

AN EXAMINATION OF THE GUBERNATORIAL POWER OF APPOINTMENTS UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED)*

Abstract

The principle of separation of powers provided for the executive powers for the Federal and State Governments. As the executive powers of the Federation are vested in the President, the executive powers of the state are vested in the Governor of the State and hence the phrase 'Gubernatorial Powers'. It is among the powers of the Governor of a State in Nigerian constitutional democracy appointment of political and public officers that will aid executive running of the state. This paper aimed at analysing the Gubernatorial Powers with much emphasis on the Gubernatorial power of appointment under the Constitution of the Federal Republic of Nigeria. The paper achieved the aims by using doctrinal research methodology in which both primary and secondary sources of law were consulted. It is the finding of this paper that there is no Constitutional Court or Tribunal created by the Constitution that will be handling legislative and Gubernatorial feud-appointment and confirmation inclusive. This paper recommends that Constitutional Court or Tribunal be created that will be manning the Gubernatorial and legislative feuds.

Keywords: State, Governor, Executive, Gubernatorial, Power, Appointment

1. Introduction

The Executive is regarded as the most influential organ of government, it is charged with the responsibility of executing and enforcing laws.¹ The State executive headed by the Governor comprises all the functionaries and agencies that are concerned with the administration of the State. It consists of the Governor and his Commissioners, Special Assistants and so on. Since the passing of the 1999 Constitution, a very noticeable growth in the powers of State Governors in Nigeria is witnessed.² Huge responsibilities have been placed in their hands as the structure of government has expanded and becomes increasingly complex.³ The doctrine of the separation of powers also plays an important role in determining the extent of the Governor's appointing power, because if the power to appoint can be called an executive function, his power will be subject to approval by the State legislature.⁴ This meant a multiplication of subordinate administrative offices for the execution of some executive functions.⁵ The powers of the chief executive to appoint and remove become especially important because they constitute a significant aspect of his control over State administration. It is desirable that the extent of these powers be known, not only from the viewpoint of the Governor himself but also from that of the 1999 Constitution. This paper aimed at analysing the constitutional existence of a State, features of a State, powers of a Governor of a State with more emphasis on the power of appointment, mode of control of such powers and the exercise of the power. The aim will be achieved by using doctrinal research methodology.

2. Constitutional Existence of a State Government

As clearly stated by the 1999 Constitution, Nigeria as a federation has 36 (thirty-six) States and 1 (one) federal capital territory. Each of the 36 States is a semi-autonomous political unit that shares powers with the Federal Government as enumerated under the Constitution of the Federal Republic of Nigeria⁶. The Federal Capital Territory (FCT), is the Capital Territory of Nigeria, and it is in this territory that the capital city of Abuja is located.⁷ Each State of Nigeria, named in the first column of Part I of the First Schedule to the Constitution, consist of the area shown opposite thereto in the second Column of that Schedule.⁸ There is no doubt that the states in Nigeria are creation of constitution. Powers of the states have been spelt out categorically by the constitution which federal of government cannot in anyway take same away from the later.⁹

3. Constitutional Features of a State Government in Nigeria

A State which falls within the sovereign state(country) may be defined as a politically organised body of people inhabiting a defined geographical entity with an organised legitimate government. A State must be free from all

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¹ Nat, O, Amending the Constitution of the Federal Republic of Nigeria 1999, *African Journal of Legal Studies* 4 (2011) p. 123

² *ibid*

³ Emmanuel, I. A, Nigerian Federal Constitution and the Practice of Federalism, *Beijing Law Review*, Vol 8, No 3, 2017

⁴ Okuwa, B., *Retaining a Bicameral Legislature for Nigeria*, Arkansas, University of Arkansas Press 2001) p. 6

