THE LEGISLATIVE, EXECUTIVE, JUDICIARY THEIR RELATIONSHIP AND THE SUSTAINANCE OF DEMOCRACY IN NIGERIA

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ABSTRACT

In the past years an attempt has been made in the relationship between the three arms of government, legislative, executive, judiciary in their relationship and the substance of Democracy in Nigeria, which has been in abysmal due to the action of Legislative performance which suppose to be the Nucleus of Democracy practice and is clear that Executive has not deepen the sustainability of the Democracy in Nigeria, as the winner take it all attitude of the Executive arm has lower the dividend of Democratic practice in Nigeria. The Research method adopted and source of data for the study is content analysis of secondary data which are collected from published and unpublished material, such as books, Journal, Articles and Newspaper. The method of Data analysis are historical method and content analysis which are epithamology in nature, data gathered are analysed through the quantitative method by sequential reasoning and logical presentation of existing views of various schools of thought on the subject with the aim of a pragmatic survey method and a causal analysis are applicable. The finding is that Executive, Legislative and Judiciary in their relationship, there is conflict, which has affected the performance of democratic development in Nigeria and the Legislative Arm who amend the constitution at will and the executive influences the power of the other arm of government, because of undue advantage confided on Executive arm by the 1999 constitution, which need amendment for good political, economic and social responsibility development of democratic practice in Nigeria. The conclusion is that gladiator and ombudsman has use their position to appropriate the state resources to themselves their action has been nefarious in their behaviour, hence thwarting the democratic development of the country and we recommended the 1999 constitution amendment which is imperatively necessary for sustenance of democratic practise in Nigeria and dynamic organism for world development and there should be total clearship of organic and endemic corruption practice by most Nigerian, winner take it all game attitude without recognizing a divergence view and opinion this will lead to underdevelopment for sustenance of democracy practise in Nigeria, the gladiator, ombudsman, actors and leader should harnessed the human resources of Nigerian this will bring about the most desire development in pure democratic practice of this country.
INTRODUCTION
The constitution of the Federal Republic of Nigeria 1999 like those of other democracies, is premised upon the separation of the three arms of governments, namely, the Legislative, the Executive and the Judiciary. The phrase “as far as possible” is used advisedly, since so far no known constitution has succeeded in keeping the three arms of government in three water tight compartments, and the Nigeria constitution has not attempted that impossible task. Not only is such a task impossible any constitution which purports to do so must be making a deliberate effort to create anarchy because in any state, there can be only one government, but the truth is that as of three arms of government the executive dominate the judiciary and legislature, but constitutionally, the legislative is Supreme over the other Arm of Government. Nigeria has formulated and implemented many strategies, since independence for her growth and development because of governance but could not deliver the dividend of democracy, because democracy is all about economy development. (Aguda 1984:4).

The history of the evolution of the doctrine of separation of powers, or as it is usually referred to check and balances. The basic norm is Power, which is often wrongly associated with greatness. But democracy has realized, as the immortal Bard of Strafford-On-Avon had done, centuries ago, that power is usually abused, and when so abused, it is done to the chagrin of the common man. Shakespeare had said that: the abuse of greatness is when it disjoins remorse from power.

The Philosopher Aristotle had recognized the price of good government. In the philosopher’s opinion, good government would exist, only when the powers of government are divided. He believed that thus, governmental operations would be more thorough (Fredrick (1968:69). It is to be noted that the view of Bandeis J. which, we had earlier given, was that such thoroughness was not the aim of the American Convention in 1787 but a concern for the circumscription of the exercise of arbitrariness in the exercise of powers. Aristotle was thus the originator of the constitutional philosophy-separation of powers. His thesis, being that we would thus have a separation of the main powers of governmental bodies, which are now referred to as the executive, the legislature and the judiciary (Amissah, 1981:15).

The successive leadership since 1999 “declaring that the nation’s misfortune stemmed from placing leadership in the hand of mediocrities, felon of unimaginable crime and erstwhile beggars who live in benumbing opulence. This has threatened the National Security of Nigeria” (Kutiji, 2007:79). Therefore, we state emphatically that if honest people refuse to take up the political challenge in our nation, then we must be prepared to endure the rule of dishonest people, where there will be insecurity” (Montesquieu, 1949:6).

