



Theory Issues in Separation of Powers in Nigeria: Implications for Democratic Consolidation

Samuel Chukwuma NDEMA

Lecturer; Godfrey Okoye University, Enugu, Nigeria

Alumnus, University of Strathclyde, Glasgow, Scotland, United Kingdom

Abstract: *The debate on the principle of separation of powers is an age long concern. Over the years, scholars and laymen have come to accept that what guarantees liberty of citizens and responsibility in governance is the practice of separation of powers. However, the frictions and disruptions in governance occasioned by the frequent standoff between the executive and the legislature have brought to the fore the need to investigate how Nigeria has fared as regards separation of powers and checks and balances. This paper is therefore an attempt to match the theory and practice of separation of powers and checks and balances in the Nigerian context. The paper sought to examine the extent to which separation of powers contributed to consolidation of democracy in Nigeria; determine the factors affecting separation of powers in consolidation of democracy in Nigeria; and ascertain the extent to which checks and balance contributed to effective management of separation of powers for consolidation of democracy in Nigeria. The research found that separation of powers appears not to operate any legal restriction on power but, it provides the basis for important principles which the law protects such as independence of the judiciary. It provides a basis for the adoption of structure processes and control which protects liberty now and in the future. It guards against broad spectrum of the ills like absurd judgement avaricious and ambitious self-serving behaviour and inefficient performances of functions. As our system of government evolves new conventions, political practices and events at times new legal rules will need to be devised to protect the liberty of the people and our nascent democracy. The doctrine of separation of powers therefore provides the justification for these measures and helps to determine their nature and scope. Apparently, there is the need to monitor our political system, be vigilant about our liberty and advocate new measures when the liberty is threatened. The research recommended that the Nigerian state should adhere to the theory of separation of powers as it is the practice in other democratic states of the world taken account of our historical past and the urgent need to modernize where necessary. Only this can bring about lasting political stability.*

INTRODUCTION

The debate on the principle of separation of powers is an age long concern. Over the years, scholars and laymen have come to accept that what guarantees liberty of citizens and responsibility in governance is the practice of separation of powers. Asogwa (2019) argued that the political and national development of any democratic country is a function of the mutual and cordial but also genuine relation between all arms of government. Where such relation is not a cordial one, it leads to malfunction of the apparatuses of the state. The separation of powers as advocated by the founder of the liberal school of governance is to ensure that conflict is reduced to its most possible minimal. The guarantee of human liberty

in any given government to the people is the practice of the theory of separation of powers (Ogoloma, 2012). This theory Asogwe (2019) implies that different bodies of persons should perform the three functions of the government. Each department (the legislature, the executive, and the judiciary) limited to its sphere of actions and within that field should be independent and supreme". The essence of the theory of separation of powers, therefore, is built on the believe that, if the executive, legislature, and the judiciary powers are vested in one person or group of individuals, such people will have unlimited powers. In such a way that they could prescribe any law, arrest anyone and even prosecute same for no reason. Since they exercise unlimited powers, they may pronounce even a falsely accused person guilty without a chance to defend himself. Through the separation of powers then, any particular group cannot prescribe, execute and adjudicate in any case at the same time. Doing this would amount to injustice.

The origin of the theory of separation of power in the post-ancient Greek era democracy can be traced back to John Lock and Montesquieu. Locke posits that: It may be too great a temptation to human frailty, apt to grasp at power, for the same person who have the power of making laws also to have in their hand the power to execute them whereby they may exempt themselves from the obedience to the laws they made and suits they, both in its making and execution to their private advantage.

