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Matric no; 19/sms09/069

Course; pol 104

Assignment: constitution is important for the consolidation of democracy .however ,the making of Nigeria’s constitution have been under two political dispensation that have anti-democracy tendencies and this has been a great impediment to democratic governance in Nigeria .examine some of the loopholes in Nigeria’s constitutions over the years that have been affected democracy in Nigeria. Discuss [10 pages]

Constitution

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

Scope of constitution

* The system of government; The constitution provides for the system of government to be operated in such a state whether unitary, federal, parliamentary, presidential or monarchial
* It also specifies the political institutions and organs or agencies of government that exist in a particular state such as the legislative, executive and judicial organs and their functions and limitations including the ministries ,parastatals
* The constitution set down the code of conduct for public officers .this comprises the rules of behaviour as well as other standards such as age at which one can hold certain offices, marital status of occupants, age at retirement etc.
* It also determines the system of government; this includes the hierarchy of courts –customary, alkali, high court, appeal courts and Supreme Court etc. Nature of offences and punishment for offences,
* Citizenship of the state; the constitution determines the basis of citizenship acquisition ,duties and obligation of the citizens towards the state

Sources of the constitution

1. Parliamentary statute; this is the first official source of any constitution .the function of law making is enjoyed mainly by the parliament so that any law made by the parliament automatically becomes the part of the constitution.
2. Conventional rules; this refers to political relationships, which have gained the acceptance of the citizens of any body politic .conventions entails rules of behaviour accepted by concerned obligations for the working of the constitution e.g. appointing the British prime minister from the house of commons
3. Customs and traditions; these include the usages –usual practices of the people appadorai [1975] maintains that customs become law only when they are enforced by political authorities. The common law of England consists of mainly customs accepted by law courts .customs and traditio9ns also refer to those modes of political rules that persisted over time .these include patterns of traditional authority ,marriage system ,mode of burial, seniority etc.
4. Judicial precedents; the judiciary interprets the constitution .the judgments or interpretations go down in the constitutions as part of the constitution when they are accepted by the law courts as such.
5. International documents; such as charter, conventions, agreements, treaty, etc. help to shape a country’s constitution .e.g. U.N.O charter on the privileges and rights of citizens appear in constitutional as fundamental human rights .
6. Public opinion; sometimes laws can originate from the opinion of majority of the citizens of a state.

Functions/importance of constitution

1. It symbolizes the sovereignty of a nation
2. The constitution protects the rights and liberties of citizens of a state
3. The constitution states the means whereby change of government shall be achieved effected
4. It enjoins accountability from holders of political power.in a democratic state, accountability is owed to the people –the electorates.
5. It ensures procedural stability procedure. Procedural stability provides citizens with adequate foreknowledge of the consequences of their actions

Types of constitution

**1; Written constitution**

A written constitution is one in which the fundamental principles concerning the organization of government ,the powers of its various agencies and the rights of the subjects ,are written down in one document .E.g. of countries with written constitutions are Nigeria, U.S.A, Ghana ,etc.

Functions of written constitution

1. There is one document ,which can be pointed out as the constitution of the land
2. written constitutions are very often rigid constitutions
3. The parliament is subordinate to the judiciary because the judiciary has the power of final interpretation to the laws made by the parliament.
4. The court can declare parliamentary acts “ultra vices ”
5. Amendment procedure for written constitution requires special and rigorous procedure.

Advantages of written constitution

1. It is more easily accessible to citizens. A written constitution is easy to refer to when necessary
2. It is most consistent
3. A written constitution helps to ensure political stability owing to the general awareness of its provisions by the citizens
4. The knowledge that the constitution is within the reach of the ordinary citizens helps to reduce any authoritarian tendencies of state leaders.
5. Citizens are better aware of their fundamental rights when the constitution is written.
6. It is simpler to understand and usually ,it involves greater precession

Disadvantages of written constitution

* It is subject to frequent litigations ,as a result of which much valuable time and energy may be lost to governance
* It is usually too rigid
* The rigid nature of written constitution makes it not readily adaptable to changing circumstances
* Written constitution do not often cover all subjects that may be required of the constitution

**2; Unwritten constitution**

This is a constitution in which the fundamental laws, conventions, principles, customs, norms, rules and regulations that govern a country are not written down in any single document.

**Features of unwritten constitution**

* There is no single document that could be referred to as the constitution but series of document detailing out the rules of the land
* In countries with unwritten constitution ,the judiciary is subordinate to the legislative
* Unwritten constitutions are usually flexible thus, not requiring any special procedure for amendment.
* The flexible natures of unwritten constitutions make it possible for easy adaptability to changing circumstances
* The courts cannot declare parliamentary acts “ultra vires” or null and void.

Advantages of unwritten constitutions

1. It is flexible and as a result easy to amend.
2. Easy and quick decision making in time of urgency.
3. It grows with the people.
4. It does not give rise to much litigation.
5. Difficult to ascertain the unconstitutionality of an act.

Disadvantages of unwritten constitution

1. It is unclear and ambiguous
2. As it is very easy to bring about changes in a political system with an unwritten constitution ,many undesirable changes take place resulting in a lot of instability
3. It does not clearly express fundamental rights of individual
4. An unwritten constitution is not good for a federal system, as it does not provide for proper distribution of powers between the center and federal units-states or provinces. Because of this ,many disputes occur between the central government and state or provincial governments

Richard constitution

The Richard constitution of 1946.Sir Arthur Richard introduced the Richard constitution of 1948.The main essence of Richard’s constitution was to promote unity in Nigeria and to ensure greater participation of Nigerians in the discussion of their own affairs .The constitution came into operation on 1 January 1947

**Features of the Richard constitution**

* The Richards constitution of 1946 brought regionalism to Nigeria eastern, western and northern regions.
* Apart from the governor, there were forty –four members .The 28 unofficial members formed the majority in the legislative council.
* Only four of the unofficial members were directly elected ,three from Lagos and one from Calabar
* Bi-cameral legislature; the constitution granted the northern region a bi-cameral legislature –regional assembly and the regional house of chiefs.
* The chief commander was the president of the house of chiefs, while the senior resident was the president of the house of assembly in the northern region; in the eastern and western regions, the chief commissioner was the president of the house of assembly.

