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POL 104: CONSTITUTIONAL DEVELOPMENT IN NIGERIA

ASSIGNMENT

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

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Nigeria has had various constitutions over the years, even before she gained her independence. The constitutions have been fashioned by different types of leaders; colonial leaders, military leaders and democratic leaders as well. However, these constitutions have failed to reach the requirements of an average constitution particularly that used in a democratic state. These faults can be attributed to those who formulated the constitutions. The Nigerian constitutions were written in two broad eras; the colonial era and the military era. The features of these eras largely influenced the stipulations of the constitutions written in those eras; causing major loopholes in the constitutions which are now harmful to the practice of democracy in Nigeria. Before I move into discussing these loopholes, how they came about and how they are hindering the practice of democracy, I will look into the meaning of the key terms; constitution and democracy.

A constitution is simply a collection of basic principles and laws of a nation or state that guides the conduct of the people, determines the institutions and apparatus of the government, defines the scope of governmental power, and guarantees certain rights to the citizens of the state (human right). Democracy is a system of government whereby power is vested in the people and exercised by them directly or indirectly. Democracy has certain pillars. A state cannot be considered democratic if such pillars are absent. One of the pillars is the rule of law; this is where constitution comes into play. Rule of law is the supremacy of the law over the ruler and the ruled in the political system. Therefore, a body of law should exist in the country, such law is the constitution. The constitution is above all individuals in a state, and since it falls under a pillar of democracy, it is necessary in a democratic setting. Constitution and democracy have a strong relationship. A constitution is a system of agreed laws that democracy works within. Without a constitution, government power cannot be limited, resulting to arbitrary rule and dictatorship (constitutionalism will not be observed). Also the constitution helps to protect the people’s freedom and places government power in the hands of the citizens.

The Nigerian Constitution is the supreme law of the state, like any other constitution of a state. Nigerian constitution is written, codified, rigid, federal, and presidential. It is called the ***‘The Constitution of the*** ***Federal Republic of Nigeria’***. The present Nigerian constitution was enacted on the 29th of May 1999, which inaugurated the Nigerian fourth republic. The series of constitutions that Nigeria has had have been classified into two main periods based on the era it was written in accordance to Nigerian history and the type of ruler who spearheaded the formation of the constitution. The periods are; the colonial period and the military period.

Although, Nigeria has had various constitutions which contained bulky provisions, none of her constitutions can be regarded as a standard constitution. This is mainly as a result of the era in which the constitutions were formed. This is why her constitutions over the years have had and still have loopholes which hinder democratic government in the country that is meant to be democratic. The colonial era and the military era are anti-democratic in nature. This is why all constitutions of the country did not reflect the people’s interest because they were either formed by foreigners, political elites or military juntas who did not consult the people before the constitutions were enacted, and simply imposed the constitutions on them. They formed the constitutions to suit their private interests.

The constitutions in the colonial era comprises of those written by a colonial constitutional-making authority, during the colonial era. These include the 1914 amalgamation constitution, the Clifford’s constitution of 1922, the Richard’s constitution of 1946, the Macpherson’s constitution of 1951, and the Lyttleton’s constitution of 1954. The nature of colonialism was used to form such constitutions which can be seen in their provisions. Colonial rule in Nigeria, though indirect, was anti-democratic in the sense that in practice power was vested in the colonial government and the people had little say in the political affairs of the country. These anti-democratic tendencies were evident in the colonial constitutions. The colonial government was only there to achieve their economic objective, which was their main purpose of having the colonies. The colonial government controlled participation by Nigerian citizens by limiting their representation in the legislative and executive councils; to avoid opposition from the people. This limitation is also seen in the elective principle which disenfranchised a large number of Nigerians as the qualifications were too high. The governor-general was vested with veto power, making him above the constitution. This made the councils serve as advisory and deliberative bodies rather than having proper legislative and executive functions. Lastly, the citizens were not granted full autonomy to control their own affairs as the colonial government tried to control their participation in political affairs.

