supreme Court set aside the conviction and acquitted the appellant for both the offences holding that the issue in the case was civil in nature and the appellant shouldn't, in the first place, have been tried for any offence on the basis of the same whatsoever. The Court ruled and stated per Abba Aji Jsc. thus:

> As I went through the facts of this case, I was wondering how a purely civil matter could easily metamorphose and transubstantiate into a purely criminal case. The end result now is that the Appellant has suffered irreparable damage, disgrace, shame, odiousness and untold hardship in the hand of the Police that is constitutionally and legally saddled with the prosecution of criminal offences.
>
> The Police have muzzled the rights and freedom of Nigerians even where cases are clearly outside their jurisdiction, power or corridor. If this is not curbed, everybody including the judicial officers will suffer always from floodgate of civil matters being hijacked by the police and transmuted into crimes. If this is not tackled, everybody would have suffered in the merciless hand of the Police which have become a law unto itself in this country… There is no known law where a breach of an agreement between two parties which has no element of criminality, can result in a criminal charge and subsequent conviction. At best, it can be a breach of a contractual relationship, which criminal law lacks legal capacity or competence to enforce and punish.

From the understading of the writer in the course of attending various conferences towards the making of the Administration of Criminal Justice Act and Law of the states, the decision to allow ordering payment of money as a condition for bail, is aimed at helping those accused persons who could not get human sureties to stand for their bail. This may be due to the moral associated with their cases or any other reason. The experience of Abubakar Bello Masaba, the strong muslim husband of at least 86 women arrested for breaking the Islamic Marital Code and who could not secure human sureties to stand for his bail, was cited as an example. The makers of the Administrtion of Criminal Justice Act, 2015 thought that by providing the money alternative, a bouyant accused person can use money as a bond for his pre-trial freedom where no surety is availabe to stand for his bail. On the other hand, an indigent accused will have the liberty to approach the services of professional bond persons to assist him secure his liberty for fees. Their other reason is the need for the control of the illegal practice of charge and bail, prevalent at the Magistrates and other lower courts bail process, prior to the enactment of the Act. Like the non interventionists, the makers of the Act thought that by introducing the controlled system of a charge and bail, no accused released in the hand of a registered bondsman will escape justice. If he does, the registered professional bondsman who stood surety for his bail, will be responsible to the forfieture of his bond; and be accountable to produce the accused for the purpose of his trial.

However, the question here is, whether the old bail regime under the Criminal Procedure Code and the Criminal Procedure Act were oblivious to the plight of an accused who may not secure human sureties to stand for his bail? Answer to this question is in the negative because, the then system has allowed the court to accept the deposit of money from accused as an alternative to sureties (Section 347, Cr*iminal Procedure Code, Cap. C42,* Laws of the Federation of Nigeria, 2004). The only exception was that the court was not allowed to fix deposit of money as a condition for bail in protection to the right of an accused to personal liberty and to the presumption of innocence (*Eyu vs The State* (1988). An accused may even be allowed on bail based on self recognizance under the old system (Section 340(3), *Criminal Procedure Code Law*, Cap C42, Laws of the Federation of Nigeria, 2004). To this effect therefore, the argument of the proponent of money bail under the Administration of Criminal Justice Act, does not hold water in the view of the writer.

As for the introduction of the bondsmen into the bail system, it is the view of the writer that the system will cause more problem than it seeks to resolve. This is so because, corrupt court officials may be tempted to becoming owners of bond companies; or be inclined to accept bond only from the bondsmen who have cooperation with

them for personal gain. A situation like this, which is a possibility in Nigeria, will be detrimental to the interest of the accused and the system in general. As the bond companies are business oriented, expectation is that their services will be offered for money considerations only (Sections 187(2)(6) & (7), *Administration of Criminal Justice Act*, 2015). No moral burden or consideration is attached to their work because they need not even be related to the accused. Thus, in the making of the bail agreement with the accused, the bondsmen may be tempted to exploit the accused and the accused who is in the disadvantaged position, will be amenable to submit to the exploitation. His precarious condition will open him to submit to the unwholesome demand of the bondsmen in desparation for his freedom against a charge of which he may be innocent. At every point where an accused fails to submit to the exploitation of a bond person, the bond person may refuse to stand for his bail. Where the surety contract has been entered, the bondsman may at any time withdraw his bond and apply that he be discharged from his obligation under the bail contract. The accused may then be arrested and sent to detention pending the provision of a new surety. A bondman who personally believe that an accused is planning to jump bail, may arrest and take him to the police as he deems fit. All these discretions to the bondsmen,exposes the accused to explotation and poses a great danger to the realisation of his right to personal liberty and presumption of innocence under the Constitution.

