

THE RELATIONSHIP BETWEEN THE THREE ARMS OF GOVERNMENT AND FEDERALISM IN NIGERIA

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Abstract

The 1999 Constitution provides for what may be considered as basic and rather comprehensive legal framework for true federalism. This Constitution has improved based on the 1979 Constitution in seeking to promoting federalism both in its formulation and as a tool for achieving the much needed unity in diversity. The aim of this paper is to examine the relationship between the three arms of government and federalism in Nigeria. To achieve this, the paper adopted the doctrinal methodology otherwise known as theoretical consisting of consultation of statutory legislation, case laws, books, journal, conference papers as well as internet materials both in printed form and electronic means. The findings of the paper reveal that the doctrine of separation of powers, federalism and principles of check and balance are not strictly adhered to, because the separation of powers between the legislature, executive and the judiciary which is based on the principle of federalism advocates, while working together none should either exercise the power of the other arm nor control it and the check and balance should be within the ambit of law is not tenable in Nigeria. The 1999 Constitution does not advocate for total separation of powers necessary for the maintenance of each arm of government within the ambit of it powers. As a result of that, there are a lot of interference by one arm of government against the other which undermine the smooth running of the government. In view of this, the paper recommends that though absolute separation of powers is not possible, the interference by one arm of government over another should be in the best interest of the nation and its people and not based on individual, group or political interest.

Key Words: Federalism, Separation, Power, Legislative, Executive, Judiciary, Relationships

1. Introduction

Federalism is a system of government or arrangement of power that is deliberately crafted to deal with such a sociologically complex polity as presented by Nigeria's multi-ethnic, multi-linguistic¹ and multi-religious composition. The existence of federalism presupposes the

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existence of certain compelling and propellant forces which theoretically at least, are absent from its opposite phenomenon, called a Unitary System.² Nigeria is a country of extraordinary diversity and as such, one of extraordinary complexities.³ These complexities are reflection of the avalanche of ethno-cultural and religious groups cohabiting the territory and the intricacies of interaction.⁴ The idea of federalism seeks to cope with the central problem of territorial distribution of power in such a manner that guarantees unity in diversity.⁵ This is because, it involves organisation of the state in such manner as to promote unity while at the sometime preserving existing diversities within an overarching national entity.⁶ To this end, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for what may be considered as basic and rather comprehensive legal framework for true federalism. This Constitution has improved based on the 1979 Constitution in seeking to promote federalism both in its formulation and as a tool for achieving the much needed unity in diversity.⁷ This include among others, a supreme written constitution, a predetermined distribution of authority between the federal and state governments, a provision for amending process with the active participation of both levels of government, some measures of financial autonomy for states and the judiciary exercising powers of judicial review.⁸ Providing for the vertical separation of powers among the three arms of government, the Legislative, the Executive and the Judiciary. The constitution also provides for the vertical division of powers between the federal and state and by extension the local government. The Constitution has provided for the three arms of government with some well-defined powers and functions. Federalism, no doubt, represents an institutional mechanism through which intra societal plural elements can be accommodated and protected, the adoption of which in Nigeria viewed in the context of this virtue of federalism. However, its adoption shall seems not to have been fully transcended as evidenced in series of agitations by scholars. This paper seeks to examine the relationship between the three arms of government and federalism in Nigeria.

2. Concept and Meaning of Federalism

Federalism is one of the major systems of government, and an academic or political term that has received greater but relative attention from academics, social scientists and politicians.⁹ It is however, widely known as a concept or system of government that is fluid and subjected to varying approaches, perception, interpretations and practice.¹⁰ The conception and practice of federalism are relative to and greatly shaped by socio-societal set-ups, depending on numerous factors geography, history, worldview, level of development, and other heterogeneous

¹Sam Egwu, *Contending Positions and Issues in Debating the Future of Federalism in Nigeria, Contentious Issues in the Review of the 1999 Constitution* (ed.) by Otiye Igbozor and Ololade Bemidele. Published by Citizen Forum for Constitution Reform (CFCR, 2002), Lagos, 58.

² Ibid.

³ Aderonke Majekodunmi, "Federalism in Nigeria: The Past, Current Peril and Future Hope," (2015) (9) (2) *Journal of Policy and Development Studies*, 112.

⁴ Ibid.

⁵ Ibid Egwu, (n 1) 59.

⁶ Ibid.

⁷ P. Ehi Oshio, *Nigerian Federalism: Local Government and its Relationship with the other Tiers of Government*.

⁸ Ibid.

⁹ M. F. Othman and I. S. Mohammed, 'Nigerian Federalism: An Overview of its Imperatives and Impediments', (2017) (17) *Journal of International Studies*, 189.

¹⁰ Ibid.

conceptions and practices.¹¹ Federalism is derived from the Latin word “*Foedus*” meaning covenant. It is a political concept in which a group of members are bound together by covenant with a government representative head.¹² The term is also used to describe a system of the government in which sovereignty is constitutionally divided between a central government authority and constitutional political units.¹³ A central feature of federalism is the formal division of power between levels of government, an issue that pre-occupies the attention of Wheare, whose classical formulation on the federal principle is considered a major landmark.¹⁴ However, this formulation has been subjected to several criticisms, among which are the suggestions that it fails to distinguish between an idea and its institutional manifestations, and that it sets-up the experience of the United States of America as the ideal type of federal system.¹⁵ Despite such objections, it remains central to the discourse on federalism that is the legal-constitutional arrangements that provide indications to the legal and political competence of levels of government.¹⁶ Consequently, at the heart of a federal polity is the issue of inter-governmental relations, the constitutionally assigned responsibilities to the different levels of government that, at once, meets the requirement of relative autonomy for each level of government and the non-centralisation of power in the national government.¹⁷ Wheare, also cautions, the ultimate test is how the federal system operates, the legal-constitutional arrangement is equally a very important dimension.¹⁸