Similarly, Montesquieu posits that; Political liberty is to be found only when there is no abuse of power. But consistent experience shows every man invested with power is liable to abuse it and carry his authority as far as it will go. To prevent this abuse, it is necessary from the nature of things that one power should be checked on another. When the legislative and the executive powers are united in same person or body, there can be no liberty. Again there is no liberty if the judiciary is not separated from the legislature and the executive. There would be an end of everything if the same person or body, whether of the noble or the people, were to exercise all the powers. Thus, the theory of separation of powers is made necessary by the need to preserve and ensure that the liberty of the people and the society, which was in the first place the basis for governance, is not trampled upon. Indeed, the theory was developed to ensure that the society works and develops. The objectives of the doctrine of separation to include among others; (i). Avoidance of tyranny and ultimate safeguard of labor, all arm works for peace and coexistence in the society. (ii) Efficiency is employed in the most suitable position as a result of concentration in specialize functions (Beetsehand and Echikwonye, 2022). Separation of powers brings about higher productivity as a result of dexterity in performance. The corollary principle of separation of powers enhances checks and balances as one arm serves as a watchdog over the other. In effect, there will be independent co-operation as each arm monitors the activities of the other to preserve human liberty. Thus, the principle of separation of powers is premised on the need to protect the liberty of the citizens of the state, in other words, to protect the fundamental human rights of the people. While some scholars advocate for a total separation of powers, some others advocated for a system of checks and balance where it is premised on the perceived impracticality of the complete separation of powers. To these scholars, a system of checks and balance is desirable and feasible rather than absolute separation of powers which is impracticable. The power may be distinct but not separate. It is germane to maintain that the value of the doctrine lies with the checks and balances which are essential to prevent an abuse of the enormous power vested in the ruler (Beetsehand Echikwonye, 2011). A separation of powers is prominent in Nigeria's constitution. Sections 4,5, and 6 outlines the

respective powers of the legislature, executive and judiciary branches in the 1999 Constitution of the Federal Republic of Nigeria. However, in the light of provisions on checks and balances, the Constitution does not engender a total separation of powers because each branch has some influence over the others. For example, the legislature reviews the executive through its oversight functions, the impeachment weapon and legislative confirmation of certain executive nominees, such as ministers, commissioners, and ambassadors. Thus, the principal purpose of checks and balances is to ensure that all arms of government inter-monitor one another for efficient and good governance.

One does not have to look too deep into political practices in Nigeria for one to see that the principle of separation of powers and checks and balance have been over the years, mal-applied, perverted and as a matter of fact, abused in the Nigerian political reality. The extent this constitutional provision is applied leaves much to be derived. There is interference among the organs of government. In most cases, the executive with power dictates the tune in the functions of the other arms of government. This is an abuse of power that is contrary to the doctrine of separation of powers (Beetseh and Echikwonye, 2011). The point here is that the principles of separation of powers seem not to be very much extremely practicable, as it looks in principle. This is the case between the executive and the legislative arms of government in Nigeria. The question that would come to mind is that, how can such a principle of separation of powers which was borne out of the need and quest to protect the people from being subjected to a tyrannical government not work well in practice? To this end, (Oshio, 2013) contends that Separation of powers in its practical operation involves a sharing of government, a system of checks and balances which allow each arm of government to defend its position in the constitutional framework of government. It needs flexibility, understanding and cooperation among the arms of government with each arms recognizing the limits and enforcing them. In this way, the purpose of government is fulfilled, through the contribution from all the arms of government as partners in progress. The implication of Oshio's position is that the principles cannot work on its own; they have to be placed in the hands of those whose intention to govern are strictly the interest and wellbeing of the society as a whole. Thus, separation of powers coupled with checks and balance may not bring forth the desired result if put in the hands of ill-intentioned individuals. It should be noted that people in government do not just choose to become enemies for selfishness or enmity sake. There are therefore factors which can be held responsible for the hostility perceived in government circles.

Partisan politics and unethical godfatherism are some of the factors affecting executive-legislative relations in Nigeria. These factors have gone as far as causing both inter and intra-party conflict which has led in many cases to disputes between the executives and the legislature. There have been cases where the executive refuses to sign into law a bill passed by the legislature, on the grounds of political differences. Similarly, lawmakers have made attempts to unleash their power of impeachment on the executive by perceived political difference(s).

In view of this, it observed that the practice of separation of power is gradually going into oblivion. This is basically due to series of factors affecting and influencing the executive and legislative arm of government. Factors which include; constitution provision, conflict of roles, perceive executive dominance, oversight function of the legislature, inexperience among emerging politicians; to mention a few.

Having been through military regimes overtime, the average Nigerian citizen has come to appreciate that the three arms of government should work independently. However, the frictions and disruptions in governance occasioned by the frequent standoff between the executive and the legislature have brought to the fore the need to investigate how Nigeria has fared as regards separation of powers and checks and balances. This paper is therefore an attempt to examine the theory and practice of separation of powers in the Nigerian context.

