

**APPLICABILITY OF THE DOCTRINE OF SEPARATION OF POWERS IN NIGERIA AND THE LEGAL CHALLENGES THAT HINDER ITS EFFECTIVE IMPLEMENTATION\***

**Abstract**

*The doctrine of separation of powers, a fundamental principle in democratic governance, faces prevalent issues and legal challenges in Nigeria's political landscape. This article explores the complexities and shortcomings surrounding the implementation of this doctrine within the Nigeria context. In Nigeria, the separation of powers is enshrined in the Constitution, dividing governmental authority among the legislature, the executive and the judicial arms. However, several factors undermine its effectiveness. One key challenge arises from the blurred lines between these branches leading to frequent conflicts and encroachments on each other's domains. The executive often dominates the political scene, wielding significant influence over the legislature and judiciary. This dominance can manifest through executive interference with legislative processes, such as budgetary allocations and appointments comprising the independence of the legislature. Similarly, the judiciary may face pressure or manipulation from the executive affecting impartiality of judicial decisions. Legal challenges to the doctrine of separation of powers in Nigeria also stem from ambiguities within the Constitution and inconsistencies in its interpretation and application. This article analyses prevalent issues and legal challenges which impede effective implementation of the doctrine of separation of powers in Nigeria and recommends ways to tackle the issues and challenges.*

**Keywords:** Separation, Powers, Issues, Challenges

**1. Introduction**

The term 'separation of powers' in its modern connotation is an influential concept especially in democratic governance. It deals with the distribution of governmental powers among the three organs of government. Similar to division of labour in Adams Smith's economic theory, separation of powers is directed towards specialization in the art of governance and more importantly, towards guarding against abuse of political powers for the benefits of individual citizens. The concept of separation of power envisages the principle of checks and balances of governmental actions.<sup>1</sup> The doctrine of separation of powers, as understood today came largely from the work of Baron De Montesquieu, a French Philosopher. He reasoned as follows:

Political liberty is to be found only when there is no abuse of power. But constant experience shows us that every man invested with power is liable to abuse it and to carry his authority as far as it will go.... To prevent this abuse, it is necessary from the nature of things that one power should be a check to another .... There will be an end of everything if the same person or body, whether of the nobles or of the people, were to exercise all their powers.<sup>2</sup>

Nwabueze has summarized the purport of the postulation of Montesquieu in the following words: "Concentration of governmental powers in the hands of one individual is the very definition of dictatorship and absolute power is by its very nature arbitrary, capricious and despotic".<sup>3</sup>

**2. Applicability of the Doctrine of Separation of Powers in Nigeria**

**Exercise by the Legislature and its Limitations**

The legislative power of the federation is vested in the National Assembly which consists of the Senate and House of Representatives, while the legislative power of each state is vested in the House of Assembly of that State.<sup>4</sup> The legislature has power to make law for the peace, order and good government of the federation or of the State as the case may be in relation to the matters contained in various legislative list. Section 4(2) and (7). The exercise of legislative power of the federation has some superiority over the exercise of legislative power of the States by section 4(5) of the Constitution that is to say that where any law made by any State House of Assembly is in conflict with the law validly made by the National Assembly, the law of the National Assembly shall prevail while the law made by the State shall to the extent of its inconsistency be void. The limitations of the legislature are limited in respect of some basic structure such as constitutional guaranteed rights in Chapter IV of the constitution. The legislature lacks power to make law that derogate from the rights contained in Chapter IV of the Constitution, through law making in the interest of peace, order,

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<sup>1</sup>In Nigeria, Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) in sections 4, 5 and 6 of the 1999 Constitution provides for the division of powers amongst organs of government, which are the Legislature, the executive and the Judiciary respectively.

<sup>2</sup>BD Montesquieu, *L'Esprit Des Loix* (translated as '*The Spirit of Laws*') (1748) chapter II, pp.3-6. The English version of the work can be obtained at [www.efm.bris.ac.uk/het/montesquieu/](http://www.efm.bris.ac.uk/het/montesquieu/) accessed on 29 November 2023.

<sup>3</sup>BO Nwabueze, *The Presidential Constitution of Nigeria* (London, Hurst & Co Publishers Ltd, 1982) p.32.

<sup>4</sup>CFRN 1999 (as amended) s. 4 (1) and (6)

public safety, public morality and laws that are reasonably justifiable in a democratic society. Section 6 of the 1999 Constitution restricts the legislature from vesting judicial powers in bodies or authorities other than the courts. Also, section 4(8) of the Constitution restricts the legislature from making law that purports or oust the jurisdiction of the court.