The most important contribution of Riker to this discourse draws attention to the fact that, federalism is depicted as a political power arrangement in which the activities of governments are constitutionally divided between regional and central government in such a way that each level of government has some activities that it makes and takes final decisions.¹⁹ A federal system of government often arises from the desire of the people to form a union without necessarily losing their identities. Federalism would, therefore, seem to provide an attractive system of government especially in the context of ethnic pluralism found in many African states.²⁰ Federalism is generally accepted by many as necessary for managing the country’s ethnic diversity as reflected in the adage “Unity in diversity”.²¹ To this end, Babalawe, explained federalism in the following term

A federal state is one in which there is an: explicit and constitutional demarcation of powers and functions among national and sub-national units. Moreover, the powers and responsibilities are distributed in such a manner as to protect the existence of authority of both levels of polity each of which is independent within its own sphere...federalism refers to the doctrine which advocates and promotes the form of organisation

¹¹ *Ibid.*

¹² *Ibid* Mojekodunmi, (n 3).

¹³ *Ibid.*

¹⁴ Wheare, C.Kenneth. “*Federal Government, New York*”, (Oxford University Press, 1963)

¹⁵ *Ibid* Egwu (n 1) 58.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Riker, W. H., *Federalism*: in F. I. Greenstein and N. W. Polsly (eds.) *Handbook of Political Science: Government Institutions and Process*. (Addison Wesley 1975)

²⁰ *Ibid* Majokudunmi, (n 3).

²¹ *Ibid.*

of a state in which power is dispersed or decentralised by contract as a means of safeguarding local identities and individual liberties.²²

From the above discussion, the common element in the various meanings of federalism as highlighted above is the co-existence of concurrent governments within a state, with well-defined autonomy assigned in a constitution. This shows that the essence of federating is to realise the twine objectives of maintaining unity while also preserving diversity. This is particularly ideal in a pluralism and multi-ethnic society such as Nigeria where there are obvious differences in the peoples' cultural and religious lives.²³

2. Historical Overview of Federalism in Nigeria

Historically, it is instructive to note that the evolution of federalism in Nigeria shows that even prior to the advent of colonial rule in what is now known as Nigeria, there existed indigenous political institutions, spread across over 250 independent nation states embracing over 500 ethnic and linguistic groups.²⁴ These indigenous communities had their various systems of administration before the British penetrated Nigeria and began the annexation of the various colonies through force, non-negotiable treaties with traditional rulers and the establishment of total control in and over the whole of Nigerian territory.²⁵ As a result, the decision of Lord Lugard to create a unified Nigeria on 1 January 1914 did not result from the desire of the natives but derived from considerations of administrative convenience that guaranteed easy economic exploitation of the Nigerian peoples.²⁶ These various spheres were subsequently amalgamated into a centrally governed protectorate, and from the making of the Richards Constitution of 1946, the need for a looser sort of arrangement was realised, with the awareness that the geography that had been yoked together was too complex to be governed by a unitary sort of system.²⁷ The years from 1954 to the earlier part of 1966 is generally referred to as the Golden Age of federalism in Nigeria, as there was meaningful devolution of power and decentralisation, through the creation of four regions that were more powerful than the centre.²⁸ Also, during this period resources were regionally based, and each region had its own Constitution, Coat –of-Arms, anthem and others paraphernalia of government, while the federal government equally had a Constitution, Coat-of-Arms among other, until mid-1966 when this system was aborted by the military which, thereafter, operated a normal and not practical federal mode of government.²⁹ Consequent upon the incursion of authoritarian rule, the region configuration of the country was initially broken down into 12 States, before being fragmented further into 21, and then 36 States and a Federal Capital Territory (FCT), Abuja.³⁰ Hence, the character and powers of the federating units gradually weakened while their resources, functions and responsibilities were taken over,

²² Babalawe Tunde, "The Impact of the Military on Nigerian Federalism" *Re-inventing Federalism in Nigeria: Issues and Perspectives*. Kunle Amuwo and Tunde Babalawe (eds.) (Ibadan: Spectrum Books, 1998).

²³ Osy Ezechukwunyere Nwebo, *Federalism Under the 1999 Constitution: The Challenge of Restructuring and Democracy Legitimacy*.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Obiakor, NJ., Historical Evolution and Growth of Federalism in Nigeria, <<https://www.pen2print.org/2017/02/historical-evolution-and-growth-of.html>> accessed on 24/1/2024

²⁷ Otiye Igbuzor, *Remarks on the Preamble to the Workshop on Contentious Issues in the Review of the 1999 Constitution*, Organized and Published by Citizens' Forum for Constitution CFCR, 2002, Ikeja, Lagos, 18.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

alongside the general respect for the Constitution, which was routinely suspended as the military preferred to rule through decrees. At the outbreak of the Civil War, the semblance of a federal structure operative at that time was shattered by a war economy that led to the consolidation of the resource based at the federal level. The coming into force of the Land Use and Petroleum Acts signposted the creation of Exclusive, Concurrent and Residual Lists that concentrated much power at the centre of government. However, a federal system ought to provide for more than one tier of government, in terms of functions, responsibility, and the allocation of power among others, and part of the issues that picked with the realisation of a federal polity is the non-adherence to minimal requirements of such.³¹