⁵ *ibid*

⁶ Section 2(1) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

⁷ Section 2(2) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

⁸ Section 3(2) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

⁹ Sections 4, 5, and 6 of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

forms of external control to exercise its sovereignty within its area of jurisdiction.¹⁰ It must be noted that a State differs from a kingdom and empire. Nigeria is an example of a State. In the Nigerian context, state is not the same with above conceptual clarification, in essence, it means certain boundary of a land mass geographically demarcated with certain population and hence, state government in Nigeria is a tier of government next immediately after federal government. There features of a state government that distinguished it from Federal and Local Government councils as tiers of government, the followings are constitutional features of state government in Nigeria;

A State is headed by a Governor

In Nigeria, there shall be each state of the federation a Governor.¹¹ State Government is being headed by a governor as the chief executive.¹² Despite the principle of separation of powers, a governor of a state is the chief executive officer of state. This is because whether he will seek approval of any state establishment to execute a particular action, he must be the one to do it though he can delegate his executive power to certain official.¹³ Once a power is delegated, the official in whom power is delegated can act on behalf of the donor of the power.¹⁴

Senatorial Constituencies/Districts

One of the attributes of state government in Nigeria is senatorial districts. In Nigerian constitutional democracy, each and every state has three senatorial constituencies regardless of the nature of its population. It is only Federal Capital Territory that has one senatorial district.¹⁵ Based on this, the States through their populace, produce Senators as their representative in the National Assembly Upper Legislature.

Federal Constituencies

Each State of the federation has federal constituencies defined according to the quantity of its population. In essence, it is the number of constituents in particular State that will determine the number of federal constituencies. In essence, unlike senatorial district, in this feature, one state of the federation may have more than the number of federal constituencies other states have. Instead of senators, in this feature, the States produce through their constituents, members of the House of Representatives that will represent them in National Assembly Lower Chambers.¹⁶

Existence of Local Government Councils

In Nigerian constitutional democracy, each State of the Federation has Local Government Councils. However, the number of the local government councils depends on the quantum of population a state may have. A state with huge population may have more Local Government Councils than the ones with less population.¹⁷ Notwithstanding the Local Government Councils as smallest tier of government under the state government, they are constitutionally being governed by the democratically elected officials. The effect Nigerian constitutional provision on the Local Government council is that, Local Government council must be governed by persons elected by the people and State Government must work to establish framework for democracy.¹⁸ This becomes reverse in many states in Nigeria. Democratically elected Local Government Councils are frequently removed by state governors with help of House of Assembly and replaced with unelected care takers.¹⁹

House of Assembly Constituencies

It is trite that there should be House of Assembly of each and every State of the Federation of Nigeria.²⁰ The legislative power of a state in Nigeria is vested in the House of Assembly of the State. The House of Assembly Members are always from the various constituencies of created by the Nigerian constitution. House of Assembly constituencies are apportioned by the constitution according to the population of the state alongside considering the number of constituencies of the House of Representative. Be that as it may, a state should not have less than 24 and more than 40 State House of Assembly constituencies.²¹

¹⁰ Roskin, M.G., *Political Science: An Introduction*, USA, Pearson Education Ltd, 2008 p. 1 <<https://www.Ajol.Info/Index.Php/State/Article/View/207288/195398>> assessed on 3rd January, 2023

¹¹ Section 176 (1) of the Constitution of the Federal of Nigeria 1999 (as altered 2018)

¹² Section 176 (2) of the Constitution of the Federal of Nigeria 1999 (as altered 2018)

¹³ Section 5 (2b) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

¹⁴ Attorney General Kaduna State v Hassan (1985) 2 NWLR pt. 8 p.483

¹⁵ Section 48 of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

¹⁶ Section 49 of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

¹⁷ Section 7 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

¹⁸ Collin, O, Needed: A Democratic System at Local Government <<https://www.thisdaylive.com/index.php/2021/05/06/needed-a-democratic-system-at-local-government/>> accessed on 23rd day of March, 2023

