

THE IMPACT OF SEPARATION OF POWER ON GOOD GOVERNANCE IN NIGERIA: CHALLENGES AND PROSPECTS FOR THE PRESENT ADMINISTRATION

***PEACE .M. KADIRI (ESQ) **ALTINE ABDULLAHI (ESQ)
& ***MUSA KADIRI (ESQ)**

Estate Management Department, Federal Polytechnic Bauchi, Bauchi, Bauchi State, Nigeria **Eruorapo & Co. Barristers and Solicitors *Federal Ministry of Justice Headquarters, Abuja*

ABSTRACT

This article is focused on drawing out attention to the doctrine of separation of power under the 1999 constitution of the federal republic of Nigeria (as amended) and its impact on good governance in the country. It therefore advocates the necessity for a holistic approach towards the prohibition of fusion of powers to ensure good governance in the country as a mark of government seriousness towards a meaningful development and the democratic tenets which it has embraced.

INTRODUCTION

The principle of separation of powers emphasizes the necessity of constituting the three organs of government to three separate bodies with varying functions and powers. These organs of government are the legislators which have the primary responsibility of law making, the executive which is responsible for the implementation of laws and the judiciary which is responsible for the interpretation of laws. Each of these organs must be confined to the exercise of its own functions and not allowed to encroach on the functions of other organs. In order words, the organs must be coordinate and mutually independent, each having independent powers in its area of influence.

The doctrine of separation of powers was popularized by Baronde Montesquieu, the French liberal philosopher who lived from 1689 to 1755. Jean Bodin, a French writer in his book, *The Republic* (1576) had earlier said some separation of powers was essential. He maintained that the prince should not administer justice in person but should leave such matters to independent judges. John Locke, the great liberal philosopher of the late seventeenth century also argued that it was advisable in the interests of liberty for powers

of government to be separated from each other. Aristotle also mentor similar ideas in his treatise on politics and Blackstone, in his commentaries on the laws of England (1765), referred to the importance of mutual checks on governmental power and of an independent judiciary in the English constitution.

The Nigerian government through its previous democratic constitutions had also adopted and institutionalized the doctrine of separation of powers. Under part II of the 1999 constitution of the Federal Republic of Nigeria (CFRN), section 4(1) vested the powers of law making on the legislators and states thus;

‘The legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the federation which shall consist of the senate and the House of Representative’.

Section 4 (2) states that, the National Assembly shall have power to make laws for the peace 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 second schedule to this constitution....’

The executive power is vested on the president and his cabinet with the main function of law implementation, as contained under section 5 of the 1999 constitution of the Federal republic of Nigeria, in these words;

5(1) subject to the provisions of this constitution, the executive powers of the federation –

(a) Shall be vested in the president and may, subject as aforesaid and to the provisions of law made by the National Assembly, be exercised by him either directly or through the vice president and ministers of the Government of the federation or officers in the public service of the federation.

While judicial powers are vested on the judiciary with the primary responsibility of interpreting the laws. The constitution provides under section 6 of the CFRN, thus;

6 (1) ‘the judicial powers of the federation shall be vested in the courts to which this section relates, being courts established for the federation’.

As earlier noted, the three organs of government in Nigeria have separate functions, while the legislators perform the functions of law making the executive implement such laws and the judiciary interpret the laws. The importance of that is to avoid the excessive use of powers by one organ of government and each serves as a check on the other. For example, if law made by the legislature are wrongly implemented by the executive, the judiciary would be called upon to stabilise the problem by quashing such wrong actions. In the same vein if the legislature makes laws that may be inconsistent with public policy or are repugnant to natural justice, equity and good conscience, the executive will refuse

his assent even though his refusal may be vetoed but it is democratically very difficult to get the absolute majority to veto the presidential assent.

Furthermore, the three organs of government, apart from being separate are also independent from each other. Hence members of the National Assembly are prevented from becoming cabinet members (ministers) and any member of the National Assembly that desires taking up the work in the cabinet or a Judicial posts must resign his membership in the National Assembly.

Similarly, the president and his cabinet members are not members of the legislature or the Judiciary. The judiciary is also independent of the legislature and the executive under the constitution. The judiciary has the powers to declare the actions of the executive unconstitutional, and they also have the powers to declare laws made by the legislature null and void if such laws are considered contrary to or inconsistent with the constitution. The constitution is the ground norm.

SEPARATION OF POWERS UNDER THE PRESIDENTIAL SYSTEM OF GOVERNMENT

One of the major distinguishing characteristic of the presidential system of government is separation of powers. It is evident from the issues raised above in our introduction, that the doctrine of separation of power is more successful under the presidential system of government as operated in Nigeria than under any system of government. However, in spite of these facts, evidences abound to show that there is still no strict operation of the doctrine as could be viewed from its operation and practice in Nigeria. It has been discovered that despite the operation of the doctrine of separation of powers, in practice, there has been lots of interference by one organ of government on the other. Though there is always the need for synergy and co-operation between the organs of government to enhance smooth running of government but not to the extent of usurping or glaringly interfering with the powers of the other organ.