3. Federalism and Separation of Powers under the 1999 Constitution (as amended)

The principle of separation of powers, which Nigeria's previous and present democratic arrangement is anchored on, was propounded by a French jurist, Barande Montesquieu.³² Montesquieu argued albeit successfully that if liberty and freedom were to be, the three branches of government, that is, the Legislature, Executive and Judiciary must be separated and entrusted in different people.³³ He believed that this system of government would provide a safeguard against the concentration of too much of powers in a single authority.³⁴ The essence of the theory of separation of powers, therefore, is built on the belief that, if the executive, legislature and the judicial powers are vested in one person or group of individuals, such people will have unlimited powers in such a way that they would prescribe any law, arrest anyone and even prosecute same for no reason. It may be too great a temptation to human frailty, apt to grasp at power, for the same person who have the power of making laws also has in his hand the power to execute them whereby he may exempt himself from the obedience to the laws he made. To prevent this abuse, it is necessary from the nature of things that one power should be checked on another...when the legislative and the executive power are vested in same person or body, there can be no liberty.³⁵ So also, there is no liberty if the judiciary is not separated from the legislature and the executive.³⁶

Thus, the theory of separation of power is made necessary by the need to preserve and ensure that the liberty of the people and the society, which was in the first place the basis for governance is not trampled upon.³⁷ To this end, it is pertinent to note that, one of the central features of federalism is the formal division of power between levels of government, which is an issue that pre-occupies the attention of Wheare, whose classical formulation on the federal principle is considered a major landmark. Nigeria as in the case of other federations in the world, operates a written constitution, the supremacy of which is laid down in its provisions. Section 2 (1) of the 1999 Constitution clearly provides for one indivisible and indissoluble sovereign state to be

³¹ *Ibid.*

³² TSAV, Stephen Aondoana, 'Constitutional Provisions: Relationship between the Executive and the Legislative', (2015) (3) (2) *International Journal of Business and Law Research*, 28.

³³ *Ibid.*

³⁴ Kusamotu, G., *Nigerian Federalism and Separation of Powers*: Ibadan (Sulek-Temik Publishing Company, 2001) 35-39.

³⁵ *Ibid* Aondoana, (n 32) 29.

³⁶ *Ibid.*

³⁷ C. C. Ihemey and B. G. Z. Ahmad and J. Jawan, Factors Influencing the Executive and Legislative Conflict in Nigeria Political Development (2016) (21) (8) *Journal of Humanities and Social Science*, 20.

known as the Federal Republic of Nigeria.³⁸ Beyond the above declaration, the 1999 Constitution attempted to entrench federalism in Nigeria. It is apposite to first consider the power sharing formula between the levels of government in the country as a prominent feature of federalism. Section 2 (2) of the 1999 Constitution provides that: Nigeria shall be a federation consisting of states and a Federal Capital Territory. While, section 2 (3) provides for 36 States in Nigeria and listed them into six geopolitical zones. The South-East Zone comprises; Enugu, Anambra, Imo, Abia, and Ebonyi States. The South-South Zone comprises; Rivers, Cross River, Akwa Ibom, Delta, Edo, and Bayelsa States. The South-West comprises; Ogun, Oyo, Ekiti, Lagos, Osun, and Ondo States. The North Central Zones comprises; Federal Capital Territory Abuja (FCT), Plateau, Nassarawa, Niger, Kwara, Kogi, and Benue States. The North-West Zone comprises; Kaduna, Katsina, Jigawa, Sokoto, Kebbi, Kano, and Zamfara States. And the North-East Zone comprises; Bauchi, Gombe, Borno, Taraba, Adamawa, and Yobe States respectively.³⁹ The clear description of Nigeria as a federation and the division of the country into 36 States with Abuja as the Federal Capital Territory confirms the existence of a federation, at least in terms of structure. It is also instructive to note that, under the successive constitutions of Nigeria, there was strict division of law-making power between the federal government and state governments.

Accordingly, section 4 (2) of the 1999 Constitution (as amended), provides that the National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule of the Constitution.⁴⁰ It is pertinent to state that the Constitution also assigned functions to the local governments, as specified in the provisions of Part IV of the Schedule to the Constitution.⁴¹ The above provisions provide evidence of federalism under the constitution. The method of division of powers legislative, executive and judicial functions and otherwise among these tiers of government and their independence are also significant as determinant of federalism. In this regard, the legislative powers of the federal government are vested in the National Assembly consisting of a Senate and a House of Representatives. While, the legislative powers of State are vested in the States House of Assembly.⁴² The executive powers of the federal government are vested in the President, while, the executive powers of the State are vested in the State governors.⁴³ The judicial powers of the federation are vested in courts established for the federation and FCT. While, the judicial powers of the state are vested in the courts established for the state.⁴⁴ In the light of the above, one may come to a factual conclusion that, the division of powers among levels of government under the Constitution, that is, between the federal government and the federating units and the extent to

³⁸ *Ibid* Nwebo (n 23).

³⁹ Kennedy Ohazuruike, *Leadership and Power Sharing in Nigerian Federalism: Issues and Perspectives*, (2022) (3) (11) *Journal of Global Social Sciences*, 78.

⁴⁰ These include; accounts of the federal government, aviation, arms, ammunition and explosives, banks, citizenship, currency, defense, external affairs, exchange control among others. Part II of the Second Schedule contains the Concurrent Legislative List in respect of which both the federal and state governments have concurrent powers. These include; revenue allocation, antiquities, archives, collection of taxes, agriculture, education etc. however, it went on to provide in Section 4 (5) of the 1999 Constitution (as amended), that if any law enacted by the State legislature is inconsistent with the law validly made by National Assembly the law made by the State shall to the extent of inconsistency be void.

