

TOWARDS FEDERALIZATION OF NIGERIAN UNITARIZED JUDICIARY

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ABSTRACT

This paper examines federalism as a concept, its adoption to governance in Nigeria through the constitution. The constitution is examined with a view of showing elements of unitarism instead of the federalism the constitution proclaims for Nigeria. In this regard, we examined the creation of federation account, statutory allocation of revenue to states and local government and what it portends for a federation. Conduct of general Election on a date for the central government and all the states of the federation is observed as an aberration in a federal state, so also is the creation of a National electoral commission for both the central and state governments. Creation of central judiciary for both the National and state government with institutions like Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices Commission (ICPC) is also an aberration in a federation. The paper is concluded by contrasting Nigerian federation with American federation with a recommendation for true federation modeled along American system so as to ensure peace, order, good governance and security of the nation. This will be a form of devolution of power which can ensure Nigeria's unity and erase agitation for balkanisation of Nigeria.

KEYWORDS: Federalization, Nigeria, Judiciary, Constitution, Government.

INTRODUCTION

Federalism is a system of government by which the same territory is controlled by two levels of government (Garner, 2009). Both the national government and smaller political subdivisions have the power to make laws and both have a certain level of autonomy from each other (<https://www.britannica.com>). It is also seen as a system of government where there is one strong central controlling authority and other smaller units still retaining power of governance in their respective units (<https://www.merriam-webster.com>). It is also described as a system of government that believes each state under central government can have its own laws and customs while still sharing unified laws, customs and currency e.g. U.S.A (<https://www.law.cornell.edu>).

Federalism is also described as a mode of political organization that unites separate states or other polity within a political system in a way that allows each to maintain its own integrity (<https://www.dictionary.com>). Federal systems do this by requiring that basic policies be made and implemented through negotiation in some form, so that all the members can share in making and executing decision. The political principle that animate federal system emphasize the primacy of bargaining and negotiated coordination among several power centres; they stress the virtues of dispersed power centres as a safeguarding individual and local liberties. The various political system that call themselves federal differ in many ways, certain, characteristics and principles, however, are common to all truly federal systems (<https://www.britannica.com>). Example of federal states are:- Argentina, Australia, Belgium, Bosnia, Brazil, Canada, Germany, India, Malaysia, Mexico, Nigeria, Pakistan, Russia, Switzerland and United States of America.

METHODOLOGY

The article relies on the doctrinal research methodology. Doctrinal research is concerned with legal propositions, the sources of data are legal and appellate courts decisions. It is library research; it includes primary and secondary sources. The primary sources are Statutes, Constitution, Acts and Laws while secondary sources are books, articles etc.

Some of the primary sources explored here are: The 1999 Constitution of the Federal Republic of Nigeria (as amended), Economic and Financial Crime Act, Federal Road Safety Commission Act among others. The secondary sources include books, articles and journals related to the subject matter of this research. The internet has turned the whole world not only into a global village but also a global room. It helps a lot in various researches of various natures. There is no information needed that cannot be obtained from the internet. Thus, the internet is of tremendous help in putting this article together.

COMMON FEATURES OF A FEDERAL SYSTEM

Written Constitution

All federal relationship must be established or confirmed through a perpetual covenant of union usually embodied in a Constitution which is clearly written down. The Constitution outlines the terms by which power is divided or shared between the central and the component states or units. The constituent states, often retains constitution making power right of their own (<https://www.britannica.com>).

Non-concentration of power

The political system itself must reflect the Constitution by diffusing power among a number of substantially self sustaining centres. Such diffusion of power may be referred to as non centralization of power. This is a way of ensuring in practice that the authority to participate in exercising political power cannot be taken away from the general or the state government without common consent (<https://www.britannica.com>).

Area division of power

This has two faces-the use of area divisions to ensure neutrality and equality in the representation of the various groups and interests in the polity and the use of such division to secure local autonomy and representation for diverse groups within the same civil society. This encourages national integration (<https://www.britannica.com>). The principle of representation serves to maintain the union i.e. Having a National Assembly that represents the divergent people on the basis of equality and proportionality. House of reps, represents on proportionality while the senate represents on the basis of equality.

