

Abstract

The practice of constitutional democracy in Nigeria is a mixture of both observance and breach of supremacy of the Constitution. It is so in the sense that the dry letters of the Constitution of the Federal Republic of Nigeria, 1999 are sterile, dormant or docile unless activated and brought to life by a judicial pronouncement of a court of law declaring certain executive or legislative acts as unconstitutional and therefore null and void. This means that where there is a breach of the Constitution unless and until an action is taken out challenging it, such breach persists albeit clothed with the toga of 'constitutionality' or being 'constitutional' and actually in some situations becomes the law until pronounced unconstitutional or inconsistent with the Constitution. This has given rise to a plethora of cases of unchallenged violations of the Constitution resulting to injustice sometimes against the federating States and violations of human and civil rights of the citizens. This surely does not represent the spirit of constitutional supremacy. In addition, it was found that there is a seemingly unending tussle of supremacy between constitutional supremacy and sovereignty of the people, the makers of the Constitution. This conflict is predicated upon where lies the ultimate supremacy. This research adopted the doctrinal methodology using primary and secondary sources of information and takes an examination of the concept of constitutional supremacy from both de jure and de facto perspectives. In the end, it is recommended among others that the Constitution being a legal document should have an auto operating clause that automatically renders unconstitutional, null and void any act that breaches it so as to maintain its supremacy and integrity at all times.

Keywords: Constitution, Supremacy, Democracy, Nigeria

1. Introduction

In a democratic society, the Constitution binds and governs all institutions of government and the people *ditto* other statutes which derive their validity from the constitution. In Nigeria, the Constitution of the Federal Republic of Nigeria, 1999 has its binding and coercive powers expressly provided.¹ By its overall binding powers, it acquires a status of supremacy over all persons in Nigeria including over other laws.² Constitutional supremacy declares the constitution's ability to establish a hierarchical primacy among various laws. It places the constitution at the top of the pyramid and the source of all other legal documents. It makes the constitution the highest and supreme law of the land otherwise the fundamental and organic law of the nation. This hierarchical primacy and constitutional rigidity are always activated in cases of conflict. In *Marbury v Madison*,³ where the Court held that ensuring the effectiveness of the Constitution as the supreme law of the land implies that the court should have the power to strike down legislative acts that are in conflict with the provisions of the Constitution. Supremacy of the constitution therefore is its quality, which positions it on top of all state institutions. Constitutional supremacy not only affects the rank order of legal norms but also the institutional structure of the state as it entails the subordination of the legislator.⁴ Therefore, constitutional supremacy is the position of the constitution undisputedly having the superior or greatest power or authority.

2. Definition, Concept and Nature of Constitutional Supremacy

Supremacy is the quality or state of having more power, authority, or status than anyone else; the state of being supreme.⁵ Constitutional supremacy is the system of government in which the law-making freedom of parliamentary sovereignty abandons to the requirements of a constitution as the constitution is supreme.⁶ This is so because the Parliament's authority derives from the Constitution. It is the quality or state of the Constitution being the *numero uno* by having a binding force on all authorities and persons and the *grundnorm* from which all other laws in a political and democratic society derive its life and validity. Thus, the court has a duty to interpret ordinary legislations or statutes in a way or manner consistent with constitutional provisions, otherwise, where or when it is not possible, it must give legal precedence to the constitutional provisions in order to preserve its

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¹ S 1 (1) Constitution of the Federal Republic of Nigeria, 1999 hereinafter cited as CFRN, 1999

² *Ibid*; (3)

³ 5 US 137 [1803]

⁴ J Limbach, *The Concept of the Supremacy of the Constitution*, 64 MOD Law Review, I, 7 (2001) cited by G Romeo in *The Conceptualization of Constitutional Supremacy: Global Discourse and Legal Tradition*, German Law Review (Cambridge University Press, 2020) pp. 904 – 923 at p. 905

⁵ Google.com accessed on 20 August, 2024

⁶ <<https://www.bartleby.com>> accessed 20 August, 2024

supremacy and maintain the hierarchical primacy.⁷ In terms of legal thinking, the conceptual device of constitutional supremacy is ability to transform the normativity of the constitution into all-powerfulness.⁸