⁴¹ *Ibid* Nwebo, (n23).

⁴² See generally Section 4 of the 1999 Constitution (as amended)

⁴³ *Ibid*, s. 5.

⁴⁴ *Ibid*, s. 6.

which each tier of government exists within its own sphere, coordinate and independence and the totality of centralised functions being exercised by the federal government in relation to the state government is a critical determine out of true and real federalism as opposed to a decentralise Unitary System of government.

4. Relationship Between the Three Arms of Government and Federalism in Nigeria

One of the characteristic features of federalism is the division of powers among levels of government, a written constitution showing this division of powers and coordinate not subordinate supremacy of the two levels of government with respect to their functions. To this end, the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides vivid roles between the Legislature, Executive and the Judiciary. These Constitutional provisions are succinctly enunciated to guide against any breach by any arm of government in the discharge of its functions. The principles of separation of powers and the doctrine of checks and balances are the two major mechanisms that define relations among branches of government in presidential system.⁴⁵ This basic philosophy of the principles of separation of powers and checks and balances is clearly reflected in the 1999 Constitution. This Constitution contains incompatibility and ineligibility clauses to the effect that the three branches of government should be of distinct persons accordingly. Each branch or organ of governmental administration is accorded a place of pride in separate clause in Part II of the 1999 Constitution which vests Legislative, Executive and the Judicial Powers in the National Assembly, President and Courts respectively.⁴⁶ The principles of separation of powers recognise matters pertaining to the operation of each branch of government are accorded treatment in the Constitution in separate clause of Part II of the Constitution dealing with powers of the Federal Government. For instance, Section 4 of the 1999 Constitution deals with matters pertaining to the powers of the legislature. While, sections 5 and 6 are mainly concerned with matters relating to the executive and judiciary respectively.

It is pertinent to note that, the powers of the legislature are primary to enact laws, while that of executive is to execute the laws made by the legislature and the judiciary on the other hand interprets and enforces the legislative enactments. In this situation, it is of importance to note that, the power of the legislature is subject to check by the judiciary which can declare any enactment by the legislature unconstitutionally, null and void. The power of the judiciary is subject to check by the executive through the executive power of clemency.⁴⁷ Although, this is a system of separated institutions checking each other, it is also one of separated institutions sharing powers. These shares of power were not distributed casually, they were carefully related to the capacities of each branch, to its constituency and to its intended role in the system.⁴⁸

Having examined briefly the principles of separation of power and checks and balances in line with federalism, it will be pertinent to examine the Constitutional relationship between the executive, legislative and the judiciary based on the principle of federalism in Nigeria.

⁴⁵ O. Fagbadebo and S. Francis, 'Power Relations among Institutions of Government in Nigeria's Presidential System: Issues and Contentions', (2016) (7) (7) *International Journal of Politics and Good Governance*, 1.

⁴⁶ *Ibid* Aondoana (n29)

⁴⁷ *Ibid*

⁴⁸ Candance H. Beckett, *Separation of Powers and Federalism: Their Impact on Individual Liberty and the Functioning of Our Government*, (1988) (29) (3) *William and Marry Law Review*, 639.

a. **Law-Making Power:** The National Assembly derives its legislative powers directly from the Constitution. It has the power to legislate on the whole of the Federation or any part thereof.⁴⁹ The Constitution vested the legislative powers to the Senate and the House of Representatives in respect of all matters contained in the Exclusive Legislative Lists set out in the Second Schedule to the Constitution. These Powers are exclusively given to the National Assembly by the Constitution to legislate on. In the case of *Lagos State Internal Revenue Board v. Motorola Nigeria Limited & Anor*⁵⁰ the Court held that, the power of making-laws by the National Assembly is for peace, order and good governance of Nigeria. In addition, to the powers contained in the Exclusive Legislative Lists, the National Assembly can concurrently exercise legislative powers alongside the State House of Assembly in all items contained in the Concurrent Legislative Lists set out in Part II of the Second Schedule of the Constitution, where there is dispute in items of exercise of legislative powers between the National Assembly and any of the State House of Assembly, the laws made by the National Assembly shall prevail and that other law made by the State House of Assembly is void to the extent of the inconsistency.⁵¹ To this end, it is pertinent to note that, in the content of law making power, there are relationships between the legislature and the executive, because , the legislature is the only branch that is empowered by the Constitution to pass bills sent to it by the executive, be it at the national or state levels, for instance, in the case of the federal, the president sends the bill to the National Assembly for its consideration, so also, in the case of a State, the Governor sends to the State House of Assembly.⁵²

This is one of the most essential areas of collaboration between the legislature and the executive arms of government. However, it has been held in the case of *AG Abia State v. AG federation*⁵³ that, the Constitution being the ground norm and the organic law of the land, it may restrict or ignore the full application of this principle by means of an express provision of the Constitution itself. Therefore, the Supreme Court may expressly expand, widen or restrict the application of the principle of separation of powers.⁵⁴ The Supreme Court, held in the case of *AG Abia v AG Federation* (supra) that the provision of Section 315 (2) of the 1999 Constitution which empowers the President as the Chief Executive to modify an existing law either by way of alteration, omission or repeal if the President considers it necessary to bring such law into conformity to the Constitution. The Supreme Court validated the legislative action of the President when he without any recourse to the National Assembly modified the Allocation of Revenue (Federation Account Amendment) Act.⁵⁵ This decision of the Supreme Court is a clear negation from the principle of separation of power and true federalism.

b. **Public Funds:** Although the appropriation bill is proposed by the executive branch, the same must be forwarded to the legislature for consideration before the executive can embark on expenditure. This power of the legislature is limited only to the raising of the public funds but includes the spending of all funds established for that purpose in the Consolidated Revenue Fund of the Federation. No money shall be withdrawn from the Consolidated Revenue Fund

⁴⁹ *Ibid* Section 4 of the 1999 Constitution (as amended)

⁵⁰ (2012) LPELR, 14712 C A 1-8.

