Analysis of Legislative Power Under the Constitution

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Introduction

The 1999 Constitution of the Federal Republic of Nigeria remains today, one of the most important documents for discussion being the organic law relating to issues of governance. As the mode of governance affects the citizens directly or indirectly, the philosophy behind the examination of the document relating to it becomes imperative.

More specifically, law relating to the Constitution embraces that part of a country's laws which concerns the following topics, among others: the methods of choosing the Head of State; his powers and prerogatives; the composition of the legislature; its powers and privileges of its members; if there are two chambers, the relations between them; the general system of courts, and the tenure and immunities of judges; citizenship; civil liberties and their limitations.[1]

Briefly this paper is a diagnosis of the provisions of the Constitution relative to legislative powers. In this regard an attempt will be made to examine the meaning of legislative powers, the repositories of such powers, the parameters for and the mode of exercise of such powers and proposal for reforms.

The Legislatures

Suffice it to say that Section 4(1) and (6) of the Constitution vests the legislative powers of the Federation and of each State exclusively in the National Assembly and State House of Assembly, respectively.[2] The two subsections read:

> (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.
>
> (6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.

Further Section 47 of the Constitution is instructive as regards the bodies in which the legislative powers of the Federal Republic of Nigeria is vested and it reads:

> "There shall be a National Assembly for the Federation which shall consist of a Senate and a House of Representatives".

As regards the States, Section 90 of the Constitution provides:

> "There shall be a House of Assembly for each of the States of the Federation".

Meaning of Legislative Powers

Essentially, legislative function is the making of new law and the alteration or repeal of existing law. Legislation is the formulation of law by the appropriate organ of the State, in such a manner that the actual words used are themselves part of the law; the words not only contain the law, but in a sense they constitute the law.[3] It must be noted that words are common signs that mankind make use of to declare their intention one to another and when the words of a man express his meaning plainly, distinctly and perfectly, it must be given effect and there is no occasion to have recourse to any other means of interpretation.

The Constitution provides that 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.[4] The Exclusive Legislative List set out in Part I of the second schedule to the Constitution contains a list of sixty-eight items which include, among others, accounts of the government of the Federation, Arms, Ammunition and explosives; Aviation, including airports, safety of aircraft and carriage of passengers and goods by air; Banks, banking, bills of exchange and promissory note; Customs and excise duties; Diplomatic, consular and trade representation; Exchange control; External affairs; Insurance; Maritime shipping and navigation; Patents, trade marks; Railways; Stamp duties and any matter incidental or supplementary to any matter mentioned in the list. It should be noted that the power of the National Assembly with respect to this list is to the exclusion of the Houses of Assembly of States.[5]

The matters contained in the Exclusive Legislative List are so wide and covering as to touch every facet of human endeavour. The Constitution states that the House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to any matter outside the Exclusive Legislative List and any matter included in the concurrent legislative list.[6] The effect of this provision as it relates to House of Assembly in the State has been watered down by Section 4(5), which for ease of reference states:

> "If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of the inconsistency be void".

The concurrent legislative list under Part II of the second schedule contains a list of not too important 30 items, stating the extent of Federal and State Legislative powers. The items covered under the concurrent list include inter alia: Allocation of revenue, antiquities and monuments; Archives; Electric power; Exhibition of cinematograph film; Statistics and Trigonometrical, cadastral and topographical surveys.

The sum total of the effect of the extent of Federal and State Legislative power can be found in the doctrine of "Covering the field". This doctrine was explained by the Supreme Court in the case of Attorney-General of Ogun State v. Attorney-General of the Federation.[7] In this case the court had to interpret, among others the provision of Section 11 of the 1979 Constitution.[8] The section states:

> (1) "The National Assembly may make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services".
>
> (2) "Nothing in this section shall preclude a House of Assembly from making laws with respect to the matters referred to in this section including the provision for maintenance and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services".

Briefly, in this case, each of the then nineteen States of the Federation inherited the legislative powers of the former regions and by virtue of this power, each of the nineteen States either enacted or adapted its own Public Order Law. Also having taken over powers of Parliament to enact laws, the then Federal Military Government enacted the Public Order Act, 1979 (Act No. 5 of 1979). All the State enactments, under reference were repealed by Section 13(2) of the Public Order Act, 1979.

On 1st October, 1979, the Constitution of the Federal Republic of Nigeria came into force. Thereupon, the President of Nigeria issued an order — the Constitution of the Federal Republic of Nigeria (Adaptation of Public Order Act) Order 1981 — commencing on 10th February 1981 in the purported exercise of the powers conferred on him under Section 274(2) of the 1979 Constitution.[9] In three separate suits which were consolidated, the Governments of Ogun, Bendel and Borno States challenged the power and authority of the President to make the Adaptation Order. The issues to be determined include, among others:

(a) Whether or not the Public Order Act 1979 took effect from 1st October, 1979 as a State law or as a Federal law?