#### **Exercise by the Executive and its Limitations**

The exclusive power of the executive is provided in section 5 of the 1999 Constitution. The executive powers of the federation are vested in the President who may exercise such powers directly or through his Vice or his Ministers or other officers in the government of the federation. Section 5(1) of the CFRN as amended. The executive powers of the State on the other hand are vested in the Governor who may exercise such powers directly or through his deputy or through his commissioners and other officers appointed in the service of the state government. The federal executive government cannot declare war between Nigeria and another country except there is a resolution by both Houses of the National Assembly supporting the declaration in the same vein. Also, no member of the Armed Forces shall be deployed on a combat duty outside Nigeria except there is a prior approval by the Senate, but must seek approval with seven days of actual engagement. This does not stop the Senate from disapproving the deployment within fourteen days of actual engagement. Section 5(4-5). Some of the limitations to executive powers are requirement of permission, confirmation or consent of certain authorities for a valid executive action. For example, the President requires the approval of the National Assembly (that is the Senate and House of Representatives) to appoint a new Vice President if the Vice President dies or resigns from office. (Section 146(3). The president also needs the approval of the Senate for the remuneration of special adviser

#### **Exercise by the Judiciary and its Limitations**

The Judicial powers of the Federation or of the States of the Federation are vested in the court established for the federation and for the State. The courts include the Supreme Court, the Court of Appeal, the National Industrial Court, the Federal High Court, the High Court of the Federal Capital Territory, the High Court of a State, the Sharia Court of Appeal of the Federal Capital Territory, the Sharia Court of Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory, the Customary Court of Appeal of a State and such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make law, such as Election Tribunal, Code of Conduct Tribunal among others, are regarded as superior courts of record<sup>5</sup>. Section 6(1-3) of the constitution. Judicial powers include all inherent powers and sanctions of all courts of record. It also includes any dispute or action between any person or authority and to any other person in Nigeria, in order to determine the existence of a legal right of a person. It is the duty of the judiciary to guide and protect the Constitution. The judiciary has the constitutional mandate to curb the excesses of the executive and legislative acts through its pronouncements. It is also the responsibility of the judiciary to be a watchdog of the fundamental rights and liberty of the people. The judiciary is said to be the last hope of a common man. Where the fundamental rights of a person are violated, the judiciary will not hesitate to come to the aid of such person if an application is made to the court for the enforcement of the rights of such person. See *Rotimi Williams v Majekodunmi*.<sup>6</sup> The primary role of the court is to interpret laws. The judiciary gives effect to wordings of a law, statute, order among others and apply them in the adjudication of disputes between individuals, government organizations and between individuals and the government.

### **3. Challenges that Hinder the Effective Implementation of the Doctrine of Separation of Powers in Nigeria**

#### **Absence of True of Judicial Independence**

In any democratic society, the judiciary has often been vested with a duty of being the organ of government responsible for the dispensation of justice, and the custodian of constitutional values. The judiciary, as the guardian of Separation of Powers, ensures that the organs of government do not stray into the sphere of each other, and that powers and authority are exercised within the prescribed constitutional boundaries. Accordingly, the judiciary acts as a watchdog over the other organs of government and ensures their fidelity to the doctrine of separation of powers and respect for the supremacy of the constitution. By giving the power of judicial review to the courts, the constitution ensures obedience to its provisions by all persons and authorities since any violation of its provisions will be an illegality.<sup>7</sup> Furthermore, the constitution's supremacy is assured since any derogation from it will be declared void because it is unconstitutional.<sup>8</sup> The vesting of executive powers of the federation in the President and the exercise of such powers by him are made subject to the provisions of the constitution.<sup>9</sup> The executive powers so vested in the President extend to the execution and maintenance of the constitution itself and all laws made by the National Assembly. By means of judicial review, the judicial organ of government exercises a measure of control and check over the legislature and the executive.<sup>10</sup> To support this controlling

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<sup>5</sup> CFRN 1999 (as amended), s. 6(1) (2) and (3)

<sup>6</sup> (1962) LCN 987 SC

<sup>7</sup>SI Nchi, *Separation of Powers under the Nigeria Constitution* (Jos: Greenworld Publishing Co. Ltd., 2000) p. 148.

<sup>8</sup> Ss. 1, 4(8) & 6 (6).

<sup>9</sup> The 1992 Constitution of Ghana contains a similar but more explicit provision in article 58(1), which states that the executive authority of Ghana shall vest in the President and shall be exercised in accordance with the provisions of the Constitution.

