



DOCTRINE OF SEPARATION OF POWERS IN A PRESIDENTIAL SYSTEM OF GOVERNMENT & GOOD GOVERNANCE IN NIGERIA: A STUDY BUHARI CIVILIAN ADMINISTRATION

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ABSTRACT

This research was carried out to examine the application of the doctrine of separation of power in a presidential system of government with a critical review of the fourth republic of Nigeria. The objective of the study is to ascertain whether separation of power in Nigerian presidential system in the fourth republic helps to improve or endanger the protection of civil liberty and freedom of citizens in Nigeria. The study used the secondary means of data collection in obtaining information which include interview, textbooks, articles and publications. It was found that separation of power practiced in Nigeria does not guarantee civil liberty and freedom in the fourth republic. It is recommended that there should be check and balance between the three arms of government irrespective of party in which one emerged and that also, there should be true independence of the judiciary with a body saddled with the responsibility of appointing judges and presidents of courts of appeal to determine their remuneration and discipline.

Keywords: separation of power, presidential system, Nigeria, fourth republic, civil liberty

Introduction

The presidential system of government also called a congressional system of government is a system of government where an executive branch exists along side legislature and judiciary. The president exercises ultimate power with little or no limitation of such powers as assigned to him by the constitution. Its origin can be traced back to the medieval monarchies of France, England and Scotland in which executive authority was vested in the crown not in the meeting or the estate of the parliament.

According to (Ugu and Vincent 2007) the presidential system of government is a system whereby the president wields the ultimate power of government. Under this system, the president is not just a mere figure head like is the case of parliamentary system but the head of state and the head of government with all rights, powers, privileges and immunities.

Being the chief executive, the president bears all burden of government and is answerable to the people for the effective and efficient discharge of his duties. He combines both

functions of head of state and head of government in the administration of Sovereign state (Bassy 2002).

Okoli and Okoli (1990) described the presidential system of government as a form of government in which the presidential is dominant. Thus, in presidential system of government, the president combines the important rules of:

The chief executive

Ceremonial head of state and the very symbol of authority

The commander – in – chief of the arm forces and

The leader of his political party

The cardinal feature of the presidential system of government is that the president and cabinet are not members of the legislature. However, the members of the presidential cabinet may be summoned before the legislature to answer questions on any irregularities on behalf of their respective departments or ministries.

Furthermore, no bill passed by the legislature becomes law until the president gives his assent to such bill. Hence there is considerable separation of powers, functions and functionaries (Omolayo and Anowolagu, 1987). The doctrine of separation of powers was first propounded by John Locke and first used by Baron Montesquieu in his book titled “The spirit of the laws” published in 1748 which implies that the functions of government must be divided into three areas viz, the executive, the legislative and judiciary, in such a way and manner that these arms must be combined to exercise its own functions without encroaching upon the functions of the other arms (Appadoric: 1968).

Hence the doctrine of separation of power implies that the law-making powers of government must be exercised by the legislature elected by the people through a popular election while the law implementation power should be exercised by the executive and the law adjudication power exercised by the judiciary (Okoli and Okoli: 1990). The essence of doctrine of separation of power is to ensure limit excess usage of governmental powers, preservation of civil liberty and avoidance of tyranny (Appaoria 1986)

Nigeria as a sovereign political entity adopted the presidential system of government on first of October 1979 propounded out by the 1979 constitution that ushered in the third republic under the leadership of President Shehu Shargari. The system did not last long as it was terminated in December, 1983 due to military intervention that brought in Buhari and Idiagbon through a successful coup – d’etat (Bassy: 2002).

However, in May 1999, Nigeria again adopted the presidential system of government under the leadership of president, Olusegun Obasanjo; which marked the beginning of the fourth republic. This system is still in place till date. This research work, however, solely intends to critically assess the application of the concept of separation of power in Nigeria’s presidential system of government in the fourth republic (1999 to 2012).

The fundamental of the application of the doctrine of separation of power in the presidential system of government tends to guarantee civil liberty and freedom of the citizens as well as eliminates tyrannical government.

Unfortunately, the period between May 1999 to date under which Nigeria has practiced presidential system of government, the state has experienced very severe abuses of the civil liberties and freedoms of the Nigerian citizen's as well as the promulgation of obnoxious laws which constitutes tyrannical system of government. It is these excesses usage of powers which branches the rules of law and separation of powers that these research works intend to address.