Research Questions

1. To what extent has separation of powers contributed to consolidation of democracy in Nigeria?
2. What are the factors affecting separation of powers in consolidation of democracy in Nigeria?
3. To what extent has checks and balance contributed to effective management of separation of powers for consolidation of democracy in Nigeria?

Objectives of the Study

The broad objective of this study is to identify the effect of separation powers in Nigeria's democracy. The specific objectives are:

1. To examine the extent to which separation of powers contributed to consolidation of democracy in Nigeria.
2. To determine the factors affecting separation of powers in consolidation of democracy in Nigeria.
3. To ascertain the extent to which checks and balance contributed to effective management of separation of powers for consolidation of democracy in Nigeria.

Statement of Hypotheses

The study formulates the following hypotheses:

- HA1. Separation of powers has contributed to consolidation of democracy in Nigeria.
- HA2: There are factors affecting separation of powers in consolidation of democracy in Nigeria
- HA3: Checks and balance has contributed to effective management of separation of powers for consolidation of democracy in Nigeria.

Conceptual Framework

Meaning and Origins of the Separation of powers

It must be noted that, the doctrine of separation of powers has been developed over the centuries. The evolution of the concept of separation of powers can be traced to the British Parliament's gradual assertion of power and resistance to the royal decrees during the 14th century. James Harrington, an English scholar was one of the first modern philosophers to do analysis of the doctrine of separation of powers. Harrington in his essay, *Common Wealth of Oceana* (1656), built upon the works of earlier philosophers like Plato, Aristotle and Machiavelli, described a utopian political system that included a separation of powers (Ogoloma, 2012).

In his second *Treatise on Government* (1690), John Locke an English Political theorist, gave the concept of separation of powers more refined treatment. John Locke argued that

legislative and executive powers were conceptually different. But that it was necessary to separate them in government institutions (Obidimma and Obidimma, 2015). However, in Locke's conception, judicial power played no significant role. The modern idea of the doctrine of separation of powers was vigorously explored in the Spirit of Laws (1748) by Baron de Montesquieu a French Political writer in his work. He based his exposition on the British constitution of the first part of the 18th century the way he understood it. As a doctrine, it has been interpreted as, where an individual occupies the position of both the executive and the legislature, there is the danger of the legislature enacting oppressive laws which the executive will administer to attain its own ends||.

Montesquieu in the process outlined a three-way division of powers in England amongst the parliament, the king and the courts, even though such a division was not in existence at that time. Montesquieu apparently believed that the stability of the English government was due to this practice of separation of powers despite the fact that he did not use the word separation.

It must be realized that Plato, Aristotle, Harrington, Locke, Montesquieu and other commentators saw the concept of separation of powers as a way to eliminate the arbitrary powers to check dictatorial tendencies. One condition of liberty is the separation of the legislature from the executive, and the existence of an independent and impartial judiciary. It is also as a result of this that, Montesquieu regarded the separation of powers as an essential safeguard of liberty. According to him, there is no liberty if the judiciary power be not separated from the legislative and executive. That is why according to Gettel, this doctrine implies that the three functions of the government should be performed by different bodies of persons; each department limited to its own sphere of action, and within that sphere should be independent and supreme (Oni, 2013).

Hence, separation of powers is presently understood to mean that, none of the legislative, executive and judicial powers is able to interfere with the others. For example, the Judges should be independent of the executive and legislature in theory. Or that the same persons should not hold posts in more than one of the three branches. For example, that one branch of government should not exercise the functions of another. That is, the executive should not make laws which fall within the purview of the legislature. That be as it may, closely related to this theory is the doctrine of checks and balances. This doctrine states that, governmental power should be controlled by overlapping authority within the government and by giving citizens the right to criticize state actions and remove officials from office. But the big question is, what happens in despotic military regimes and, dictatorial civilian regimes or in parliamentary 'systems where the cabinet minister must be a member of either houses of parliament as we have seen in Mymmar (Burma), Nigeria, before 1966 Coup, Thailand, Chile, China, Union of Soviet Socialist Republics (USSR) before it crumbled in 1989 with the introduction of glassnote and prestorica by Govbachev or how about where there is one party dominance in a political system? The whole argument in favour of separation of powers will be meaningless as well as hopeless in the above situation or circumstances.