⁵¹ *Ibid* , s. 4 (5).

⁵² *Ibid* ss. 58 and 100.

⁵³ (2003) 4 NWLR (Pt.809) 124 SC.

⁵⁴ *Ibid*.

⁵⁵ Cap A27 LFN 2004.

unless authorised by an Act of the National Assembly whether for an Appropriation or Supplementary Bill as prescribed in the Constitution.⁵⁶ The withdrawal of monies in the coffers of the Federal Government can only be made in accordance with the manner prescribed by the legislature.⁵⁷ Notwithstanding the legislative powers to authorise the withdrawal of funds only after appropriation, the President can authorise the withdrawal of money from the Consolidate Revenue Fund, if the Appropriation Bill is not passed into law by the beginning of any financial year for the purposes of running the daily needs of the Federal Government. However, the authorisation by the executive to withdraw from the Consolidated Revenue Fund will not exceed six months or the coming into force of the Appropriation Act whichever comes earlier.⁵⁸

The legislature in addition to the powers over budget yearly estimates of the Federation has the power to look after funds meant for contingencies which have not been covered by the yearly estimates. The Contingencies Fund is for urgent and unforeseen need expenditure of which no provision exists as at this time of happening of the contingency.⁵⁹ Furthermore, the legislature has power to receive report from the Auditor General of the Federation who is authorised by law to audit all books, accounts and records of transactions of the Federation. His appointment however, is subject to the confirmation of the Senate but he is not subject to any authority or person and can only be removed from office as Auditor-General of the Federation before his tenure ends by the President when he sees that the Auditor-General has failed to perform his functions.⁶⁰ What is of particular interest in this analysis, is the constitutional relationship between the legislature and the executive, the relationship of which is based on the principles of checks and balances as enshrined in the Constitution and the principles of separation of powers within the ambits of federal system of government.

c. Passing of Budget: This is one of the annual and supplementary budgets to finance the programs and activities of government. The passing of annual and supplementary budget as a function of legislature, as public funds cannot be spent without approval by the legislature. However, budget proposals for the spending of public money must come from the executive, which usually accommodates inputs from the other arms of government. However, does the legislature have powers to alter the budget sent to it by the executive? Sebastian Hon. opined that the word “laid” in Section 81 (1) of the 1999 Constitution, if read subject to the legislative powers of the National Assembly under Section 59, has given the National Assembly some levels of powers over the estimates sent by the executive.⁶¹ Indeed, the word “laid” in the sub-section suggests about two things: (a) “put on the legislative table for deliberation and passing into law,” and (b) “consider the estimates as human beings and not as robots.” Clearly, from this interpretative reasoning, the legislature has powers to tinker with the estimates sent to it by the executive and this includes subtracting or adding to those estimates.⁶² According to Falana, the legislature is not “Rubber Stamp Parliament” on the grounds that it is empowered by the Constitution to debate and make its informed inputs into the budget proposals submitted to it by

⁵⁶ *Ibid*, s. 80 (1-3).

⁵⁷ *Ibid*, s. 80 (4).

⁵⁸ *Ibid*, s. 80.

⁵⁹ *Ibid*, s. 83.

⁶⁰ *Ibid*, ss. 83-87.

⁶¹ Sebastian Tar Hon., Does the National Assembly have Powers to Alter the Budget, <<https://punchng.com/does-nationalassembly-have-powers-to-alter-the-budget>> accessed on 2/2/2024.

⁶² *Ibid*.

President. But, nowhere in the judgement did the Federal High Court say that the National Assembly has the power to increase or insert new items like Constituency Projects into the budget estimates contained in any Appropriation Bill or Supplementary Bill prepared and submitted to it by the President.⁶³

It is pertinent to state that, the seeming *lacuna* in Section 81 of the Constitution has been sufficiently addressed by the Fiscal Responsibility Act, No. 31 of 2007. Section 13 thereof has imposed a mandatory duty on the Minister of Finance to seek inputs from the National Assembly and other relevant statutory bodies in the preparation of the Medium Term Expenditure Framework which shall be the basis for the preparation of the estimates of revenue and expenditure to be prepared and laid before the National Assembly under Section 81 of the Constitution. It is at this stage of preparing the Medium Term Expenditure Framework that the members of the legislature may influence the introduction of new items or inclusion of projects to be executed in their constituencies. Therefore, the legislature cannot prepare any aspect of the budget estimates, lay before it, pass same and then request the President to sign it into law.

d. Oversight Functions: Legislative oversight is defined as “the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation.”⁶⁴ The legislature constitutionally has the power to supervise the exercise of the executive powers to the extent determined by the Constitution. The rationale behind the oversight functions of the legislature is provided for under Section 88 of the 1999 Constitution, which empowers the legislature to carry out investigations within its competence to prevent and expose corruption, inefficiency or waste in the executive or administration of laws. Thus, from the wording of the Constitution, the legislature has independent powers to inquire into the workings of the government because of the prominence given to the oversight responsibility of the legislature. For instance, Section 67 (2) of the 1999 Constitution provides that: A Minister of the federation shall attend either House of the National Assembly if invited to explain to the House the conduct of his ministry, and in particular when the affairs of that ministry is under discussion.⁶⁵ Legislature exercise oversight of the executive branch of government to ensure that policies agreed upon at the time they are passed into law are in fact implemented by the state.⁶⁶ The whole idea behind oversight function is premised in its efficacy to ensure accountability of government, limiting the exercise of powers of government institutions, especially the power of the executive branch of government to often than not make policies unilaterally and it encourages a practical expression of the principles of checks and balances.⁶⁷

The Supreme Court in the case of *AG, Abia v. AG, Federation*⁶⁸ held that, there are three types of oversight functions. These are the power to the legislature to conduct investigations; control and surveillance over the financial affairs of the executive; and control and supervision of

⁶³ Fami Falana, Does the National Assembly have Powers to Alter the Budget, <<https://punchng.com/does-national-assembly-have-powers-to-alter-the-budget>> accessed on 3/2/2024.