**Merits of Richard constitution**

* it was an improvement of Clifford constitution of 1922
* Greater consideration was given to Nigerians opinion in the making of laws than under the 1922 constitution
* It gave the division of the country into East, north and west the force of law
* The federal idea was the most popular feature.

**Demerits of Richard constitution**

* The constitution failed by not giving Nigerians responsibility in the actual administration of their country
* The governor still retained his veto powers thereby making a mockery of the legislative council
* The elective principle was still as restrictive as under the 1922 constitution
* The right to vote was limited to people with high income or property

**Clifford constitution**

The Clifford constitution of 1922 established the elective principle for the first time in Nigeria. However, the elective principle was limited to male adults that have resided in Nigeria for over 12 months and have a gross annual income of 100 pounds

**Merits of Clifford constitution**

* Elective principle; the Clifford constitution brought the elective principle into Nigeria which paved way for elective representation of Nigerians into the legislative council.
* Political activities for Nigerians; the Clifford constitution permitted the formation of political parties in Nigeria so as to ensure greater participation of Nigerians in their government.
* New legislative council; The constitution created a new legislative council which consists of 46 members of which 27 were official and 19 were unofficial
* Nationalism ;the constitution geared up nationalism among Nigerians
* Establishment of newspapers; newspapers were established to promote more political activities in Nigeria.

**Demerits of Clifford constitution**

* Sectionalism; The Clifford constitution of 1922 brought sectionalism into Nigeria as the constitution was meant for the southern protectorate alone. The legislative council was also created for the south excluding the north.
* The legislative council was dominated by Europeans.
* Partial representation; The elective principle introduced by the Clifford constitution of 1922 works only for the legislative council
* Imposition ;The people claimed that the constitution was imposed on them
* The governor; General had veto powers on issues discussed in the legislative and executive council.

The loopholes of Nigeria constitution and how it has affected democracy.

Democracy being the government of the people, by the people and for the people has gone from doing Nigeria good, set the country back decades and provided a perfect alibi for the political class to bankrupt and bury the country once and for all .the democracy practiced by Abuja is fractured beyond recognition; it is not what Nigerians signed up for in 1999.

* The material promise of democracy, that is, the supposed correlation between democracy and improved standards of living, has yet to materialize for Nigerians in almost eleven unbroken years of democracy.
* Even advertised abstract benefits like press freedom, human rights ,the right to free political choice ,and the right to make deliberative input in governance have all been denied Nigerians under this democracy .while we saw flickers of these benefits in the wake of military disengagement in 1999,today’s democratic environment resembles the regimented ,freedom less days of military rule.
* Democracy has provided the perfect cover for corruption ,massive corruption .democracy has to forgive redundancy –democratized corruption .under military corruption was a quasi-monopoly; it was tightly controlled a small cohort .under our democracy ;the need to cultivate political support and immunity means that the loot has to circulate .democracy has also has also made corruption legitimate. In the days of the military, the zones of legal and illegal monetary appropriation were clearly demarcated, so we could tell easily when an act of corrupt self-enrichment has occurred.
* The bill for this destructive democracy is now being paid in the life and limbs of Nigerians.
* This democracy has intensified our ethno-regional bickering while bequeathing an unfolding legacy of costly national political gridlock
* Elected officials often do not play by the rules that brought them to power ;they seek instead to subvert laws and constitutions to secure longer tenures .the irritant for many Nigerians is that democracy has been reduced in practice to and accepted as being constituted by only one of its main elements .
* In this democracy every governments action is conceived through the lens of politics ,not of patriotism .instead of asking if a policy or initiative is good for the Nigerian people elected officials ask if it would look good politically

Democratic disappointment

With such a low dividend on democracy, and with democracy being so costly and toxic to the body politic, it is no surprise that many Nigerians have begun to question their loyalty to the received wisdom that democracy is superior to its alternatives. For many Nigerians and Africans democracy has failed.it has failed to live up to its published benefits tangible and intangible .so glaring is this failure and so painful are the betrayals of Africa’s democrats that ten thousand Nigerians recently poured into the streets of Niamey to rally in support of the new military regime today.

**Anti- democracy**

Anti –democratic is a person, place or the thing unfriendly or against the ideas and actions of democracy such as the power of the people to elect their leaders through majority rules and free elections.

Arguments against democracy are;

* Governments of the innocent and in compete; it is said that a democratic governments is a government of the incompetent and ignorant. The common man is neither political intelligent nor sufficiently educated.
* Instability; in a democracy leaders keep changing which leads to instability.
* More importance to quantity; democracy give more importance to quantity rather than quality. All people are incapable of taking part in governments of the country .on the polling day a wise man and illiterate are on the same level.
* Governments of the rich; Democracy is a government of the common but actually it is a government of the rich, the candidate spend lakhs of rupees for winning election. The poor man cannot afford to spend so much on elections and hence his right to contest elections become meaningless
* Corruption; Democracy is based on electoral competition this leads to corruption.

In conclusion the democracy needs the constitution and the constitution needs the democracy, they both work together for effective governance