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- **QUESTION**

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

- **INTRODUCTION**

Nigeria, which prides itself as Africa's giant, is faced with myriads of challenges. These numerous challenges raise doubts about this unproven appellation. Our politics has become a platform for impunity, graft and fragrant disobedience to the laws of the land. These factors have, ultimately, reduced our respect among the comity of nations. Regardless of our practice of democracy, the constitution imposed to govern the nation takes a ghostly stand because recent political happenings in the country shows we are not governed by any law. There are various other factors exhibited today that retards the growth of democracy which could also be closely examined as the loopholes of the constitution which is also similar to the factors that have been listed earlier. These factors obviously does not characterize democracy, factors such as corruption, ethnic diversity and others are outcomes of the loopholes we have in the constitution. Undoubtedly, this anti-democratic tendencies has really hindered the flourish of the democratic governance. And now, I am going to look into these loopholes extensively. I would first of all define certain terms that could aid our understanding.

- **DEFINING KEY TERMS**

WHAT IS LOOPHOLE IN POLITICS?

Loophole in politics means an ambiguity or inadequacy in a system, such as a law or security, which can be used to circumvent or otherwise avoid the purpose, implied or explicitly stated, of the system.

WHAT IS A 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.

WHAT IS DEMOCRACY?

Democracy which derives from the Greek word “demo” meaning people and “kratos” meaning to rule, can be defined as the government in which supreme powers is vested in the people and it comes in various forms or systems.

- **A BRIEF HISTORY OF CONSTITUTION MAKING IN NIGERIA.**

Nigeria is a creation of the Constitution. Nigeria grew into an internationally recognized independent nation, in 1960, after a period of colonialism under the British government which spanned about a century beginning with the formal annexation of Lagos in 1861. Nigeria’s constitutional development history can be divided into two epochs or generations: the colonial or pre-independence epoch – which covers 6 constitutional instruments (1914, 1922, 1946, 1951, 1954 and 1960) and the post-independence constitutional epochs (encompassing 3 instruments – 1963, 1979 and 1999). While each successive pre-independence constitutional instrument was enacted through an order-in-council of the British monarch, their post-independence counterparts were enacted in two ways: an Act of parliament (1963 Constitution) and military decree (1979 and 1999). Well, these constitutions had loopholes that have affected the democratic form of government, even though I would categorize the constitutions under the military rule as undemocratic because it was a rule by decree.

- **LOOPHOLES IN THE NIGERIAN CONSTITUTION**

Unaware of the fact of how Nigeria got it’s Constitution is one of the biggest loopholes, because It was written by an 8 man committee during the military Government of Abdulsalam Abubakar to suit his exorbitant looting and signed into law by the then 1999 Democratically Elected President. Imagine a Constitution where the President, his Vice, the Governor and his deputy are immune from both civil and criminal prosecutions while in office?

First of all, at the start of the 1999 constitution with the preamble, the constitution had started exhibiting some loopholes. “A preamble is an introduction or a preparatory statement that captures or gives you an insight of what is obtainable in the main constitution”. The Preamble is “we the people of the Federal Republic of Nigeria, having firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign nation, under God, dedicated

to the promotion of inter-African unity, world peace, international cooperation and understanding and to provide for ourselves a constitution for the promotion of good government, and welfare of all persons in our country, on the principles of freedom, equality and justice, and for consolidating the unity of our people Do hereby make, Enact and give to ourselves the following constitution". This is definitely a loophole because there is no sense of unity in the country as a major result of ethnic diversity which dwells in favoritism. Secondly, good government is a big contradiction to the government we have today. On a very sad note, our government is characterized with corrupt minds and unprofessional individuals in the field of government. Thirdly, government does not really look into the rights of its citizens. The rights of the citizens that can be further studied in the chapter 4 of the 1999 constitution, is not fully enforced. Rights of individuals have been abused and also the government is not the only person at fault but the citizens are too due to their ignorance and inadequate political enlightenment. However, this was just at the beginning of the constitution that there are a lot of loopholes to be dug as I further look into the various sections of the constitution.

Secondly, a fundamental loophole is the fact that the constitution is written and rigid thereby making the amendment process cumbersome. That's why impeaching a president or a Governor is an almost impossible task. A Governor needs to be impeached by a 2/3 majority of the State Assembly after constituting a committee to investigate his offence. And for a President to be impeached, 2/3 majority of the 36 states of the federation is needed, 2/3 of the House of Representatives and 2/3 of the Senate. Making it a mountain to climb to impeach any of them. This impeachment procedure of the president is section 143, while the Governor's is in section 188.

Thirdly, the Constitution has failed to define the role of traditional rulers in modern day democracy and yet lots of millions are being spent on them to pay them salaries and maintain their too expensive life style. You can imagine having a budget that is being covered by the constitution, how comes it's the government that pays them and such expenses are mostly not covered by budgets! The idea of defining the role of traditional rulers was an intended debate proposal by late President Umaru Musa Yar'adua. He wanted to scrap them totally and the topic was "What are the roles of traditional rulers in modern day democracy" It was sent to the National Assembly but it didn't hold ground because he later died.

Fourth loophole, the functions of Local Government is not really spelt out, this makes them at the mercy of other Governments. And that is why State Governors are always fighting against the Local Government Autonomy. Autonomy makes the Local Government independent of state government. Unfortunately, to suit their interests and political agenda, federal and state governments maintained level of influence and control over local authorities. This is found in the 4th schedule of the Constitution. However, since the entrenchment of this system of administration in the constitution, there have been series of controversies over the real position of local government under the authorities of states and the government at the center over the establishments, control and supervisions of its activities as enshrined in the sections 7 (1) and 8 (6) of the 1999 constitution.