¹⁹ Governor Ikiti State & Ors V Prince Sunni Olubunmo, Executive Chairman Ido-osi Lga & Chairmen Association of Local Government in Nigeria (Algon) Ikiti State Chapter & 13 Ors. (2017) 3 NWLR (Pt 1551) p. 1

²⁰ Section 90 of the Constitutional of the Federal Republic of Nigeria 1999 (as altered 2018)

²¹ Section 91 of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

4. Gubernatorial Powers

In respecting the principle of separation of powers, the executive powers of the States of the Federation are vested in the governors of the state and hence the phrase 'gubernatorial powers'.²² The Governors are responsible for implementing State laws and overseeing the operation of the State executive branch. As State leaders, Governors advance and pursue new and revised policies and programmes using a variety of instruments, among them executive orders, executive budgets, and legislative proposals and vetoes. As chiefs of the State, Governors serve as the intergovernmental liaison to the Federal Government on behalf of the State. The executive powers of a State are vested with the Governor and that the executive power of the State shall directly or indirectly through subordinate officers be exercised by him.²³ Subject to the provisions of the Constitution, the executive powers of a State is vested in the Governor of that State and may, subject to the provisions of any Law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State²⁴ Governors carry out their management and leadership responsibilities and objectives with the support and assistance of department and agency heads, many of whom they are empowered to appoint. A majority of Governors have the authority to appoint State court judges as well, in most cases from a list of names submitted by a nominations committee.²⁵ There are many gubernatorial powers as provided by the Constitution, extant laws of states and sometimes gubernatorial executives orders, the followings are some of the gubernatorial powers;

Legislative power

The executive Governor of a State has the legislative power to assent to a bill as enshrined in the Constitution.²⁶ Once the legislation has been presented to the Governor, he has the options to either sign and make it into law, or return the bill to the State House of Assembly expressing any objections.²⁷ However Where the Governor withholds assent and the bill is again passed by the House of Assembly by two-thirds majority, the bill shall become law and the assent of the Governor shall not be required.²⁸ It is also worthy to note that the State Governor may influence legislation by threatening to veto their bills to achieve desired legislation.²⁹ The governor can also take an indirect role in shaping legislation, especially if the governor's political party has a majority in the House of Assembly. Governors prepare specific legislative proposals to be introduced on their behalf. In addition, state departments and agencies may pursue legislative initiatives with gubernatorial approval.³⁰ Executive branch officials often are called to testify on legislative proposals, and Governors and other executive branch leaders will seek to mobilise public opinion and interest groups in favor of specific legislative proposals.³¹ Governors may use their role as party leaders to encourage support for legislative initiatives, and along with department heads and staff, may seek to influence the progress of legislation through regular meetings with legislators, legislative officials, and other stakeholders.

Power of Maintenance and Execution of Constitution and other Extant Laws

Governors are charged by Constitution with responsibility to see that the laws are faithfully executed by people and organizations that comprise the executive branch. Day-to-day administrative responsibilities are delegated to state agencies supervised by the Governor. State cabinets, which serve as advisory councils to the nation's Governors, generally are made up of officials appointed by the Governor to head state departments and agencies, and in some cases top-level staff in the Governor's immediate office. The Gubernatorial Powers are to extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the state and to all matter with respect to which the House of Assembly for the time being has power to enact law.³²

Power of Appointment

One of the important powers of the Governor is the executive power to appoint and discharge certain appointees at the pleasure of the Governor as enshrined under the Constitution.³³ The gubernatorial powers of appointment are many and it is they Governor that can exercise such powers of appointment though he can be sometimes delegate same to permanent secretary of the relevant ministry. The Constitution went further to classify executive

²² Section 5 (2b) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

²³ Section 5(2.a) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2011)

²⁴ Section 5 (2,b) Of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2011)

²⁵ Ese Malemi Op. Cit. 62

²⁶ Section 100(3) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2011)

²⁷ ibid

²⁸ Section 100 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

²⁹ ibid

³⁰ Establishment of KASAROTA in Katsina State 2022

³¹ Lagos Cabinet: Fashola Submits 37 Names to Assembly, Articles - THISDAY LIVE". <thisdaylive.com>. Archived from the original on 16 April 2015. Accessed 4th, February 2023.

