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**A BRIEF OVERVIEW OF THE 1999 CONSTITUTION**

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 but recent political happenings in the country perhaps show that the country is far from being governed by any law. The constitution was adopted on 29 May, 1999. It has 320 sections divided into 8 chapters and 15 parts with 7schedules. Chapter1 deals with the general provision which introduces to the reader to the sovereign state called Federal Republic of Nigeria said to be indivisible and indissoluble(no matter what),a federation consisting of 36 states a federal capital territory and Local Government Areas totaling 774 and 6 Area councils(FGN 1999). The government consists of the Legislature, Executive and Judiciary. The legislative power of the federal republic as stated in Section 4shall be vested in the National Assembly of the federation made up the Senate and a House of Representatives which shall have powers to make laws for the peace, order and good governance of the federation or any part there- of with respect to any matter set out with exclusive legislative list as contained in the second schedule to the constitution part1 thereof to the House of Assembly of States (FGN 1999). Additionally, the National Assembly is also conferred with powers to make laws on any matter in the concurrent legislative list, set out in part 11 of the second schedule or any matter the constitution empowers it Under section 4(5) where a law enacted by the House of Assembly of a State is inconsistent with that made by the National Assembly; the later shall prevail and the State Assembly shall to the extent of the inconsistency be void (FGN1999). In Section 5; the President holds executive powers while those of the state are vested in the Governor both of whom may exercise the powers themselves or assign their Vice and Ministers in case of the president and deputy Governor and Commissioner in the case of the Governor(FGN1999). Section 5(3)(a) Subject the exercise of the executive powers of the state to the exercise of the executive powers of the federation which it cannot impede or prejudice, whose asset or investment cannot be endangered or the continuance of which as a whole cannot be endangered(FGN1999). Despite this provision, actual practice of the Nigerian constitution produces different outcome, a fact made evident by the myriad loopholes created by the constitution itself. Case examples of some of the constitutional gaps follow below.

**EVIDENCE OF SOME CONSTITUTIONAL GAPS AND CASE EXAMPLES**

In the 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.

**Citizenship/Indiegenship**

 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 indigeneity and what should not Again, there is a lacuna 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.

**The Case of Anzaku & 33 others v Ex. Gov NASG & 2 ORS**

There was a breach of constitutional provision on the issue on indegenship. This event took place in December 2004 in Jos North central Nigeria where the Appeal court Jos Division ruled that the Nassarawa state government acted in error in deploying a local government Staff to the alleged local government of origin. The court ruled that this was discriminatory and at variance with section 42 and 46 of the constitution of the federal republic of Nigeria.

 **The Case of Yar’A duah’s Ill Health and Constitutional Loophole**

 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.

Besides, in the context of Nigerian cultural precepts and practice ,any human being with two “heads” is a clear abnormality or abomination .Translated in the political arena, what Nigeria had at the level of headship, silently from 23 November,2009 and openly from 9th February 2009 was the constitutional equivalent of an abomination no more and no less (Tamuno,2012).

 Against the back drop of President Yar’Adua’s condition, as of 9th February, 2010, at least two remedies, potentially available months later, were not quickly taken.First, relevant aspects of this case, were not taken to the level of the Supreme Court and so did not resolve the pending matter authoritatively within its powers.

Second a complete appeal of section 144 of the 1999 constitution was not taken to its logical conclusion and so did not end the matter in an orderly manner for the removal of Nigeria’s de jure Commander in Chief. But not all subsisting doubts would have been removed, yes in the minds of several close friends of President Yar ’Adua and co- defenders of his cause for whatever reason.

**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 inter alia;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.

Ogunbodeded on (2015) observes that cross carpeting has become a norm in the eyes of political actors, every executive seems tenable and every step taken is a means of outwitting opposition parties. He reasoned that Tambuwal may have taken the decision for his political survival, the aftermath of that action led to the removal of his security details by the Inspector General of Police(IGP)Suleiman Abba.

The IGP ought to have known that 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 interest According to Flava (2014), the President of the Nigeria Bar Association Alegeh Senior Advocate of Nigeria (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.

Alegeh explained that the constitution never envisaged such political scenario such as the defection of either the Speaker or Senate President from one party to the other since both officers were meant to preside in the House among other law makers (Flava 2014).

 He argued that the police erred by withdrawing the security details of the Speaker as it had no constitutional powers to determine whether Tambuwal’s defection was constitutional or not (Flava 2014).

This political twist occasioned by the gap created in the Nigerian constitution was worsened by the poor intervention of the court in dealing with such constitutional lacuna. The role of the court in matters of constitutional defects is very critical. It is important for t he court to always act in order to uphold democracy.

Alegeh also described as unacceptable the pending court cases of some People’s Democratic Party(PDP) lawmakers who decamped to the APC, which he said lasted for an upward of eight months in court, noting that the argument surrounding Tambuwal’s defection would not have arisen, if such cases had been constitutionally resolved (Flava 2014).

**In conclusion**

Arguably 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 decree 24 of 1999.As discussed, issues emanating from the constitution reveal that actual practice of the constitution is far from what the document makes provision for.

As it is expected, no 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, it will always require some fine tuning from time to time as events unfold. 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.

These bizarre political events will have a long term effect on the coming generations and particular their understanding and adherence to constitutional dictates. This compels the critical need to redress this enormous challenge. The Nigerian constitution contains several provisions that make it a stumbling block for consolidating democracy. in view of this challenge, it is therefore recommended that there is need to review the 1999 constitution. It must reflect present realities. Also, the court which is seen as the last hope of the common man, should adjudicate on infringement on these letters in our statutory book. Thus, constitutionalism which has been an integral part of democratization has been largely missing in the Nigerian constitution this calls for urgent policy attention.