From the research of the writer, the idea behind allowing the bondsmen power over the accused under their suretyship, was derived from the Common Law as explained by the U.S. Supreme Court in the case of *Taylor v Taintor*. In that case, the court explained that:

> When bail is given, the principal is regarded as delivered to the custody of the sureties. Their dominion is a continuance of the origninal imprisonment. Whenever they choose to do so, they may sieze him and deliver him up to their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State, may arrest him on the Sabbath and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. Non is needed. It is likend to the re-arrest by the Sheriff of an escaping prisoner… It is said: "The bail have their principal on a string and may pull the string when ever they please,and render him to their discharge".

The above pervasive power, was based on the private contract between the accused and the bondsmen not because the bondsman stands in the stead of the State. The ancient justification for the power, was the return of a run away slave and the paucity of law enforcement agencies at Europe in those days (Ramsy C., (1970). However, in the present twenty first century, the business of law enforcement has become the professional business of the law enforcement agencies whose discharge of duty is expected to be driven by the urge to promote public safety and ensure the protection of human rights rather than the need for financial gain. Hence, the ancient power to the bondsmen at Common Law has clearly no place (Section 4, *Police Act*, 2020). A free society such as Nigeria, cannot be right to expose the liberty of its members to the whimsical exploitation of the bondsmen for personal gain rather than the safety of the state and its citizens. This is more so, if the country is serious in the promotion and the protection of the fundamental rights of its individual citizens as professed by section 1(1) of the Administration of Criminal Justiced Act, 2015 .

In the view of the writer, the power of arrest granted the bonds men against an accused is inimical to the full realisation and enjoyment of the right of an accused to presumption of innocence. The writer holds this view because such power, exposes an accused to exploitation, arbitrary arrest and detention pending trial at the whims of the bondsmen. The consequence may be the anger of the poor accused against the system as unjust, inhuman and discriminatory as happened at the United State of America from where the system was borrowed (Ramsy C., (1970). This may in turn lead to frustration, a factor influencing criminal behaviours that may lead to the destruction of the society.

6. An Examiniation of the American Experience

At the United State of America from where the system of money bail was borrowed by the Administration of Criminal Justice Act, 2015, the system has been abandoned since the year 1961 due to its established deficiencies and negative implications on the accused right to presumption of innocence and overall realization of the right to

personal liberty. It was abandoned because, the system was considered discriminatory against the poor who usually suffer incarceration for his inability to settle his money bail condition. It was considered costly because the government must pay to detain and feed those offenders who are unable to make bail but who would otherwise remain in the community prisons. It was considered as unfair because, it was reaslised that a higher propotion of detainees at America receives longer sentences than people released on bail. The system was at the same time considered dehumanizing because innocent people who cannot make bail suffer and even commit suicide in the then United States deteriorated jail system.

As the function of bail lies in ensuring the presence of an accused before the court for his trial, the American courts now favour granting bail to an accused on recognizance in the vast majority of cases. Except where the court is apprehensive that an accused will not appear for his trial, or where the court lacks verifiable information about an accused or in the most violent crimes, where the safety of the state is threatened, those accused of crimes are as much as possible allowed bail on recognizance without any money condition.

Highlighting the nature of the money bail system at America, and the reasons which led to the reform of the system at the States, Larry stated as follows:

> At America, Bail is usually considered at a hearing that is conducted shortly after a person has been taken into custody. At the hearing, such issues as the crime type, flight risk, and dangerousness could be considered before a bail amount is set. Some jurisdiction have developed bail schedule to make the amount of bail uniform based on crime and criminal history. There are numerous other junctures during which bail is considered.
>
> Because many criminal defendants are indegent, making bail is a financial challenge that if not met can result in a long stay in a country jail. In desperation, indigent defendants may turn to bail bondsmen. For a fee, bonding agent lends money to people who cannot make bail on their own. Typically, they charge a percentage of the bail amount. For example, a person who is asked to put $10,000.00 will be asked to contribute $2,000.00 of his own and the bondsman cover the remaining $8,000.00. After trial, the bondsman keeps the $2,000.00 as his fee.
>
> Powerful ties often exists between bonding agents and the court with the result that defendants are steered toward particular bonding agents. Charges of kick backs and cooperation accompany such arrangement. Consequently, efforts have been made to reform and even eliminate money bail and reduce the importance of bonding agents. Until the early 1960s the justice system relied primarily on money bonds as the principal form of pre-trial release. Now Many States allow defendants to be released on their own recognizance without any money bail.