The Courts in a plethora of cases have upheld the supremacy of the Constitution both as it relates to organs or institutions of government or the State and persons. Section 1 (1), (2) and (3) of the CFRN, 1999, provides for the supremacy of the Constitution. By sub-section (1), no person or constituted authority is above the constitution and where any such person or authority acts outside the constitution, such an act would be declared unconstitutional, void and of no effect. In *AG Lagos v A.G. Federation*,⁹ it was declared that the actions of the president in withholding the federal allocation to Lagos State was in contrast to section 162 (5) of the Constitution and therefore they were unconstitutional, null and void. Similarly, in *Inakoju v Adeleke*,¹⁰ some members of the Oyo State House of Assembly purported to remove the Governor of the state. However, they did not follow the full provisions of section 188 of the Constitution. The Supreme Court declared their actions unconstitutional, null and void. By sub-section (3), it means that any law that conflicts with the provision of the Constitution shall be inapplicable to the extent of its inconsistency. This is also known as the blue pencil rule or severability rule.¹¹ In *Inspector General of Police v ANPP*¹² the provisions of the Public Order Act which provided that a permit is needed from the Governor before people can assemble in public contrary to the provision of the fundamental rights of freedom of expression and association which is contained in sections 39 and 40 of the 1999 Constitution was declared unconstitutional and inconsistent with the Constitution.

3. Distribution of Powers and Constitutional Supremacy

The CFRN, 1999, creates various organs of government with assigned specific functions to them¹³ *ditto* various tiers of government,¹⁴ also with their respective specific areas of competences and shared competences and the relationships inter-se.¹⁵ Thus all constituted authorities in the exercise of their powers are limited to their areas of competences and shall not be allowed to exceed the powers allotted to them under the constitution, or to act in any manner inconsistent with the provisions thereof.¹⁶ Any exercise of powers otherwise than in accordance with the provisions of the Constitution shall be declared *ultra vires* or null and void and of no effect to the extent of its inconsistency with any of the provisions of the Constitution. For instance, the Parliament at the state level symbolized by the State House of Assembly cannot legislate on any subject matter in the Exclusive Legislative List pursuant to any purported exercise of its legislative powers.¹⁷ Any such act may be declared *ultra vires*¹⁸ in substance (substantive *ultra vires*) or procedure (procedural *ultra vires*) by the courts in the exercise of its power.¹⁹ Nigeria is a Federation²⁰ with a rigid and written Constitution. In a jurisdiction like ours, three things are quite visible- (a) the text of the Constitution is comprehensive, (b) the Constitution is normative and (c) constitutional arguments are a ruling-out move in litigation, meaning that whenever a constitutional argument is validly raised, it takes precedence over all other arguments and the court has to sustain it.²¹

4. Key Purposes of the Supremacy of the Constitution

- a. Establishing a Legal Framework: The Constitution provides a foundational legal framework for governance, outlining the structure of government, the powers of different branches, and the rights of citizens. This ensures that all laws are grounded in a single, authoritative document.

⁷ *Regina v. Director of Public Prosecutions Ex Parte Kebeline & Ors.* [1994] 4 All E R, 801

⁸ D P Kommers and R A Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 47 (Durham and London eds., 2012) cited by G Romeo, op. cit. at p. 906

⁹ [2004] 18 NWLR (Pt. 904) 1

¹⁰ [2007] 4 NWLR (Pt. 1025)

¹¹ The blue pencil rule doctrine is a legal principle that allows the legally valid enforceable provisions of the contract to stand despite the nullification of the legally void unenforceable provisions. It is the striking out of the illegal and unenforceable portion of a contract and retaining the rest of the contract and allowing it to be enforceable and legal. <<https://en.wikipedia.org>> accessed 20 August, 2024; Severability rule- A law that violates the Constitution may be invalidated by the courts in entirety or the courts may adopt the doctrine of severability to sever the illegal parts and save the rest of the statute; *PP v Pung Chen Choon* [1994] 1 MLJ 566.