⁶⁴ Hironori, Y., *Tools for Parliamentary Oversight Geneva: Inter-Parliamentary Union*, (2007), 9.

⁶⁵ Maxwell, M. Gidado, “The Constitutional Role of the Legislature Viewed from a Nigerian Prism” (2015) (10) (1) *University of Jos Law Journal*, 249.

⁶⁶ *Ibid.*

⁶⁷ Aboyami, K., “A Critical Analysis of the Legislative Process in Nigeria,” (2000) (4) (2) *Nigerian Law and Practice Journal of Council of Legal Education*, 29.

⁶⁸ (2009) All FWLR (Pt.338) 604-609

government general business. But, the power of oversight or supervision can only be exercised within the law making powers of the legislature. The functions are not at large and must be exercised within the provisions of the Constitution. Legislative oversight function explains why accountability is a central concept to democracy and good governance which has now received much attention in the emerging democracies.⁶⁹ Unlike in the Republic of South Africa where its Constitution has a provision for legislative oversight institutions, the Constitution of Nigeria did not provide directly for legislative oversight functions of the legislature.⁷⁰ The concept legislative functions of the legislature is associated with the Constitutional theory of separation of powers. Shikyil and Ahmadu⁷¹ argued that, pure separation of powers in our democracies is not practical because the arms of government cannot check and balance each other than maintain their coordinate status. This postulation of theirs led to what Marshall⁷² sees checking of one branch by another as a participation in the other's function and a partial violation of the separation of powers theory which is meant to separate and balance off against each other.

- e. **Confirmation of Appointments:** Despite that the President is empowered to make various appointments, still the 1999 Constitution requires the Senate to confirm most of these appointments. Similarly, at the State level, various appointments made by the Governor must be confirmed by the State House of Assembly before the appointments become effective. Some of these appointments include: Commissioners, Chairmen, and Members of Statutory Commissions, judges among others. Scrutiny of such nominations for appointments by the House is useful in so many ways. First, it can be used to discourage favouritism or nepotism on the part of the Governor or keep politically unfit or controversial figures away from State agencies.⁷³ It can be used and it is often used by the Senate to ensure fair balancing of States' interest in Federal Character Principles, since without this, the tendency that a President or Governor, consciously or unconsciously, allows a preponderance of some ethnic groups or sections in his administration to the disadvantage of others is very high.⁷⁴

Having examined the relationship of the legislature to the Executive, it will be pertinent to look at the relationship of the Executive to the Legislature within the ambit of federalism and the Constitution. The Executive broadly refers to the arm of government responsible for carrying out or administering laws enacted by the legislature. It is the branch of government responsible for the day-to-day management of the state. Under the Nigerian Constitution, the executive powers of the Federation is vested in the President and shall extend to the execution and maintenance of the Constitution, all laws made by National Assembly and to all matters with respect to which the National Assembly has for the time being power to make laws.⁷⁵ The Executive function of the State shall be vested in the State governor and is extended to the execution and maintenance

⁶⁹ S. S. Shikyil and R. A. Ahmadu, "Legislative Oversight: Imperative for Good Governance," In: Yusuf, M. Yusuf, and Others. (Eds.) Contemporary Legal and Development Issues in Nigeria: Essay in Honour of Late Shattima Ahmed Mukhtar Liberty, (Global Comput Rays Co. Lagos, 2013), 126

⁷⁰ *Ibid*

⁷¹ *Ibid*

⁷² Marshall, V., *The Separation of Powers in Founding Principles of American Constitution*, (Indiana University Press, Bloomington, 1977), 110.

⁷³ *Ibid* Aondoana, (n27)

⁷⁴ *Ibid*

⁷⁵ E. A. Obidimma and E.O.C. Obidimma, *The Legislative –Executive Relations in Nigeria's Presidential Democracy* (2015) (3) (1) *International Journal of Business and Law Research*, 77.

of the Constitution and to supplements all matters of which the State House of Assembly has power to make laws.⁷⁶ Although, the executive in its relationship with other branches of government is identified with the maintenance of the Constitution, all laws made by the legislature as well as the implementation of government policies and programmes, the scope of its functions appears to permeate into legislative and judicial functions.⁷⁷ Anifowoshe⁷⁸ encapsulates the functions of the executive into three broad categories: legislative, administrative, and judicial.

f. **Legislative Function:** The executive performs legislative functions by recommending and initiating bills for the consideration of the legislature. In addition, through delegated power by the legislature, the executive can make regulations, issue statutory orders, standards, guidelines, and rules necessary to meet changing circumstances. Furthermore, the power of veto is a legislative function of the executive most especially in the Presidential system of government like Nigeria.