The constitutions in the military era comprises of those that were written by a military constitutional-making authority, during the military era. One thing to note is that the constitutions written during this period were not written for the military era (as the military ruled by decree). Rather, they were formed in response to the transition to civilian rule programme, as part of the necessities of a democratic state is a constitution. However, each civilian era was interrupted by a military coup until 1999 when such practice came to an end. The constitutions formed during this era include; the Independence constitution of 1960, the 1979 constitution, the 1993 constitution and the 1999 constitution. During this era, colonial legacy began to unfold beginning with the way the military ruled the state and the constitutions they formed. The military governments inherited the ethnic politics, political corruption and monopoly of power that had existed during the colonial era and was practiced by the anti-colonial leaders.

Just like the colonial leaders, the military was bent on articulating their centrist constitutional and military visions through the following means;

* Through civilian technocrats like groups of academics and lawyers that composed the Constitution Drafting Committee. They used the civilian technocrats as a means of elaborating their military visions in the constitution.
* Controlling the debates and ratifications that occurred in the constituent’s assemblies; which favoured the military’s request.
* Preserving their constitutional sovereignty i.e. they were solely tasked why approving, amending, or rejecting any decision made by the constitutional drafting and debating bodies.
* The use of a rigid constitutional amendment formula; to prevent opposition and eliminate the ease to amend constitutions.

The colonial and military eras have done great damage to Nigerian politics, especially in the hindrance of democracy. Nigeria in those eras was meant to be a democratic state. In the colonial era, the colonialist used the indirect policy, which gave the impression of a semi-democratic state. As for the military era, Nigeria was already an independent nation and so had established a democratic government. However, the ruling institutions used their influence on the constitution as a tool to hinder democracy. These influences on the constitutions are;

For the colonial period;

* Political authority was not vested in the people but rather, power was monopolised by the ruling institution and vested it upon the governor general.
* The colonial rulers were bent on securing their economic objectives rather than securing the interest of the people.
* Popular participation was absent as the colonial government controlled the participation of these people in political activities.
* The rule of law was not obeyed. Although a constitution was formed, the governor general’s veto power made him above the constitution.
* The governor general was not accountable to the people as expected in a democratic government, but was accountable to the Sectary of states, who was a member of the parliament in London.

For the military period;

* They drafted the constitution in such a way that power stayed within them (monopoly of power).
* They were bent on securing their objectives rather than that of people.
* They frowned at any opposition from the citizens of the country.
* Qualifications requirement for public position were not tough as they ought to be so that they can come back as civilians an enjoy power
* They drafted the constitution in such a way that it was in the government’s favour.
* They engaged in political corruption inherited from colonial rule, which has now become the practice of present-day civilians.

Some scholars have identified a third period which is called the democratic period. This period earned is called democratic as its constitution was written by a democratic leader. There is only one constitution in this category, which is the 1963 Republican constitution.

Looking at the loopholes in the Nigerian constitutions over the years, one can generally conclude that the shortcomings came from the constitution-making authority. Some of these shortcomings have already been pointed out while discussing the constitution-making authorities’ impact on the constitutions they drafted. These loopholes had adverse effects on the citizens and how they were governed and also help the leaders to evade any challenge that they may encounter later in the future. To better understand these loopholes, a brief discussion on the shortcomings of the past constitutions in Nigeria is very necessary. Remember that each constitution aimed at correcting the shortcomings of the previous constitutions.

Let’s begin with the 1914 Amalgamation constitution. The constitution was mainly drafted to amalgamate the Northern and Southern protectorates. Actions that have to do with creating consciousness of one’s group or ethnic group are said to lead to ethnic politics; though they were not done intentionally by the colonialists. Therefore, this amalgamation aided ethnic politics. The Clifford’s constitution comes after containing several loopholes. The two protectorates were administered differently which led to the differences in the two protectorates (based on development) resulting to distrust and disunity among them. Some scholars have traced the root of the present dichotomy in Nigeria among the ethnic groups from here. The elective principle that was first adopted in this constitution largely disenfranchisement a lot of Nigerians preventing their elections from having a large impact on the government; lacking responsibility in the administration of the affairs of their country. The governor-general had veto power and was not bound to the advices of the administrative bodies; making the bodies to not have proper legislative and executive functions. Nigerians opinions on the constitutions were not sought for before they were enacted.

