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Question : Examine some of the loopholes in Nigeria constitution over the years that have affected democracy in Nigeria.

# Meaning of constitution :

A constitution is an aggregate of fundamental principles that constitutes the legal basis of a polity, organization or other type of entity, and commonly determine how that entity is to be governed.

A constitution can be written or unwritten, rigid or flexible . A written constitution is when a set of principles are written down into a single document or set of legal document . On the other hand an unwritten constitution is when a set of principles are written down in different document.

A rigid constitution is a constitution which stands above the other laws of the country. The laws set here are difficult to amend . On the other hand a flexible constitution is a constitution that is not defined or set apart in a distinct document and that is not distinguishable from other law in the way in which its terms can be legislatively altered.

What is democracy ? Democracy is government by the people in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system.

Abraham Lincoln defined democracy as a government of the people by the people ,and for the people.

Democracy is a set of ideas and principles about freedom but it also consists of a set of practices and procedures that have been molded through a long, often tortuous history.

Nigeria has had different constitutions since its inception. The constitutions can be divided into two generation; the pre-independence and post independence generation. The pre-independence generation is made up of six constitution. These are the 1914 , Clifford constitution of 1922, Richard constitution of 1946, Macphersons constitution of 1951 and lyttletons constitution of 1945. The post independence constitution was made up of 1963, 1979 and 1999 constitution.

In 1914,the southern and northern protectorate were amalgamated. The legislative council was empowered to make laws only for the colony. The governor was empowered to make laws for the protectorates.

Nigeria which prides itself as Africans giant ,is faced with many challenges . These numerous challenges raise doubt about this unproven appellation. Our politics has

become a platform for impunity, graft and disobedience to the laws of the land .

The Nigerian constitutions had so many loopholes. Nigerians had no say in the making of their own constitution this was present in the Clifford and Richards constitutions . Clifford constitution limited the way in which people vote and voted for, one has to be residing in Lagos or Calabar and has to be earning a minimum of 100 pounds per year. Many Nigerians could not afford it . There was an uneven development , the legislative council ruled the south while the governor ruled the north this is still very present in Nigeria today as the north is far behind in many things such as lifestyle, education, human rights etc. The worst is bad as the highest case of illiteracy is recorded in the north.

The various constitutions tried to unite Nigerians after amalgamation but they went about it in the wrong way . The Richards constitution brought regionalism but it was not fair, the eastern and western part had a unicameral legislature while the northern part had house of chiefs . His predecessor Macpherson thought his idea will bring unity he established a bicameral legislature in the northern and western part alongside a house of

chiefs .while they eastern part had only a unicameral legislature . This action did not improve any situation rather it heightened the problem .

Lyttleton constitution was able to resolve this as all regions were properly represented. The lyttleton constitution led to the independence of Nigeria.

There is one phrase whose exact denotation is problematic namely : indigenous to: which was first spelt out in the 1999 constitution and it has often used in the constitution of the Federal Republic of Nigeria (CFRN) 1979. The term was not properly spelt out in the 1999 constitution and it has often created problems in understanding and delineating who is an indigene and who is not beyond that what should be considered in the context of indigeneity and what should not. Again, there is a lacuna on aspects of citizenship involving male foreigners married to Nigerian .

women and wishing to gain Nigerian citizenship.

Section 26 defined a Nigerian citizen and process of citizenship by naturalization and registration ,however the silence about the process of citizenship for non - Nigerian men perhaps results in challenges of marriage instability.

Nigeria is presently governed by the 1999 constitution but recent political happenings in the country shows we are not governed by any law.

The role of the constitution in governance and democracy cannot be overemphasised. It is a legal book that states how a given nation should be governed. Therefore, the court, which is seen as the last hope of the common man, should adjudicate on infringement on these letters in our statutory book.

Five years ago, the Speaker of the House of Representatives defected from the ruling Peoples Democratic Party (PDP) to the opposition All Progressives Congress (APC). This development once again indicates a loophole in our constitution. Section 68 (g) of the 1999 Constitution is clear on the fate of a member of the Senate or House of Reps who decamps from one party to another. Such member loses his seat by implication. Though the constitution guarantees freedom of association but the flimsy excuse politicians give for their defection is a source of concern and it is inimical to the development of democracy. In our society, cross carpeting has become a norm in the eyes of political actors; every excuse seems tenable and every step taken is a means of outwitting opposition parties.

Here is an example of one of many constitutional loopholes. Umaru Musa Yar'Adua was the president of the fifth republic and suddenly took ill while in office. His prolonged absence from Nigeria for reasons of illness, without constitutional transfer of power and authority to Dr Goodluck Jonathan the Vice President to act on his behalf revealed a major constitutional loophole in the Nigerian constitution and threatened the nation's political authority. Whereas, the provisions of the 1999 constitution is clear with regards to matters relating to permanent incapacity of the President or Vice President; the point is made clear in Section 144(1)a & b,(2),93) 7 (4) a & b that the President's health condition must be confirmed by a panel of medical practitioners who shall certify same in a report which will be published in the official gazette of the government of the federation. Between 23 November 2009, when President Yar'Adua was hurriedly taken to a specialist hospital in Jeddah, Saudi Arabia and 9 February 2010, when his Deputy Dr Goodluck Jonathan, was by a Resolution of the Senate and the House of Representatives, declared acting President and Commander in Chief of the Armed Forces, the Nigerian polity experienced one of its greatest threats to the constitutional democracy.

While Section 144 expresses the permanent incapacity of the President or Vice President; Section.145 treats the circumstance by which the Vice President could act on behalf of the President in his absence Section 145 reads thus; Whenever the President transmits to the President of the Senate and the Speaker of the House of representatives a written declaration that he is proceeding on vacation or that he is otherwise unable to discharge the functions of his office, until he transmits to them on the contrary such functions shall be discharged by the Vice President as acting President.

The problem this creates is that due to the circumstance of the President's ill health, he was unable to transmit to the Senate President and the Speaker of the House of Representatives the required written declaration to his intention. As a result, there was confusion in the polity.

In conclusion ,this are some of the constitutional loopholes experienced in Nigeria . And how our past and present leaders have added more petrol to the fire instead of resolving it.