<sup>10</sup> Nchi, *opcit*, at 148.

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and checking functions of the judiciary, the constitution provides that the constitutional powers of the National Assembly or of a State House of Assembly shall be subject to the jurisdiction of courts and of tribunals established by law and accordingly, the legislative Assemblies 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.<sup>11</sup>

It is, however, important to reiterate that while the exercise of the power of judicial review by the courts has so far been quite encouraging and commendable, the attainment of optimal performance by the courts has been impeded by several difficult factors, some of which include interference from the other organs of government,<sup>12</sup> lack of courage to decide a case in line with laid down laws and precedents,<sup>13</sup> complaints of judicial neutrality and favouritism in election cases,<sup>14</sup> problem of financial autonomy contrary to the provisions of the Constitution,<sup>15</sup> absence of true judicial reforms,<sup>16</sup> weak and inactive National Judicial Council in charge of regulation and welfare of judicial officers, problem of corruption in the judiciary,<sup>17</sup> which always leads to denial and access to justice,<sup>18</sup> problem of judicial philosophy such as rigid and conservative approach to constitutional and statutory interpretations instead of flexible, functional, progressive<sup>19</sup> and purposive approach<sup>20</sup>, and problem of *locus standi*.<sup>21</sup>

From the above premise, it can be safely concluded that judicial independence is not yet a reality but a mere aspiration in Nigeria today. The appointment and removal of judges are not insulated or isolated from politics, ethnicity, favoritism, and other primordial considerations.

### **Problem of Disobedience to Court Orders by the Executive**

Without doubt, accessibility to court by litigants is one thing, while the impartiality of the judge is another. Respect and obedience to the judgment and orders of the court is yet another important consideration. It is a notorious fact that judgments and orders of courts are not self-executing and the judiciary does not have its own body or institution charged with the responsibility of enforcing its judgments.<sup>22</sup> The implication is that the judiciary inevitably depends on the executive for the enforcement of its judgments. The executive branch, without doubt, is the greatest violator of court orders.<sup>23</sup> This being the case, there is little guaranteeing that when an order is made against the executive branch, the same will be treated as sacrosanct. On the contrary, the unfortunate and regrettable experience has been regular disobedience of the executive to lawful and subsisting court orders.<sup>24</sup> Often, government chooses the orders to obey. It obeys those it is comfortable with and disobeys those which are in conflict with its interest, ignoring the consequences to the individuals whose rights have been violated or the public who bear the brunt of such grave disobedience by those who

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<sup>11</sup> S. 4(8).

<sup>12</sup> A Aguda, *The Judicial Process and the Third Republic* (Lagos: F & A Publishers, 1992) pp. 35 - 36.

<sup>13</sup> Lord Reid 'The Judge as Law Maker', available at [www.oppapers.com/subjects/thejudge](http://www.oppapers.com/subjects/thejudge) last accessed 13 June 2021.

<sup>14</sup> I Nnochiri, 'Corruption in Nigerian Judiciary: How Safe is 2011 General Elections?' Vanguard, July 18 2019.

<sup>15</sup> CFRN, *op cit*, s. 81(3) & 121 (3).

<sup>16</sup> E Essien and M Udofia, 'Judicial Reforms and Democracy in Nigeria' E Essien (ed.) Law: All-Round Excellence Essays in Honour of Professor Peter Umama Umoh (London) (Lagos: Toplaw Publishments Ltd, 2012) p. 13.

<sup>17</sup> A Oyeboode, 'The Judiciary, Corruption and Democratization' in A Gboyega (ed), *Corruption and Democratization in Nigeria*. (1996). Y Osibajo, 'Impact of Corruption on Socio-Economic Development in Nigeria.' *Being a speech delivered at the Fourth Gani Fawehinmi Annual Lecture, organized by the Ikeja branch of the Nigerian Bar Association on January 15, 2008*, Lagos State.

<sup>18</sup> B Okafor, 'Prospects and Problems of Access to Justice Through the Multi-Door Court' (2014) *ABUAD Law Journal*, Vol. 1 N0. 1 p. 41.

<sup>19</sup> AE Davies, 'The Independence of the Judiciary in Nigeria: Problems and Prospects' in (1990) 10 *African Study Monographs* 3 at pp. 125 - 136, noting that Nigerian Judges are in most cases unable to interpret the laws to accord with the progressive aspiration of the people.