The objective of this study is to critically assesses the following:

- i. To examine the extent to which doctrine of separation of power is applied in Nigeria presidential system of government of the fourth republic (1999 to 2012) in order to guarantee the civil liberty and freedom of the citizens as elimination of tyranny in government of the Nigeria state.
- ii. To examine if true separation of power exist in the presidential system of government of Nigeria in the fourth republic

Does the application of the doctrine of separation of power in Nigeria presidential system of government in the fourth republic engender the protection of civil liberty and freedom of citizens in Nigeria?

Does true separation of power really exist in Nigeria presidential system of government of the fourth republic?

Hi: Presidential system of government encourage tyranny and abuse of power by the president.

Ho: Presidential system of government does not encourage tyranny and abuse of power by the president.

Ho: There is no true separation of power in the presidential system of government of the fourth republic.

Hi: There is true separation of power in the presidential system of government of the fourth republic.

Ho: The application of doctrine of separation of power does not guarantee civil liberty and freedom of citizens in Nigerian fourth republic.

Hi: The application of doctrine of separation of power Guarantee's civil liberty and freedom of citizen's in the Nigeria fourth republic.

This research work when completed will be of paramount and tremendous benefit to the following:

- i. Students of Public Administration, Political Science and other students in the social sciences.
- ii. Members of the three arms of government in federal, state and local government.
- iii. It will also serve as reference materials for future researchers who may wish to research further on the topic or similar topics.

The scope of this study is limited to Nigerian presidential system of government in the fourth republic (1999 – 2012) under the leadership of president' Olusegun Obasanjo, Umaru Musa yardua and Ebele Good luck Jonathan.

Some of the constraints I encountered in the course of this academic research are financial and materials relevant for this research work. Time factor is another problem as a result of other academic engagements and other domestic activities.

Theoretical Framework

The Doctrine of Separation of Power

The doctrine of the separation of powers is a model for the governance of a state. Under this model, the government of a state is divided into branches, each with separate, distinct and independent powers and areas of responsibility so that the powers of one branch are not in conflict with the powers assigned to and associated with the other branches.

Separation of powers therefore refers to the division of responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The purposive and teleological intent of the doctrine of separation of powers is to prevent the concentration of untrammelled and unchecked power by providing for “checks” and balances” to avoid autocracy, over-reaching by one branch over another, and the attending efficiency of governing by one actor without need for negotiation and compromise with any other.

The separation of powers interacts with both the rule of law and the supremacy of the constitution; and the independence of the judiciary ensures that the executive will be kept within the legal powers conferred by the constitution, and thus, simultaneously upholding the rule of law and constitutional supremacy.

Merits of the Theory of Separation of Powers

1. Protection of Liberty and Rights

The theory of separation of powers allows for protection of the liberties and rights of the individual, and protects him or her from different forms of despotism and oppression.

2. Increase in Government's Efficiency

As powers are distributed among the government departments, these departments gain deep knowledge about the matters they are concerned with, and become more efficient. The functions that are involved in governance can often be enormous for one arm of government to perform. So, separation of powers helps to reduce the workload on any particular arm of government.

3. Promotes Order in Governance

All the three arms of government are allocated their separate functions. A strict application of the principle would ensure that each performs its role and that only. This ensures that there is order in the management of the state.

4. Prevents Abuse of Power

Separation of powers accompanied by check and balances is an effective check against abuse of power and arrogance of power. As powers are distributed among different departments,

these departments enjoy only limited powers which prevents rise of dictatorship. The concept is good in the sense that it is able to check tyranny on the part of those in government. The concept ensures that too much power is not concentrated in one arm of government. This prevents the temptation of abuse of power.

5. Ensures Judicial Independence

Judicial independence is the concept that the judiciary should be independent from the other branches of government. In almost every constitution, the judiciary is clothed with the powers to have the final say in all constitutional disputes and to be able to declare null and void the actions of the other arms of government. The concept of separation of powers helps to strengthen the independence the judiciary has to perform its functions.

Demerits of the Theory of Separation of Powers

This theory, though adopted by most countries, has not escaped criticism. It has been criticized not only as impossible but also as undesirable. According to Sabine, "Montes was guilty of oversimplification. He united his theory to a hasty and superficial analysis of the constitutional principles of liberty." Finer said that it was futile to rigidly apply the theory of separation of powers to modern conditions. The theory of separation of powers has been attacked on the following grounds.

