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QUESTION: Constitution is important for the consolidation of democracy. However, the makings of Nigerians constitutions have been under two political dispensations that have anti-democracy tendencies, and this has been a great impediment to democratic governance in Nigeria. Examine some of the loopholes in Nigerians constitutions over the years that have affected democracy in Nigeria.

**Manner of approach**

1: Everything concerning the constitution

2: Political dispensations

3: Loopholes of the constitution

**The constitution**

 In the 19th Paradoxically enough, if the word retained some ambiguity, this was because of the British constitution; that is, because the mother country of modern constitutionalism appeared to have an obscure constitution, or even-according to some of the standards that seemed very important elsewhere-no constitution at all.

 Yet the very term ***“constitution”*** has acquired its modern meaning in English in the course of evolution of the English in the terminologies. The Latin term constitution meant the very opposite of what is now understood by constitution. A constitution was an enactment; later, after the 2nd century, the plural form constitution came to mean a collection of laws enacted by sovereign; and subsequently the church too adopted the term for canonical laws.

 Most of the great historical constitutions were created in order to crown and close political and social revolutions, indicating what the given victors deemed important and preventing people from thinking about repeatedly changing the social and political order. Other constitutions created to ward off revolutions and to restore certain prerevolutionary conditions. The U.S constitution was a pragmatic instrument: it had to correct the functional mistakes of the articles of the confederation. Constitution as fou0ndations is created so that a nation in a new condition that can declare its own citizenry, as well as to the rest the world, that it exists. Other constitutions are in order to delude the public; the ***“great”*** shamanist constitution of 1936 was created to begin the world. The constitution is built on a dual assumption, referring to a prior or underlying order. Both assumptions are vague and have several meanings. According to the first one, the states guarantees peace for those to whom we want to give peace because they are identified with us.

 Homogeneity is the second assumption, the uncertainty of which comes from the fact that we can never know what it is that we have to identify ourselves with, what we have to live up to in order to be accepted in the political community, who has the right to give up a significant part of ourselves.

 The constitution is primarily effective when and if it is binding. Mere declaration, if not strengthened by some form of religious influence actions.

century what was meant by the term ***“constitution”*** was reasonably definite and clear. As the creation of modern states, constitution assumes prevalence in the legal sphere. In itself, a constitutions normative nature, and the fact that it is made legally binding, says very little. To have the ability to determine the legal system, a constitution must be above all other legal regulations.

 No matter how technical it may seem, amending a constitution is an essential element of the document itself and of constitutionalism. The current and latent crisis of Hungarians constitutionalism is a proof of this. If the constitution can be changed like any other law, then there is nothing to guarantee its supremacy in the legal system. In the absence of rigorous amendment procedure, a constitution can become the victim of incidental considerations at any time, of any one of its prescription were to obstruct a current legislative improvisation or a prevalent legislative interest. The blessed self-restriction dictated by the constitution would cease to exist.

**FEATURES OF THE 1999 NIGERIAN CONSTITUTION**

1. ***Preamble****:* this introduces us to main content of the constitution. It also ends with “the constitution shall be the main authority for the people and government”. That is the highest law.
2. ***The Government***: the law of the Nigerian is that the country practice democracy and that the government should be operated based on justice system.
3. ***The territory:*** here a lot were discussed including but not limited to how to attain citizenship and what makes a citizen.
4. Section 5 is about sovereignty and legislature
5. Separation of powers, exclusive arm, federalism and constitutionalism
6. Fundamental human right

**Sources of the Nigerian constitution**

1. ***Legislation***: acts of parliament and laws made by the legislative body comprising of the senate and House of Representatives.
2. ***Judicial decisions***: landslide supreme courts judgments made by the supreme court of Nigeria.
3. ***International laws***: laws and agreements from international organizations such as the UN charter and conventions on human rights.
4. ***Customs of the land***: our culture plays a big role. Homogeneity is frowned upon by most cultures in Nigeria and is entrenched in the constitution also.
5. ***Constitutional conferences***: remember all those constitutional conferences where they will just be sleeping and their final drafts on the constitution takes time to be reviewed. The most recent is constitutional conference of 2014.

***Political dispensations***

 This is an important era in a specific political period defined by its individual uniqueness and has its own demands and expectations.

 ***Military dispensation (1970-1979):*** the Gowon Regime was in power until 1975. It is worthy of note that is during this regime that many of Nigeria’s major development programs were undertaken in the name of reconstruction and rehabilitation of war-ridden areas, this period also saw the introduction of various forms of business, scholarship students ,loan schemes ,etc. In July 1975, another military regime headed by Brigadier General Murtala Ramat Muhammad and General Olusegun Obasanjo took over power. The Obasanjo administration willfully handed over to a civilian regime, paving way for the second republic.

***Second military dispensation:*** 1985-1999 Babangida cited the misuse of power, violation of human right and failure of the government to deal with the country’s Deeping economic crisis as a justification for the takeover. Babangida’s failure to fulfill his promise to return the country to the civilian rule in 1990, later postponed to 1993 presidential election which was generally believed to be the fairest in the countries electoral history led to his handing over to an intern government headed by Earnest Shonekan who was to rule until new elections in February 1994.

***Loopholes in the Nigerians constitution***

 Nigeria is a federal system which operates a written constitution which constitutes the supreme law of the land. The constitution was adopted on 29 may, and it has 320 sections divided into 8 chapters and 15 parts with 7 schedules. Some of loopholes therefore are;

1. **selection process**: the selection process is misused. In the sense that one cannot become either a president, governor, chairman or whatever in politic without joining or belonging to a political party. It is the political party that selects and the process is called primary election.

Other missing gaps in the Nigerian constitution include but not limited to the question of prohibition; Sexual Discrimination; The Federal character Principle; Right to inheritance

1. **Prohibition*:*** The term remains rather vague and indistinct in the constitution and often seen as a stand- alone phrase that may prove difficult and contradictory in practical terms
2. **Sexual Discrimination**: This is another term in the constitutional that has been poorly implemented in practical terms The right to dignity of womanhood has also been poorly internalized and implemented in the Nigerian constitution as women and their rights have been marginalized
3. **The Federal Character Principle**: This is an invention of the 1999 constitution aimed to reflect federal presence in all aspects of events or activities such as political offices, including the composition of the national football team However since its adoption the federal character principle has not enthroned ethnic emancipation both in the structure of political appointments and similar public offices
4. **Right to Inheritance**: In the 199 there is a gap in contextual application of the clause right to inheritance much of the crisis is reflective of persisted quarrels among families on the demise of its breadwinners
5. **The Land Use Act**: This has been a colonial legacy and often equates land grab and alienation It extends beyond the use of land alone rather encompasses the natural resources therein In the particular case of the oil rich Niger Delta there are repeated incidence of resource marginalization as constitutional dictates are not followed. There are other key issues that require urgent attention such as sexual discrimination**,** section 42(1-3);right to dignity of womanhood, section 34,their political and economic rights, section 14(3);right to inheritance, land use act etc. Equally there are important case examples to buttress gaps in the Nigerian constitution as follows;

**The Case of Yar’A duah’s Ill Health and Constitutional Loophole**

Umaru Musa Yar’A duah 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 Good luck Jonathan the Vice President to act on his behalf revealed a major constitutional lacuna in the Nigerian constitution and threatened the nation’s political authority. Where- as, 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’A duah was hurriedly taken to a specialist hospital in Jeddah, Saudi Arabia and 9 February 2010, when his Deputy Dr Good luck 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 and the rule of law. 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.