³² Kahende, M. M Op. Cit p 161

³³Section 5(2) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

appointment at the State level into two. The first sets are the Chairman and members of State Civil Service Commission, State Independent Electoral Commission and State Judicial Service commission, the appointment of this set of executives are subject to the confirmation of the State House of Assembly before their appointment can be valid in law.³⁴ The Second set of executives who shall hold their offices at the pleasure of the Governor are secretary to the State Government, Head of the Civil Service of the State, Permanent Secretary or other Chief Executive in any ministry or a department of the Government. It is clear from the wordings of the Constitution that appointment and removal of any of this category does not require approval or confirmation of the House of Assembly of the State.³⁵ The followings are types of power of appointment;

Power of Appointment of Commissioners

Any appointment to the office of Commissioner of the Government of a State shall be made by the Governor of that State and while making any of such appointments, the Governor shall comply with the provisions of Constitution.³⁶ An appointment to the office of Commissioner under this section shall be deemed to have been made only where no return has been received from the House of Assembly within twenty-one working days of the receipt of nomination, by the House of Assembly as enshrined in the Constitution³⁷. It is to be noted that no person shall be appointed as a Commissioner of the Government of a state unless he is competent for election as a member of the House of Assembly.³⁸ The Constitution gives the Governor of a state a decision to assign to the Commissioner of the Government of the state responsibility for any business of the Government of that state including the administration of any department of Government.³⁹

Power of Appointment of Chief Judge of a State

The appointment of a person to the position of Chief Judge of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State.⁴⁰ From the wording of the constitution, one will not be in doubt that the power of appointment of person to the position of Chief Judge of a state can only be exercised by the Governor of that State. If the office of Chief Judge of a State is vacant or if the person holding the office is for any reason unable to perform the functions of the office, then until someone has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the Governor of the State shall appoint the most senior Judge of the High Court to perform those functions.⁴¹ Except on the recommendation of the National Judicial Council an appointment of a Chief Judge shall cease to have effect after expiration of three months from the date of such appointment and the Governor shall not re-appoint a person whose appointment has lapsed.⁴²

Power of Appointment of Judges of a State

It is the usual constitutional practice that the governor of state has the power to appoint a person as High Court Judge of a State though based on the recommendation of National Judicial Council without subjecting such appointment to confirmation by the State House of Assembly. However, the Constitution did not leave the power absolute as qualification has been placed on a person to be appointed as a High Court Judge of a State; a person shall not be qualified to hold office of a Judge of a High Court of a State unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years.⁴³

Power of Appointment of Grand Kadi of Sharia Court of Appeal

Governor of a state is empowered to appoint a person to the office of Grand Kadi of Sharia Court of based on the recommendation of National Judicial Council but subject to confirmation of such appointment by state House of Assembly of the State.⁴⁴ As provided by the Constitution, nobody else apart from the Governor of a State has power to make appointment of a person to the position of Grand Kadi of a State. The Governor is mandated by the constitution to have recommendation of the National Judicial Council. It is superfluous to mention that in the event the governor failed to seek recommendation of the National Judicial Council, such appointment will be null and void as same will not stand the test of judicial review of executive action.