(b) Whether or not Public Order Act 1979 is an existing law under Section 274 of the 1979 Constitution?

(c) Who has the authority as the appropriate authority to adapt the Public Order Act 1979?

(d) Meaning and extent of the principle of "covering the field"?

The Supreme Court held among others that: (1) By the promulgation of the Public Order Act 1979, in pursuance of its constitutional power under the Constitution (Basic Provision) Decree 1975, the Federal Military Government expressed completely, exhaustively and exclusively what should be the law governing the proper and peaceful conduct of public assemblies, meetings and processions throughout Nigeria. Therefore the Public Order Act was meant only to be and indeed it was a Federal legislation and not a State law. (2) On 1st October 1979 when the 1979 Constitution came into force, the Public Order Act as an existing law by virtue of Section 274(4)(b) of the Constitution took effect as an Act of the National Assembly it being a law the National Assembly has power to enact law by virtue of Sections 4(2); 11(1) and Part 1 of the 2nd Schedule to the Constitution. (3) By virtue of the relevant provision of the Constitution, the President is the only competent authority to adapt the Public Order Act so as to bring it into conformity with the Constitution. In this case it was observed:

> "Where under a Federal set up, both the Federal and State Legislatures, each being empowered by the Constitution so to do legislate on the same subject then if it appears from the provisions of the Federal law on the subject that the Federal legislature intends to cover the entire field of the subject matter and thus provide what the law on the subject should be for the entire Federation, then the State law on the subject is inconsistent with the Federal law and the latter must prevail

> and the State law on the subject is invalid. If no general intention to cover the entire field on the subject can be gathered from the Federal law then the mere concurrence of the two laws (i.e. the Federal and State laws) on the subject is not eo ipso an inconsistency although the detailed rules in the provision of both laws may lead to different results on the same facts".[10]

It appears firmly settled, therefore, that where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, where the legislation enacted by the State is inconsistent with the legislation of Federal Government it is indeed void and of no effect for inconsistency.

Mode of Exercising Legislative Powers

As the exercise of legislative powers is the fulcrum of this paper, a clear statement of the provisions relating to it is considered necessary. For ease of reference and analysis, the Sections (58 and 59) of the 1999 Constitution are reproduced hereunder:[11]

> 58(1) The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and House of Representatives and except as otherwise provided by Subsection (5) of this section, assented to by the President.
>
> (2) A bill may originate in either the Senate or the House of Representatives and shall not become law unless it has been passed and, except as otherwise provided by this section and 59 of this Constitution, assented to in accordance with the provisions of this section.
>
> (3) Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.
>
> (4) Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assent.
>
> (5) Where the President withholds his assent and the bill is again passed by each House by two-thirds majority the bill shall become law and the assent of the President shall not be required.

59(1) The provisions of this section shall apply to:

(a) an appropriation bill or a supplementary appropriation bill, including any other bill, for the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Federation of any money charged thereon or any alteration in the amount of such a payment, issue or withdrawal; and

(b) a bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof.

(2) Where a bill to which this section applies is passed by one of the Houses of the National Assembly but is not passed by the other House within a period of two months from the commencement of a financial year, the President of the Senate shall within fourteen days thereafter arrange for and convene a meeting of the joint finance committee to examine the bill with a view to resolving the differences between the two Houses.

(3) Where the joint finance committee fails to resolve such differences, then the bill shall be presented to the National Assembly sitting at a joint meeting, and if the bill is passed at such joint meeting, it shall be presented to the President for assent.

(4) Where the President, within thirty days after presentation of the bill to him, fails to signify his assent or where he withholds assent then the bill shall again be presented to the National Assembly sitting at a joint meeting and if passed by two-thirds majority of members of both Houses at such joint meeting, the bill shall become law and the assent of the President shall not be required.

(5) In this section, "joint finance committee" refers to the joint committee of the National Assembly on finance established pursuant to Section 62(3) of this Constitution.

It need be stated that Section 58 governs exercise of Federal Legislative powers generally and Section 59 relates to the mode of exercising Federal Legislative power with reference to money bills.[12]

Therefore, a bill (whether a "money bill" or "non-money bill") does not and cannot become a law made by the National Assembly unless and until it has been passed by the Senate, the House of Representatives and — except where Section 58(5) applies — assented to by the President. In the case where a bill ("money bill" or "non-money bill") is passed only by the House in which it originates and not passed by the other or second House to which it is transmitted then the bill cannot become law until agreement has been reached between the two Houses on areas of disagreement and the President — except in circumstances where Section 58(5) applies — has assented to the bill.