Nigeria as a Federation

Nigeria, as a country is regarded as a federation because the 1999 Constitution of the Federal Republic of Nigeria (as amended) (The 1999 Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004) said so, not because Nigeria exhibits the characteristics of a federation. It is true that the constitution proclaimed in the preamble that we the people of the federal Republic of Nigeria, having firmly and solemnly resolved to make and give this constitution to ourselves (Babalola, 2018). The same Constitution says the Federal Republic of Nigeria shall not be governed nor shall any person or group of persons take control of the government of Nigeria or any part of it except in accordance with the provisions of this constitution (Preamble to the 1999 Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004). More specifically, the Constitution went further to say that Nigeria shall be a federation consisting of states and Federal Capital Territory (Section 2(2) of the 1999 Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004). The Constitution also

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stated the Legislative, Executive and the judicial powers of the federation and prescribed the appropriate persons and institutions vested with the authority to exercise those powers.

The same Constitution not only prescribed that Nigeria shall be a federation but also provided that the federal republic of Nigeria shall be a state based on the principle of democracy and social justice and that sovereignty belonged to the people through whom the government derives all its powers and authority. The security and welfare of the people is vested in the government as the primary purpose of government and the same Constitution made it mandatory for the people's participation in government and governance. It went further to state clearly the political, economic, social, educational and cultural objectives of the government.

Political Participation

According to Patrick J. Conge (Conge, 1988), political participation is any number of voluntary activities interactions by the public to influence public policy either directly or by affecting the selection of persons who make those policies through, typically associated with voting in elections, political participation includes activities such as working on political campaigns, donating money to candidates causes, contacting public officials, petitioning, protesting and working with other people on issues.

To ensure clarity in division of power between the national government and state governments two legislative lists were created by the Constitution while the third legislative list is always conventionally inferred. Globally the Exclusive Legislative list contains those legislative powers reserved for the central or national government while the Concurrent legislative list is reserved for both the central or national government and the state governments. The third list known as the residual legislative list is always reserved for the states. Residual legislative list consists of items, issues or matters not mentioned in either the exclusive or concurrent legislative lists (Posey, 1988).

However, it must be stressed here that some federations only insert Exclusive Legislative list in the Constitution while any other item not on that list is consigned to the residual list. An example of this type of federation is the United States of American while another state like India specifically stated the three legislative lists in its Constitution so the Constitution of India contains the exclusive, concurrent and residual legislative lists for avoidance of doubt.

Unitary Concept of Governance

Unitary government is a kind of government system in which a single power which is known as the central government controls the whole government. In fact, all powers and administrative divisions' authorities lie at the central place (Conge, 1988). According to Robert Longley, a unitary state or Unitary government is a governing system in which a single central government has total power over all of its other political sub divisions.

A unitary system is the opposite of a federation where governmental powers and responsibilities are divided. In a unitary state, political subdivision must carry out the directives of the central government but have no power to act on their own. In a unitary state, the central or national government may grant some powers to its local governments through a legislative process called "devolution". However, the central government reserves the supreme power and can revoke the powers it devolves to the local government or invalidate their actions. Of the 193 member countries of the United Nations Organization 165 are Unitary States. The United Kingdom and France are the well recognized examples of the lots.

The United Kingdom comprises of England, Scotland, Wales and Northern Ireland; while technically a constitutional monarchy, the United Kingdom functions as a unitary state with total political power held by the parliament. The Parliament is the national legislature located in London, England. While the other countries within the United Kingdom each have

their own government, they can neither enact a law that affects any other part of United Kingdom nor can they refuse to enforce a law enacted by parliament.