³⁴ Section 208 of the Constitution Of The Federal Republic of Nigeria 1999 (as altered 2018)

³⁵ Ibid

³⁶ Section 14(4) of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

³⁷ Section 192(5) of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

³⁸ Section 192(4) of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

³⁹ Section 193(1) of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁴⁰ Section 271(1) Of The Constitution Of The Federal Republic of Nigeria 1999 (as altered 2018)

⁴¹ Section 271(4) of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁴² Section 271(5) of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁴³ Section 271(3) of The Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁴⁴ Section 276 (1) of the Constitution of Federal Republic of Nigeria 1999 (as altered 2018)

Power of Appointment of Kadis of Sharia Court of Appeal

The Governor of the State is constitutionally empowered to appoint a competent person to the position of a Kadi of Sharia Court of Appeal of a State on the recommendation of National Judicial Council.⁴⁵ Notwithstanding the power given to the Governor to make such appointment, the person to be appointed must be a legal practitioner so qualified for not less than ten years and has obtained a recognised qualification in Islamic law from an institution acceptable to the National Judicial Council⁴⁶

Power of Appointment of the President of the Customary Court of Appeal

It has also been the provision of the Constitution that the Governor of the state has power to appoint a person to the office of the President of Customary of Court of Appeal based on the recommendation of National Judicial Council but subject to confirmation by House of Assembly of the State.⁴⁷ It is needless to say that the appointment will not be lawful if the Governor failed to abide by the constitutional provision in obtaining National Judicial Council recommendation.

Power of Appointment of the judge of the Customary Court of Appeal

The appointment of a person to the rank of Judge of Customary Court of Appeal shall be made by the Governor of the State on the recommendation of National Judicial Council.⁴⁸ The power of the Governor here has been placed under serious watch as constitutional word ‘shall’ has been used in bestowing the power of appointment to the governor and seeking recommendation of National Judicial Council before exercising his power. Therefore, whenever Governor makes appointment without recommendation of National Judicial Council, such appointment is unconstitutional as the word ‘shall’ does not take admission when it comes to the issue of compliance.⁴⁹

Power of Appointment of State Statutory Bodies (Chairmen, Director General, Executive Secretaries)

The Chairman and members of any of the bodies so established shall, subject to the provisions of the Constitution, be appointed by the Governor of the State and the appointment shall be subject to confirmation by a resolution of the House of Assembly of the State.⁵⁰ In appointing Chairmen and members of boards and governing bodies of statutory corporations and companies in which the Government of the State has controlling shares or interests and councils of Universities, the Governor shall be confined within the Constitution.⁵¹ Moreover, any person holding any of the offices to which Section 201 of The 1999 FRN Constitution applies to shall only be removed from that office by the Governor of that State acting on an address supported by two-thirds majority of the House of Assembly of the State praying that he be so removed for inability⁵²

Power of Appointment of the Auditor-General

The Auditor General for a state shall be appointed by the Governor of the State on the recommendation of the State Civil Service Commission subject to confirmation by the House of Assembly of the State⁵³. From the wording of the constitution, the power given to the governor is to be wielded by him though administratively, he can delegate same to designated official, in this situation, the beneficiary of the delegated power cannot in anyway delegate same to another official no matter how highly placed the later may be. The rule of *delegatus non potest delegare* is applicable here.⁵⁴ Except with the sanction of a resolution of the House of Assembly of a State, no person shall act in the office of the Auditor-General of a State for a period exceeding six months.⁵⁵

Power of Appointment of the Head of Service

Power to appoint person to hold or act in the offices to which this section applies and to remove person so appointed from any such office shall vest in the Governor of the State.⁵⁶ An appointment to the position of the Head of the Civil Service of a State shall not be made except from among Permanent Secretaries or corresponding position in the civil service of any State or of the Federation and it does not require the approval of the State legislature as implied by the Constitution.⁵⁷ Moreover, any appointment made in this regard shall be at the pleasure

⁴⁵ Section 276 (2) of the constitution of Federal Republic of Nigeria 1999 (as altered 2018)

⁴⁶ Section 276 (3) of the constitution of Federal Republic of Nigeria 1999 (as altered 2018)

⁴⁷ Section 281 (1) of the constitution of Federal Republic of Nigeria 1999 (as altered 2018)

⁴⁸Section 281 (2) of the constitution of Federal Republic of Nigeria 1999 (as altered 2018)