Further, it is pertinent to mention that the Constitution has left the National Assembly with complete discretion as to how it should reach agreement on areas of disagreement with respect to a "non-money bill". As regards "money bills" the procedure is contained in the provisions of Subsections (2), (3) and (5) of Section 59 and Subsections (3) and (4) of Section 62 of 1999 Constitution

The idea behind the requirement that a legislative proposal must be in the form of a bill is to enable the proposal to be considered from the stand-point of its substance and the implications of the actual words used. It is calculated to give greater reality and effectiveness to the enacting function of the Assembly.[13]

Where a legislature is given power subject to certain manner and form, whether it be a simple or special majority, that power does not exist unless and until the manner and form is complied with.

The fact that the courts in Nigeria have the power and indeed the duty to see to it that there is no infraction of the exercise of legislative power can be seen in the celebrated case of Attorney-General of Bendel State v. Attorney-General of the Federation & Ors.[14] In this case the President of the Federal Republic of Nigeria on 28th October, 1980 forwarded to the National Assembly a Bill entitled Allocation of Revenue (Federation Account etc.) Bill 1980 setting out new formula for the distribution of the amount standing to the credit of the Federation Account between the Federal and State Governments and the Local Government Councils in each State for the consideration and enactment by National Assembly pursuant to Section 149 of the Constitution of the Federal Republic of Nigeria 1979.

The Bill was given its first reading in the House of Representatives on the 3rd November 1980 and the Senate on the 4th November 1980. The Bill was passed with a set of amendments by the Senate on 15th January 1981.

The Bill was presented to the House of Representatives and given first reading on 3rd November 1980. It was passed with another set of Amendments by the House of Representatives on the 22nd January 1981. Significantly, the copy of the Bill considered and passed by the House of Representatives was not the same copy considered and passed by the Senate.

In execution of the constitutional duty imposed on him by Section 55(2) of the Constitution, the President of the Senate convened a meeting of the Joint Committee of the National Assembly on finance to examine the Bill with a view to resolving the differences. The committee comprised 24 members — 12 each from the Senate and the House of Representatives.

The committee met on the 28th and 29th January 1981 and varied and adopted the Senate set of amendments by votes of 13 in favour and 11 against.

The approved committee version of the Bill was then presented by the Clerk to the National Assembly to the President of the Federal Republic of Nigeria for his assent and he assented to the Bill on the 3rd February 1981. The Bill became an Act i.e. Allocation of Revenue (Federation Account etc.) Act 1981.

Dissatisfied with the mode and manner by which the National Assembly had exercised its legislative power in respect of the Bill, the Government of Bendel State as plaintiff, challenged the constitutionality of the Act by filing an originating summons in the Supreme Court of Nigeria and invoking the jurisdiction of that Highest Court under Section 212 of the Constitution of the Federal Republic of Nigeria 1979.

This case raised a number of major issues touching, among others: (1) mode of exercising Federal legislative power (in general Bills and in particular money Bills) and the correct interpretation to be given to Sections 54, 55, 58 and 149 of the Constitution of the Federal Republic of Nigeria 1979; (2) where there is irregularity in procedure in constitutional issues — whether or not substantial justice or technicality shall be the watchword.[15]

The court held, among others, that a bill amended by the joint committee and sent to the President for his assent which he duly signified on 3rd February 1981, cannot be said to have been passed by both Houses of the National Assembly in accordance with the procedure laid down in the Constitution bearing in mind the unequivocal provisions of Section 58(4) of the 1979 Constitution.[16] Secondly no one (including a Government or State) can contract out of the provisions of the Constitution nor can it waive a constitutional requirement, condition or provision.

From the above it appears firmly settled that once the Constitution provides for a particular procedure, requirement or condition to be followed, it must be adhered to very strictly. Failure to comply with a laid down constitutional provision will render the act or acts unconstitutional, null, void and of no effect and the court will not allow technicalities to prevent it from doing substantial justice.

Distinction between "Legislative Process" and "Exercise of Legislative Power"

The Legislative process commences with the gathering of materials for legislation and ends with the enrolment of the Act. But the exercise of legislative power envisaged under the Constitution commences with the presentation of the Bill and first reading in either House of the National Assembly and ends with the assent by the President or passing a second time with two-thirds majority in the National Assembly.[17] It should be noted that the exercise of legislative powers by the National Assembly is part of legislative process.[18]

A Bill with reference to legislative proceeding(s) has been defined to mean:

> "the draft for a proposal of an Act of the National Assembly submitted for consideration by the Senate and the House of Representatives with a view of its being passed in to law. The Bill is not the document on which the draft is contained; the draft itself is the Bill."[19]