Nevertheless, it must be stated that, like in Italy and in most democracies, separation of governmental powers in their constitutions has a separate constitutional courts to review cases that raise constitutional issues. Such democratic countries create such mechanisms to ensure judicial independence from legislative and executive officials. However, some scholars were of the opinion that, creating an extreme separation of powers can make government less effective because, it increases the possibility of governmental paralysis||.

Where the leaders in different branches of the government disagree about fundamental objectives, the country's official business will come to a standstill.

The Principle of Separation of Powers

Separation of powers is a mechanism for promoting and enhancing the independence of the organs of government in building a virile and stable political environment. Mbachu (1998:96) argued that there can be no liberty where the executive, legislative, judicial powers are united in one person or body of persons, because such concentration is bound to result in arbitrary despotism.

A constitutional democracy that is anchored on the modern principles of liberal culture of representative democracy expresses its powers in three forms; legislation, execution (implementation) and judicial precedence. It is of significance to the theory of the harmonization of government to determine the level of powers, privileges and entitlement to be exercised by a particular arm of government. Onyeneho (2014: 61) noted that separation of powers presupposes that no one should have powers over the others neither can anyone usurp the functions of the other arms. This he argued is to ensure political and civil liberty and the advancement of freedom of citizens.

Even though the theory of separation of power was clearly formulated and popularized for the first time by Baron de Montesquieu; a French enlightenment writer in his book *Spirit of Laws* in 1748. the actual practice of separation of powers amongst different branches of government can be traced to ancient Greece (Ogoloma, 2015). This doctrine of separation of powers; according to Montesquieu means that when an individual occupies the position of both the executive and the legislature, there is the danger of the legislature enacting oppressive laws which the executive will administer to attain its own ends".

In the same manner, if the power of the judiciary is not separated from the legislative and executive, liberty is not guaranteed. He believed that this system of government would provide a safeguard against the concentration of too much power in a single authority (Kusamotu, 2001: 35-39). To affirm this, Appadorai (2004:516) observed that: when the legislative and executive powers are united in one person, or in the same person, the same body of magistrates there can be no liberty; because an apprehension may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. According to Omeregbe (2010:72), Montesquieu felt that "absolute monarch" would deprive individual citizens of their freedom. In fact, his aim was to perfect the freedom of the individual citizens and reduce the power of the king by advocating separation of powers,"

The logic of the arrangement of the separation of powers is to ensure that the legislature performs the function of 'law making', the executive perform the function of 'rule implementation' and the judiciary oversees the 'interpretation of rule. Therefore, this arrangement knows no political or geographic and even party boundaries as it is today reflected in the composition of many liberal democracies. Even though separation of powers is desirable, there is great need for checks and balances to ensure that each arm of government does not abuse its powers and create unnecessary political instability in the system.

Oyediran et al (2005: 64) viewed checks and balance as that arrangement whereby an arm of government supervises and check another arm of government against any possible abuse of powers". This implies that checks and balances as a constitutional tool, enables the branches of government to resist any illegitimate expansion of power by other branches. Of course, this is in tandem with Magstadt (2006:74) view when he argued that The Madisonian

solution was to structure the government in such a way that selfish interests (faction) pursuing selfish ends would encounter as many hurdles as possible. It was this idea that won the day in Philadelphia and came to be enshrined in the constitution of United States America as the famous checks and balances. In all, Montesquieu advocated separation of powers between the executive, legislative and judiciary for the purpose of balancing them in order to avoid despotism. For instance, recently in Nigeria, there is the argument as to whether the three arms of government should enjoy the same level of privilege and entitlement.

The legislature in Nigeria have argued that they should be entitled to 'life pension' and 'immunity' just like the president, vice president, governors, deputy governor (executive) and the judges (judicial). The advocates of this believe that if the arms of government are given the same opportunities and privileges that will enhance the efficiency and effectiveness of the application of the principle of separation of powers. Hence, the need for the principle of separation of power comes to play to help stabilize and enhance the institutions and agencies of government. Checks and balances therefore is a mechanism for ensuring that each of the arms of government supervises and checks one another against possible abuse of powers. Hence, the different arms of government are vested with the responsibility to monitor the activities of other arm(s) and also limit the powers of other arm(s).