¹² [2007] 18 NWLR (Pt. 1066) 457

¹³ See sections 4, 5 and 6 which established the Legislature, Executive and the Judiciary with their functions respectively.

¹⁴ The Federal, State and Local Government- a three-tier government system

¹⁵ See Ss. 4 (2), (3), (4) (a), (6), (7), 5 (1), (2); Second Schedule Part I (Exclusive Legislative List) and Part II (Concurrent Legislative List). The Federal Government through the National Assembly legislates exclusive on the Exclusive Legislative List and shares legislative powers with the thirty six States who legislate on matters in the Concurrent Legislative List through their respective State Houses of Assembly. The State Governments legislates exclusive on all Residual matters.

¹⁶ <<https://lessonotes.com>> accessed 21 August, 2024

¹⁷ S 4 (3) and (7) (a) CFRN, 1999

¹⁸ It is a Latin word that translates to “beyond the powers” and means acting or done beyond one’s legal power or authority. It is used in law to describe an act that requires legal authority but is done without it.

¹⁹ S 6 (6) (b) CFRN, 1999; *Marbury v Madison* 5 US 137 (1803)

²⁰ S 2 (2) CFRN, 1999

²¹ G Romeo, op cit., p. 908

- b. Ensuring Consistency and Stability: It promotes consistency and uniformity in the application of laws and protects against arbitrary governance. This is crucial for maintaining order and predictability in legal and political systems.
- c. Protecting Individual Rights: The Constitution often includes a Bill of Rights²² or similar provisions that safeguard individual liberties against infringement by the government. This serves to protect citizens' rights and freedoms, ensuring that they are not subject to arbitrary treatment.
- d. Providing a Mechanism for Conflict Resolution: The Constitution serves as a reference point for resolving disputes between different levels or branches of government. It provides a legal basis for judicial review, allowing courts to interpret the Constitution and adjudicate conflicts based on its provisions.
- e. Promoting Accountability and Limiting Power: This helps to limit the powers of government officials and institutions by ensuring they operate within the boundaries set by the Constitution. This is vital for preventing abuses of power and maintaining a system of checks and balances.²³

5. Supremacy of the Constitution and the Parliament

The Parliament at the federal, state and local government levels is known as the National Assembly, ²⁴ House of Assembly²⁵ and Council, respectively.²⁶ Parliamentary supremacy holds that the legislative body has absolute sovereignty and is supreme over all other government institutions, including executive and judicial bodies.²⁷ It also holds that Parliament may change or repeal any previous legislation and so it is not bound by written law or by precedent.²⁸ In Nigeria, the Parliament is not supreme. Its legislative powers are limited and controlled by the Constitution.²⁹ There are two types of limits on Parliament's powers- substantive limits and procedural limits.³⁰ For example, it cannot violate the fundamental rights enshrined in Chapter IV.³¹ Even at the state level, the House of Assembly must not violate its own laws either in substance or in procedure nor violate the Constitution through any of its legislative instrument or statute.³² In the second arm, in enacting laws or amending the Constitution, Parliament must comply with the prescribed constitutional procedures.³³ Legislative acts will be nullified on constitutional grounds where:

- a. Where legislation offends the principle of separation of powers or the principle of federalism;
- b. When legislation is inconsistent with the provisions of the Constitution;
- c. When legislation is aimed at taking away individual rights guaranteed under the Constitution;
- d. When the legislature failed to comply with the procedure set down to doing a particular act.³⁴

From the above, the court uses judicial review³⁵ as an instrument of 'check and balance' to invalidate legislation or legislative acts that violate the Constitution and declare them unconstitutional.³⁶ Thus the legislature cannot enact any law that ousts or purports to oust the jurisdiction of a court or judicial tribunal.³⁷ The judiciary has power in view of sections 4 (8) and 6 (6) (a) and (b) of the CFRN, 1999 to nullify inconsistent acts of the legislature with the Constitution or check excesses of the executive.³⁸

²² See Chapter II CFRN, 1999 providing for Fundamental Rights particularly Ss. 33 - 43

²³ <www.quora.com> accessed on 20th August, 2024

²⁴ S 4 (1) CFRN, 1999

²⁵ S 4 (6), Ibid

²⁶ S 24 of the Imo State Local Government Administration Law No. 15 of 2000. Members of the Council are called Councillors.