It must be observed at this juncture that the Exclusive Legislative List upon which the National Assembly has power to make laws is too wide, as it touches almost every aspect of human existence. The list is pervasive. If the Constitution is regarded as an organic scheme of government to propel development one is tempted to ask the question — whether the comprehensively extensive exclusive legislative list is not antithetical to this fact (development)? The reason being that it would be extremely difficult for the National Assembly, in its life time, to touch on areas in the list that are crucial to overall development, though it is not being argued that the august body (National Assembly) need touch every item. The time wasted in the process of debates leading to the resignation of the Speaker of the House of Representatives and the removal of two Presidents of the Senate, in less than two years, though part of democratic development — it should be viewed seriously as a plus point for the need to reduce the items on the exclusive legislative list. Close to two years have gone in the life of the present National Assembly, yet nothing concrete has been legislated upon on the list that would affect the lives of the citizens. Though, as argued in some quarters that they are still settling down it is the view of the present writer that even a year in the life of the Assembly is a good period for assessing their performance.

In relation to the exercise of legislative powers the question is what happens where the joint finance committee had to examine a Bill with a view to resolving the differences between the two Houses of the National Assembly? The Constitution makes provision that where the committee fails to resolve such difference the bill shall be presented to the National Assembly, sitting at a joint meeting.[20] What then is the position where the joint finance committee succeeds in resolving the differences? Would the bill be so presented to the President for his assent or would the bill have to be passed by the two Houses of the National Assembly, sitting jointly or separately? On this, the 1999 Constitution is silent just as the 1979 Constitution. This position ought to have been envisaged by the 1999 Constitution, more importantly in view of the Supreme Court decision in Attorney-General of Bendel State v. Attorney-General of the Federation.[21] It is therefore the view that whether the joint finance committee succeeds or fails in resolving the differences the new Bill would have to be sent back to both the Senate and the House of Representatives, sitting jointly or separately for adoption — in order to satisfy the intendment of the Constitution. It is proposed that future amendment(s) of the Constitution should "block" this lacuna.

Substantive Legislative Powers

As regards the definition of "Power", Idigbe JSC, has it to say in Attorney-General of Ogun State v. Attorney-General of the Federation & Ors that:

> "Power which is another form of legal right is either public or private. Public power are those vested in a person as an agent or instrument of the functions of the State and private power, on the other hand, are those which are vested in the persons to be exercised for their own purposes and not as agent of the State. When a statute confers a power to the holder of an office, it is a public power, and then unless the contrary intention appears from or in the statute, the power may be exercised only virtue officii (i.e. by the holder of the office and by his successor in office or the holder of the office for the time being). Public power, unlike the private legal right or private power it does not require any act of part, or assurance to be transferred".[22]

The legislatures being creation of the Constitution have powers as laid down in it (the Constitution). In this regard a scan through the provisions of the 1999 Constitution reveals various substantive matters in respect of which the National Assembly and various Houses of Assembly have powers to pass laws.[23] Such areas include among others:

(a) Creation of new States and boundary adjustment, etc. — Section 8

(b) Mode of altering provisions of the Constitution — Section 9

(c) Public order and public security — Section 11

(d) Implementation of treaties — Section 12

(e) Observing and applying the provisions of Cap. II relating to the fundamental objectives and directive principles of State policy — Sections 13 to 24

(f) Restriction on and derogation from fundamental rights — Section 45

(g) Power to regulate procedure — Sections 60 and 101

(h) Powers and control over public funds — Sections 80 to 97 and 120 to 127

(i) Power to conduct investigation — Sections 88 and 128

(j) Power of removal — Sections 143 and 188

(k) Confirmation of appointments to certain Executive bodies — Sections 147, 154, 171(4) and 198 etc.

(l) Power of the National Assembly with respect to political parties — Section 288.

The determination of any question relating to any matter enumerated above by the appropriate legislature must be in conformity with the laid down procedure in the Constitution. This fact is recognized by Section 56 relating to voting in the National Assembly and Section 98 with respect to a State House of Assembly. Therefore it is stated for example under Section 56(2), that:

> "Except as otherwise provided by this Constitution the required majority for the purpose of determining any question shall be a simple majority".

The above legislative powers — pervasive as they are — only few excite public debate and have attracted judicial attention. Some of the powers under reference are: (a) Powers and control over public funds (b) Power of removal otherwise referred to as power of impeachment, which though is not the language of the Constitution but has received common usage, (c) Power to conduct investigation. As regards the analysis of these powers this paper will now turn.

Power and Control over Public Funds

Funds is of fundamental importance in governance, without which nothing can be done and this makes its management and control an issue. If resources of the State are not to be frittered away on unauthorized ventures, there must be clearly defined pattern of government spending. In this regard, the need to match and guard jealously receipts and payments cannot be over-emphasized. Recent experiences and revelations show the relative ease at which the nation's resources can be siphoned.