John Locke, a thinker on the philosophy of separation of powers, wrote, in his observation of the seventeenth-century England. With respect, he was right when he said; it may be too great a temptation, to human frailty apt to grasp at power, for the same persons who have the power of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws, they made and suit the law, both in its making and execution, to their own private advantage (Awogu, 1984:31). Therefore people who abhor corruption remain politically indifferent they must be ready to live under the rule of corruption people, hence the sustenance of democracy in Nigeria will result to underdevelopment of the country.

The celebrated philosopher, Montesque, one of the greatest thinkers on the Separation of Powers, based his doctrine on a study of Locke’s writing in 1667. He was concerned with the preservation of political liberty. He said: political liberty is to be found only when there is no abuse of power (Montesquieu, 1735).

He then joined the idea of separation of powers to the notion of a mixed constitution of checks and balances. The philosopher brought Aristotle’s earlier discovery of good government to the service of the rising liberalism of the eighteenth century. Montesquie’s contention was that men entrusted with power seem to abuse it (Dicey, 9th Edition:68). He argued the desirability:

Firstly, to divide the powers of government so as to keep a minimum, the powers which are lodged in a single organ of government: and; Secondly, to be able to oppose one organ with one or the other of the other organs.

Indeed, this second move is very clever, and it has proved successful in several cases in history. The three forms of check by the national assembly over the president’s exercise of powers been regarded the presidency as a consultative. They are:

(i) Approval for presidential action;
In other words, there could never be an effective functioning of democracy without checks and balances. In my view checks and balances exist at every level of a free and democratic society, formally and informally. The legislature’s check the executive power and vice versa, also the judiciary check on both the executive and legislature (Nwabueze, 1985:178-179). Holding tenaciously to the fourth estate of the realm or of the republic as the case may be, the press, non-governmental organization, professional bodies, and labour union etc. This fourth estate of the realm, has been more than stooge to the executive arm, because of abuse of power by the executive that, if decent people leave the terrain in frustration, they will be compelled to take orders from indecent people and will live in greater frustration, very recently in the present administration, that checks and balances against abuse of power, by persons and organs exercising state authority include political parties have not favour practice of separation of power (Funso, 2008:9), hence the public complaints office, trade unions, professional associations like the Nigerian Bar Association has been in the bunker and indeed the International Community are just whispering to their dismal (Fisher L, 1990). However, choosing two democracies, one with a parliamentary democracy, like the one we had before the republic in 1963 and the other a presidential system of government, the United State of America, operating a similar constitution like what we now have. The concept of balance of powers between the three arms of government from the strategically approach, are too costly and threaten National Security, looking at issues from the limitation of the doctrine of balance of power, under the Nigerian Constitution and the substance of democracy in Nigeria. In a federation like ours, where in the constitution, the practice of separation of the powers of such organ, that is, of the executive, legislature and judiciary have been so expressly stated, recourse could only be made to preserve the federation by an observance, of the provisions of the constitution and the sustainability of democratic value in Nigeria.

A system where the government is shrouded in secrecy, in the name of security, is not only fertile breeding ground for the canker worm of corruption but causes a culture of non accountability to perpetuate; accountability being the chief artery of democracy, and bedrock of good governance where the practice of separation of power between the executive, legislature and judiciary is properly check and balance in the federalism, desire of the citizenry will be expeditious and justify and the sustenance of democratic value in Nigeria will be justify. The fact that government has raised the status of the rule of law to a mantra is a breath of fresh air, after the poisonous fume of rule by whim and caprice. (Coomanaswany, 1987). The government need to fine tune its rule of law strategically in 1999 constitution to met the growing demand between the executive, legislature and judiciary, because there is this growing in the country, that, what government really means is the rule of folklore not the rule of law hence the sustenance of politics in Nigeria will be in demogol. What is important is to find out whether or not they are justified, as the check of the legislature on the executive is limited to preventing the executive from acting outside the constitution is that the sustenance of democracy in Nigeria.