In the Republic of France, the central government exercises total control over the country's nearly 1,000 local political subdivisions which are called departments. Each department is headed by an Administrative Prefect appointed the French Central or National Government while they are technically government, France's Regional departments exist only to implement directives issued by the central government. Some other notable unitary states include Japan, Italy, the Peoples Republic of China and The Philippines. The Notable advantages of a unitary state are that it can be less costly, can be smaller using minimal land span, does not need a massive workload, but it can also lack infrastructure, can ignore local needs and can encourage corruption and abuse of power (<https://www.bscholarly.com>)

To the discerning, it can be seen that the 1999 Constitution of the Federal Republic of Nigeria deliberated opted for Federalism because of the diverse people that constitute Nigeria. However, in spite of the fact that federalism is the system best suited for the diversified tribes, culture and religions of Nigerians, yet the same Constitution fused Unitary System with federal principles in so many sections, parts and chapters. These sections, part and chapters we shall now examine briefly

Features of Unitarism in Nigeria Federation

The Nigerian Federation which is a creation of the constitution has been unitarised by the inherent contradictions in the same constitution. The Nigerian constitution contradicts the universal principles of federalism as earlier stated in this paper. We shall now proceed to itemize these inherent contradictions as follows: -

The 1999 Constitution of the Federal Republic of Nigerian even though established Nigeria as a federation went ahead to unitarise some powers, functions and institutions in Nigeria. The vesting of a large chunk of power to generate revenue in the central government is the starting point of unitarisation of the Nigerian Federation (Section 162 & 163 of the 1999 Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004). Instead of each level of government i.e. central or national and states to generate its own revenue, the mineral resources and other natural resources are vested in the federal government instead of vesting it in the owner of the land where it is found as in American (Section 1 of Nigerian National Petroleum Corporation Act 1969).

The 1999 Constitution of the Federal Republic of Nigerian also created a federation account for the federation, state and local governments (Section 162(4) of the 1999 Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004). The money paid into this account is to be shared using certain unfair parameters (Section 162 (2) *ibid*). This sharing is done on a monthly basis among federal, states and local governments this and made them to be dependent on the federal government. The federal government instead being equal partners to the component states is now the master of the component states.

In the Nigerian federation, state cannot organize its own election, election into the offices of state governors and their deputies and States Houses Assemblies are equally organized and conducted by a federally controlled institution (Item 63 of the Exclusive Legislative Act to the of the 1999 Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004). The National assembly is the only institution that can legislate on these elections except election to local government offices which the states are empowered to conduct by the Constitution. Even after the general election to the offices of state governors and their deputies and the Houses of Assembly. It is the Federal Government that has the power to set up election tribunals and to appoint the judges of the tribunals.

It is the federal Constitution that contains a uniform code of conduct applicable to all public officers whether of state or federal public service. There is also a federally controlled Code of Conduct Tribunal, Economic and Financial Crime Commission (Economic and Financial Crime Act 2004), Independent Corrupt Practices Commission etc (Independent

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Corrupt Practices Act 2000 Act No 5 Laws of the Federation of Nigeria). The Nigeria federation also has a Federal Policing System, with all security agencies being Federal Agencies and Institutions (Nigeria Securities Agencies Act) except the “Amotekun” security Agency that has just been inaugurated or established in the South Western part of Nigeria. No state or local government police or security outfit in Nigeria. This has made it difficult for states to secure their territories. There is also a central prison system or correctional services system, Federal Road Safety System (Federal Road Safety Commission Act Cap 141 LFN 1990) and Federal Driving licensing authority contrary to the provision of the Constitution (Item 63 of the Exclusive Legislature List to the 1999 Constitution of the Federal Republic of Nigeria, Cap C23, LFN 2004). The Constitution specifically assigned the power to make law on traffic on federal trunk roads on the federal government while state is to make law on traffic on the state roads. The Constitution also reserved some powers in the Federal Government to establish certain executive bodies that will exercise power on issues that concerns salaries and wages of the state public Office holders or Public servants like Nigeria Revenue Mobilization Allocation and fiscal commission (Section 153 *ibid*), the same Constitution created and fund Local Governments, (Section 7(2) *ibid*) the same Constitution created an impediment that took away their power from the states by inserting a schedule in the Constitution that listed all the Local Governments in Nigeria (Section 3 (2) *ibid*). The implication of the listing on the Schedule has been interpreted to mean that the local government in Nigeria are inelastic except the National Assembly amends the schedule to include newly created Local Governments by the states (Attorney General of Lagos State V Attorney General of Federation, 2003: 12 NWLR Pt.833) and this the National Assembly has been reluctant to do.