1. Wrong Reading of British System:

By the time Montesquieu developed his theory of separation of powers, there had come into being the Cabinet system of government. The separation of powers did not exist in Britain at the time. On the contrary, there was a concentration of responsibility. Having witnessed the British people enjoying liberty, Montesquieu wrongly concluded that in Britain there was a separation of powers. He misread British politics.

2. Not Fully Attainable

This theory is not fully attainable. The executive has some role in rule-making, and the legislature also performs some judicial functions. For example, impeachment which is judicial in nature is done by the legislature.

3. Administrative Complications

Separation of powers results in administrative complications. It becomes difficult to forge cooperation, coordination and harmony among the organs of government. The smooth working of modern governments demands not so much separation of powers as a "co-ordination" of powers.

4. Could Lead to Confusion and Deadlock

Separation of powers sometimes leads to jealousy, suspicion and friction among the organs of government. While producing disharmony and confusion, it may paralyze the administration. As a result, the administration often fails to take quick decisions even at a time of crisis. According to Finer, the theory of separation of powers throws "governments into alternating conditions of coma and convulsion." Another scholar is of the view that "separation of powers means confusion of powers."

5. Inequality of Powers

This theory is based on the principle of equality of powers, but this principle is flawed. In the parliamentary system, the legislature which represents the people is most powerful while the executive is most powerful in the presidential system.

6. Not the Sole Factor of Liberty

Separation of powers may contribute to liberty, but it is not the only factor of liberty. Liberty also depends a lot on the psyche of people, their outlook, their political awareness, customs and traditions, fundamental rights, rule of law, independence of judiciary and economic equality.

7. Could Disturb the Balance of Power

The government, performing various important functions, has become increasingly powerful. Besides being the problem-solver and crisis-manager, it is also required to provide welfare for the people. All this has made the executive very powerful, and has disturbed the balance among the three organs of government. Planning, security and welfare demand not so much separation of powers as their “fusion”.

Historical Development of the Doctrine of Separation of Powers

Various writers are associated with the doctrine of separation of powers in its classical form. Aristotle who lived between 384 BC to 322 BC identified the three elements of the constitution in his famous work “The Politics”. Aristotle postulated that:

"There are elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it ... If these are well arranged, the constitution is bound to be well arranged.

The three are; first, the deliberative, which discusses everything of common importance; second, the officials; and third, the judicial element

It is beyond any doubt that the constitutional seeds of the doctrine of separation of powers were sown several centuries ago and indeed as far back as 300 years before Christ, emphasizing the need for government to act according to and under the law, a requirement made possible by separation of functions between the three institutions of the state. The constitutional historian F. W. Maitland traces the doctrine of separation of powers in England to the reign of Edward I, when he posited that:

In Edward's day all becomes definite, there is the parliament of the three estates, there is the king's crown, and there are the well-known courts of law

Viscount Henry similarly advanced the doctrine of separation of powers. He was concerned with the necessary balances of powers within a constitution, arguing that the protection of liberty and security within the state depended upon achieving and maintaining some equilibrium with the crown, parliament and the people. Addressing the respective powers of the king and Parliaments, Bolingbroke observed that:

Since this division of powers and these different privileges constitute and maintain our government. It follows that the confusion of them tends to destroy it. The proposition is

therefore true; that in a constitution like ours, the safety of the whole depends on the balances of the parts

The French writer, Baron Montesquieu, while addressing the issue of separation of powers, stressed the importance of the independence of the judiciary in the following terms.

When the Legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.

Again, there is no liberty if the power of judging is not separated from the Legislative and executive, if it were joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control for the judge would then be the Legislator. If it were joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, if the same man, or the same body, whether of the nobles or the people, were to exercise those three powers, that of enacting laws, that of executing public affairs, and that of trying crimes or individual cases.

Although Montesquieu had some fundamental misconceptions about the true nature of the English Constitutional system, in reality, he referred to “distribution” of powers

Montesquieu’s approach was to present and defend a form of government which was not excessively centralized in all its powers to a single monarch or similar ruler or a form of government known then as “aristocracy”. He based this model on the constitution of the Roman Republic.