What are the legal strategies, that are in place to make the practice of separation of powers, between the executive, legislature, and judiciary to stand the storm of Nigerian political leaders in the building of sustenance democratic value in Nigeria. Furthermore, what the whole idea means is that neither the legislature, the executive nor the judiciary should exercise the whole or part of another’s powers, but it does not exclude influence or control by one over the acts of another there the sustenance of democratic value will be attained in Nigeria.

This research paper, take a look at the Nigerian constitution, the interaction between the three arms of government, and analyzed it meticulously, geared toward a better practice of separation of powers between executive, legislature and judiciary and the sustenance of Democracy in Nigeria.

The research questions for this paper are:

i. What is the theory behind the separation of powers between the executive, legislature and judiciary?

ii. How is the separation of power practised in Nigeria?

iii. What could be done to improve practice of separation of power between the executive, legislature and judiciary in their relationship
iv. How is the practice of separation of power relevant to National Security in Nigeria for sustainance of Democracy?

The purpose of doing this research is to gain clearer perspective of the present event of three arm of government in their relationship and the sustenance of democracy in Nigeria that has brought the nation into corruption and underdevelopment and has not been focused on. This research can provide us not only with the hypothesis for the solution of current problem, but also with a greater appreciation of the ethnical culture of the practice of separation of power and in their relationship of the role new knowledge can play in the practice of separation of power to National Security Management in the sustenance of Democratic value.

The objectives for the paper are

i. To find out, whether the practice of the separation of powers in 1999 constitution is a function of persistence crisis been the executive, legislature and judiciary.

ii. To look into the various roles of the rule of law in enhancing separation of powers between the executive, legislature and judiciary.

iii. To critically examine, evaluate, why the adopted separation of power failed to produce the desire results in their relationship.

iv. To examine, the practice of separation of power to National Security Management for the sustainance of Democratic values.

The research will essentially be an evaluative one, i.e. the inquest to the practice of separation of power between the three arms of government and the sustenance of democracy in Nigeria. How far there is impact of the doctrine of separation of power in governance on the people and to what extent. The research method to be used for collecting data during the study, is content analysis for secondary sources. This is due mainly to the availability of literature on the practice of separation of power to national security. The secondary source is also suitable because of the historical perspective adopted by the researcher.

According to Whitney, historical research interprets past trends of attitude, event and fact, history is any integrated narration or description of past event of fact written in a spirit of critical inquiry for the whole truth of yesterday (Edward, 1976:55). More emphatically, historical research embracing the whole field of human past as broad as life itself, although the data must be viewed with historical perspective as part of the process of social, political and economy development rather than an isolated attitudes event or facts of the three arms of government, its relevance to sustenance of democracy in Nigeria.

The paper is limited to the strategies review of the social, legal, political and economical of the three arms of government in their relationship and the sustenance of democracy in Nigeria its relevance to the National Security of Nigeria. This is due to the fact with the spate of corruption, spreading in the country that can lead to insecurity to a failed state. It seems that only one institution cannot solve the problem no matter how transparent and efficient. Since the inception of the democratic dispensation in 1999, it is doubtful, if the strategic applied by the politician. Whether the expected effects of the doctrine of separation of power in their relationship are being achieved or not. This investigation is to be carried out in order to determine the effectiveness otherwise of the strategic. The limitation of the study may arise from the fact is only an evaluation of the practice of separation of power of the three arms under the Nigeria constitution and the sustenance of democracy in Nigeria that will be historical, strategically and analytically analyzed in their relationship.

It is important to have a theoretical framework for this type of study. Theoretical framework could primary be taken as a basic necessary in any research. Moreover, all theory could be seen as a system in which all prepositions are logically or mathematically corrected by law or principles. That is a theory is scientifically validated, relatively certified and generally accepted. Such allow knowledge to be critical and reliable in studying and given phenomena vis a visra institution or administration. According to V. O. Aghayere, (1997:17) theoretical framework is like a road map which helps us to get from a point which we know well to an unknown point. It is guide for researchers when they are in search of fact that are not readily apparent. For the purpose of this paper, it could be ideal and suitable to use theories as our framework of analysis.

**Set Theorem**

The set theorem analysis is one of the key theory used by the researcher, its objectives is solving problem by using set notation concepts, and diagram. Basically any clearly defined collection of things objects or law, rules constitutes a set. A set is completely specified in the following ways, by describing the element of
the set. The set which contains all the possible elements e.g. power, influence, law, function etc, under consideration is called universal set. This method of set theory developed by John Venn, a German Philosopher in 1897, is a pictorial representation of set.