⁴⁹ *Menakaya V Menakaya* (2001) 16 NWLR (Pt.738) p. 203

⁵⁰ Section 198 of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁵¹ Section 14(4) of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁵² Section 201(1) of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁵³ Section 126 of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁵⁴ *NAF v James* (2002) 18 NWLR Pt 798 p. 295

⁵⁵ Section 126(3) of the Constitution of the Federal Republic of Nigeria 1999 (as Altered 2018)

⁵⁶ Section 208 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as Altered 2018)

⁵⁷Section 208 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as Altered 2018)

of the Governor and shall cease when the Governor ceases to hold office, however where a person has been appointed from a public service of the State, he shall be entitled to return to the public service of the State.⁵⁸

Power of Appointment of Special Adviser

The governor of a state may appoint any person as special adviser to assist him/her in performance of his functions and such appointment shall be at the discretion of the Governor and shall terminate whenever the governor left office.⁵⁹

Judicial Power

The judicial power of a Governor is affiliated with power to grant pardons to convicts and approving the execution of capital punishments in a State.⁶⁰ The Governor may grant any person concerned with or convicted of any offence created by any law of a State a pardon, either free or subject to lawful conditions; grant to any person a respite of the execution of any punishment imposed on that person for such an offence; substitute a less severe form of punishment for any person for such an offence; or remit the whole or any part of punishment for any punishment imposed on that person for such any offence or of any penalty forfeiture due to the State.⁶¹ Clemency is an umbrella term that refers to several mechanisms that allow for the remittance of consequences of a committed crime. Virtually the Constitution authorises the Governor or a board of pardons to grant clemency, although terminology, procedure, and structure may vary greatly crime to crime. Generally, clemency authorities refer to either pardon is an official nullification of legal consequences for a crime. The granting of a pardon by the Governor or Formal Pardons Board may restore civil rights for services to the state, such as the right to vote, the right to bear arms, or the ability to serve in the military.⁶² Another mode of clemency is Commutation which shortens an individual's sentence. If a commutation shortens an individual's sentence to time served, it results in that individual's release. Upon release, an individual whose sentence is commuted may remain on community supervision or may be released without ongoing supervision.⁶³

Financial Power

The Governor has the power over the State budget and money bills. To be prepared and laid before the House of Assembly at any time before the commencement of each financial year estimates of the revenues and expenditure of the State for the next following financial year⁶⁴ and when approved by the State assembly the Governor have the financial power to control and execute projects within the State.⁶⁵ Governors develop and submit annual or biennial budgets for review and approval by the legislature. In a number of states, commonwealths, and territories, Governors also have veto power that can be used for the removal of appropriations to which they object. These tools allow Governors and their budget staff to play a strong role in establishing priorities for the use of state resources.⁶⁶

Security Power

Despite it has not been categorically stated by the constitution that a State Governor has/her security power. However, based on his/her position as the executive officer of state, he has the power maintenance and execution of the Constitution and other extant law of the State, it can be derived that he has security powers over territorial jurisdiction of the state.⁶⁷

5. Exercise of Gubernatorial Powers

The powers and obligations of State Governors are immensely provided for in the same way as that of President at the Centre though with some credentials.⁶⁸ However, powers of the President and Governors are couched in the manner, the presidential power covers all the federation while gubernatorial powers are restricted to and within the territorial boundary of a state. Therefore, the Governor has a responsibility to make sure that the provisions of the Constitution are implemented and preserved within his state and can institute action against possible infraction.⁶⁹ The Constitution vested executive powers of the State in the Governor and he may subject to the

⁵⁸Section 208(5) of the Constitution of the Federal Republic of Nigeria 1999 (as Altered 2018)

⁵⁹ Section 196 (1 and 3) of the Constitution of The Federal Republic of Nigeria 1999 (as Altered 2018)

⁶⁰ Ese Malemi, *Administrative Law*: Princeton Publishing Co, Lagos. 2008 P. 54

⁶¹ Section 212 Of The Constitution Of The Federal Republic of Nigeria 1999 (as Altered 2018)