No thanks to the command structure of the military — the government of which has brought the economy to its new thought, systematic and mindless depletion of the nation's resources running to billions or trillions of naira. There is no gainsaying that in Nigeria today every known infrastructure has been rendered useless. In the era of military government or I dare say armed bandits, extra budgetary spendings was the norm without any clearly defined limits. The result of all these activities on the overall development of the nation is better imagined than analysed.

It is against this background that a study of the power and control over public funds of the federation is important. The Constitution provides under Section 80 as follows:[24]

(1) "All revenues or other moneys raised by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation".

(2) "No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those money has been authorised by an appropriation on Act, Supplementary Appropriation Act or an Act passed in pursuance of Section 81 of this Constitution".

(3) "No money's shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorized by an Act of the National Assembly".

(4) "No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation except in the manner prescribed by the National Assembly".

From the above Section 80, there is a clear establishment of Consolidated Revenue Fund which takes care of all receipts, and the manner of withdrawal from such Fund has been clearly defined. Section 81 places the responsibility of preparing and laying before the National Assembly estimates of the revenues and expenditure of the Federation for every financial year, including in it (i.e. a bill to be known as an Appropriation Bill) heads of expenditure contained in the estimates. This section also makes provision for supplementary estimate the bill of which is called Supplementary Appropriation Bill where the amount appropriated by the Appropriation Act is insufficient or a need has arisen for fresh expenditure.[25]

The Constitution under Section 82 allows for government spending as authorized by the President, for the purpose of meeting expenditure necessary to carry on the services of the government for a period not exceeding six months or until the coming into operation of the Appropriation Act whichever is earlier.[26]

Further, it need be noted that the National Assembly may by law make provisions for the establishment of a Contingencies Fund for the Federation to meet by way of advances an urgent and unforeseen need for expenditure for which no other provision exists.[27]

The above provisions are there to ensure that every government spending is wise and accounted for. Through these processes the possibility of diversion of funds has been greatly reduced. From the above analysis, though the government can spend on essential activities in order to keep running without the passing of Appropriation Bill — delay in passing it may send wrong signals. The problems that delay could cause the economy, was identified by the Organised Private Sectors, as including:[28]

(a) Dislocation of timely and pragmatic business planning;
(b) Vitiation of productivity level and growth expected in the economy;
(c) Delay in implementing policies and programmes embodied in the budget;
(d) Slow-down of business investment decisions of both local and foreign investors;
(e) Creation of undue caution in entering into business transaction, which itself, could lead to a general lull in economic activities; and
(f) Erosion of confidence already being generated by potential investors.[29]

It is being suggested that budget delay which was the hallmark of the military era, must be avoided in this democratic dispensation. The early passage of this year's (2001) Appropriation Bill, as against last year's, is gratifying.

Power to Conduct Investigation

Investigatory powers can be defined simply as the powers to establish a fact or set of facts by way of an inquiry. The Constitution states that each House of the National Assembly has power to direct or cause to be directed an investigation into:

(a) Any matter or thing with respect to which it has power to make laws; and

(b) The conduct of affairs of any person, authority, ministry or government department charged or intended to be charged with the duty or responsibility for executing or administering laws enacted by the National Assembly or disbursing or administering moneys appropriated or to be appropriated by the National Assembly.[30]

However, the power to conduct investigation is not limitless — it must be exercised for certain specified purposes being to enable it to:

(a) Make laws with respect to any matter within its legislative competence and correct any defect in existing laws; and

(b) Expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.[31]

An issue for the determination of the extent of Senate's power of investigation arose in the case of *Momoh v. Senate of the National Assembly*.[32] In this case on 4th February 1980, The *Daily Times of Nigeria* carried a story which alleged that Senators spent their time playing cards in the House and hunting for contracts in government offices. Consequently the Senate invited the Editor to give details of such impropriety and substantiate the allegation. However the Editor immediately brought an action in the court to have the resolution quashed on the ground that the Senate had no power to invite him to appear before it to substantiate the allegations contained in the story. The question turned on whether the resolution and the request were within the power conferred on the Senate under Section 82 of the 1979 Constitution.[33] The resolution, not being one as to achieve any of the specified purposes, under the Constitution was clearly unconstitutional and the Senate itself recognized this when subsequently it rescinded the resolution some days before the Editor was due to appear. The court finally held that the resolution was unconstitutional as a journalist can not be compelled to disclose his source of information.