<sup>20</sup> L Uzoukwu, 'Addressing the Legitimacy of the 1999 Constitution through the Reform Process' *Being a paper presented at the British - Nigerian Law Week 23 - 27 April, 2000, Abuja, Nigeria*; *Abubakar v. Yar'Adua* (2008) 36 NSCQR (Pt. 1) 231

<sup>21</sup> *Nafiu Rabiu v. Kano State* (1980) 8 - 11 SC 130; *A-G, Abia State v A-G, Federation* (2002) 6 NWLR (Pt. 763) 264 at 485 - 486. *A-G, Ondo State v A-G, Federation* (2002) 9 NWLR (Pt. 772) 222 at 340; *Orhiunu v. Federal Republic of Nigeria* (2005) 1 NWLR (Pt. 906) 39 at 55 and *A-G, Abia State v. A-G Federation* (2003) 4 NWLR (Pt. 809) 124 at 230. See also *Buhari v INEC* (2008) 36 NSCQR (Pt. 1) 475 at 599 - 602; CA Ogbuabor, 'The Supreme Court and Presidential Election Petitions in Nigeria: The Impregnable Reign of Literalism.' (2010) 6 *Nigerian Bar Journal* 123 - 164; ON Ogbu, 'The Doctrine of Substantial Compliance in Election Petitions in Nigeria: The Imperative of a New Judicial Approach' (2010) 6 *Nigerian Bar Journal*, pp. 29 - 48.

<sup>22</sup> *Adesanya v. President of the Federal Republic of Nigeria (1981) ANR 1*, *Fawehinmi v President F.R.N* (2007) 14 NWLR (pt.1054) 275, *Olagunji v. Yahaya* (1998) 3 NWLR (Pt. 542) 501; *Ogbuehi v. Governor, Imo State* (1995) 9 NWLR (Pt. 417) 53 and *Okafor v. Asoh* (2017) 3 NWLR (Pt. 593) 35.

<sup>23</sup> CFRN, *opcit*, s.5, it is the responsibility of the executive branch to enforce the law, including judicial decisions.

<sup>24</sup> M Mutua, 'Human Rights: A Political and Cultural Critique' (2002) p.2, CA Odinkalu, 'Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa' (2003) 47 *Journal of Africa*, pp. 1-37.

<sup>25</sup> This is amplified by the cases of Military Governor of *Lagos State Government v. Chief Emeka O. Ojukwu* [1986] 1 NWLR 621; *Lakanmi & Kikelomo Ola v. Attorney General Western State (Supra)*.

ought to have implemented such orders.<sup>25</sup> The sanctity of law depends on the respect for the judicial process through which orders according to the law are made<sup>26</sup>. This is very rampant during the military regime as could be seen in *Military Governor of Lagos State Government v. Chief Emeka O. Ojukwu*<sup>27</sup> where the Supreme Court observed that the result of the disobedience of court orders would lead to the replacement of rule of law with anarchy. This trend is still being witnessed under this current democratic dispensation despite the existence of a written constitution.

### **Weak Oversight Capacity of the Legislature**

The legislature epitomizes an aspect of the sovereign expression of the constituent representative authority of the people, whose interest is to project and protect through the discharge of the legislative functions of law making; control and protection of the public finance; oversight functions; and representation of the constituencies. Barnett observed the government, in formulating policy, and the legislature, in legitimating that policy, are accountable to the electorate on whose trust power is held.<sup>28</sup> The legislature performs vital roles in the practice of Separation of Powers. Indeed, the law making, and budgeting or appropriation functions constitute veritable tools for checking the excesses of the executive. However, in Nigeria, these functions are merely performed to rubber stamp the actions of the executive, instead of checking their excesses and corrupt practices.<sup>29</sup> In fact, the role of the legislature as the watchdog over public finance is part of its oversight functions over the executive in the management of the capital and resources of the Nigerian state that is meant to ensure good governance, accountability and probity.<sup>30</sup> By virtue of the 1999 Constitution<sup>31</sup> it is the National Assembly that gives authorization to the President for all expenditures from the Consolidated Revenue Fund, and any unauthorized expenditure by the executive is unconstitutional null and void<sup>32</sup>, thus affording the representative body an opportunity to rigorously debate and rationalize the budget. Unfortunately, the performance of the legislature has fallen woefully below expectation, as they have been sometimes involved in bribery and corruption when they receive bribes or incentives from the executive to pass appropriation Bills or they corruptly enrich themselves when expending the budgetary allocations to the National Assembly.<sup>33</sup>