²⁷ <https://en.wikipedia.org > accessed 20 August, 2024

²⁸ Ibid

²⁹ Ss. 1 (1) and 4 (8), Ibid

³⁰ S 9 (2), Ibid

³¹ Ss. 33 – 43, Ibid

³² S 4 (5) CFRN, 1999

³³ S 9 (2) and (3), Ibid.

³⁴ *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112

³⁵ Judicial review is the power of a court to examine the acts of the other branches of government, lower courts, public or administrative authorities and uphold them or invalidate them as may be necessary in line with the relevant constitutional provisions which empower the courts to review such acts.

³⁶ *Adegbenro v Akintola* [1962] 1 All NLR 442; An example of such remedies is an order of *certiorari*

³⁷ S 4 (8) CFRN, 1999

³⁸ A Hamilton, *The Federalist Paper No. 78*, (Penn State Electronic Classic Series Publication), 2009, pp. 352 - 358 cited in I Imam, *Judicial Activism in Nigeria: Delineating the Extent of Legislative-Judicial Engagement in Law Making*, ICLR, 2015, Vol. 15, No. 1, p. 125; *Dapialong v Dariye* [2007] 8 MJSC 140

6. Supremacy of the Constitution in Military Regime

The usual practice is that upon a successful *coup d'etat*,³⁹ the military immediately suspends or abrogates the Constitution either in part or in whole and consequently assert the absolutism/supremacy of their laws (Decrees).⁴⁰ This is done by promulgating the Federal Military Government (Supremacy and Enforcement of Powers) Decree.⁴¹ Section 1 of the said Decree affirmed and declared absolute powers to make laws for the Federation and supremacy of the Decrees of the Federal Military Government.⁴² The Court of Appeal in *Commissioner for Local Government v Ezemuokwe*⁴³ held thus: 'Decree No. 13 of 1984 re-enacts the supremacy of Decrees as the *grundnorm* or the organic law of the land. Therefore ... Decrees cannot be challenged nor could their validity or invalidity be impugned in any court'. This position was cemented in *Labiya v Anretiola*⁴⁴ where the Supreme Court held Decrees to superior to even the unsuspended sections of the Nigerian Constitution. In this case, the court listed the hierarchy of laws in a military regime thus:

- a. Constitution (Suspension and Modification) Decree No. 1 of 1984
- b. Federal Military Decrees
- c. Unsuspended parts of the 1979 Constitution
- d. Laws made by the National Assembly before military takeover or having effect as if so made
- e. Edicts of State Military Governors
- f. Laws of the State House of Assembly before military takeover or having effect as if so made.

7. Supremacy of the Constitution versus Sovereignty of the People

Constitutional supremacy presupposes its operation in a democracy and it raises the question of where the ultimate authority/power in a country lies. Whether it is in the people who made it or in the constitution itself? This is borne out of the fact that when a constitution is made by the exercise of the people's sovereignty, it binds the people that made it.⁴⁵ Constitutional supremacy represents the highest form of expression of the sovereignty of the people.⁴⁶ The CFRN, 1999, in section 14 (2) (a) bestows sovereignty on the people from whom government through the Constitution derives all its powers and authority. However, there is a conundrum on where the ultimate *cum* sovereign power lies in a political system. Put succinctly, between the constitution and the people- where does supremacy reside? The purport of supremacy of the Constitution is that the people are sovereign as provided in Section 14 (2) (a). It means that every power in the country answers to the people. Also, the preamble of the Constitution thus: 'We the people ... do hereby make, enact and give to ourselves the following Constitution:' presupposes that same was made by the people for themselves in the exercise of their sovereignty. This is where the legal conundrum comes up in view of the fact that Chapter II of the Constitution titled 'Fundamental Objectives and Directive Principles of State Policy are non-justiciable.'⁴⁷