Our theoretical thrust for this discourse is centred on Set theory. The evaluation of the practice of separation of powers between the executive, legislature and judiciary (1999-2015) how relevant is each system in a highly complex society of ours. To determine these issues what come to mind is power, function and influence etc. firstly, power is one of the central concepts of political theory, which sociologist have sought to define by distinguishing it from authority on one hand, and from force on the other hand. It is the ability of its holders to exert compliance or obedience of others to its will. In order words power mean the capability of making one’s will felt in other decision-making centres.

Power, is almost a metaphysical substance, which cannot be seen, but its effects can be fleet and the elements, since in states, national level, we have component’s unseparated function of the three arms of government that, have their own independent power and function. Therefore to check this independent powers and functions, then checks and balances were formulated. In examining the picture in our continent, where presidential and state tyranny has acquired a frightful reality, which has earned, for a system, a rather pejorative appellation African presidentialism’, defined checks and balances as: A concept in the relationship between the executive, the judiciary and the legislature whereby in the political organs with a view to the balancing of powers are able to check one another in the exercise of their respective functions.

Exchange Theory
The exchange theory are political mobilization of its citizen to achieved national goal, of high welfare package, for Nigerian citizen is another factor by our conception and sustainable strategies for mobilization of Nigeria, must necessarily include the willingness and commitment of Nigeria government to amelioration of any harsh economic condition against its citizen through exchange, if the Nigeria government provides a conducive atmosphere in the form of good education, abundant food and job accessible and cheap transportation then there will be pressure on the people to reciprocate by providing support and legitimacy for governments. They can then pursue honest endeavours and believe in rule and play by the rule and ensure that the nation’s interest comes first in security (Edward, 1976:55).

That is, in a nutshell, the political or social exchange theory (Homans) it is founded in the reward cost outcome of interaction adequate reward from the political system engenders the citizens’ need to continue the exchange relationship through patriotic acts, support and political participation in sustenance of democratic values.

The Elite Theory
The elite theory as espoused by Pareto discussed the division of society based not on classes but on “elites” and “masses” and that maintaining equilibrium in society rests on the circulation of “elites”. The elites in society could be “governing” or “non-governing.” The central theme of the theory is that when the governing elite is dominated by “speculator” types then society will be subject to rapid change, but when “Rentierse” dominate, change will be slower (Delaney, 1971:39-42).

Speculators are expansive personalities, ready to take up anything new, submissive to the man who shows himself the stronger, but knowing how to work underground as well. Their opinions are always the opinions most useful to them at the moment. Rentiers are on the other hand, conservative, easy to maintain what exists. They tend to be rigid and determined and to rely on force rather than cunning.

The equilibrium in society will be maintained provided there is room for an interchange of types in the governing elites. A dominance of “speculators” will lead to the rise of “rentiers” among the masses and vice versa. The governing elites could be military, political, and industrial in nature or the combination of two or all the three types. In other societies one may find religious, commercial or labour governing elites.

The contribution of Gaetano Mosca cannot be left out when discussing elite theory. His contribution is in the observation that, all but the most primitive societies are ruled by a numerical minority known as the political class. He defined modern elites in terms of their superior organizational skills especially useful in gaining political power. However, Mosca’s theory was more liberal than the elitist theory of Pareto since in his own conception, elites are not hereditary in nature and peoples from all classes of society can theoretically
become “elite”. He also adhered to the concept of “the circulation of elites”, which is a dialectical theory of constant competition between elites, with one elite group replacing another repeatedly over time (Mosca, 2010).

The elite theory postulates that public strategic reflects the values and preferences of the elite, rather than the demand of the masses. The elite makes strategic, the administrators and the public officials implement the elite’s decisions.

The elite(s) are few in society but they control power and influence, allocate values and rule. This group consists of those who hold leading positions in the strategic aspects of society and have the control of power in strategic groups. Because they are rich, intelligent and few in numbers in any society, their interest is the preservation of societal status quo. This is why policies are conservative, non innovative, marginal and most time difficult to implement in favour of the masses. To preserve itself and to avoid change and stress, the elite yields to some welfare policies and public demands.

