**Political Science Term Paper**

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**INTERNATIONAL RELATIONS AND DIPLOMACY**

**{100 LEVEL}**

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**QUESTION**

**Constitution is important for the consolidation of democracy. However, the making of Nigeria’s constitutions has 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 Nigeria’s constitutions over the years that have affected democracy in Nigeria.**

**WHAT IS A CONSTITUTION?**

A constitution can be defined as an established body of laws and principles by which a country is governed. It can be viewed as the sum total of all political and institutional arrangements which are tools for the exercise of power in a state’s government. A constitution deals with issues such as how the laws are passed, who interprets the laws, when persons can be detained or coerced, who adjudicates disputes, how powers are to be exercised and by whom, what patterns of political opposition are permitted and so on. We can assert that every human organization has in place a set of rules which guide and direct it. This includes but is not limited to trade unions, chambers of commerce, international organizations and of course countries or nations of the world. Groups or Individuals that join these organisations are expected to abide by the stated rules or face sanctions or punishment. Historically, constitutions are traceable to the 18th century. The US has the first written constitution in 1787 and France followed suit in 1789.

The fundamental rules which make up a constitution can be derived from written documents, organics laws adopted through ordinary legislative procedures, judicial decisions, as well as constitutional customs.

A constitution is important in order to ensure that the state has sufficient power through its empowerment by the constitution in order to ensure that its citizens and their rights are secure and safe. It is also important in order to guarantee government stability as an unstable government is an ineffective one. A constitution helps to protect freedom and rights the people and it helps to legitimize any government in power, since their power is gotten from the constitution and they obtained power through the means prescribed by the constitution.

**WHAT IS DEMOCRACY?**

Democracy "is a 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." In the phrase of Abraham Lincoln, democracy is a government "of the people, by the people, and for the people." Democracy is the institutionalization of freedom. For this reason, it is possible to identify the time-tested fundamentals of constitutional government, human rights, and equality before the law that any society must possess to be properly called democratic. Generally, there are two types of democracy: direct and representative. In a direct democracy, the people directly deliberate and decide on legislature. In a representative democracy, the people elect representatives to deliberate and decide on legislature, such as in parliamentary or presidential democracy. The most common decision making approach of democracies has been the majority rule. Others are supermajority and consensus.

Democracy is important in order to act as a check on the power of those who hold government power as well as to provide a mechanism for replacing people in positions of authority in a peaceful and orderly manner.

**CONSTITUTION AND DEMOCRACY**

One of the pillars upon which democracy stands is the constitution. Without the presence of a constitution to prescribe how things should be done, it would be easy for anarchy to ensue. Human rights would not be protected and there would be no checks and balances on the arms of government. This is why it is commonly seen that when the military takes over power in a government, it usually suspends the constitution so that their actions are free of influence from the constitution’s prescriptions.

Constitutionalism is the practice of limited government ensured by the existence of a constitution. For constitutionalism to be obtained where must be a situation in which there is a body of fundamental laws and government institutions and political processes are properly constrained by such constitutional provisions. Constitutionalism aims at ensuring the protection of liberty through the establishment of checks on government as well as championing the need for the rule of law in opposition to arbitrary rule by public officials.

**CONSTITUTIONAL DEVELOPMENT IN NIGERIA**

Nigeria’s constitutions have been made under two major periods, there is the colonial Era, lasting from 1914 to 1960, and the military era, beginning in 1966 and finally ending in 1999. These periods have bestowed on Nigeria’s constitutions the characters that defined them.Constitutional development is a dynamic process and as such susceptible to a number of short comings. For Nigeria, the case is the same.

In the pre independence period, Nigeria had many constitutions introduced by the colonial government. First was the Clifford Constitution of 1922, then the Richards Constitution which came into force in 1946 and was suspended in 1950 while the McPherson and Lyttleton Constitutions were promulgated between 1951 and 1954 respectively. What is common in all these colonial constitutions is the absence of a participatory approach to constitution-making. The input of the people of Nigeria was largely left out, so how could democracy even exist? It is also important to note that all the pre-independence Constitutions were named after the incumbent British governor-generals of their era. This contributed to criticisms of the Constitutions’ alienation of the people whom they were meant to govern.