GOOD GOVERNANCE

The concept of good governance according to Ngozi Udombana in her article, Human rights protection and good governance in Nigeria, is as old as human civilization. She maintained that governance means the process of decision making and the process by which decisions are either executed or not executed. Similarly, prof. Nwabueze in his work “Judicialism and good governance” maintained that good governance is a process whereby public institutions conduct public affairs, manage public resources and guarantee the realisation of human rights with special regard to openness, participation, accountability, effectiveness and coherence.

From the above, we can safely state that good governance is the exercise of political authority to manage a nation's affairs so as to secure and to promote happiness, security and welfare of the public.

Good governance represents the interest of the people by upholding rule of law, protection of human rights, ensuring security of life and properties, discouraging corruption and sharp practices. It is open to criticism, it promote accountability and transparency in public offices. It is participatory and it is generally responsive to the need of the general public. It is transparent, accessible to all. Reif L.C in his work described good governance "as a basket of many practices". Its true test depends largely on the degree to which it delivers on the promise of human rights, be it civil, cultural, economic, political and social rights". Office of the high commissioner on human rights (2000).

VIEWS BETWEEN SEPARATION OF POWERS AND GOOD GOVERNANCE

The legal basis for separation of power and good governance can be seen in the postulations of the proponents of the doctrine. Jean Bodin (supra) earlier said, some separations of power were essential, and that the prince should not administer the law himself. In his argument, he insists that that will avoid excess of governance and promote transparency by curtailing tiny impunity.

When the three organs are separated as analysed in this work, governance will be more effectively done, and there will be better performance by each organ of government knowing fully that its powers are not left unchecked but it will be interfered with when it over exercise the powers or is bias in the exercise of such powers, hence separation of power is not only important but it is necessary to ensure effective and efficient exercise of power.

THE IMPACT OF SEPARATION OF POWERS ON GOOD GOVERNANCE

There is no doubt that the principle of separation of power have great impact on good governance, especially in a developing democracy like Nigeria where the democratic institutions are not yet stable and the old ways of military dictatorship is still in the political blood of the nation, thus separation of power enhances good governance.

Under the presidential system of government as practiced in Nigeria, both the executive and the legislature are checked by the judiciary, hence the judiciary can declare the actions of both the executive and the legislature null and void if such actions are seen to be inconsistent with the constitution. Similarly, both the legislature and the executive also check the powers of each other, while the president can exercise his discretion and refuse to sign any law, thus preventing the law from becoming legally effective, this veto can be over ridden by two thirds (2/3) vote of the National Assembly. Moreover, major

appointments of the president including that of his cabinet must be approved by the senate to avoid wrong appointments by the president. The legislature also has the power to impeach the president if found guilty of violating the provisions of the constitution or if he commits any impeachable offence as prescribed by the nations constitution.

From the above, it is evident that the constant checks between the three arms of government promote efficiency in administration which give good governance as its by-products.

CHALLENGES AND PROSPECTS FOR THE PRESENT ADMINISTRATION

Separation of powers has become more popular for the purpose of preserving the liberty and freedom of the citizens. This is necessary in order to prevent tyranny and abuse of power by government. But an in-depth study of contemporary political systems however, shows that it is difficult or even impossible to completely separate the three organs of government, because government functions and authority overlap each other at some points. The biggest challenge before the present administration in Nigeria in her effort to deliver her mandate which should naturally reflect good governance is to uphold the principle of separation of power so that the necessary checks will prevent unnecessary abuse of power by political office holders. Situation where the executive pockets the legislature and even the judiciary is not good for the system, and that will normally lead to abuse of power by the executive.

Moreover, despite the need for the three organs of government to separate for the smooth running of government, it is also needful to co-operate with each other administratively to promote efficiency. For instance, even though the president is not a member of the legislature, he interact administratively with her and often lobby to approve certain bills, budgets, appointments and other things that may enhance his performance. In addition, the members of the president's cabinet have to appear before the legislative committees to defend their actions or inactions that have direct negative impact on the general public. Furthermore, as powerful and independent as the judiciary is, its success and strength is tied to the executive, because the appointment and removal of judges largely depends on the executive.

Thus, for the smooth running of government and the three organs of government there must be co-ordinate and efficient harmony among them. If the required co-operation and understanding does not exist, then each organ might pursue policies and programmes that might undermine the integrity and efficiency of the other arm or organ. The present administration must therefore ensure that the expected level of interaction and understanding between the organs of government is guaranteed to allow efficiency with the resultant end of giving the people the necessary good governance.

CONCLUSION

To achieve balance and good governance, the three arms of government must be separated. This will ensure that liberty and effective governance can be simultaneously achieved. Thus, instead of dominating others, each arm of government should be a watchdog to the others. Separation of powers does not mean that the legislature, the executive and the judiciary should not interact with each other, but what the proponent, Barondi montesquieu had in mind was that each organ should impose restrains to prevent the abuse of power.

Finally, strict adherence to the principle of separation of power will no doubt guarantee good governance and add credibility to Nigerian's growing democracy.

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