For good governance, separation of powers and checks and balances must coexist. According to Ogoloma (2012), the whole argument in favour of separation of powers is meaningless if the principle of checks and balances does not, in reality, operate as it helps in limiting the powers of each arm and restricting them to operate within their constitutionally assigned duties. This implies that when an individual is vested with such powers of abating and probating or executing and adjudicating, there is every possibility that such a person will become despotic.

Structure of Modern Government and Separation of Powers in Nigeria

The Executive Arm of Government

The executive regarded as the most influential organ of government is charged with the responsibility of executing and enforcing laws. It comprises all the functionaries and agencies that are concerned with the administration of the state. It consists of the president and his ministers as in the presidential system of government; the prime minister and his cabinet as in parliament system, the politicians elected or appointed to the executive arm of government, the civil servants, police, and other security agencies.

Ibekwe Ibeto and Anazodo (2015:20) outlined the functions of the executive as contained in the 1999 Constitution as follows: budget preparation, initiation of development projects, execution and maintenance of the Constitution and laws and by-laws made by the National, States Assembly and councilors, preserving, protecting and defending the territorial integrity of the nation, Ensuring the stability and security of the Nation, States and local government areas and carrying-on the business of governance in all ramifications including conducting the Nation's international relations.

The Legislature

The legislature is an organ of the government that comprises the elected representatives from geo-political zones whose primary function is to make laws and change laws and policies for the welfare of the citizenry. In democracy, the legislature plays a crucial

role to give voice to the voiceless and ensure effective representative of all interest and cultural affiliations or segments of a country. Legislature can be described as symbol of liberal democracy, because, it is only the institution or arm of government that always receive the sledge hammer of the military juntas whenever there is coup d'état, as the executive and judiciary continue to function even during such periods.

The legislature is classified into two: unicameral and bicameral. Unicameral legislature is the type of legislature with a single or one chamber while bicameral legislature is the type of legislature with two chambers. One of the chambers is called a lower chamber while the other is called an upper chamber. In Nigeria, the two chambers called the House of Representatives (lower house, presided over by a Speaker) and the Senate (the upper house, presided over by the President of the Senate).

The primary function of the legislature remains enactment of laws, modification or amendment of existing laws to make them to be effective to address the multifaceted and critical needs of populace through good governance. Other functions include: amendment of the constitution, supervision of the activities of the executive, approval of the budget, provision of forum for public opinion approval of appointment, ratification of treaties and approval of state of emergency and declaration of war by the executive.

Separation of Powers and Checks and Balances in Nigeria

The principle of separation of powers and checks and balances is a theoretical framework meant to help and ensure that leaders and operators of various institutions of government do not allow their selfish-interest to override public interest and common good. In theory, the 1999 constitution recognized and made provisions for the smooth relationship between the executive and judiciary by prescribing their functions based on the principle of separation of powers and checks and balances.

However, when it comes to practice, we observe that there are several party and personal interests causing huge quagmire in the practical implementation and adherence to the principle of checks and balance in Nigeria. Nigeria has witnessed crisis in her democratic arrangement as one branch of government tries to check the other arm of government. For instance, when the National Assembly (Senate and House of Representative) attempts to check the activities of the executive through its over-sight responsibility, they end up misunderstanding themselves. Similarly, when the executive uses its instrument to regulate the expense and budgeting of the National Assembly, they quickly fight back with threat of impeachment. Nigeria has never had good implementation of the principle of checks and balances in the history of her democratic experience and existence.

Indeed, in Nigeria's presidential democracy there have been several instances of one form of interference/usurpation of power between the legislature and executive since the inception of presidential democracy in 1979. Such interference/usurpation got to its peak at the first 8 years of the Fourth Republic after the inception of the new democratic dispensation in 1999 (Obidimma and Obidimma 2015). This conflict of interests between the executive and legislature produced five senate presidents in eight years (1999-2007). Similarly, the cold war existing between the Buhari government and the legislature over the 2015 budget is also noteworthy. This scenario delayed the passage of the 2016 budget up till the second quarter of the year.