The principle of 'non-justiciability' is a doctrine that permits the courts to decline jurisdiction because the issue at hand is unsuitable for judicial determination.⁴⁸ The non-justiciability of Chapter II⁴⁹ under which section 14 (2) (a) falls finds support in Section 6 (6) (c) of the CFRN, 1999, which ousts the jurisdiction of the court as it relates to Chapter II. This appears as a constitutional fraud against the touted 'sovereignty' of the people. This fraud also negates and nullifies the claim in the preamble of the Constitution which asserts that same was made by the people for themselves,⁵⁰ being a product of a military regime which was not the elected representatives of the people.⁵¹ Undoubtedly, 'consent' of the people is a factor in constitution making is conspicuously absent in the 1999 Constitution and clearly, this is not a case where the notion of implied consent of the governed can be applied for the makers of the 1999 Constitution were not the elected representatives of the people nor was it made under a constitutional democracy. It is trite that the legal enforcement characteristic enjoyed by the law is what lends it the force that compels adherence.⁵² When this force is however removed from any law, it renders such a law an

³⁹ The term comes from French which literally means "stroke of state" or "blow of state", <<https://en.wikipedia>> accessed 20 August, 2024

⁴⁰ See The Constitution (Suspension and Modification) Decree No. 1 of 1966 and the Constitution (Suspension and Modification) Decree No. 1 of 1984 *et al*

⁴¹ Decree No. 13, 1984. See section 5

⁴² Decree No. 1 of 1984 and Decree No. 107 of 1993

⁴³ [1992] 8 NWLR (Pt. 258) 139

⁴⁴ [1991] 3 NWLR (Pt. 615) 640; [1986] 1 NSCC 304; Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1987; The (Supremacy and Enforcement Powers) Decree No. 28 of 1970; *Lakanmi v A. G. West* [1971] 1 UILR 210

⁴⁵ See the Preamble of the CFRN, 1999; Ss. 1 (1) and 14 (2) (a) CFRN, 1999

⁴⁶ S 14 (2) (a) CFRN, 1999

⁴⁷ S 6 (6) (c) CFRN, 1999

⁴⁸ *Teng Chang Khim v Dato Raja Ideris* [2014] 4 MLJ 12

⁴⁹ Chapter II is titled Fundamental Objectives and Directive Principles of State Policy from Sections 13 – 24

⁵⁰ See the Preamble of the CFRN, 1999

⁵¹ It was made during the military regime of General Abdulsalami Abubakar on 5th May, 1999

⁵² O M Atoyebi, SAN, *An Examination of Chapter 2 of the CFRN, 1999*, an article published online 23rd July, 2023, accessed 20 August, 2024

image of mere toothless bulldog. The non-justiciable nature of Chapter II means that the Fundamental Objectives do not provide a strong legal basis for direct enforcement. The purport is that government's compliance with these principles depends on political will and the accountability of elected officials rather than legal mandates.⁵³

However, for every general rule, there is an exception. The exception clause in section 6 (6) (c) thus: '...except as otherwise provided by this Constitution...' enables the National Assembly to enact specific legislations that gives legal backing to any of the directive principles and any such legislation shall become justiciable.⁵⁴ In *Federal Republic of Nigeria v Aneche*,⁵⁵ Justice Niki Tobi observed:

Section 6 (6) (c) of the Constitution is neither total nor sacrosanct as the subsection provide a leeway by the use of the words 'except as otherwise provided by this Constitution'. This means that if the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiciable, it will be so interpreted by the Courts.

It means that where a law is passed to implement a particular directive principle, individuals can challenge the government's compliance with that law in court.⁵⁶ This exceptive principle also seemingly applies in the field of enforcement of the Fundamental Rights provided in Chapter IV. Thus, where the implementation of the provisions of Chapter II results in the violation of Chapter IV, the courts tend to exercise jurisdiction over Chapter II. Thus, the inevitable and practical implication (though unintended) of this is to render Chapter II justiciable where the issues involve a breach or violation of Chapter IV.⁵⁷ In *A. G. Ondo State v A. G. Federation*,⁵⁸ the Supreme Court held, *inter alia*, that 'courts cannot enforce any of the provisions of Chapter II of the Constitution except the National Assembly has enacted specific laws for their enforcement'.