The Richard’s constitution was drafted to replace the previous one. Here, they tried to make an improvement on the elective principle but a large number of people could still not vote as the qualificatins were still high. Although there was an adjustment in the number of Nigerian representatives in the administrative councils, Nigerians still lacked responsibility in the administration of their country. The governor-general still had veto power; making the administrative bodies remain advisory and deliberative bodies. Nigerians were also not consulted before the enacting the constitution. The Macpherson’s constitution, unlike others, strongly tried to correct the shortcomings of the previous constitutions. However, it still gave way to present day ethnic politics. Since the regions were being given more responsibilities in the administration of the country, leaders began to conduct politics along ethnic lines. This led to lack of team work among government officials. The Lyttleton’s constitution has similar shortcoming as the Macpherson’s constitution.

The Independence constitution of 1960 was drafted to mark an independent Nigeria. However we were not fully independent as we still had ties with the British colonialists. The Queen was the ceremonial head of State, Nigeria’s highest court of appeal was the Privy council and not the Supreme council. This shows that the colonialists still had control on the Nigerian government and Nigerians did not have full responsibility in their administration. When Nigeria became a republic in1963, she cut all ties with the British colonialists and formed the Republican constitution. The constitution made the election of the president be done by the house of assembly, who constituted minority of the electorates. The prime minister was accountable to the parliament rather than the people. Carpet-crossing was permitted; were politicians were allowed to switch political parties to gain personal rewards. Also, only the executive and legislative bodies we used effectively.

The military intervened in politics so as “correct the errors of the civilians”. The 1979 constitution was then drafted in preparation for civilian rule. The constitution introduced several changes in the administration of the country; making the new system quite complicated for those who were fully involved in it. The new system introduced checks and balances; however, the president still had room for dictatorial actions. The constitution failed to state the aspirations and expectations of a leader. Also, the constitution encouraged a winner-take-all situation making little room for consensus and resulting to rivals and instability. The 1993 constitution was never fully implemented.

The present constitution, the 1999 constitution, was hastily drafted and contains many loopholes. The constitution was not drafted by a constitutional conference but was hastily drafted by a military government. This means that it is not of the people as their representatives did not participate in the drafting of the constitution. The president still has a lot of room for dictatorial action and disregards the powers of the other units. The exclusive list which is solely the job of the federal government is too bogus, making the federal government to be too dominant; leaving the other units to be dependent on the federal government. The recognition of the sharia law depicts the country as a secular one; it is like having two contradicting constitutions.

Now that the loopholes have been identified how do they affect democracy in Nigeria? One can notice that the constitutions that the country has had are not of the people because the people were not consulted before the constitutions were enacted. This is not right because in a democratic state the people hold political authority and should be included in all political affairs of the country. The leaders in power in the different eras used the constitution as a tool to pursue their private interests rather than benefit the people and develop the country as it ought to be. Ethnic politics (tribalism and ethnicity) can be traced to the colonial era. With the use of the divide and rule policy and some other techniques, the people became too attached to their ethnic groups that politics was conducted along ethnic line. A good example are the political parties that were formed along ethnic lines. This makes people be more loyal to their ethnic groups and select leaders who they share ethnic ties with, irrespective of how capable they are; which is not a democratic practice.

Remember that the colonialists employed the indirect rule and were under a lot of pressure from the nationals who agitated for the need to be included in the administrative affairs of the country. As a result of this, the colonialists had no choice but to be democratic; but their democracy was not authentic. The fact that the elective principle still disenfranchised a lot of people made them not to have the right to vote; which should not be for a democratic state. The governor-general held veto power, which made the government a centralised one as other bodies did not have proper functions. Such should not be condoned in a democratic state as power is vested in the electorate and not in an individual. Also, the fact that colonialists did not cut off all ties with Nigeria showed that they still influenced some of the decisions that were made then. This is definitely not expected from a democratic state as Nigeria was still not fully independent.

Lastly, in the constitutions drafted by the military, the president had so much power which gave room for dictatorial rule. This is not meant to be for power is vested in the people and supposed to be shared equally among the units.

So far, we have been able to look at the framework of the Nigerian constitution and gone through its development. We identified the two periods, their impact on the constitutions, shortcomings of the constitutions and their effect on democracy in the country. The present constitution carries most of these problems which will continue to hinder how democracy is practiced in the country. If the constitution can be thoroughly amended a whole lot of problems will be corrected and the practice of democracy will not be hindered by anything. This will also foster nation-building and development of the country.

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