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**QUESTION**

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

**INTRODUCTION**

Over the past years, Nigeria has practiced several constitutions even before her independence. The constitutions were led by both colonial leaders, military leaders and democratic leaders as well. Nigeria’s constitution is the supreme law of the land.

The current constitution practiced in Nigeria was enacted in 29 May 1999, inaugurating the Nigerian Fourth Republic. The making of the constitution is aimed at ensuring the establishment of a new order.

Constitutions have come to be in some cases, after a war, revolution, national independence, creation of a new political order for a colonized state, etc. Before I go further in this work, there is need to define the key terms; constitution and democracy.

**WHAT IS A CONSTITUTION** **?**

Constitution can be defined as the body of doctrines and practices that form the fundamental organizing principle of a political state. The importance of a constitution in any given society cannot be overemphasized. In Nigeria’s situation, Constitution is the supreme law of the land which all acts of individuals and political institutions must not contravene.

The constitution is the fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers and guarantees individual civil right and civil liberties. Virtually, every state claims to have a constitution, but not every government conducts itself in a consistently constitutional manner.

A constitution consists of the basis norms that the people setting up the polity have accented to with the aim of establishing the kind of government they want and setting up the rules that should guide it. The constitution is expected to bring stability, predictability, and order to the actions of government.

There are different types of constitution which include; written constitution, unwritten constitution, rigid constitution, flexible constitution, monarchical, republican, federal, unitary, presidential, parliamentary, codified and uncodified constitution. Nigeria being a federal state, has a written constitution.

**WHAT IS DEMOCRACY ?**

The word Democracy was gotten from a Greek word “ Demokratia ” which means rule by the people. Democracy is a system of government by the whole population or all the eligible members of a state, typically through elected representatives. It is a form of government in which the common people hold political power and can rule either directly or through elected representatives.

Democracy is a form of government in which the people exercise the authority of government. Democracy is a system of processing conflicts in which outcomes depend on what participants do, but no single force controls what occurs and its outcome. The uncertainty of outcomes is inherent in democracy. Democracy makes all forces struggle repeatedly to realize their interests and devolves power from groups of people to sets of rules. Democracy consist of four key elements: a political system for choosing and replacing the government through free and fair elections; the active participation of the people, as citizens, in politics and civic life; protection of the human rights of all citizens; a rule of law, in which the laws and procedures apply equally to all citizens.

We have two types of democracy which is the direct democracy and the indirect democracy.

Democracy cannot be effective without a constitution. The constitution helps to protect the rights of the citizens. It also helps to protect socialism in the country and to serve equality among the citizens of the country. They both work together. A constitution is to be governed by the government and must be compulsory in conduct with effective democracy. The constitution is the master plan to organize the government strategies. No constitution can cause lack of organized conduct, no justice in judicial and other activity. To back this up that democracy cannot be effective without a constitution, a theorist, argued that most, if not all, the major provisions of the constitution, are there to promote effective democratic representation, and should be interpreted with that purpose in mind.

**THE NIGERIAN CONSTITUTION**

Nigeria is unarguably one of the most influential countries in Africa. The concept of “One Nigeria” dates back to 1914 when Lord Fredrick Lugard succeeded in amalgamating the Northern and southern Protectorates.

Before the amalgamation by Lord Fredrick Lugard, the British colonialism of Nigeria began in the year 1861, when Lagos was ceded to Britain. This occurrence was described as the annexation of Lagos. With this annexation of Lagos, British colonialist began spreading their dominance and finally in 1914, Lord Lugard became Nigeria’s first British Governor – General and thereupon he joined Southern Nigeria with Northern Nigeria.

The Federal Republic of Nigeria which gained independence in 1960, after a long period of colonialism by the British government has a remarkable constitutional development.

**PERIODS IN THE MAKING OF NIGERIA’S CONSTITUTION**

The constitutional development in Nigeria from 1914 till date can be divided into two broad periods; The Colonial Era and The Military Era, it can also be called The Pre – independence Era and The Post – independence era. The Pre – independence era is made of six constitutional instruments; they include: 1914 constitution, 1922 constitution, 1946 constitution, 1951 constitution, 1954 constitution and 1960 constitution. The Post – independence era on its part, encompasses the following constitution: the 1963 constitution, the 1979 constitution and the 1999 constitution.

During the colonial era (1914 – 1960), Nigeria served as a crown colony under the British government. In the course of this, Nigeria had its first five constitutions by order in council.

Each of these periods have bestowed on Nigeria’s constitutions, the various characters that accompany the era.

The constitution under the colonial era have been such that they are made for subjects, and not citizens; they are characterized by a controlled participation of Nigerian’s in politics. Also, constitutions under the military era have been characterized by retaining the monopoly of force over the people; and the setting of certain institutions as if they are above the law as well as instrument of oppression.

The formation of what Nigeria is today can be traced to colonialism. There would have been no Nigeria, if colonialist had not merged together erstwhile independent communities and named it Nigeria. It was the colonialist that gave birth to Nigeria, formed its institutions, set its bureaucracies in place, decided the rule in which Nigeria is to be administered and determined the mode of governance with which the country is to be governed.