### **Weak Institutional Infrastructure and Autonomy**

A major deficiency in the promotion of Separation of Powers is one of enforcement. Since the enforcement of violation of the provisions of the constitution largely depends on the domestic machinery of the executive, Nigeria has erected seemingly weak institutional infrastructures to promote Separation of Powers. The institutional infrastructures include the judiciary,<sup>34</sup> the National Human Rights Commission,<sup>35</sup> the Public Complaints Commission,<sup>36</sup> the Legal Aid Council,<sup>37</sup> Economic and Financial Crimes Commission,<sup>38</sup> Independent Corrupt Practices and Other Related Offences Commission,<sup>39</sup> among others. Regrettably, the various institutional mechanisms are not strong enough or capable of providing adequate and effective platforms for meaningful promotion of Separation of Powers. This is especially so because many of these institutional mechanisms are not independent and do not have the financial and logistical capability to meaningfully function as they ought to. Judiciary and these extra-judicial bodies are in a more dangerous position as they are being controlled, directly or indirectly, by the executive through funding, composition of membership and provision of operational guidelines, among others. Government interference or influence becomes not a mere possibility but a reality of these institutions depends on the executive for their survival, therefore, weak in enhancing the promotion of Separation of Powers contrary to their establishments.

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<sup>25</sup>*Attorney General of Lagos State v. Attorney General of the Federation* [2004] 20 NSCQR 99; *Attorney General Abia State v. Attorney General of the Federation (Supra)*, wherein, although the Supreme Court declared it unconstitutional, the federal government paid deductions from the Federation directly to the local government; *Attorney General of the Federation v. Attorney General, Abia State & 35 Ors* [2002] 6 NWLR 542; *Attorney General, Ogun State & Ors v. Attorney General of the Federation* [2002] 18 NWLR 232.

<sup>26</sup>DA Ijalaiye, 'Executive and Legislative Lawlessness: A Challenge to the Rule of Law in Nigeria', *Faculty of Law Lagos State University Distinguished Jurist Lecture*, p.2.

<sup>27</sup>(1986) 1 NWLR (pt. 18), 621.

<sup>28</sup> H Barnett, *Constitutional & Administrative Law* (14<sup>th</sup> edn, Routledge, 2005) p.5.

<sup>29</sup> J.D Barkan, 'African Legislatures and the Third Wave of Democratization', Preliminary Draft of 12/30/08, at pp.2-3, *Prepared for Yale/World Bank Workshop on Governance and Development in Africa and the Middle East to be held at Yale University*, January 30-31, 2009.

<sup>30</sup>EO Oyewo, 'Separation of Powers and the Oversight Functions of the Legislature in Nigeria', being a paper presented at the African Network of Constitutional Lawyers Conference in April 2007 held at Nairobi, Kenya. I Ibrahim and MA Mustapha, *Combating Corruption in Nigeria: The Role of the Legislature Examined*, at <http://www.unilorin.edu.ng> accessed on 5 November, 2023.

<sup>31</sup>Ss. 80 and 81

<sup>32</sup>*Attorney General of Abia State v. Attorney-General of the Federation and Ors (Supra)*.

<sup>33</sup> Oyewo, *opcit.*

<sup>34</sup> CFRN, *opcit.* s. 6.

<sup>35</sup> National Human Rights Commission Act, Cap. N46, Laws of the Federation of Nigeria, 2004.

<sup>36</sup> Public Complaints Commission Act, Cap. P37, Laws of the Federation of Nigeria, 2004.

<sup>37</sup> Legal Aid Act, Cap. L9, Laws of the Federation of Nigeria, 2004.

<sup>38</sup>EFCC Act, *opcit.*

<sup>39</sup> Corrupt Practices and Other Related Offences Act, 2000.

### **Corruption, Lack of Accountability and Good Governance**

In the area of accountability, transparency and good governance, the aggregate of opinion of academic writers is that the government has not discharged its responsibilities. Corruption has been the prevalent factor that is debarring the country from attaining that lofty height of good governance thereby retarding the effective practice and promotion of Separation of Powers.<sup>40</sup> The Transparency International Annual Corruption Perception Index consistently rated African countries as corrupt, and Nigeria as one of the most corrupt nation in the world, - at one time or the other.<sup>41</sup> The acknowledgment of corruption governmentally<sup>42</sup> and judicially<sup>43</sup>, as one of the foremost endemic challenges to the sustainable development of Nigeria, informed the adoption of the “Anti-Corruption Campaign” as a fundamental policy of the former President Olusegun Obasanjo administration that started the democratization process on May 29, 1999.<sup>44</sup> Subsequently, two main anti-corruption statutes were enacted by the National Assembly, to form the bedrock of the fight against corruption, that is, the Independent Corrupt Practice Commission and Other Related Offences Act 2000, and the Economic and Financial Crimes Commission Act 2001. These anti-corruption legislations have been complimented by several legislations aimed at engendering transparency and accountability, and combating corruption in governance, by the successive administrations.