⁶² Adigwe, F., *Essentials of Government for West Africa*: University of Ibadan Press. Ibadan. Ibadan 2008 p 54

⁶³ *ibid*

⁶⁴ Section 121(1) Of The Constitution Of The Federal Republic of Nigeria 1999 (as Altered 2018)

⁶⁵ Section 121(2) of the Constitution f the Federal Republic of Nigeria 1999 (as Altered 2018)

⁶⁶ Wade & Philips, *Constitutional and Administrative Law*, 9th ed. (Bradley) p 84; Syama Prasad Mookerjee, *Convocation Address delivered at Gurukul Kangri Viswavidyalaya*, Haridwar, 1943 <<https://www.Spmrf.Org>>, Accessed On 8 February, 2023.

⁶⁷ Section 5 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as Altered 2018)

⁶⁸ Kahinde, M. M *Constitutional Law in Nigeria*, Malthouse Press Limited Lagos, (2008) p. 161

⁶⁹ Kahinde, M. M, pp. 161-162

provision of the Constitution and any law made by House of Assembly exercise it directly or through his/her Deputy, Commissioners or Officers of the State Public Service.⁷⁰ A Deputy Governor cannot however, compel the Governor to delegate power to him/her, delegation of the power is dependent upon the option of the Governor in whom all the executive powers of the state are vested.⁷¹ The entire executive powers are stated to extend to maintenance and execution of constitution and laws enacted by the House of Assembly of the state and to all matter as regards which the House of Assembly has for the period being power to make law.⁷²

6. Control of Gubernatorial Powers

The executive is one of the three arms of government; the other organs are the judiciary and the legislature. As we have seen, the main function of the executive is to formulate and implement policies of government. But, how do we prevent the executive from becoming dictatorial and tyrannical is by separation of powers. Separation of powers refers to the division of responsibilities into distinct branches to limit one branch from exercising the core functions of another. The intent of separation of powers is to prevent the concentration of unchecked power by providing for 'checks' and 'balances' to avoid autocracy, over-reaching by one branch over another, and the attending efficiency of governing by one actor without need for negotiation and compromise with any other.⁷³

Legislative control

The Executive can be controlled through the Legislature. In a Federal System of Government, for example, the Governor nominates people as Commissioners but before they can assume their office, they have to be confirmed by the State House of Assembly⁷⁴. Also, the legislature must approve the annual budget, prepared by the executive before any expenditure can be made.⁷⁵ The Gubernatorial Powers can be controlled by the House of Assembly of a State through impeachment process if the Governor conducts himself/herself in a way that brings the name of the office into disrepute. In a parliamentary system, on the other hand, the legislature could pass a vote of no confidence in the executive and the entire team must resign for a new government to be formed.⁷⁶

Judicial control

The courts can also help put the Gubernatorial Powers in check. An action can be taken against the Governor in his official capacity in court when it is proven that the Governor acted in contravention of the Constitution or beyond the powers granted by the Constitution. Judicial review is the exercise of the court's inherent power to resolve whether an action is lawful or not. It holds the balance of power between individuals and the government.⁷⁷

Conduct of periodic elections

The Gubernatorial power can also be controlled through the use of the ballot box in a democracy. The tenure of an elected Governor is 4 (four) years as provided by the Constitution, as soon as the four-year tenure expired, he ceases to be a governor if not re-elected for a second tenure.⁷⁸ In every constitutional democracy, there is bound to be election from time to time to renew the mandate of a government or to change an unpopular one or one that is deemed ineffective by the masses. The fear of losing power to another party serves as a check on the activities of the gubernatorial power.⁷⁹