The fifth loophole is, the exclusive List is so Bogus, making the Federal Government to be too dominant and subjecting the state and Local Government to unnecessarily depend on the Center. Asides from that, in my opinion their salaries is overly too much and consumes a part if the economy that could be use for the benefit of the nation. Anyways this exclusive list is found in the 2nd schedule of the constitution.

Sixth loophole is the cultivated norm by senates, to serve their interest by moving from one political party to another. This in Nigerian politics is referred to as cross carpeting. Several members of the house of representative are executors of this prohibited action by the constitution. This is found in 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.

There are certain laws in the section of the constitution which are been denied by other sections in the same constitution, making this the seventh loophole. Just as I have mention earlier, section 68(g) prohibits cross carpeting but Section 40 of same Constitution states that “every person shall be entitled to assemble freely and associate with other persons and in particular he may form or belong to any political party, trade union or any association for the protection of

his interests". In relation with the case of Alhaji Aminu Tambuwal, who defected from the ruling Peoples Democratic Party (PDP) to the All Progressives Congress (APC). Few hours later, the IGP announced in a statement the withdrawal of the Speaker's security details citing provisions of Section 68 (1) (g) of the 1999 Constitution as amended. The statement reads: "In view of the recent defection by the Right Hon. Aminu Waziri Tanbuwal, CFR, the Speaker of the House of Representatives of the Federal Republic of Nigeria, from the Peoples Democratic Party to the All Progressives Congress and having regard to the clear provision of section 68(1) (g) of the 1999 Constitution of the Federal Republic of Nigeria as amended, the Nigeria Police Force, has redeployed its personnel attached to his office." Tambuwal may have taken the decision for his political survival, the aftermath of that action led to the withdrawal of his security aides by the Inspector General of Police, Sulaiman Abba. Without being sentimental to the issue at hand, the IGP ought to know that Section 40 of same constitution. Therefore, does it mean the speaker is not entitled to his rights anymore? With the provision of the constitution he has the right to move to any political party if his former party is in crisis.

Lastly, the case of Late Umaru Musa Yar' A Duah, the president of the 5th republic whose health illness portrayed another loophole of the constitution. 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.

. These loopholes are majorly carried out by political leaders but making an observation from an unbiased point of view, the government are not the only ones to be blamed, citizens also have a minor role in retarding the flourish of democracy in Nigeria, how? Well, Poverty also accounts for ignorance and lack of political education, abridgement of political rights and duties, and lack of an appropriate political culture. In Africa where political culture is not well developed, there is limited emphasis on political participation, voters education, respect of the rule of law, tolerance of opposition, and supremacy of the will of the people, as expressed in a free and fair electoral process. In Africa, the civic culture or political efficacy, which is most likely to ensure political stability is either low, or even absent. In a parochial political culture of Africa, citizens see themselves as distant from the government, and not a participant. This problem in turn accounts for lack of patriotism among the citizens because of the disconnect between power and responsibility.

- **HOW DID ALL THESE LOOPHOLES AFFECT DEMOCRACY OVER THE YEAR?**

A constitution is really essential in democracy. It ensures the government never controls the people by taking it supreme place over everyone in a country. But on a very sad note, our Nigerian constitution is a problem to democracy. Our constitution having a lot of loopholes, has hindered the flourish of democracy which has really affected it over the years. This has affected the practice of democracy in Nigeria.

Firstly, as a result of the loopholes in the constitution, 'democracy' has provided the perfect cover for corruption – massive corruption. 'Democracy' has – forgive the redundancy – democratized corruption. Under the military, corruption was a quasi-monopoly; it was tightly controlled by a small cohort. Under our 'democracy,' the need to cultivate political support and immunity means that the loot has to circulate. Democracy 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 had occurred. Not any more. Under our current 'democratic' practice, public officials steal legally. They only have to underwrite what they steal as a licit item in the budget bill. This can be done in a few choreographed, taxpayer-funded committee sittings and a hurried process of debate-less approval. Political office holders can even steal in anticipation, carefully documenting future thefts and including them as budgetary earmarks or exculpatory footnotes in legislations. And it's all legal – and perfectly within the procedural norms of our 'democracy.' Where the law did not exist to legitimize the theft, our legislators have enacted or been goaded by executive carrots and sticks into enacting one-off bills to authorize acts of pillage deemed in the pecuniary interest of legislators and their executive partners. Democracy has licensed and unleashed novel evils on our country.

Secondly, this 'democracy' has intensified our ethno-regional bickering while bequeathing an unfolding legacy of costly national political gridlocks. The quagmire occasioned by Yar'Adua's health crisis is a perfect illustration which is also a constitutional loophole. Try quantifying the financial and political cost of this long-running farce and you'll see how expensive 'democracy' really is. The constitution has also made room for a bogus exclusive list that accumulates lots of government fund and adds to expenses of democracy.

Thirdly, 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 due to the ineffectiveness of the constitution. 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.

In conclusion, , it is very important to note that there is no perfect Constitution anywhere in the world. Strength and weakness of a constitution lies on those who practice it, particularly the decision makers. So each constitution must always be amended to stand the taste of time and the changing world. The Nigerian Constitution has lots of shortcomings to the best of my knowledge, the lapses only surfaces when we experience a despicable situation in a sector in which the constitution fails or could not fully address. So, in order for democracy to be successful in Nigeria, the Nigerian constitution has to be properly amended.

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