De Jure Sovereignty and De Facto Sovereignty

It has been suggested that generally the power of the people can have no limits.⁵⁹ However, Nwabueze⁶⁰ argued that the assertion is true only in a *de facto* sense but not in a *de jure* sense where the people are bound by the constitution once adopted and it binds the people and operates as *de jure* limitation on their power. However, this does not take away their *de facto* power to put an end to the *de jure* limitation by way of a revolution or extra legal means.⁶¹ In view of the limitations of the law as an instrument of social change, the justification of a revolution can plausibly and objectively be founded in the face of a failure of the government in the administration of the constitution to meet their aggregate will and their perception of social justice and social progress.⁶²

There is a division among scholars who posit that sovereignty originates from the people. The division centers on the argument whether the people transfer their sovereignty to the sovereign or whether they retain their sovereignty. Scholars who hold the view that the people have transferred their sovereignty to the government invariably agrees that sovereignty is not divinely acquired. It means that sovereignty originates from the people but the only area of discord being whether the people after electing a government retain their sovereignty or not. If it is then agreed that sovereignty originates from the people, identification must be made of how the people pass or confer that sovereignty to the government. In other words, is any overt act required to show that the people have indeed taken this all-important step or is it to be assumed in some or all cases? If it is agreed that sovereignty originates from the people, what is the purpose for the conferment by them of sovereignty on the government? If the purpose fails or if the Government becomes destructive of them, do the people have any right to intervene or are they constrained in that regard by the fact they have allegedly transferred their sovereignty to the Government? The answers to these and more are to be found in an examination and proper appreciation of the notions or concepts of 'Popular Sovereignty' and 'Consent of the Governed'.

Popular sovereignty or the sovereignty of the people is the principle that the legitimacy of the state or government is created and sustained by the will or consent of its people, who are the source of all political power and

⁵³ E Okon, *The Environmental Perspective in the 1999 Nigerian Constitution*, Environmental Law Review (2003) 5.4, pp. 256- 278 cited by O M Atoyebi, SAN, *An Examination of Chapter 2 of the CFRN, 1999*, op. cit.

⁵⁴ *Federal Republic of Nigeria v Aneche* [2004] 1 SCM 36 at 78

⁵⁵ *ibid*

⁵⁶ See Item 60 (a) of the Second Schedule CFRN, 1999; *A. G. Ondo State v A. G. Federation* [2002] 9 NWLR (Pt. 772) 222; *Olafisoye v Federal Republic of Nigeria* [2005] 51 WRN 62

⁵⁷ *Anthony Olubunmi Okojie v Attorney General Lagos State* [1981] 1 NCLR 218

⁵⁸ [2002] 9 NWLR (Pt. 772) 222

⁵⁹ C H McIlwain, *Constitutionalism and the Changing World*, (Ithaca, New York, 1939), p. 29

⁶⁰ B O Nwabueze, *Ideas and Facts in Constitution Making* (Ibadan: Spectrum Books, 1993), p. 29 cited in O E Nwebo *Critical Constitutional issues in Nigeria*, op. cit. p. 62