Release on recognizance, was pioneered by the Vera Institute of Justice in an experiment called Manhattan Bail Project, which began in 1961 with the cooperation of the New York City criminal courts and local law students. It came about because accused with financial means were able to post bail to secure pretrial release; while indegent accused remained in custody. The project found that if the court have sufficient background information about an accused, it could make a reasonably good judgement about whether the accused would return to court for his trial. When release decisions were based on such informations as the nature of the offence, family ties, and employment record rather than money, most defendants returned to court when released on their own recognizance. The result of the Vera Institute's initial operation showed a default rate of less than 0.7 percent only. The bail project's experience suggested that releasing a person on the basis of verified information more effectively guaranteed appearance in court than did money bail.

The success of the ROR programme in the early 1960s at America, resulted in bail reforms that culminated with the enactment of the America's Federal Bail Reform Act of 1966, the first change in the Federal Bail Laws at America, since 1789. This legislation sought to ensure that release of an accused will be granted in all non capital cases in which there was sufficent reasons to believe that the defendant would return to court. The law clearly established presumption of ROR that must be overcomed before money bail is required and stressed the philosophy that release on bail should be under the least restrictive conditions necessary to ensure court appearance *et cetera.* By the year, 1984 under the Bail Reform Act of 1984, factors such as the seriousness of the offence, the wieght of the evidence, the gravity of the punishment, the court appearance, history of the accused, and prior conviction of the accused become the most important factors of cosideration in deciding bail applications in America. Once

the court is satisfied that an accused is entitled to bail in a given circumstance, he or she will be allowed to proceed on self recognizance bail without the necessity of making the deposit of a sum of money as a condition for his bail.

If research about the efficacy of money bail at America shows negative consequences and has forced the country to abandon the system, to a system of release on recognizance, why then should Nigeria, a reputed country of poor and corrupt population, imbibe the system at the 21st century. This system of money bail is not suitable to Nigeria because, even without the legal sanction, it has been difficult, if not impossible for accused to secure bail wihtout paying gratification to the police, and other officials involve in the process due to corruption with negative consequences on the right of the accused to fair hearing. The legalisation of money bail therefore, provides incentive to those corrupt practices rather than controlling it. From as far back as 1996 in Nigeria, the Civil Liberty Organization report on the prevalence of corruption in the bail process at the Magistrate and Customary courts of Southern Nigeria, observed as follows:

> A practice that has acquired notoriety is the extortion of gratification from accused persons in the criminal justice process either before the grant of bail or at the approval of surety stage. Most magistrates charge a fixed percentage of bail sums, notoriously ten percent. This is clearly against the spirit of Section 32 now (S.35) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 6 of the African Charter on Human and People's Right which entitles everyone to his personal liberty except for reasons laid down by law or for coming within one of the provisions of section 32(1)(a) to (f) (Onyekpere E., (1996).

Until the present day in the experience of the writer in practice, bail is granted mostly to only those accused that can pay stipulated sums of money as gratification to be shared by the magistrates, police officers, legal practitioners and other officials having a role to play in the process. In some cases, after the bail is approved, the accused and or his surety has to pay for the production warrant to be filled otherwise, the accused may not be released as expected. The Court clerk working in collusion with the Magistrate may inform the surety that the warrant has to be photocopied as the stock of the same has finished. It is also not uncommon for instance to hear a Magistrate pronounces in open court that the accused is admitted to bail in certain sum of money with reliable sureties one of whom shall be a first-class emir, an officer of the rank of a director in the civil service *etcetera*. The sureties may be required to be resident owners of properties within the jurisdiction of the court.

However, it is also not unusual to hear that after meeting the magistrate in camera, the bail conditions have been relaxed or waived for the gratification of it. In the view of the writer, these negative practices can be checked not by providing additional incentive of legalization or decriminalization but, through the improvement of the standard of living of the judiciary, provision of facilities, rigorous supervision of their work and purposeful law enforcement in the fight against corruption.

7. Conclusion

Ordinarily, bail is a pretrial right subject to the discretion of the court. In the exercise of the discretion, the court usually requires an accused to enter into a guarantee that a certain amount of money will be paid or property forfeited if the accused fails to appear for his trial or breached any of his bail conditions. What is then contemplated by bail is the procurement of the temporary release of a person from legal custody by making undertaking that he or she will appear at a designated time and place as may be required by the police or the court for the purpose of his trial. In the effort of the court to ensure the presence of an accused for trial, it is not necessary that he be required to deposit an amount of money as a security. In the bail pending trial in particular, stipulating deposit of money as a condition for bail will amount to convicting an accused pending trial contrary to the purpose of the right to presumption of innocence under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The system is not only inimical to the purpose of the Constitutional presumption of innocence but, the purpose of the Act in the protection of the right of suspects and accused as expressed in Section 1(1) thereof. Thus, based on the foregoing discussions, the paper finds as follows:

i. That by implication, the system of money bail introduced by the Administration of Criminal Justice Act, 2015, presumes an accused guilty; and is derogatory to the purpose of the Constitutional right to personal liberty and to presumption of innocence; and the purpose of the Administration of Criminal Justice Act itself in Section 1(1) thereof.