The majority (the masses) only obeys and are guided, controlled and governed by the few elite. Public strategic seldom reflect their interest and preferences. Even in representative democracies, the masses still have little or no control because the elite selects the candidates and manipulates the voters through propaganda and resources.

The Group Theory
In democratic countries the elite theory becomes more difficult to apply in view of the numerous types of elites which may exist and the various agencies which have a hand in producing them e.g. labour unions, religious organization, political organization etc.

A group is defined as a collection of individuals who have some characteristics in common and interact with some frequency on the basis of their shared interest. To the group theorists, the interaction among groups is the central fact of political and important element of the process of governance. The strategic therefore, is the equilibrium or the compromises reached in the group struggle.

The political system or the institutions of government and strategic makers referee the group interaction and enact policies in favour of the most influential group. Interest groups focus their attention on the bargaining, compromises, coalition and other activities that take place within the institutions of government among various groups and interests. To ensure their influence, the groups maintain access to the key points of decision making in governmental institutions such as the legislative committees, the executive, bureaucratic institutions and even the judiciary. The influence of any group depends on its leadership, organization, resources and strategic position.

Critical analysis of these theories shows that the group theory is embedded in the elite theory. This is because the groups are the elite who organize themselves into either interest groups or political interest groups, the masses of societies are usually subjected to the decisions and political actions of these highly influential groups in society.

The Concept of Machiavellism
This concept is based largely on the assumption that human nature is essentially selfish, and that egoism is the basis on which statements rely in their conduct of public affairs. Human nature is essentially aggressive and acquisitive, that is what makes men always want to keep what they have and even to acquire more. Machiavellism believes in “the end justifies the means’. And that the only way to judge the acts of the ruler is the success of his political expedient for enlarging and perpetuating the power of his territory and domain. This is why Machiavellism endorses the use of cruelty, perfidy, murder or any other means by the ruler for as long as these are used with sufficient intelligence and secrecy to reach their ends.

Indeed many rules at the helm of affairs in Nigeria at various times from independence in 1960 use this strategy in formulating public orders (Festus, 2007:33).

The summary is that strategic successes or failures can be encapsulated within the leadership theory. The summary is that Nigeria leadership is characterized by poor vision, lack of ideology, tribalism, corruption, preoccupation with political struggle to the neglect of critical development. This is a point, fore-grounded by Achebe (1983:1), when he wrote:
“The trouble with Nigeria is simply and squarely a failure of leadership. There is nothing basically wrong with the Nigerian character. There is nothing wrong with the Nigerian land or climate or water or air or anything else. The Nigerian problem is the unwillingness or inability of its leaders to rise to the responsibility” to fight corruption, which has lead to insecurity. Interaction among the three arms of government an attempt has been made in this discourse to trace the reason for the advocacy of the doctrine of balance of powers of inter government relationship, between the executive, legislature and judiciary (1999-2015) to the absolutism of monarchs of early history, and to state the working of the doctrine. It is characterized by apparent interactions amongst the three arms of government and these interactions limit the force of the doctrine as follows:

Legislature in Judicial functions

It would appear that there is a siming contradiction in terms when discussing the principle of powers to talk of the judicial functions of the legislature. Certainly it is not it merely shows that the three arms of government cannot afford to operate in watertight compartment under Nigerian system of government. The rational conclusion is that our constitution has produced a government of ‘separated institutions’ sharing powers in some spheres rather than under rigid separation of powers in their relationship. In considering the judicial functions of legislature it is evident that various sections of the constitution of the Federal Republic of Nigeria, 1999 vest in the National Assembly or States Houses of Assembly power to remove the President, Vice-President, the Governors and the Deputy from the office in the event of gross misconduct. The sections outline conditions under which impeachment can be brought against the offices specified therein. Under the 1999 constitution, the National or the State House of Assembly has the final say.

Equally important in this matter of separation of powers is the fact that the National Assembly sometimes act as an appeal Court. This is so because search of the State Legislative Houses has a Public Petitions Committee to which a citizen can send his petition even after the aggrieved citizen must have exhausted all the possible judicial remedies. The Legislature thus is enabled to intervene on various issues affecting the dweller of citizens as a quasi-judicial body.