The Checks and Balances in the Executives – Legislators Relationship

The constitution of the Federal Republic of Nigeria provides for a system of checks and balances to restrict the powers of each arm of government at both the federal, state and local

government tiers. On one hand, the constitution empowers the executive arm to veto bills passed by the legislature while on the other hand, the latter can override the veto by the former. Similarly, the executive can check the judiciary through its power to appoint or remove judges while the judiciary can declare laws made by the legislature and certain executive actions unconstitutional. Other measures to check the excesses of the executive arm by the legislature include: Invalidating the actions of the executive done in excess or beyond the constitutional pressures by declaring it null and void and of no effect or ultra vires. ii. Removal of the head of the executive (the president or the prime minister) through impeachment process in accordance with the constitutional provisions. iii. Ratification or approval of the appointment of ministers and ambassadors (high commissioners) who are members of the executive. Control of the expenditure of public fund by the execution (e.g. approval of money bill or budget). v. Audits public account spent by the executive and carrying out oversight functions in order to obtain first-hand information on the implementation of the budget by the executive (Eze, 2013).

Factors Affecting Separation of Powers in Consolidation of Nigerian Democracy

There are several factors affecting separation of powers in democratic consolidation in Nigeria. Partisan politics and unethical godfatherism are some of the factors affecting executive-legislative relations in Nigeria. These factors have gone as far as causing both inter and intra-party conflict which has led in many cases to disputes between the executives and the legislature. There have been cases where the executive refuses to sign into law a bill passed by the legislature, on the grounds of political differences. Similarly, lawmakers have made attempts to unleash their power of impeachment on the executive by perceived political difference(s).

In view of this, it observed that the practice of separation of power is gradually going into oblivion. This is basically due to series of factors affecting and influencing the executive and legislative arm of government. Factors which include; constitution provision, conflict of roles, perceive executive dominance, oversight function of the legislature, inexperience among emerging politicians; to mention a few.

i) The Constitutional Provision

The constitution is the map through which any democratic government can progress (Fasagba, 2010). He states that the constitution stipulates the powers as well as the responsibilities of the various institutions of government. The first to third republic Nigerian constitution collapsed not because the constitution was not good enough, but it was caused by the inability of the government elites to abide by the rules of the game (Asogwa, 2019). The Nigerian constitution made provisions for each arm of government to survive interdependently. However, these roles are conflicting most of the times. For example, the role of law making by the legislature and veto power of the executive seems to be unclear to the leaders of both organs. Whereas the executive also initiates legislation and submits to the legislature for consideration and approval sometimes, look as the legislature depend solely on the executive initiatives to pass laws. One major constitutional conflict in the executive and legislative relations emanating from the Constitution is the issue of apower vacuum in 2010 (Fasagba, 2010). In spite of the constitutional provisions to settling the problems in the previous governments, the fourth republic tends to chart the line of conflictual power relationships instead of harmony between the executive and legislature (Mba, 2007). Though the constitutional crisis was abated, yet the constitutional has not been amended. This conflict has degenerated into severe constitutional issues which have

endangered to undermine democratic consolidation and hinder political development (Eze, 2013).

ii) Conflicts of Roles

The role conflict has to do with respect to budget endorsement, execution and evaluation processes (; Momodu & Ika, 201). The executive and legislature under the 1999 constitution were empowered to prepare and approve budgets of the Federation respectively. Consequently, sections 80 and 81 further established the mode of approving and implementing the budgets. However, section 81, part 1, reserves the exclusive right to the executive in budget preparations. There are cases budget proposals from the executive which have been hampered by the legislature for approval. For example in 2002, the budget sent to the National Assembly for approval was gridlock for five months before it was later passed into law (Aiyede, 2005). The proposed budget was a total of N1.06 trillion which has about of N297 billion, capital expenditure and over N588 recurrent expenditure. Instead of passing the budget the legislature, however, increased the capital allocation as well as slashing the current allocation. This does not go down well with the executive who later revised the budget estimate and proceeds with implementation of the revised version of the 2002 budget. This action prompted the legislature to embark on impeachment process against the president. But for the intervention of the party leaders in this bid, the legislatures would have had their way (Eminue, 2006).