However, the question being raised now is, whether in the face of numerous anti-corruption legislations and policies, the poor record of adherence/enforcement, prosecution, conviction and punishment under the anti-corruption laws, any appreciable progress has been made in combating corruption in the governance and management of the resources and economy of African countries, especially Nigeria?<sup>45</sup> In *SERAP v FRN & UBEC*<sup>46</sup> an action for a declaration that diversion of the sum of 3.5 billion naira from the Universal Basic Education (UBE) Fund by certain public officers in 10 States of the Federation of Nigeria is illegal and unconstitutional as it violates Articles 21 and 22 of the African Charter on Human and Peoples’ Rights (ACHPR), the ECOWAS Community Court of Justice, decided, *inter alia*, that ‘embezzlement or theft of parts of the funds allocated to the basic education sector will have negative impact; this is normal since shortage of funds will disable the sector from performing as envisaged by those who approved the budget’.<sup>47</sup>

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<sup>40</sup>DA Ijalaiye, ‘Democratic Governance in Nigeria: A Critical Appraisal’ in Law, Politics and Development: The Challenges of an Emerging Mega City: Essays in Honour of Babatunde Raji Fashola, SAN, (Lagos, NBA Ikeja Branch, 2010); D.A. Ijalaiye, : Executive and Legislative Lawlessness: A Challenge to the Rule of Law in Nigeria, *opcit*; MA Belgore, ‘Rule of Law and Democratic Governance in Nigeria: Challenges and Prospects’, University of Abuja Pre-Convocation Lecture, Feb., 2, 2008; O Oyelowo, ‘Constitutions, Good Governance and Corruption: Challenges And Prospects For Nigeria’, *opcit*.

<sup>41</sup> In 2000 Nigeria was rated as the most corrupt nation in the world out of a total of 90 countries. In 2001, Nigeria was rated the second most corrupt nation out of a total of all 91 countries assessed. In 2002 Nigeria retained its number two position as the most corrupt country out of a total of 102. However, by 2020 Nigeria was ranked number two out of 186 countries. Rankings available online at <http://www.fordham.edu/economics/vinod/cie/ti-cpi2k.htm>[2000Index], <http://www.transparency.org/cpi/2001/2002>. 06.28. cpi. en. html; [http://www.infa.please. Com/ipa/A078135Q.htm](http://www.infa.please.Com/ipa/A078135Q.htm) [In 2021 Nigeria was ranked as the most corrupt country out of a total of 133]; <http://www1.transparency.org>> Last accessed on 13 November 2023.

<sup>42</sup> See Report of the Drafting Committee containing the Draft Constitution (1976) Vol. 1. p. XXXIII para. 7.5; Report of the Political Bureau 1987 (Federal Government of Nigeria, Printer, Lagos) 213 Para 12. 037. – 12.039.; See also AN Aniagolu, *The Making of the 1989 Constitution of Nigeria*. (1993, Safari Books) 156-157; T Osipitan and O Oyelowo, ‘Legal and Constitutional Framework for Combating Corruption in Nigeria’, in *Unilag Readings in Law* EO Akanki (ed) (1999) 257-282. . ‘Corruption is evidently Nigeria’s greatest problem. Since the attainment of independence, corruption and abuse of office have enjoyed steady growth. They have consequently become cankerworms reaching the dimension of epidemic in our body politic. While admission and examination scandals are examples of corruption in our educational institutions, payment of salaries to ghost workers, over invoicing of goods and services, and the raising of fictitious local purchase orders, are examples of corruption in our private and public sections. It suffices to state that a nation where corruption is an accepted norm is bound to suffer economic backwardness and isolation. We therefore support the view that lawless and unaccountable government not only guarantees economic backwardness, it insures societal breakdown.’ Qouted by the Supreme Court in *Attorney-General of Ondo State v Attorney-General of the Federation & 35 Ors* (2002) 14 WRN 1 at per Uwaifo JSC

<sup>43</sup> *Attorney-General of Ondo State v Attorney-General of the Federation & 35 Ors* (2002) 14 WRN 1; *Olafisoye v F.R.N* (2005) 51 WRN 52. These are decisions of the Supreme Court on the Independent Corrupt Practices Commission Act.