g. **Administrative Functions:** Under this function the executive administers the affairs of the state, directs, supervises and coordinates the implementation of laws passed by the legislature. In addition, the executive appoints, controls, disciplines and removes the higher administrative officers. Such appointments and removals however, have to be confirmed by the legislative branch. Another administrative function is the control of the armed forces and agencies. By this function, the Chief Executive (President) is the supreme commander of all the military and security forces and has the authority to commit them to a war against external aggression and to combat internal disturbances, tension, insurgencies and civil war. He has the responsibility of declaring a state of emergency in the country for the peace, order, safety and security of all. The executive is primarily responsible for determining, coordinating and implementing the foreign policy objectives of the nation. He is the symbol of the nation in foreign affairs through his representation of the country at international events and negotiating and concluding binding treaties with foreign entities, governments and other global and regional institutions. The treaties, however, may require the ratification of the legislature for their domestication and implementation in Nigeria.

h. **Judicial Function:** The judicial functions of the executive include issuing prerogative of mercy on offenders' sentence by court of competent jurisdiction. The executive can also grant pardon and amnesty to certain categories of offenders thus freeing them from legal consequences of their action.⁷⁹

The Executive branch may check the legislative arm of government by means of its control over public funds of the federation. Though, it is the function of the legislature to approve the appropriation bill and make provisions for the execution of its project and functions, the actual release of the fund is the responsibility of the executive arm of the government.⁸⁰ The executive

⁷⁶ *Ibid*

⁷⁷ *Ibid*

⁷⁸ Anifowoshe, A., "Legislative, Executive and Judicial Duties in Sustaining Democracy: A Theoretical Discourse in Nigeria" (1998) XXI (1) (2) *Indian Socio-Legal Journal*, 38.

⁷⁹ *Ibid*

⁸⁰ Amah Emmanuel Ibiam, *Federalism, Democracy and Constitutionalism: The Nigerian Experience* (2016) (53) *Journal of Law, Policy and Globalization*, 9.

may therefore frustrate the legislative duties through its process of release of funds to the legislature.⁸¹ This is in addition to the power to veto legislation made by the legislative arm of government.

The judiciary is to be found in the provisions of Section 6 of the 1999 Constitution, it appears from the provision of the section that the Constitution intended that the judiciary should be truly federal. However, the Constitution draws a sharp line of distinction between the judicial powers of a State. According to Section 6 (1) of the 1999 Constitution, the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the federation. On the other hand, Section 6 (2) provides that: the judicial power of a State shall be vested in the courts to which this section relates, being courts established subject as provided by this Constitution for a State. The Constitution further underscores the separateness of federal courts and state courts by the delimitation as Part I, of the Chapter is headed “Federal Courts” Part II is headed “State Courts.”⁸² Under the Federal Courts, we have the Supreme Court, Court of Appeal, Federal High Court, the National Industrial Court of Nigeria, High Court of the FCT, Sharia Court of Appeal FCT and Customary Court of Appeal FCT.⁸³ For the State Courts, which are listed under Part II, these are; High Court of a State, the Sharia Court of Appeal of a State and Customary Court of Appeal of a State.⁸⁴ The federal structure of the judiciary is however, not limited to the courts. The Constitution also delineates the administration of the court between the federation and the states. One of the bodies created for the federation under Section 153 of the 1999 Constitution is the Federal Judicial Service Commission. This is the body vested with the power to advise the National Judicial Council in nominating persons for appointment to federal judicial offices.⁸⁵ At the State level, we have the State Judicial Service Commission, which is one of the bodies established under section 197 of the 1999 Constitution, to exercise similar powers as its federal counterpart.⁸⁶ From the foregoing, it appears from parallel existence of the judicature at the Federal and State levels, that there is judicial federalism in Nigeria under the 1999 Constitution.

The judicial arm of government is responsible for interpreting the Constitution and laws made by the legislature and assented to by the executive arm of government. This has created a relationship between the three arms of government in Nigeria. These judicial functions are mainly exercised in civil and criminal cases by qualified judges appointed by the executive, some of which appointments require the confirmation of the legislature. Judiciary is spoken of by Blackstone, in his distinct and separate existence of the judicial power in a particular body of men, nominated indeed, but not removable at pleasure by the Crown. This goes to say that separation of powers and independence of judiciary remains key to the tenets of democracy. However, the judiciary from its nature and functions, appears to be the least dangerous to the liberty of the citizens. In support of this, Hamilton states that:

⁸¹ *Ibid*

⁸² Babatuder Fashola, *Judicial Federalism under the Nigerian Constitution*, being a Paper Presented at the Section of Legal Practice of the Nigerian Bar Association, Uyo, Akwa Ibom State, November.11, 2014., 6-9.

⁸³ *Ibid*.

⁸⁴ *Ibid*.

⁸⁵ A. W. Ekarika and E.E.Ekpo and A.D.Essien, *Federalism and the Challenges of Judiciary in Nigeria* (2017) (2) (1) *International Journal of Advanced Research in Public Policy, Social Development and Enterprise Studies*, 125.

⁸⁶ *Ibid*.