Looking at all the aforementioned contradictions, it is clear that the Nigeria Federation is a hybrid type not a federation at all. This account for the frequent agitation for true federalism, resource control, restructuring and devolution of power. Failure of each state of the federation to have its own Constitution is another aberration in a federation. In the first republic, every region has its own Constitution. Although the Constitution of the federation did not prohibit state Constitution, but states refused to make their Constitution.

The Unitarisation of the Judiciary in the Nigerian Federation

The Nigeria Judiciary is also a creation of the Constitution which established the Supreme Court, Court of Appeal, Federal High Court, High Court of Federal Capital Territory Abuja, High Court of a State, Sharia Court of Appeal of Federal Capital Territory Abuja, Sharia Court of Appeal of a state, National Industrial Court of Nigeria and such other courts as may be authorized by law (Section 6 (1) of the Federal Republic of Nigeria, Cap C23, LFN 2004). Looking at this court structure, it looks like a Federation at the level of High Courts, i.e. The Constitution established State High Courts and Federal High Courts, Sharia Court of Appeal at Federal Capital Territory and States, Customary courts of appeal at Federal Capital Territory and states (Section 270 – 284 *ibid*) but the appellate level of the courts are Unitarised. The Constitution did not establish State Courts of Appeal or States Supreme Courts.

Appeal lies from State High Courts, State Sharia courts of Appeal and Customary Courts of Appeal to the Court of Appeal and the Supreme Court established by the federation for the federation. (Section 241 *ibid*) Each state in Nigeria ought to have its own Court of Appeal and Supreme Court. |This had happened in the first republic especially in the Western part of Nigeria. The present position of the appellate system in Nigeria had given room for federal government’s interference in the judicial system in Nigeria.

Another very disturbing aspect of the Unitarisation term of the judiciary in Nigeria is the procedure of appointment of judicial officers to the courts. The appointment procedure is a fusion of the powers of state and federal government especially in the appointment of state judicial officers. While the Federal Government appoints its Judges or Judicial Officers at all

levels from Federal High Courts to the Supreme Court, without the input of states, the federal government interferes in the appointment of judicial officers (judges) to the State High Courts, Sharia Courts of Appeal and Customary Courts of Appeal through the National Judicial Council (Sections 271, 276 & 281 *ibid*). The State Chief Executive (Governor) should be able to approve the appointment of states judges without interference of the National Judicial Council. The procedure under the 1979 Constitution which was not abused by any state should still have been the position (Sections 271, 276 & 281 *ibid*).

The procedure then was that the state Judicial Service Committee will recommend to the Governor who will then forward the name to the House of Assembly for confirmation. This position is recommended for future appointment of State Judicial Officers. The National Assembly should take cognizance of this obvious fact in their Constitution alteration or amendment. The power to discipline the State Judicial Officers is also vested in the National Judicial Council.

Judicial System in American Federation (Art. III, Constitution of U.S.A.)

The Judicial system in the American Federation has two separate branches. The federal, national or central judiciary and state judiciary. They are distinct and run *paripasu*. The federal judiciary has three layers of courts namely District Courts, Court of Appeal and the Supreme Court. Each state in America has its own three layers or court system namely District Court, Court of Appeal and Supreme court.

The Federal Court Structure in America (Art. III, Section I, Constitution of U.S.A.): The Judicial power of the United States shall be vested in one Supreme Court and in such inferior court as the congress may establish from time to time. In exercise of this power, the Congress established the following:

The District Courts: The District Courts are the trial courts of the Federal System. There is at least one district court in each state and the large states have more e.g. Texas has four District Courts and eight other state have three., there are eighty-nine Federal district courts in U.S. and there are 382 District Court judges in the US federal judiciary. The District Courts exercise original jurisdiction and appeal goes from there to the Federal Court of Appeals.