The kind of politics the colonialist introduced to Africa was different from the kind they practiced in their home countries. The politics in which they practice back home was responsive to the needs of their people and geared towards improving the life of their citizens. But the kind of politics they introduced to Africa was exploitative and directed towards expropriating the human and natural wealth of the African continent. Politics in the colonial era was aimed at the maximization of returns from the colonized states for the advantage of the colonizers.

The prime motive for the establishment of colonies was “economic” and in order to realise their economic goals, the colonialists employed means that are immoral in achieving the ends they sought.

The impact of colonialism in Nigeria could be discussed under political, economic, social, educational and religious aspects. Economically, the British colonial authorities encouraged Nigerians to be involved in agriculture for the production of certain crops such as coffee, cotton, etc. With the production of these agricultural crops, new cash crops, were introduced so that the inhabitants would no longer rely on food crops but also on export crops. More so, raw materials were evacuated from the hinterland for onward transportation to the industries of the colonizers and this led to the development of transport system thus, linking roads and railways, were constructed by the colonial masters to enhance the evacuation of these agricultural products.

The political structures such as the legislative, the judiciary and the executive, as well as the concepts such as democracy, federalism, rule of law, and fundamental human rights, helped Nigeria become one political entity. Politically, colonialism had helped to sow the seed of disunity, acrimony, rancour, corruption, discrimination, mediocrity, sectionalism, and absence of patriotism. The British officials did not have nationalistic political interest of Nigeria at heart, instead, “a divide and rule policy” was adopted without considering the ethnic differences. That is why till today, Nigeria still experiences political disharmony.

Socially, the colonial masters alongside with the Christian missionaries brought education to us in 1842. The curriculum of alien education was based on 3Rs which means reading, writing and arithmetic. The introduction of formal education helped Nigerians to be more literate, that is being able to read and write. It was a result of education that Nigerians became exposed to the injustice of colonialism and realized the need to struggle to be free from colonial domination.

The military rule was done through the instrumentality of brute force. Because it was governance over subject, obedience must be commanded and not earned.

The economic impact of the military rule were disastrous. The traditional agricultural based economy was abandoned and they became extremely dependent on exports of oil which due to frequent fluctuations in oil prices led to an unstable economy. The Babangida regime was characterized by “gross incompetence and unbridled, waste and mismanagement, the privatization of public office and public resources, the neglect of non – oil sectors and misplaced priorities”. Essentially the focus was on the private sector as opposed to the good of the nation. As a result of the military economic policy of the 1980s, 45% of foreign exchange earnings were going into debt servicing and there was very little growth. This led to the rise in poverty, crime, child abuse, disease, institutional decay, and urban dislocation.

The fundamental hindrance to the survival of democracy in Nigeria lies in the obvious division of ruling class elite along ethnic, religious, regional, and class lines.

The failure in Nigeria democratic practice has also been intensified and exacerbated by the high rate of illiteracy and poverty in the country. This illiteracy has made it possible for politicians to manipulate the masses with relative ease and this raise the ethnic bogey to win the support of people, thereby raising the level of the ethnic consciousness. The issue of poverty made it possible for politicians to bribe their way through the masses.

**LOOPHOLES IN NIGERIA’S CONSTITUTION THAT AFFECTED DEMOCRACY**

Constitutionally, Nigeria is presently governed, by the 1999 constitution but recent political happenings in the country show we are not governed by any law.

In Pre-independence period, there were many constitutions used to rule over us by colonial masters. The Richard’s constitution came into force in 1946 and was suspended in 1950 while the Macpherson constitution and Lyttleton constitution were operated between between 1950 and 1954 respectively. And then, enter the Post-independence constitutions.

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 coup and counter coups giving rise to a thirty month civil war between 1968 to 1970. In 1979 Nigeria 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. It retained the existing federal structure which implies the constitutional share of power between the center and the federating component units. The 1999 constitution was and used as the supreme law of the state. A number of case scenarios and constitutional matters suggest that the 1999 constitution 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.

Some of these gaps include;

1) Gender disparity: In 1999 constitution, gender disparity is discernible. For instance, in section 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 and gender equality.

2) Citizenship/Indigenship Crisis: There is one phrase whose exact denotation is problematic namely; 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 indigenity and what should not.

Again, there is a lucana on aspects of citizenship involving male foreigners married to Nigerian women and wishing to gain Nigerian citizenship. Section 26 defined a Nigerian citizen and process of citizenship by naturalization and registration, however the silence about the process of citizenship for non–Nigerian men perhaps results in challenges of marriage instability.

In conclusion, a lot of problems arise from the 1999 constitution. Going by the history of the 1999 constitution which is largely described as a military invention emerging from the decree 24 of 1999. As it is expected, no body of laws is quite capable of addressing all matters in a political society. From the analysis of this review, it is imperative to state that the loopholes created in the constitution have derailed democracy deepening, particularly such gaps have been a lee way for politicians to commit impunity which invariably distorts peace and sustainable economic and political development of Nigeria.

The Nigerian constitution contains several provisions that make it a stumbling block for consolidating democracy. In view of this, it is therefore recommended that there is a need the review the 1999 constitution. It must reflect present realities. Also the court whih is seen as the last hope of a common man, should adjudicate on infringement on these letters in our statutory book. Thus, constitutionalism which has been an integral part of demoncratization has been largely missing in the Nigerian constitution this calls for urgent policy attention.

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