The foregoing underscores the far-reaching importance and significance of the operation of the doctrine of separation of powers in modern states and goes to show the inevitable dangerous consequences of its negation by governments in any modern state, since it is trite and axiomatic aphorism that “power corrupts and absolute power corrupts absolutely”, and that the arrogance of power is the worst form of arrogance ever known to man, among all the forms of arrogance to which man is susceptible.

Furthermore, it can be seen from the postulations of these writers and jurists mentioned above that the doctrine of separation of powers and the independence of the judiciary can veritably be said to be the twin pillars on which modern states and all normative governments are based. Thus, the entire edifice or superstructure of all modern states and governments ought to be established on the three pillars of separation of powers in executive, legislature and judiciary. The imperative for separation of powers was beautifully summarised by Roy Moore who stated "The basic premise of the Constitution was a separation of powers and a system of checks and balances because man was perceived as a fallen creature and would always yearn for more power[7]"

The Relevance of Separation of Powers and Its Application to Nigeria

Nigeria as presently constituted is a creation of our colonial master, the Great Britain, which had suzerainty over what is Nigeria today from 1855-1960 , and shortly after the Berlin conference, which dealt with the partition of Africa by the European Colonial powers. Great Britain acquired control over different entities comprising the present- day Nigeria at

different point in time, culminating in the amalgamation of southern and northern protectorates in 1914 and to which independence was granted in 1960.

Lord Lugard of the Royal Niger Company introduced some sort of governmental system for the new colony and the colony went through various constitutional phases ranging from indirect rule to the Clifford Constitution of 1922, Richard Constitution of 1946, the MacPherson Constitution of 1951, and to the Littleton constitution of 1954, and the Nigeria independence constitution of 1960. During these eras, few eminent Nigerians like Obafemi Awolowo, Dr. Nnamdi Azikikwe, and Mallam Aminu Kano agitated for independence and self-determination from the Colonial Master, the Great Britain, which culminated in Nigeria being eventually, granted independence on October 1, 1960.

Unfortunately, Nigeria has not been able to achieve sustainable democracy since her independence, owing to an array of factors that “held her back” and prevented the consolidation of democracy in Nigeria.

Juan J Linz and Alfred Stephan (1996) succinctly put it thus:

There are a variety of different forms of authoritarians that fundamentally constrain any democratic transition in characteristic ways and systematically create obstacle to affect democratic consolidation. Different authoritarianism regimes affect the subsequent trajectory of transition effort toward democratization in systematic ways

The Nigerian state has been enmeshed in different kinds of authoritarianism right from the colonial era to this present day. Nigerian state is engaged in fierce struggle to break loose from all forms of undemocratic governance.

The Nigerian state has been enmeshed in different kinds of authoritarianism right from the colonial era to this present day. Nigerian state is engaged in fierce struggle to break loose from all forms of undemocratic governance.

It is unfortunate that since Nigeria’s independence in 1960, the state has been wallowing in the abyss of misrule and has been struggling to sustain genuine democracy and the judiciary has been saddled with the role of stabilizing Nigeria democracy.

When we look at our political system of government, the performance of the three arms of government, the electoral crisis and the post electoral crisis in Nigeria, one will arrive at the reluctant and bitter realization that the masses and electorates are not strong enough, united enough, courageous enough, or enlightened enough to cause the three arms of government to adhere strictly to the age long principle of separation of power. The abuse of state power mentioned here could not have thrived in Nigeria if the doctrine of separation of powers and rule of law and independence of the judiciary are strictly observed and religiously adhered to, and requisite checks and balance of state powers stringently maintained and respected. Assuming that these principles were rigorously adhered to in our country, Nigeria, the practice of democratic governance would have been well entrenched in our nation.

Checks and balance is the principle that each of the branches of government or state has the powers to limit or check the other two branches and this creates a balance between the three separate powers of the state. Checks and balances are designed to maintain the system of

separation of powers keeping each branch in its place. This is based on the idea that it is not enough to separate the powers and guarantee their independence but to give the various branches the constitutional means to defend their own legitimate powers from encroachment of the other branches.