Court of Appeals: The eighty-nine district courts are grouped into ten circuits in each of which there is a United States Court of Appeal. Each circuit court comprises from three to nine judges. Each case is heard by no fewer than three judges and a decision is by majority. The jurisdiction of Circuit Court of Appeal is appellate in nature. Appeals from the decisions of the District Courts go to the appropriate Circuit Court whose decision ordinarily is final. Appeals are also taken to the circuit courts from decisions of quasi –adjudatory boards and commissions such as the interstate commerce commission.

The Supreme Court of the United States (Art. III, Section I, Constitution of U.S.A.): The Pinnacle of the Federal Judicial System is occupied by the Supreme Court, consisting of a Chief Justice and Eight Associate Justice. The size of the court is set by the Congress. The Constitution confers Original Jurisdiction upon the Supreme Court in cases involving ambassadors, ministers, consuls, or a state government. Otherwise the Jurisdiction of the court is appellate and as a matter of policy on the part of the court, is largely confined to cases containing some constitutional questions. Appeal cases come from the Court of Appeal, the District Courts or the state Supreme Court. In some cases coming from state Supreme Courts, an appeal to the Supreme Court is a matter of right. The Supreme Court by and large determines what cases it will adjudicate and what cases it will not.

All of its cases are heard by at least Six Justices, decisions are by majority opinion, if the court splits evenly upon a case, it is later re heard. The Chief Justice assigns one of the majority to write the majority opinion. A Justice who disagrees with the verdict of the majority may write a dissenting opinion if he wishes. If a Justice agrees with the majority but on the basis of different law of reasoning, he may write a concurring opinion.

The State Court System in America

Each State has its own system of courts. The state judiciary constitutes a larger element in American jurisprudence for state courts are more numerous than the federal courts, they are staffed by a larger number of judges and they adjudicate a much larger number of cases. The state courts are also classified into three layers of Circuit Courts, Court of Appeal and the Supreme Court.

Circuit Court/District Court

The typical name for the general trial courts both civil and criminal of a state is Circuit Court although they may also be referred to as District Court or Superior Court or County Court or court of common pleas. The judges are elected to serve for four or six years. Circuit courts are the general trial courts of record, a court of first instance. They have original jurisdiction, no appellate jurisdiction. One judge hears each case with or without a jury. All proceedings are taken down verbatim by court reporters. Some states provide for specialized courts having jurisdiction over estates and inheritances, legal declaration of mental infirmity and for supervision of the property of minors and insane persons.

State Court of Appeals

Twenty three states have one or more Court of Appeals to relieve the State Supreme Court of burden of Appeal in cases of minor importance. A typical appeal court consists of three judges either elected to the court or selected to the court by the Supreme Court from among the personnel of lower state courts. Appeals has to this court from the district, courts or inferior court of record.

Supreme Court of States

At the apex of the Judicial pyramid is the state supreme court. It usually consists of five or seven judges elected for a term of six years, although the term varies considerably among states. The court sets exclusively as an appellate court hearing appeals from decisions of the lower state courts. The judges sit en banc and render decisions by majority concurrence. Sometimes the court is divided into two or three sectors each section hearing cases separately.

Appointment and removal of judges in America

The judges of state courts in twenty-seven states are elected by the people. Party nominations and partisan elections ballots are used in thirteen states while non partisan nomination and election prevail in fourteen states. In fourteen states, a portion of the judiciary is popularly elected. This method is adopted to guarantee independence of the judiciary.

CONCLUSION AND RECOMMENDATION

From the analysis above, the judiciary in Nigeria is Unitarised by fusing the federal judiciary with state at the Court of Appeal and Supreme Court level. The appointment and removal of judges is done by a federal agency called National Judicial Council. Whereas, in America where we copied our democracy, the state and federal judiciary are kept separate in operation, appointment and removal of judges.

We recommend that the American Judicial System be adopted for states in the ongoing constitutional amendment. The procedure before now in Nigeria was that the state Judicial Service Committee will recommend to the Governor who will then forward the name to the House of Assembly for confirmation. This position is recommended for future appointment of State Judicial Officers. The National Assembly should take cognizance of this obvious fact in their Constitution alteration or amendment. The power to discipline the State Judicial Officers is also vested in the National Judicial Council which should be changed in line with the arguments canvassed in this article.

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