⁶¹ Ss. 1 (2) and 14 (1) CFRN, 1999

⁶² O E Nwebo, op. cit., 62

legitimacy. It is closely associated with republicanism⁶³ and the social contract theory or philosophers.⁶⁴ The doctrine posits that sovereign power is vested in the people and that those chosen to govern, as trustees of such power, must exercise it in conformity with the general will. Benjamin Franklin⁶⁵ expressed the concept thus: 'In free governments, the rulers are the servants and the people their superiors and sovereigns.' After all, as warped as section 14 (1) and (2) (a) of the CFRN, 1999 is, it still provides that Nigeria shall be a State governed on the principles of democracy and social justice and concedes sovereignty to the people. The question that arises is whether the people in the exercise of their sovereign powers or rights, can by popular choice overthrow the constitution or can the makers of the constitution unmake the constitution at will outside the means provided by the constitution? Can the people take the laws into their hands in order to effect a social or constitutional change otherwise than in a manner specifically provided by the Constitution? This question becomes pertinent in view of section 1 (1) and (2) of the CFRN, 1999. In answering this question, it can be argued with simplistic logic that since the constitution is a product of the people by virtue of their repository and sovereign power, they can unmake the constitution at will outside the contemplated provisions of the constitution. This position can be supported by the proposition that the law is made for the people and not the people for the law and by extension that the law as made by the people is for their protection and welfare and not to be used as instrument of their oppression or tyranny which incites revolt of the people against it. After all, the people are not obliged to owe obedience or allegiance to a legal system that has lost its legitimacy and has failed to meet their collective will, aspirations, concerns and failed to protect them. Accordingly, the supremacy of the constitution is itself subject to the provisions of the constitution and the people's right guaranteed therein which includes the right to good governance.

Section 1 (1) and (2) of the CFRN, 1999, emphasizes its supremacy and it outlaws any form of change or control of government otherwise than as provided. When juxtaposed with section 14 (1) and (2) of the CFRN, 1999, it becomes clear that section 14 which vests sovereign powers in the people is not justiciable but section 1 is justiciable in the event of a breach. In view of this, the people's sovereignty cannot override the supremacy of the Constitution. However, this is where this legal or *de jure* submission ends. Where the government makes constitutional change impossible, they make unconstitutional change inevitable by the repository sovereign power of the people.⁶⁶ For the law to be meaningful, it must represent the aggregate will and social purpose of the people and be equally administered to serve the people otherwise it is regarded as having lost its social purpose.⁶⁷ A Constitution that will endure must not depart too far from the *volksgeist* (spirit of the people). It cannot be a sanctuary or a safe haven for the people entrusted with the collective will of the people and who themselves are subject to the constitution while they violate and breach it by using it as an instrument to work oppression on the people or the governed. In such a situation, their legitimacy is lost and the people are not obliged to obey the command of the state sovereign for this will enable maintaining the working of the oppression against the people. Therefore, the people would be at least morally justified to demand for a change and in fact overthrow the constitution if necessary to bring an end to ceaseless oppression. The people as the repository and source of all power can in the exercise of their power in a *de facto* sense, resort to extra legal means to overthrow an oppressive regime.⁶⁸ It is admitted though that the right of revolution is not legal in law, but international law recognizes it as a principle of law that a successful revolution begets its own legality⁶⁹ and this takes care of the legitimacy issues that arise from a revolutionary change of government. A successful revolution is an internationally recognized method of changing a constitution or a government as is in itself is a law creating fact and the

⁶³ Republicanism is the political belief that the best form of government is one in which citizens choose their representatives and leaders through free elections. <<https://www.vocabulary.com>> accessed 4 September, 2024

⁶⁴ Thomas Hobbes, John Locke and Jean-Jacques Rousseau

⁶⁵ Benjamin Franklin (2003) *The Political Thought of Benjamin Franklin*, ed. Ralph Ketchum Hackett Publishing, p. 398

⁶⁶ *Ibid*, pp. 60 - 61

⁶⁷ There are agitations for a new constitution or holistic amendment of the CFRN, 1999 by various religious, ethnic and socio-cultural groups such as National Christian Elders Forum, Ohaneze Ndigbo, Middle Belt Forum, Arewa Consultative Forum and the Pan Niger Delta Forum because the CFRN, 1999 undermines true federalism; concentration of power and resources at the centre *et al.* The calls for change are aimed at addressing structural imbalances and ensure equity, fairness and justice. <<https://wazam.net/news/2965812>> accessed 2 September, 2024; The National Christian Elders Forum (NCEF) aligning itself with the Patriots Group, which held a conference on March 18, 2024 in Kaduna State, also called for a new Nigerian Constitution. The group stated that National Assembly's repeated amendments to the existing Constitution should cease. Instead, legislators should begin crafting a new Constitution for Nigeria noting that after five alterations with no substantial positive change, the Assembly should start adopting the 2014 National Conference report and its draft Constitution. State-of-the-Nation: Adopt 2014 confab report. <<https://www.vanguardngr.com/2024/04/state-of-the-nation-adopt-2014-confab-report-gani-lekwot-wigwe-tell-tinubu>> Vanguard Online Newspaper of 11th April, 2024, accessed 2 September, 2024