Also, section 128 of the 1999 constitution empowers the National Assembly to conduct investigations into any issue with respect to which it has power to make laws. It also has power under section 128(1)(b) to carry out investigation into the conduct of affairs of any person, authority, Ministry or government department charged or intended to be charged with the duty of or responsibility for executing or administering laws enacted by the National Assembly and disbursing monies appropriated or to be appropriated by the National Assembly. Secondly, powers conferred are also to enable the Legislature to expose corruption, inefficiency or waste in the execution or administration of laws.

To enable the legislature handle difficult witnesses, section 129 of the constitution provides that for the purposes of any investigation under section 129, the legislature or a committee appointed in accordance with section 129 of the constitution shall have power (a) to procure all such evidence, written or oral, direct or circumstantial, as it may think necessary or desirable, and to examine all persons as witnesses whose evidences may be material or relevant to the subject matter; (b) to require such evidence to be given on oath; (c) to summon any person in Nigeria to give evidence at any place or to produce any document or other hinges in his possession or under his control subject to all just exceptions and (d) to issue a warrant to compel the attendance of any person who after having been summoned to attend, falls, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House or the committee in question, and to order him to pay all costs which may have been occasioned in compelling his attendance or by reason on his failure, refusal or neglect to obey the summons and also to impose such fine as may be prescribed for any such failure. Refusal or neglect, to pay any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law.

Another area in which the Legislature appears to have been given quasi-judicial powers is the area of discipline of its members. For example, legislators have been suspended for indisclipline. Suspension and or removal are normally and properly meant for use by the judicial arm of the government. But anarchy may become the order of the day in the Houses of Assembly if they cannot discipline erring legislators.
In support of this, it is only fair to say that anarchy may be invited if a House of assembly has to wait for court action to discipline erring members. From the foregoing we have seen how the legislature in one way or the other, has to perform judicial functions even though the doctrine of separation of powers is very much one of the characteristic of our constitution.

The executive Arm

The executive powers of the Federation and the states are vested, subject to the provisions of the constitution in the president and the governors respectively. See the Federal Republic of Nigeria constitution 1999, the country ground norm. Despite the above quoted provision on the power of the executive arm, the executive powers of government are still shared by the other arms of government with the executive arm. Section 12(1) of the 1999 Constitution provides that no treaty between the Federation of Nigeria and any other country shall have the force of law except to the extent to which any such has been enacted into law by the National Assembly. This means that although the president has the duty to negotiate treaties, such treatise do not become affective until the National Assembly had approved the treaties. A case example is Bakassi peninsula that president Obasanjo did not sent to National Assembly for approval. This again shows how close and interwoven the activities of both legislative and executive arms of government are:

Another point which makes nonsense of the much – proclaimed doctrine of separation of powers is the powers of the other arms of the government over the judiciary. This is that the appointment of a person to the office of the Chief Justice of Nigeria is by the President subject to approval by a simple majority of the Senate. It is difficult to understand the reason or the necessity for the imposition of the approval of the Senate in this matter. There is no reciprocal power in the judiciary: the judiciary has no say in the appointment of the President or members of Senate unless there is a dispute concerning the elections, in which case it serves as an impartial arbiter. In the peculiar position of Nigeria where appointments to these positions are usually from serving members of the judiciary, difficulties may arise where the nomination of a particular judge fail to get the approval of the Senate. The repercussions on such a judge for such a failure may be far from salutary, as the common man may as well lose confidence either in his ability or probity.

The removal which is covered by section 291 of the constitution the provision is, Any judge of any of the superior courts can be removed from office for inability to discharge the functions of his office or appointment” or ‘for misconduct’. In the case of the Chief Justice of Nigeria, the President acting on an address supported by two-thirds majority of the Senate praying that he be removed, may remove him. There is something seriously wrong with this subjection of the head of the judiciary to both the executive and the legislature, because recent events in the country regarding impeachment of a president or governor and his deputy make one uneasy in the sense that an impeachable offence is whatever a majority of Senate considers to be sufficiently serious to require removal of the person involved. So the continuity in office of the Chief Justice of Nigeria is dependent upon whether the President can master two-third support of Senate. It is true that the constitution has vested the judiciary with judicial powers. But it is equally true that many administrative and executive bodies have been invested with judicial or legislative powers. For example a minister may be given power under statute to make some forms of subsidiary legislation. Similarly, administrative tribunals may be set up by the executive. Whatever may be said about the close connection between the judiciary on the one hand and the legislature and the executive on the other, the truth is that the principle of separation of powers influences administrative law; and indeed some of the rules concerning judicial review and remedies in administrative law are based on the doctrine of separation of power in the three arms of government relationship and the sustainance of democratic value in Nigeria.