<sup>44</sup> MN Ribadu, ‘Nigeria’s Struggle with Corruption’, *Being an abridged and edited version of presentation to US Congressional House Committee on International Development, Washington D.C* on May 18 2006.

<sup>45</sup> In an address to ‘a high-level panel meeting on the platform of the Club de Madrid’ at the 100<sup>th</sup> International Labour Conference in Switzerland, Former President Olusegun Obasanjo did not mince words to say that the claim of any fight against corruption in Nigeria is a mere illusion, see THISDAY Newspapers of Monday, June 20, 2011 write up by Imam Imam, ‘Echo of Corruption in Switzerland: What Does Obasanjo Want?’, Indeed, there has been a great reduction in the momentum of the Anti-Corruption Campaign, and the Attorney-General of the Federation has even called for the merger of the ICPC and EFCC, generally lending credence to the perception that the war against corruption is over! See also P.D. Ocheje, ‘The Failure of anti-corruption legislations(s) in Africa’ Vols. (1) and (2), *The Punch Newspaper*, Wednesday, August 3, 2011, p. 16 and Thursday, August 4, 2011, p.16 respectively, on the same theme.

<sup>46</sup>Suit No: ECW/CCJ/APP/12/07; Judgment No: ECW/CCJ/JUD/07/10 at [http://www.worldcourts.com/ecowascj/eng/decisions/2021.11.30\\_SERAP\\_v\\_Nigeria.htm](http://www.worldcourts.com/ecowascj/eng/decisions/2021.11.30_SERAP_v_Nigeria.htm) last accessed on 13 November 2023.

<sup>47</sup> The African Commission on Human and Peoples’ Right in *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic Nigeria* (2008) AHRLR 108 (ACHPR 2008) held the complaint of corruption against the Government of Nigeria arising from similar facts complained before the ECOWAS Community Court of Justice by SERAP inadmissible for not utilizing the domestic remedies available in the domestic jurisdiction.

Despite various constitutional checks like the enactment of anti-corruption laws,<sup>48</sup> the establishment of Code of Conduct Bureau,<sup>49</sup> Public Complaints Commission,<sup>50</sup> the Legislature,<sup>51</sup> etcetera that have been institutionalized under the Constitution, it is rather unfortunate that these checks are not usually and adequately utilized to curb corruption. Due to the fact that corruption has eaten deep into our polity, you hardly see transparency and accountability at any level or organ of government. One would recall that under Jonathan regime, several monumental fraudulent practices were uncovered. A former minister of aviation, Mrs. Stella Oduah, was accused of car scandal;<sup>52</sup> a former minister of Petroleum Resources, Mrs. Diezani Madueke was involved in a number of oil/kerosene subsidy scandal of billions of dollars;<sup>53</sup> the former CBN Governor, Mallam Sanusi Lamido Sanusi accused the NNPC of non-remittance of about 20 billion US dollars to the Federal Government's coffer,<sup>54</sup> while Lt. Col. Sambo Dasuki, the former National Security Adviser, was accused of embezzling two Billion US Dollars meant for the purchase of arms and ammunitions to combat insurgency ravaging the country and many more. In addition, this current administration is not an exception as there are allegations of corruption against some officials of President Buhari led administration ranging from Five hundred Million meant for grass cutting by the former Secretary to the Federal Government, over Two Billion naira allegedly embezzled by the Personal Assistant to Mrs. Aishat Buhari, wife of President Buhari, Thirty-Six Million naira allegedly swallowed by a serpent, over Two Hundred and Fifty Million U.S. dollars abandoned at Osborne house, Ikoyi, Lagos without anybody claiming its ownership till date, sudden withdrawal of charges by the EFCC, at the eve of the 2019 National Assembly elections of the principal officers, against the former governor of Gombe State, Senator Goje, for stepping down from the Senate Presidency race to enable the favoured candidate of the ruling APC party, Senator Lawal, emerge as Senate President, allegation of Ninety billion naira leveled against the Federal Inland Revenue Service led by Mr. Babatunde Fowler allegedly given to the Vice President Professor Yemi Osibajo, SAN for the 2019 Presidential General Elections, among others.

Another major impediment to Separation of Powers in Nigeria is the immunity clause provision in the Constitution that prevents the prosecution of the President, Vice president, Governors and their deputies while in office.<sup>55</sup> One may not less agree with S.M.A Belgore CJN, (as he then was) when he noted that if immunity clause is removed, the officials concerned would be careful, since they would no longer be shielded from prosecution.<sup>56</sup> To deal with the developmental quagmire that Nigeria is presently in, it will seem obvious that establishing constitutional principles along the lines of Western liberal philosophy mixed with African values, will beget good governance and begin to automatically reduce corruption, especially, when the legislative framework for anti-corruption campaigns is strengthened with new legislations. Strangely, Nigeria, has defied this line of reasoning, and the converse has been the case, as corruption has been on the increase even in the face of enactment of more anti-corruption statutes.