⁶⁸ An example of the exercise of this sovereign power of the people in a *de facto* is the popular uprising that forced the Prime Minister of Bangladesh to leave office and flee into exile in August, 2024 and her government consequently collapsed. Similarly in 1986, the people of Philippines in the People Power Revolution or the February Revolution led to the departure of Ferdinand Marcos and ended his 20 years dictatorship and restoration of democracy. The non-violent revolution was a sustained protest between 22nd - 25th February, 1986 against regime violence and electoral fraud.

⁶⁹ O E Nwebo, *Critical Constitutional Issues in Nigeria*, *op. cit.*, p. 66

overthrown constitution stands either annulled or assimilated into the new constitution either in whole or in part.⁷⁰ The new constitution becomes the *grundnorm* (fundamental law). The above extra-legal means of changing and overthrowing a constitution finds realistic and practical support in the popular Arab Spring.⁷¹

In the final analysis, when the society becomes dysfunctional, the need for change arises as a matter of necessity and indeed as of right even by revolutionary means. Such action becomes justifiable to stop the ceaseless subversion of the aggregate will of the people and save the society from collapse and advance the social purpose which represents the aggregate will of the people. Anything short would amount to the people aiding and abetting their destruction which is against human nature and instinct of preservation. In this light, it is argued that the supremacy of the constitution should be interpreted subject to the overall aspiration of the people and their perception and conception of social justice objectively determined. Hence, sovereignty belongs to the people who in the exercise of their sovereign powers can be justified, at least morally, in changing their government even by a revolution if it becomes necessary and compelling⁷² to preserve their existence⁷³ and right to good governance. Hence the saying 'he who gives can also take'.⁷⁴

8. Conclusion and Recommendations

The Constitution is the yardstick by which every other law and conduct are tested for constitutionality and upheld on the one hand and declared unconstitutional and null and void and of no effect, on the other hand. It is a requisite of constitutional supremacy that all parliamentary and executive actions must always be based on the Constitution and through this way the constitution maintains its unassailable supremacy. The Parliament should have a judicial or legal committee specially created and statutorily charged with the mandate of scrutinizing all proposed bills to ensure that they do not contain provisions that violate the Constitution or inconsistent with same before they introduced for debate or are passed into law. Amending the Constitution to have a clause that will automatically render any law that breaches it or is inconsistent with it as unconstitutional, null and void upon proof of same without necessarily and always resorting to a court action and consequent judicial pronouncement. The Executive and Legislative arms of the government and their respective personnel should be regularly schooled and enlightened on the provisions of the Constitution such that it is akin to them taking judicial notice of such provisions. There should be created a Constitutional Court charged with the duty of subjecting to a constitutional test all legislations which has passed all the three stages of reading, before being passed by the Parliament and assented to prior to come into operation.

⁷⁰ Ibid

⁷¹ The Arab Spring or the First Arab Spring was a series of anti-government protests, uprisings and armed rebellions that spread across much of the Arab world, in the Middle East and North Africa in the early 2010s. It began in Tunisia in December, 2010 in response to corruption and economic stagnation and also saw action in Egypt. In both countries, the authoritarian regimes were toppled. President Zine al-Abidine Ben Ali of Tunisia stepped down. It was known as the Jasmine Revolution in Tunisia. In Egypt, President Hosni Mubarak was forced to leave office.

⁷² The doctrine of necessity supports this proposition where the law fails in or can no longer serve its social purpose.

⁷³ The right and instinct of self-preservation which is the highest in man and even animals cannot be regulated or limited on the altar of supremacy of the Constitution and laid bare for violation by the ruling class using the constitution as a shield or over smokescreen.

⁷⁴ In this case, it is the people; O E Nwebo, *Critical Constitutional Issues in Nigeria, op. cit.*, p. 69