Additionally, in 2003 similar budget conflict ensued between the executive and the National Assembly. The budget which was sent to the legislature in mid of November 2002 with the hope of passing it into law was eventually stocked and later approved by the legislature eight months after, in May and then signed into law by July 2003. Of course, the lawmakers concluded that their reason was to have time to study the budget because of its significance to the nation. (Oni, 2013). This trend in the relations does not promote political development as government business is mostly affected by this gridlock thereby making the country witness underdevelopment in many aspects of the society. Again, in 2004 budget presented was delayed approval by the National Assembly; the legislature instead increased the budget from the initial amount of N1.089 trillion to about N1.3 trillion (Oshio, 2013). This different role is what experts in executive and legislative relations called functional overlapping. However, the conflicts between the executive and legislature in the fourth republic is identified by disagreement occurred within the period. Thus, Aiyede (2005), supported this claim when he stated that, conflicts arose when the president demanded huge sums of money in the form of supplementary from the legislature, which the National Assembly considered unnecessary and therefore, refused to approve.

iii) Perceived Executive Dominance

Another factor affecting the executive and legislative relationship is perceived executive dominance. The administration of former President Olusegun Obasanjo, 1999 on the assumption of office went ahead to scrap the Petroleum Trust Fund established by the Military Decree in 1994. The legislature conceived his action as unconstitutional as he did not consult them before abolishing the law. Meanwhile, the Attorney-General of the Federation and Minister of Justice intervened that section 315, part a, and c, provided for the executive powers under the Constitution to modify prevailing laws. Lafenwa (2007) observed that the first republic parliamentary system in Nigeria does not only fail due to the multi-ethnic society but also because of the nature of inactive legislatures existing alongside resilient and active executive. One of the reasons the executive is perceived of having so

many powers, especially in the Nigerian context was due to the state of prolonged Military rule. For out of the number of years Nigeria has existed from independence in 1960, the Military has ruled for 30 years as against the civilian rule of only 23 years in 2013. The essence of this is the absence of watchdog from the legislature who would have made them accountable to the people through its oversight. As this institution of lawmaking was sidelined, and support was shifted to the executive branch by the military, thereby making it more powerful.

In 2007, towards the end of the Obasanjo's administration, he initiated plans conceived by the legislature as underground moves to amend the constitution to favor him for the third term. The National Assembly through its leader debated this and later aborted this plans because the clause for the amendment of the constitution was not substantial enough to carry on with the task. This attempt of the third term, however, met resistance from the legislature as the majority of them did not support it (Ihemeje, Godswalth, & Jawan, 2016).

iv) Oversight Function of the Legislature

The oversight functions of the legislature in any given society cannot be overemphasized. How these oversights create conflict in the relations between executive and legislature for the development of Nigeria is what this section will look at. First and foremost, the 1979 and 1999 constitution of the Federal Republic of Nigeria provides basis and powers to the legislature's departure to promote unity and political development, section 147 (2); 153, 154 and 171(4) of the Constitution. Invariably, without the oversight of the lawmakers, it is possible for the executive to govern with impunity and not accountable to any person for their actions and inactions about the public funds. This more reason it was observed by the then Secretary General of Commonwealth that, the major function of the law-makers world over include: legislation, representation, national budgeting and oversight of the government among others (Shija, 2008). During the Military era in Nigeria, the legislatures were not empowered to function effectively to hold Military Heads of States accountable. The Military are the executive heads also. They use decrees and other coercive instruments to manipulate accountability, and no one is a watchdog to their activities. Even when there is the freedom to express, these views were limited by acts and decree powers of the Military. What this result into is the suppression of the freedom of speech as well as the executive dominance of the functions of the legislature. This cannot promote any form of development, be it economic, social, cultural or political in nature.

In their submission to the importance of oversight (Ahmadu and Ajiboye, 2004) posit that the Nigerian legislature is empowered to conduct inquiries on all matters of governance. There is a gamut of supervision performed by the legislature in the Nigerian fourth republic. And these oversights sometimes clashes with the perception of the executive which later results in conflicts of both institutional relationships. One of the Administrations so disturbed is former president Olusegun Obasanjo 1999-2007. Though Obasanjo has a high Military trait, he was admittedly infuriated by the current Legislature's antagonistic stance (Adegbamigbe, 1999). In 2006 for example, the legislature instituted a committee to investigate the alleged illegal use of the public fund for personal use. Before then, both the president and his vice have been accusing one another of illicit use of money from the petroleum trust fund account. The Senate in its oversight investigated these allegations from both principal officers of the executive organ with the sole aim of punishing the offenders. However, the investigation revealed that it was the President who withdrew the fund and