Similar decisions was handed down by the court in *Adikwu & Others v. Federal House of Representatives & Others*.[34] Here also the applicants being journalists of the Sunday Punch received letters of invitation from the Committee of the House of Representatives of the National Assembly to appear on diverse dates to testify on the information contained in the publication of *Sunday Punch* titled "Fraud — Legislators claim salaries and allowances for fictitious staff" on 5th April 1981. The journalists were further directed to bring along all relevant facts that would assist in providing the publication. The journalists sued complaining that the action of the

House of Representatives amounted to an interference with their constitutional rights under Section [36] of the 1979 Constitution.[35] The court held among others that:

(1) the legislative power of investigation does not permit a legislative body or committee to require a newsman to disclose his source of information except in grave and exceptional circumstances e.g. the security of the State;

(2) the newspaper cannot be required to disclose its sources of information. The reason is because if newsmen were compelled to disclose their sources of information they would be bereft of information which it is in the public interest to make known. Their source of information would dry up;

(3) the press is not a constitutional sanctuary from probes by a legislative investigation body where the inquiry is into matters that are within the legislative domain but that the press can not be required by a legislative investigation body of the National Assembly to disclose the source of published article except in grave and exceptional circumstances which is justifiable under the constitutional limitations on fundamental right. No such grave or exceptional circumstances has been shown to exist in this present case.

The above decision, detailed as it were, can be questioned on its narrow interpretation of the purpose(s) of legislative investigation. It would seem that the request of the House of Representatives can come within the confines of Section 82(2) of the 1979 Constitution, now Section 88(2) of the 1999 Constitution. If the above decision is applied strictly there is likelihood of every legislative request for journalist to appear being held unconstitutional and incompetent — thereby rendering such power valueless.

Legislative Power of Removal

The National Assembly or a State Assembly is empowered, to remove any of its officers or to remove the President, the Vice President or the Governor, the Deputy Governor as the case may be.36 Though, the process of removing say the Senate President or the Speaker of the House of Representatives is less rigorous, the procedure for removing President or a Governor is elaborate.[37] This power of removal has become so important that the threat of its exercise can send shivers down the spines of the person been threatened to be removed. The fact that the exercise of this legislative power has been removed from the purview of judicial review makes it contentious.

For example to remove a President or Vice President, the Constitution requires a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly be presented to the President of the Senate; stating that the holder of the applicable office is guilty of gross misconduct in the performance of the functions of his office, with detailed particulars.[38] By "gross misconduct" is meant a grave violation or breach of the provisions of the Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct.

The stages necessary for removal are — service of notice and reply to the allegation on each member of the National Assembly and the holder of such office, resolution to investigate the allegation supported by two-thirds majority; setting up of panel to carry out the investigation by the Chief Justice of Nigeria; Panel's investigation and report the final stage is that, if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.[39]

The crux of this power is that — "No proceeding or determination of the panel or of the National Assembly or any matter thereto shall be entertained or questioned in any court".[40]

The interpretation of like provisions, as above, in relation to the removal of a Governor, under the 1979 Constitution[41] — is a matter for discussion.[42] The decisions interpreted the relevant provisions of the Constitution so strictly as to give the impression that the Constitution acts as a fortified sanctuary that cannot be looked through if the legislature decides to remove a Chief Executive or his deputy.[43]

In relation to an action for non-compliance with the procedure for removal under the Constitution the court was not ready to entertain the matter on the basis of the subsection ousting the jurisdiction of the court and therefore observed:

> "My hands are tied by it as I hold that the exercise in question was purely legislative constitutional matter quite outside the jurisdiction of this honourable court".[44]

On further appeal, it was observed, still on the same question, that:

> "Where the Constitution has not vested in the courts any supervisory jurisdiction, the court will be acting contrary to the spirit of the Constitution if it went on an inquiry into the manner Parliament had performed the functions assigned to it by the Constitution. No source of conflict between the different departments is greater than an interference of that nature. In the circumstance, I am of the opinion that the court cannot enter into such an enquiry".[45]

It can be argued that to say that the observance or non-observance of the procedure for the exercise of legislative power of removing a Governor from office is political and cannot be investigated in view of the provision ousting the jurisdiction of the court, is erroneous.

The question to be asked is whether the supposed veil that ousts the jurisdiction of the court in this respect cannot be pierced through? It is submitted — it can. This is so in the light of Section 36(1) of the 1999 Constitution that guarantees right to fair hearing been held mandatory by the Supreme Court[46] — should apply to procedure for removal.

Limits of the Exercise of Legislative Powers

It is pertinent to mention that the exercise of its powers to make laws is subject to the jurisdiction of courts of law and of judicial tribunals established by law and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.[47]

Also, the Constitution provides that the National Assembly or a House of Assembly shall not, in relation to any criminal offence whatsoever, have power to make any law which shall have retrospective effect. The philosophy behind this provision is that legislation on a criminal matter should take effect prospectively.[48]

That the legislature must hinge the exercise of its power on the principle of separation of powers which has it that no organ of government (i.e. Legislature, Executive and Judiciary) must exercise the powers that belong to the other.