#### **4. CFRN 1999 as a Basis for the Doctrine of Separation of Powers**

Nigeria adopted a presidential system of government in 1979 which provided for complete separation of powers among the three organs of government and any legislator who was appointed a minister, or commissioner vacated his seat in the legislature before taking up such appointment<sup>57</sup>. The Constitution clearly demarcates the jurisdiction of the three organs of government in the exercise of their constitutional powers. The extant legal basis for the practice and implementation of separation of powers in Nigeria is the 1999 Constitution of the Federal Republic of Nigeria, as amended, which is the *grundnorm* or the *fons et origo* from which the legal authority is derived in any legal system. The importance of a constitution cannot be over emphasized for the effective implementation of separation of powers in any jurisdiction. The principle of separation of powers rests on the idea of restraining of arms government in their exercise of power, and in most emergent African states, the experience has been that the mere existence of a constitution does not automatically translate into the practice of separation of powers, since a power may be exercised on legal authority; however, the fact is not necessarily determinative of whether or not the action was constitutional.<sup>58</sup> For example, sections 4, 5 and 6 recognize the legislature, executive and the judiciary respectively.

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<sup>48</sup>EFCC Act, *op cit*.

<sup>49</sup>S.153 and Fifth Schedule Part I.

<sup>50</sup>S.315 (5) and Public Complaints Commission Act, CAP P37, LFN 2004.

<sup>51</sup>Especially their investigative functions; the role of the watchdog of public funds by virtue of sections 80 and 81 of the Constitution, etc.

<sup>52</sup>Oduah Gate: 'Inside story of Aviation Minister's survival battle', *The Vanguard*, November 3, 2013.

<sup>53</sup> Subsidy Scam: Reps insist on Diezani's resignation', *The Punch*, April 27, 2012.

<sup>54</sup>'NNPC cannot account for \$20bn, Sanusi insists', *The Punch*, February 5, 2014.

<sup>55</sup> S.308.

<sup>56</sup>*The Nation*, February 10, 2008, p.8

<sup>57</sup>Ibrahim Nasir Arab, 'The National Assembly and Separation of Powers': A lecture delivered at the National Defence College, 16<sup>th</sup> November, 2007.

<sup>58</sup>MJC Vile, *Separation of powers and Separation of Powers* (2<sup>nd</sup> ed, Indianapolis: Liberty Fund Inc.,1998) 1; CJ Friedrich, *Limited Government: A Comparison* (Prentice-Hall, 1974) 13-14.

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Indeed, the Nigerian system of government is characterized by separation of powers; it is a system in which separate institutions share governmental powers; the executive, legislature and judiciary are distinct institutions in contrast to the parliamentary system practiced in the first republic. These separate institutions are linked by their shared powers for purposes of checks and balances. Separation of powers or classification of government powers is the division of government powers into the three branches of legislative, executive and judicial powers, each to be exercised by a separate and independent arm of government as a preventive measure against abuse of power, which will occur if the three powers are exercised by the same person or group of people. Separation of powers is the division of the powers and functions of government among the three independent and separate arms of government, that is the legislature, executive and judicial, to act as a check and balance on one another to prevent the excesses and abuse of powers. Thus, separation of powers is a constitutional doctrine of the division of powers of government into three branches of legislative, executive and judicial powers, each to be exercised by a different group of persons as a means of check and balance in the government structure itself, to protect the people against tyranny. Under this constitutional doctrine, one branch of government should not encroach on the domain of another branch of government.

**5. Conclusion**

In Nigeria, the principle of separation of powers is theoretically enshrined in the Constitution, but its practical application is limited due to concentration of power in the executive branch. The executive branch often exerts control over the legislative and judicial branches, undermining independence and ability to check and balance one another. While the idea of separation of powers is essential for the functioning of democracy, its full applicability in Nigeria is hindered by systematic challenges and lack of political will to uphold the principle in practice. It is recommended that efforts should be made to strengthen and safeguard the independence of the legislative and judicial branches to ensure effective checks and balances on the executive branch and checks and balances mechanisms should be created to ensure that each branch of government can effectively check and balance the powers of the other branches. This could include strengthening the role of independent oversight bodies and promoting accountability in government institutions.