Extra judicial functions of the court

General view

It could be argued that to ensure its separate nature in the legal framework of a government, the judiciary ought not to be vested with non-judicial functions. This could be discussed in many ways. First, since the
court resents the assumption of judicial power in any other arm of government, the court also should be precluded from exercising non-judicial powers and functions. Secondly, on the other hand, it is not out of place to admit the legitimacy of non-judicial functions being conferred on the court but only so long as such functions are not incompatible or inconsistent with judicial powers. The same is true of the other arms of government.

Thirdly, it could be argued that, in practice, most of such non-judicial powers and functions conferred are not on court per se, but on the individual judges. Here the question arises whether judges are a different institution from their courts.

The Court is not precluded

The straight forward point that should be made here and which qualifies the court to discharge non-judicial functions is that while the constitution vests judicial power in the court, it does not exclude it from carrying out non-judicial functions. This is not to say that it is possible to rely upon any doctrine of absolute separation of powers for the purpose of establishing a universal proposition that no court or person who discharges any other function which has been entrusted to it or him by statute. It does not involve the further proposition that powers or duties of any description may be conferred or imposed upon the court.

The True Test

The test of legitimate distinction here is that the functions must be such as courts are not capable of performing consistent with the judicial process. Purely administrative discretion government by nothing but standards of convenience and general fairness could not be imposed upon them. Discretionary judgments are not beyond the scope of a court but there must be some standards applicable to a set of facts not altogether undefined before it can hear and determine a matter.

The restrictive nature of interpreting the general view that the court is not excluded from performing non-judicial functions is premised on the fact that the vesting of non-judicial functions the court indiscriminately would tend to sap its independence and impartiality. Also, if the function is one that is open to challenge be a citizen for inconsistency with the constitution or some other enabling law (as the executive or legislative function is), then the undesirable position of the courts having to review their own acts would result. To the argument that to bar vesting in the courts non-judicial functions would be to attach to the separation of judicial power a different significance and consequence from the attaching to the separation between legislative and executive powers, it could be said that the delegation of legislative power by the legislature to the executive has a justification which it would be undesirable to apply to the courts. For, in the exercise of legislative power, the executive acts in a subordinate capacity remain at all times subject to the control of the legislature. To delegate functions to the courts and subject them to that kind of control would impair the credibility of the courts as a bulwark against tyranny than it would in the case of control of executive and legislative action.

In matters of Prohibition

The question here is whether the objection to vesting of non-judicial functions in the court is to the court as an institution or it is to individual judges. Basically, judicial power is vested in the court and not in a judge as a person. It is true that a court can only exercise its power through the persons who compose it. Yet, there is a significant difference between a judge in court and a judge outside it. A judge is the court only when he is at sitting therein. He is then invested with the full authority, power, dignity and independence of the court. He does not cease to be judge once he steps out of court but his position is vastly different and justifies the vesting of non-judicial functions in individual judges to be performed outside the concept of institutional court. Vesting of non-judicial functions in such person is a practice that has acquired almost the force of tradition because of the qualities of integrity, impartiality and objectivity and the ability to analyse facts and weigh evidence, which a judge is supposed to possess by virtue of his training. It is for this reason judges are generally used to conduct public inquiries, act as chief returning officers at election, and to preside over industrial arbitrations. Further, the Chief Justice, as head of the judiciary, has necessarily to be invested with administrative functions since the judicature, like any other department of State, needs to be administered –
its accommodation, books, office equipment and stationary have to be provided; and its records, general financial needs, staff matters, etc must be attended to.