The question may arise whether the exercise of power by a particular organ in a particular situation can be said to belong to it? In this regard certain topical issues can be tested, in relation to the powers of the legislature viz:

(a) Can the legislature (here the Senate) pass a resolution, as it did on the 3rd July, 1999, nullifying President, Obasanjo's dissolution of the Board of the Petroleum (Special) Trust Fund?

(b) Can the Senate pass a bill mandating the President to submit the Ministers for rescreening?[49]

As regards the first question the functions of the legislature and the executive (with the President as head) must be appreciated. The function of the legislature as observed earlier is to make laws and to do everything incidental to its law making powers. The executive is to execute all laws enacted by or which took effect as having been enacted by the National Assembly. The point in issue concerns a resolution and not an enactment of the Senate. If the executive takes a position, as it has done here, on a matter within the competence of the legislature to make laws[50] — the only way in which the exercise of the executive powers of the President can be regulated is by an Act of the National Assembly, following observance of the necessary procedure which requires concurrence of both the Senate and the House of Representatives.[51] Therefore, it has as is the view of this writer, been argued in some quarters that it is not competent for either or both of the House of the National Assembly to question the legality or the constitutionality of the executive action of the President.[52]

As regards the second question the Constitution provides that any appointment to the office of Minister of the government of the Federation shall, if the nomination of any person to such office is confirmed by the Senate, be made by the President.[53] From this provision the House of Representatives is left out. Therefore the power to confirm whether a person should be made a Minister is the exclusive preserve of the Senate. Since an enactment by way of a bill requires same to pass through the House of Representatives in order to become law — it will be incompetent for the Senate to pass a bill calling for re-screening of Ministers, as such exercise will be ultra-vires. It must be noted that the Constitution makes no provision for reconfirmation of Ministers, therefore re-screening if it is for the purpose of ascertaining the competence of such a person to continue in office cannot rest on any provision in the Constitution. The situations in which the Senate can screen Ministers is in relation to its power to conduct investigations for purposes clearly defined and streamlined.[54] This also extends to where the Minister has been invited to explain to the House the conduct of his Ministry and in particular when the affairs of that Ministry are under discussion.[55]

Conclusion

In the final analysis the position of authority occupied by the Legislatures in the scheme of government, under the organic law of the

Constitution, cannot be doubted. The legislative powers should serve the end purpose of ensuring good governance in all ramifications of the nation's life. Therefore where the power seems to loom large, as is the power of removal, its exercise must not be used to stultify an arm of the government; the threat of its use must not be to intimidate — it should be seen as a measure of last resort to ensure compliance with the provisions of the Constitution for reasons that are clear, cogent, convincing and overwhelmingly compelling.

As touching the legislative list, the Exclusive Legislative List is too wide and extensive and it is most unlikely that the National Assembly can get at the root of areas listed that are seriously affecting the people of this country. In this regard some matters e.g. borrowing of money, commercial and industrial monopolies, insurance, stamp duties, police etc. should be transferred into the Concurrent List. The nature of the lists as presently constituted portrays the idea of Unitary rather than a Federal system of government.

On the interpretation of the investigatory powers of the legislature, the courts need to always follow the well established principle that words of a Constitution are not to be read with stultifying narrowness. The interpretation of the Constitution in a manner that will allow the National Assembly or a State House of Assembly carry out its functions in all material particulars, is to be preferred, so as not to render such powers ineffective.

Finally the members of the National Assembly and of each State House of Assembly must fully appreciate their roles and the extent of powers given to them by the Constitution. It must prevent acting in a manner that will be tantamount to legislative judgement. Where certain powers are granted it, such powers must be exercised and nothing more should be implied.

NOTES

1. O. Hood Phillips, Constitutional and Administrative Law, Seventh ed. 1987, p. 9

2. The Constitution of the Federal Republic of Nigeria 1999.

3. O. Hood Phillips op. cit., p. 11

4. Section 4(1)

5. Section 4(3)

6. Section S. 7(n) and (b)

7. (1982) 3 NCLR 166

8. This section is the same with Section 11 of the 1999 Constitution.

9. See like provision in Section 315 of the 1999 Constitution.

10. Ibid: Per Idigbe JSC at page 194, See also N. K. Adamolekun v. The Council of the University of Ibadan (1968) N.M.L.R. 253; E. O. Lakanmi's case (1971) U.I.L.R. 201; Ex parte Mclean (1930) 48 CLR 483 per Dixon J.