 In 1960, Nigeria adopted the Independence Constitution this was followed by some other post –independence constitutions such as the 1963 republican constitution, the1979 constitution and the 1999 constitution respectively. Much of the post-Independence Nigeria was characterized by military interregnum, giving little or no room for constitutional practice. Since the fall of the first republic as a result of the first military coup in 1966, Nigeria experienced series of coups and counter coups giving rise to a civil war between 1968 to 1970. In 1979 Nigerian adopted a presidential constitution following the Second republic which also came to an end with another coup in 1983. The Third Republic was aborted as a result of the annulment of the June 12th Presidential election which created tension in the polity. In 1999, Nigeria returned to civilian rule, with democracy as a system of government. The 1999 constitution was adopted and has been used ever since as the supreme law of the state.

**LOOPHOLES IN THE NIGERIAN CONSTITUTION AND HOW THEY ADVERESLY AFFECT DEMOCRACY**

A loophole is 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. A number of case scenarios and constitutional matters suggest that the Nigerian constitutions, particularly the ones enacted in 1999 has a number of gaps which have been at issue in effective governance and politics in Nigeria. These constitutional loopholes which have not been given adequate scholarly attention remain the source of several controversies that continue to threaten political stability and democracy transformation in Nigeria. These remain recurring issues which the Nigerian constitution is still grappling with. These gaps point to the areas of weaknesses or flaws that contradict the desire and spirit of the constitution. These gaps reflect poor governance and political participation which contradicts the ideals of democracy.

Nigeria is a federal system which operates a written constitution which constitutes the supreme law of the land. The country is presently governed by the 1999 constitution, which was adopted on 29 May, 1999. It has 320 sections divided into 8 chapters and 15 parts with 7 schedules. The 1999 Constitution clearly departs from the constitution-making trends observed in previous constitutions in Nigeria. It was also not the product of a people’s assembly. Based instead on the recommendations of a committee, it is an adoption of an amended constitution from a previous legal order – one that the military had put to sleep. The sixth Preamble of the 1999 Constitution states in this regard:

*“And whereas it is necessary in accordance with the programmer on transition to civil rule for the Constitution of the Federal Republic of Nigeria 1979, after necessary amendments and approval by the Provisional Ruling Council, to be promulgated into a new constitution for the Federal Republic of Nigeria in order to give the same force of law with effect from 29 May 1999.”*

It is safe, therefore, to conclude that the document known as the 1999 Constitution, is an amendment of the 1979 Constitution. However, there are some differences in the provisions of the two Constitutions. In the 1999 constitution, there are prescribed environmental objectives and duties of citizens to the government. The 1999 Constitution also provided for the declaration of assets by public officers. This was part of its conscious effort to promote the due process of law.

Some loopholes include:

**Gender Disparity**

In the 1999 constitution, gender disparity is discernible. For instance, in sections 26(2)(a) and 29(4)(b) the word” women” was not often used unlike “gender” which was largely used in the entire section pointing to the marginalization of the word “women” as well as gender equality.

**Citizenship/Indigeneship Crisis**

 There is one phrase whose exact denotation is problematic. It is “indigenous to” which was first 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 gap on aspects of citizenship involving male foreigners married to Nigerian women and wishing to gain Nigerian citizenship. In Section 26, a Nigerian citizen is defined and process of citizenship by naturalization and registration is stated, however the silence about the process of citizenship for non - Nigerian men perhaps results in challenges of marriage instability.

**Sexual Discrimination**

The laws concerning sexual discrimination contained in section 42(1-3), is another concept in the constitution that has been poorly implemented in practical terms. The right to dignity of womanhood in section 34 has also been poorly internalized and implemented in the Nigerian constitution as women and their rights are still being marginalized in the present day.

**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.

**The Case of Yar’A duah’s Ill Health**

Umaru Musa Yar’A duah was the 13th president of Nigeria. He ruled from 29th May 2007 to 5th May 2010. He 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 gap in the Nigerian constitution and threatened the nation’s political authority. While the provisions of the 1999 constitution are 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

“*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 Should the Vice President go ahead and assume office as President? Should he continue to wait for the return of the President, or perhaps his recovery? If the latter option is considered, what would be the implication of this for the State? This issue seriously hindered democracy, as the leader was unable to be accountable to his followers and it was almost impossible for them to be catered to in his absence.