therefore indicted him (Vanguard, 2007). The President was not satisfied with the indictment as he alleged the Vice President manipulated the result of the investigative panel. As a result, another panel was set up, which later conducted a fresh inquiry. The new panel, therefore, sort evidence from various parties and then found the Vice President guilty and recommend for his impeachment (Fasagba, 2009). While the issue of oversight power of the legislature is constitutional, through its investigative committee, the legislatures can indict the executive and recommend his impeachment if found wanting of misuse of powers. However, the constitutional immunity of the executive also protects him from facing criminal or civil actions, section 308 (1) of the 1999 constitution Taiwo (2004) avers that the impeachment power of the legislature is considering a check on the administrative functions of the executive. Furthermore, oversight is not only limited to the protection of public funds. Sections 147 (2) of the 1999 constitution also extends the powers of the legislature to rectify the appointments of members of the executive council submitted to them by the President.

v. Perceived Executive Dominance

Another factor affecting the executive and legislative relationship is perceived executive dominance. The administration of former President Olusegun Obasanjo, 1999 on the assumption of office went ahead to scrap the Petroleum Trust Fund established by the Military Decree in 1994. The legislature conceived his action as unconstitutional as he did not consult them before abolishing the law. Meanwhile, the Attorney-General of the Federation and Minister of Justice intervened that section 315, part a, and c, provided for the executive powers under the Constitution to modify prevailing laws. Lafenwa (2007) observed that the first republic parliamentary system in Nigeria does not only fail due to the multi-ethnic society but also because of the nature of inactive legislatures existing alongside resilient and active executive. One of the reasons the executive is perceived of having so many powers, especially in the Nigerian context was due to the state of prolonged Military rule. For out of the number of years Nigeria has existed from independence in 1960, the Military has ruled for 30 years as against the civilian rule of only 23 years in 2013. The essence of this is the absence of watchdog from the legislature who would have made them accountable to the people through its oversight. As this institution of lawmaking was sidelined, and support was shifted to the executive branch by the military, thereby making it more powerful. In 2007, towards the end of the Obasanjo's administration, he initiated plans conceived by the legislature as underground moves to amend the constitution to favor him for the third term. The National Assembly through its leader debated this and later aborted this plans because the clause for the amendment of the constitution was not substantial enough to carry on with the task. This attempt of the third term, however, met resistance from the legislature as the majority of them did not support it (Adedoja and Epia, 2006).

Summary of Findings

The study found some recent issues concerning the separation of powers in Nigeria; it is obvious that in modern democracy, absolute separation of powers is not feasible. In the first place, there is great need for the arms of government to cooperate and collaborate with each other for them to ensure good governance and deliver dividends of democracy.

Secondly, a water-tight separation of powers will lead to power tussle between the executive and legislative thereby over heating the political environment and instituting political instability. In Nigeria for instance, the National and State Houses of Assembly since the dawn of this fourth republic believe that their constitutional powers and responsibilities are often usurped by their executive counterpart.

The executive on the other hand feels that the legislature delay the implementation of their policies and programmes by not giving speedy attentions to executive bill, confirmation of appointments and any other collaborating assistance.

Conclusion

In conclusion, separation of powers appears not to operate any legal restriction on power but, it provides the basis for important principles which the law protects such as independence of the judiciary. It provides a basis for the adoption of structure processes and control which protects liberty now and in the future. It guards against broad spectrum of the ills like absurd judgement avaricious and ambitious self-serving behaviour and inefficient performances of functions. As our system of government evolves new conventions, political practices and events at times new legal rules will need to be devised to protect the liberty of the people and our nascent democracy. The doctrine of separation of powers therefore provides the justification for these measures and helps to determine their nature and scope. Apparently, there is the need to monitor our political system, be vigilant about our liberty and advocate new measures when the liberty is threatened.

Recommendations

It is suggested therefore that, the state should adhere to the theory of separation of powers as is the practice in other democratic states of the world taking account of our historical past and the urgent need to modernize where necessary. Any dictatorial tendency should be nipped at the bud.

Secondly, it will help to dispense with executive usurpation of powers, check corruption of elected officials and manipulation of electoral processes.

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