That the prohibition does not apply to judges as individuals therefore seems to be generally recognized. Thus in Thorton’s case the High Court observed:

…it is to be noted that the enactment does not take away any magistrate as a designated person.
…it is addressed to the court of summary jurisdiction… all that matters here is that the enactment attempts to invest the court of summary jurisdiction and not an individual, with a non-judicial power…

One thing is clear as concerns interactions of the three arms i.e. that like the other arms of government, the court go outside its jurisdiction to perform administrative functions. This again stresses the point that the three arms of government do not operate in water-tight compartments, hence the need of Balance of Power. The interactions amongst the three arms and near interference in one another’s sphere of power is so apparent that the safest conclusion one could make in the circumstance is that the force of the doctrine of separation of powers is seriously limited in their Relationship. (Brimoh, 2018 p 35-55). Even if one could agree on the proponents intents, the relationship amongst the three branches of government have changed fundamentally to produce an arrangement of “overlapping of functions”, but where the three cyclic edge meet in Area where the Green hole applied and practicable in favour of the Executive arm of government in their relationship to sustainance of democracy in Nigeria.

Conclusion

1. The Nigeria state, like any other developing country, is soaking with problems, such as, corruption, poor civil education, lack of infrastructure, ethnicity, tribalism, military rule, class divided and manipulation by the elites. This has affects the practice and procedure of the 3 arms of government in their relationship and the sustenance of democracy in Nigeria.

2. Secondly, my argument is that in terms of intensity and scope, the practice of Executive, legislature and judiciary, because of the Baron in politics and the ombudsman has their action been nefarious in sustenance of democratic practice.

3. The political party structure, should be redefine by allowing independent candidate to context election for executive, legislature arm of government to minimized looters in government.

4. Executive should stop funding of political party; it should be in form of association and getting Revenue from independent source, to weaken the Baron of Politics.

5. INEC should stop screening of candidate for election this will also enable the Executive, Legislature and Judiciary to perform its constitutional role unfettered, so that their appointment or removal is determined by the people.

Recommendation/Suggestion

The following strategies are recommended for a change and improvement. In the study of executive, legislature, judiciary, their relationship for peace and security in the sustenance of democracy in Nigeria

1. Amendment of the 1999 constitution is imperatively necessary, whereby practice and procedure of impeachment will be guarantee and attain. Purgatory law, negating the principle of good practice will be expunging from the constitution. I take bold to call on people constitution e.g. Strengthen the Judiciary arm of government.

2. Any member, seeking public position in the executive, legislative and judiciary arm of government, should be certified healthy and psychological reasonable by a medical doctor and psychologist to be made mandatory with a certificate to curb the hi per fraud tendency or motive of our political leaders which is negating the practice and governance between the executive, legislature and judiciary in their relationship and the sustenance of democracy in Nigeria.

3. A major weakness in the practice and procedure between the Executive, Legislature, and Judiciary in their relationship is the absence of any institutional arrangement, that can impartially assess, performance in the three arms, where I recommend, the professional body like Nigeria Bar Association, Medicine Association of Nigeria, the Press, Labour Union and NGO etc to copiously,
challenge or oppose corrupt leader and bad government e.g. whereby strengthen the civil society will be defending electoral votes, and unconstitutional impeachment.

4. Fourthly, politics is an important integral of government, hence politician once elected into office having paid huge sum of money, to party leaders see politics and public office as a zero-sum game, a situation where by they use their offices to enrich themselves while in office, negating the practice of constitutional arrangement therefore copious and crystal clear effort should be made to educate the Nigerian Society of corrupt practices of politician by all Nigerian under duties of care and social responsibility, we own to ourselves as Nigerians.

5. The Nigerian political leaders are politician in classical sense, but their influence are detrimental for good practice and procedure of democracy in Nigeria between the executive, legislature and judiciary, hence, anyone who has been indicted for embezzle mentor fraud shall be disqualified for election into the office of governor or president.

Finally, it is my submission and optimism, here, is that if positive efforts are made towards implementation of these, above recommendation, and suggestions? The performance will be greatly enhanced as better strategy cases between the executive, legislature and judiciary because, there is nothing better than to live in a country which respects constitutionalism concept between the executive, legislature and judiciary in their relationship. Democracy will be the bedrock of the state, for peace and security for the sustenance of democracy in Nigeria.
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