ii. That by the norms of criminal justice adopted by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the protection of individual liberty' takes precedence over the need for the punishment of criminal offenders. This in essence, is the reason why an accused is presumed innocent and provided with the right to bail and fair hearing under the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

iii. That the introduction of professional sureties into the bail system in Nigeria discriminates against the poor, will cause prison congestion, and will serve a catalyst for the production of more crime into the society.

Based on the above findings, it is recommended as follows:
That the liberty granted the court in fixing money deposit as a condition for bail should be reversed. In its place, there should be a return to the status quo under Section 347 of the Criminal Procedure Code as done by Katsina State (Section 162, *Administration of Criminal Justice Law of Katsina State,* 2021).

i. That in tackling the challenge of corruption prevalent in the bail process in Nigeria; the government should be more proactive in discharging its responsibilities to the officials having a role to play in the process. More focus should be placed in the provisions of facilities and improvement of the welfare of staff through home grown and favorable programs that will ensure effective discharge of their duties and the quick dispensation of criminal justice in the country rather than introducing measures that will compromise the right of defendants to fair trial.

ii. That the bondsmen should be removed from the surety system in Nigeria. In their place, release on recognizance should be encouraged and that advantage of the current technological development in the area of the National identification number (NIN) should be taken in tracking the data of every Nigerian accused and their sureties for the purpose ensuring presence in court for trial.

iii. That in place of bondsmen, strong bail institution professionally staff with adequate man power, direct funding and control of government should be established to supervise accused in conjunction with the court and the police on their compliance with bail terms imposed pending trial.

References

Akande I.F., (2021), *Synergising the Effect of Corruption on Law and Policy in National Development,* An Inaugural Lecture Series No. 01/21, Ahmadu Bello University Press Limited, Zaria, Kaduna State Nigeria, pp. 6 – 8.

Akin I., Clement N. (1992), *the Bail Process and Human Rights in Nigeria,* Constitutional Rights Project, Surulere Lagos, pp. 18 – 28.

Bryan A.G., (2014), *Black's Law Dictionary 10th Edition,* Thomson Reuters, U.S.A., p. 168

Stringent Bail Conditions Responsible for Prison Congestion Lawyers, *www.vanguardngr.com/2019,* Accessed on 28/11/2021: 10:00 a.m

Okorie Ajah et. al., (2020), Ameliorating the Flight of Awaiting Trial Inmates in Ebonyi State Nigeria Through Reasonable Bail Conditions, *www.researchgate.net.* accessed on 27/11/2021: 7:53

Oladele O.O., (2017), *Independence of the Judiciary: The Nigerian Experience*, Bowen Law Journal Volume 1(2), Faculty of Law, Bowen University, Iwo Osun State - Nigeria P. 244

Olusegun A., (2019), *Justice in Nigeria and the Lucrative Business of Bail*, www.thecable.ng 27/11/2021: 6:00 p.m.

Onyekpere E., (1996), *Justice for Sale,* Toma Micro Publishers Limited, Lagos, p. 136

Cases

Abacha vs The State (2002) F.W.L.R. (Part 98) p. 863
Bamaiyi vs. The State (2001) N.W.L.R. part 715 p. 210
Eyu vs The State(1988) 2 N.W.L.R. (PART 78) P. 602.
Fawehinmi vs The State (1990) 1 N.W.L,R.(Part 127) p.486
Meregini vs F.R.N. (2018) 12 N.W.L.R. (Part 1633) p. 331 at 333 Ratios 1,2 &3
Metuh vs F.R.N. (2020) 7 N.W.L.R. (Part 1723) p. 325 at 329 Ratio 2
Meregini vs F.R.N. (2018) 12 N.W.L.R. (Part 1633) p. 331 at 333 Ratios 1, 2,3 &

Munir vs F.R.N. (2009) ALL .F.W.L.R. (Part 500) R 775
Obekpa vs. C.O.P. (1980) 1 N.C.L.R. P. 113.
Paul vs The State (2019)12 N.W.L.R. (Part 1685) p.54 at 59 Ratio 5
Suleiman vs. The Commissioner of Police (2008) 8 N.W.L.R.(Part 1089) p. 298
Suleiman vs. The Commissioner of Police (2008) 8 N.W.L.R.(Part 1089) p. 298