The executive not only dispense the honours, but holds the sword of the community. The legislature not only command the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society and can take no active resolution whatever. It may truly be said not to have either force nor will but merely judgment and must ultimately depend upon the aid of the executive arm for the efficiency of the judgment.⁸⁷

From this, one can agree with Hamilton, that the judiciary is in comparison the weakest of the three arms of government, that it can never attack the success either of the other two branches and that all possible care is necessary to enable it defend itself against their attacks.⁸⁸ The threat to liberty thus, comes not from the judiciary which has to arbitrate, separate and protect according to law, any form of unjust treatment from the executive and the legislature which are repugnant to the true tenets of federalism is unjust.⁸⁹ However, the sanctity of the Nigeria judiciary has been brought under a serious threat by the executive arm of the government. Particularly on the 8th October, 2016, Nigerians woke to the reports of the invasion of the houses of several judicial officers by the Department of State Service (DSS). In the aftermath, some judges were searched, some arrested on the ground of allegation of corruption. This conduct of the security agency has seriously undermined the principle of separation of powers and the integrity of the judges. In addition, also, the judicial arm of government has also endured consistently disregarded to valid court orders. Another area that reflected the disregard to the principles of separation of powers, federalism and constitutionality by the executive arm of government was under President Buhari administration when he suspended the ten Nigeria's Chief Justice, Walter Onnoghen on 25 January 2019 following an order by a tribunal, even though different superior court had ordered a stay of proceeding. Though, the judiciary sits to interpret and apply the law in a disputed case, an ultimate safeguard is necessary. None can be entrusted with power without some guarantee against its abuse. Judge within the limits of his jurisdiction can be arbitrary or abuse his power. Though, the right of appeal from the lower court to a higher court is restraint in the last resort. Judges have been made subject to the general power of the executive. This check on the judiciary by the executive should be exercised in such a way that political expediency does not affect the status of the judiciary. However, the independence of the judiciary is not intended to debar the executive from its powers of check on the judicial arm of the government. All these go to illustrate the point that the Nigerian Constitution does not advocate for a total separation of powers necessary for the maintenance of each branch of government within the ambit of its powers. Despite the problems of the Nigerian Constitutional provisions on the principles of separation of powers and federalism as examined above, however, these constitutionally ordained doctrines shall be praised not buried. It is pertinent to state that, the conflict between the branches of government and the national and state governments, however, should be viewed as positive, not negative. The cooperation in government theoretically desired by so many does not, in reality constitute the making of safe government. One scholar has explained:

⁸⁷ H. Hamilton and J. Madison and J. Jay, *The Federalist* (London, J.M. Dent and Son, 1970), 78.

⁸⁸ A.W.Ekarika, and E.E.Ekpo and A.D.Essien, (n125)

⁸⁹ *Ibid*

The nation that checks and balances should involve thwarting, hampering, interfering, criticising, opposing, will naturally seem to many a little perverse and wrong-headed. But the whole point is that it is the making of mistakes which may thus be hampered, the commission of errors thwarted, the imposition of one-sided and unfair decisions interfered with the adoption of wrong policy opposed.⁹⁰

In other words, the friction between the branches is conducive not destructive, to good governance. Justice Brandeis wrote: “The doctrine of the separation of powers was adopted by the convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but...to save the people from autocracy.”⁹¹ Similarly, in *Bowsher v. Synar*⁹² Chief Justice Burger noted that:

The division of powers produces conflicts, confusion, and discordance at times...but it was deliberately so structured to assure full, vigorous and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of government power.

This system of separated institutions checking each other, is also one of separated institutions sharing powers. These shares of power were not distributed casually, they were carefully related to the capacities of each branch to its constituency and its intended role in the system.⁹³

5. Observations

Despite the Constitutional safeguards on the separation of powers in relations to federalism in Nigeria, still many challenges persist and some of these key challenges are:

1. Executive Dominance: the Executive often exerts undue influence over the legislature and judiciary, undermining true separation of power.
2. Financial Dependence: fiscal centralisation weakens state autonomy making federalism ineffective.
3. Political Interference: judicial appointments and legislative oversight are frequently politicised, eroding institutional credibility.

6. Recommendations

Based on the above observations, the paper recommends the following as a way of tackling the challenges.

1. Institutional independence free from undue influence and domination by any of the arm of government against the other arm.
2. There is a need for the amendment of the 1999 Constitution, to give the state financial autonomy rather than controlling its financial autonomy at the centre by the government in the name of fiscal federalism.

⁹⁰ Dexter, *Checks and Balances Today, in Congresses, The First Branch of Government* 1987, 83.

⁹¹ *Myers v. United State*, 273 US. 52, 293 (1926)

⁹² 478 US. 714 (1986)

⁹³ Robinson, *The Renewal of American Constitutionalism, in Separation of Powers, Does it Still Work*, 1986, 41.

3. There is a need to strengthen the checks and balances, particularly with regards to the appointments of judicial officers and the oversight function of the legislature, this will go a long way in strengthening the integrity and credibility of the judicial officers.

7. Conclusion and Recommendations

The 1999 Constitution may be considered as basic and rather comprehensive legal framework for true federalism. This was improved based on the 1979 Constitution in seeking to promoting federalism both in its formulation and as a tool for achieving the much needed unity in diversity. Federalism envisage the distribution of power among the three arms of government with a coordinate power and not subordinate powers. This doctrine can be found in what is termed as separation of powers among the branches of the government. However, the doctrine of separation of powers advocates the three branches while working together should neither exercise the power of the other branches nor control it, does not clearly operate in Nigeria. Because, the power to make laws is the function of the legislature, however, in Nigeria, the executive and the judiciary also make laws. For instance, the executive arm of government make regulation, issues statutory orders, gives guidelines among others which are purely legislature functions, so also, the judiciary, the Heads of Court are empowered by the Constitution to make Rules and Procedure for the courts. All these go to illustrate the point that the Nigerian Constitution does not advocate for a total separation of powers necessary for the maintenance of each branch of government within the ambit of its powers as enshrined under the principles of federalism and true separation of powers doctrine. However, this constitutionally ordained doctrine shall be praised not buried. The conflict between the branches of government and the national and state government should be viewed as positive, not negative. The cooperation in government theoretically desired by so many does not, in reality constitute the making of safe government.