Nigeria's Recent Democratic Experience

The 1999 Constitution of the Federal Republic of Nigeria made the theory of separation of powers a fundamental principle of governance. The 1999 Constitution in different sections vested the powers of government in separate organs of government as follows: Section 4 deals with the Legislative powers; section 5 deals with Executive powers, while section 6 is concerned with judicial powers. This kind of separation of powers is known as the horizontal separation of powers. The importance of the theory of separation of powers in enhancing the role of judiciary in achieving sustainable democracy in Nigeria was succinctly stated by Ikenga Oraegbunam (2005):[9]

There is no gainsaying the fact that a government of separated powers is less likely to be tyrannical and more likely to follow the rule of law. A separation of power can also make a political system more democratic. The division of powers also prevents one branch of government from dominating the others or dictating the laws to the public.

After three decades of nearly continuous military rule, democratic government was restored in Nigeria in 1999 and Nigeria once again adopted the American style of presidential system of government although with a nominal federal constitution. We must first of all recognize that despite the over 50 years of independence, in which the British leave a democratic system of governance and also had our own very first democratic experience (1979) and now from 1999 to the present dispensation, our democracy is still largely fledgling and imperfect with heavy consequences on human right.

However, we cannot but recognize that we are gradually, slowly, heading toward what a modern democratic society should be. There will be teething challenges, and we have them in abundance. Nigeria, as a nation has witnessed major events and milestones in her journey from colonial days through independence, the military rules and the interludes of civil rules. The on- going democratic dispensation came into force on May 29, 1999, with a new constitution known as the 1999 constitution. Under this Constitution, there appears to be some degree of separation of powers as between the Executive, which is made up of the president, the Council of Minister, the Civil Service, Local Authorities, Police and Armed Forces on the one hand, and the Legislature, i.e. the National Assembly, made up of the Senate and the House of Representatives, on the other hand. Our Legislature is bicameral, that is to say, there are two Chambers, each exercising a legislative role – although not having equal powers – and each playing a part.

The judiciary is that branch of the state which adjudicates upon conflicts between state institutions and between individuals. The judiciary is independent of both legislature and the executive. Separation of power and independence of judiciary is indispensable to the maintenance and sustenance of democracy. Separation of powers ensures that each branch

of state operates within its constitutionally allotted sphere of responsibility and independence of the judiciary ensures constitutionalism and guards against tyranny, despotism, dictatorship and totalitarianism.

To accentuate and underscore the veracity of the foregoing, James Madison, in his The Federalist Papers No 51, has observed that:

In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is no doubt, the primary control of the government, but experience has taught mankind the necessity of auxiliary precautions. This policy is supplying, by opposite and rival interest the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distribution of powers where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other, that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state.

Summary of Findings

From the study, the following findings are drawn from this research work:

- i. That the Nigerian presidential system of government does not encourage tyranny and abuse of power due to the fact that there is a separation of powers.
- ii. That the separation of power is partial due to the fact that Nigerian as a nation is a developing one which is highly characterized by high level of corruption.
- iii. That the separation of power practiced in Nigeria does not guarantee civil liberty and freedom of citizens in Nigeria fourth republic. This is for the fact that there is no independent judiciary that can advocate and guarantee civil liberty.

Conclusion

Obviously judging over Nigerian democratic system of government with those of other African countries like Ghana, South African, Togo and other Eastern countries like Singapore, Malaysia, Dubai and South Korea etc. it is a clear fact that Nigeria still have a long way to go in the world politics. This gap is not as a result of low human and material resources but as a result of multiple factors ranging from the architecture of the entity called Nigeria, lack of co-ordination on the side of elites and political class and finally the corrupt nature of the system.

Until we stand to fight corruption to the root, have individual re-orientation and restructure our judicial system and electoral system to eliminate the selection system instead of election system. Not until then Nigeria can never practice a true separation of power to uphold and sustain our democratic government.

Recommendations

Based on the research finding(s) and conclusion, the following recommendations are made by the researcher, hoping that it will help strengthen the presidential system of government in Nigeria.

- i. No nation with high level of corruption will grow economically, politically and otherwise. Therefore, Nigerian government should take the fight against corruption serious and prosecute those found guilty of any misconduct to serve as deterrent to the posterity.
- ii. There is need for true independent of the judiciary and for this to be achieved, there is need to create a body that will be sandal with the responsibility of appointing judges and presidents of court of appeal and who will also determine their remuneration and discipline. This will eliminate the influence the president has on the judiciary.
- iii. There should be checks and balances between the three arms of government irrespective of party in which one emerged. Hence there should be strict adherence to one's portfolio.
- iv. The constitution should be revisited to fashion out a system that will suit our ecological difference with that of our colonial masters, and to structure out workable civil service system.

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