**The Case of Waziri Tambuwal’s Defection**

A major gap in the Nigerian constitution was revealed in the case of former Speaker of the House of Representatives Aminu Waziri Tambuwal who around October 2014, had defected from the People’s Democratic Party (PDP)to the opposition All Progressives Congress (APC). This action spawn a round of controversy in the polity in view of its implication. Is the trend healthy for the political development of Nigeria? Does it portend stability for a political party? Does the law regulating political parties’ activities allow such defection? What actually is the position of the law on the subject matter? Badejo and Obah –Akpowoghagha (2015) observed that section 68(1)(g) of the 1999 constitution is clear on the fate of a member of the Senate or House of Representatives who decamps from one party to another. Such member loses his seat by implication. It reads 68(1):

*“A member of the senate or of the House of Representative shall vacate his seat in the house of which he is a member if (g)being a person whose election to the house was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House member was elected: Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.”*

 However, the claims by politicians is the right to freedom of association Eme & Ogbochie (2014) argued that there were provisions in the in the 2010 Electoral Act to check persistent cross carpeting from one political party to another, providing conditions for defection of elected officer however constitutional loopholes are exploited by politicians for their own selfish ends. 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. According to Flava (2014), the President of the Nigeria Bar Association, Alegeh (SAN), attributed the leadership crisis in the Federal House of Representatives over the defection of the Speaker, Aminu Tambuwal to constitutional loopholes and ineffective administration of justice leading to the withdrawal of Tambuwal’s security aides by the Nigerian police.

**CONCLUSION**

Examining the history of Nigeria’s constitutional development, there are several things to be noted. The first is that military interventions have blighted Nigeria’s capacity to respond adequately to the challenges of federalism on which its constitutionalism is founded. Being based on coercion, military rule is invariably and necessarily centralised. This centralisation, which contradicts true federalism, did not take appropriate cognizance of the heterogeneous nature of the country. More ominously, it curtailed the judiciary’s ability to develop the rule of law in Nigeria. As acknowledged by the CADC, military dictatorships resulted in the ‘curtailment of opportunities for political institutionalization and democratic consolidation’. Nigerian presidential elections have been dominated by retired military officers since 1999, a fact identified as one of the challenges facing constitutionalism in Nigeria.

Second, it is fair to accept that although the 1999 Constitution is the operative basis of Nigerian law, its validity is questionable because it lacks the will or consent of the Nigerian people. The preamble of the 1999 Constitution, which proclaims ‘we the people’ as the source of the Constitution’s validity, is a lie against the Nigerian people. As if to underline this, the Fourth Republic, under former president Olusegun Obasanjo, had barely been sworn into office when it began moves to amend the 1999 Constitution in 2000. This dissatisfaction with the Constitution did not, however, diminish the efforts to review it. This is because the general election that ushered in the reviewers of the Constitution was itself questionable. Accordingly, considerable efforts have been made by civil society to inject into the constitutional review process the participatory principles of dialogue, debate, diversity, consultation, transparency and accountability. These efforts are championed by the Citizens Forum for Constitutional Reform, a conglomerate of over 100 non-governmental and community-based organisations.

The issues emanating from the constitution reveal that actual practice of the constitution is far from what the document makes provision for. It is not expected that a body of laws is quite capable of addressing all maters in a political society (Ezra 1964; Dudley 1978). While noting that constitutions must be forward-looking to capture future events, they will always require some fine tuning from time to time as events unfold. It is imperative to state that the loopholes created in the constitution have derailed democracy and such gaps have been a lee way for politicians to commit impunity which invariably distorts peace and sustainable economic and political development of Nigeria. These political events will have a long term effect on the coming generations and influence their understanding and adherence to constitutional dictates. The Nigerian constitution contains several provisions that make it a stumbling block for consolidating democracy. In light of this challenge, it is therefore recommended that there is need to review the 1999 constitution. It must reflect present realities.

Accordingly, constitutionalism cannot survive without compliance with the rule of law. In other words, it is not enough to have a perfect constitution. The vital issue is the extent to which the constitution is respected and implemented. This is where the question of good governance gains prominence. A leading scholar has observed that ‘the trouble with Nigeria is simply and squarely a failure of leadership’. As evident in studies on leadership in Nigeria, it is on this failure from which pervasive corruption, political wrangling, civil strife, and economic mismanagement, so prevalent in Nigeria today, flow. The 1999 Constitution, even before it was amended, contained numerous provisions capable of entrenching genuine constitutionalism in Nigeria. The key challenge to the success of these provisions is their effective implementation.

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