11. These sections of the 1999 Constitution are essentially the same as the provisions of Sections 54 and 55 of the 1979 Constitution, comprehensively and extensively considered and interpreted in the case of Attorney General of Bendel State v. Attorney-General of the Federation and Ors. (1982) 3 NCLR 1.

12. It should be noted that the mode of exercising legislative power of a State is contained in Section 100 in similar terms.

13. See B. O. Nwabueze, Nigeria's Presidential Constitution 1979-83: The Second Experiment in Constitutional Democracy, First Edition, 1985, p. 28.

14. (1982) 3 NCLR 1 — This case considered and interpreted the provisions of the 1979 Constitution that have been reproduced verbatim, though under different sections in the 1999 Constitution.

15. These sections are the same as Sections 58, 59, 62 and 162 of the 1999 Constitution.

16. Same as Section 62(4) of 1999 Constitution.

17. See Attorney-General of Bendel State v. Attorney-General of the Federation & Ors (Supra) especially the statement of Obaseki J.S.C. at p. 75.

18. Ibid, p. 34 per Fatayi-Williams, C.J.N. see also Bribery Commissioner v. Ranasinghe (1965) AC 172 (PC) at p. 193; Gallant v. The King (1949) 2DLR 425 and Mutual Film Corporation v. Industrial Commission 236 US 230, 356 ct. 387.

19. Ibid, p. 63. It is axiomatic that a bill includes Money Bill. However see Section 59(1) of the 1999 Constitution for the definition of Money Bill.

20. See Section 59(3).

21. Supra note 11.

22. (1982) 3 NCLR 166 at p. 193-194

23. Though the lists (Exclusive and Concurrent) clearly mention the matters to be legislated upon, various sections of the Constitution contain the substance of some of these matters.

24. See similar provision in relation to States under Section 120.

25. See Section 212 in relation to States.

26. This section contains a proviso that such withdrawal must be an amount proportionate to the total amount so authorised for the preceding financial year. See Section 122 for the provision as regards the States.

27. See Section 123 concerning States.

28. The Organised Private Sector comprises Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA), Manufacturers' Association of Nigeria (MAN) and Nigeria Employers' Consultative Association.

29. See The Guardian Newspaper of Thursday, January 20, 2000 at pages 1 to 2.

30. Section 88(1) of the Constitution See also Section 128(1).

31. Section 88(2), see also Section 128(2). It must be noted that for the purposes of the investigation, the House or its committee is empowered to procure all necessary evidence, to summon any person in Nigeria to give evidence or to produce any document in his possession and to issue a warrant to compel his attendance if, having been summoned to attend, he fails, refuses or neglects to do so without satisfactory excuse (Sections 89 and 129).

32. (1981) 1 NCLR 105. For fuller discussion of this case see B. O. Nwabueze, supra note 13 pages 281-283.

33. Same as Section 88 of the 1999 Constitution.

34. (1982) 3 NCLR 394

35. On right to freedom of expression and the press. See Section 39 of the 1999

36. Constitution. See further the case of Olayiwola Oil Palm Co. Ltd. v. Jegede and Others (1982) NCLR 494.

37. See Section 50(2)(c) which relates to the removal of the President of Representatives, and Section 92(2)(c) which relates to the removal of a Speaker and a Deputy Speaker of a House of Assembly.

38. See Section 143 in relation to removal of the President or Vice-President and Section 188 in relation to removal of Governor or Deputy Governor from office.

39. Section 143(1) and (2)38. Section 143(1) and (2)38. Section 143(1) and (2).

40. Section 143(10)

41. Section 170 of the 1979 Constitution.

42. For details See B. O. Nwabueze, supra note 13, pages 114-123.

43. Balarabe Musa v. Auta Hamza & Others (1982) 3 NCLR 229; Balarabe Musa v. Auta Hamza & Others (1982) 3 NCLR 439; Balarabe Musa v. Speaker, Kaduna State House of Assembly & Anor (1982) 3 NCLR 450 and Balarabe Musa v. Kaduna State House of Assembly & Others (1982) 3 NCLR 463.

44. Balarabe Musa v. Auta Hamza & Others (1982) 3 NCLR 439 at 449 per Chigbue J.

45. Balarabe Musa v. Auta Hamza & Others (1982) 3 NCLR 229 at p. 257 per Karibi-Whyte JCA as he then was).

46. See Attorney-General of Bendel State v. Attorney-General of the Federation & Others (Supra).

47. Section 4(8)

48. Section 2(9)

49. See statement credited to Senator Rowland Owie in The Punch Newspaper of 3rd January, 2000.

50. See item 39 of the Exclusive Legislative List.

51. Section 58

52. See Rotimi Williams, "Why Obasanjo is right on PTF" — published in The Guardian Newspaper of Thursday, July 8, 1999.

53. Section 147(2)

54. Section 88

55. Section 67(2)