Boycotts, protests and demonstrations

Boycotts, peaceful protests and demonstrations can also be used as a tool to put the Gubernatorial Power in check. It is the Constitutional right of every citizen to go on a demonstration to voice out their dislike of government policies or programmes.⁸⁰ If the government of the day fails to listen and reason, another mechanism that can be used is a demonstration. This can be very effective if successfully applied. History has a good number of examples showing how boycotts and demonstrations were effective in bringing about positive legislative change and executive correction.⁸¹

⁷⁰ Section 5 (2a and b) of the constitution of the federal republic of Nigeria 1999 (as altered 2018)

⁷¹ Kahinde, M. M op. cit. p. 161

⁷² Kahinde, M. M op. cit. p. 161

⁷³ Tijani And Shuwa: *Constitutional Law In Nigeria*, (LawLords Publication, 2016) Pg. 11

⁷⁴ Section 192(2) of the Constitution of the Federal Republic of Nigeria 1999 (as Altered 2018)

⁷⁵ Section 121(2) of the Constitution of The Federal Republic of Nigeria 1999 (as Altered 2018)

⁷⁶ Tijani And Shuwa op cit p 12

⁷⁷ Isawa E. J. *The Federal Republic of Nigeria*, <[Http://Www.Forumfed.Org/Libdocs/Global_Dialogue/Book_2/BK2-C08-Ng-Elaigwu-En.Htm](http://www.forumfed.org/libdocs/global_dialogue/book_2/BK2-C08-Ng-Elaigwu-En.Htm)> Accessed on 5th February, 2023.

⁷⁸ Section 180 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as altered 2018)

⁷⁹ Isawa E. J. op. cit

⁸⁰ Section 40 of the constitution of the federal of Nigeria 1999 (as altered 2018)

⁸¹ Isawa E. J. Op. Cit. <[Http://Www.Forumfed.Org/Libdocs/Global_Dialogue/Book_2/BK2-C08-Ng-Elaigwu-En.Htm](http://www.forumfed.org/libdocs/global_dialogue/book_2/BK2-C08-Ng-Elaigwu-En.Htm)>

The media

The media, which we will also look at in another control, also serves as a check on the powers of the Governor. A vibrant and effective media can serve as a watch-dog, closely watching every move of the government and exposing bad moves made. Since most government is concerned about how they are seen by the electorates, the media could be used to motivate them to conduct themselves properly.⁸²

7. Conclusion

In Nigerian constitutional democracy, it is the principle of separation of powers that provided for the legislative, executive and judicial powers for both the Federal and State tiers of government through the constitution of the Federal Republic of Nigeria. The executive powers of the state government are vested in the Governor of the state and hence the phrase 'Gubernatorial Power'. Gubernatorial powers inclusive the power to appoint Commissioners, Chief Judge of a State, High Court Judges, Grand Kadi of Sharia Court of Appeal of State, Kadis of Sharia Court of Appeal of State, President of Customary Court of appeal of State, Judges of Customary Court of Appeal of State, Heads and Members of Statutory Bodies etc. such power in question is mostly being exercised by the Governor when he/she assumes office or in the event there is vacuum in a particular office that needs to be filled. Despite bestowing the governor such power solely, the exercise of same is not absolute as has been placed under checks by mostly legislature.

The paper found out that the nomination and appointment of a person to a particular office before forwarding same to House of Assembly is a unilateral affair of the Governor without making resort to the public as far as competence of the nominee is concerned. It is the recommendation of this paper that a provision in the constitution be made for the involvement of public by the Governor whenever the governor will make appointment. The paper found out that referring nominees for screening and confirmation to the House of Assembly by the Governor may cause a competent appointee to lose the opportunity of being appointed in the event majority of the House of Assembly are not from the party or are at loggerheads with governor. It is the recommendation of this paper that provision in the Constitution be made to the effect that whoever is going to be appointed by the Governor in whatever capacity, let the people of his community verify his antecedents for the Governor instead of screening and confirmation by the House of assembly. It is also the finding of this paper that there is no Constitutional Court or Tribunal created by the Constitution that will be handling legislative and Gubernatorial feud-appointment and confirmation inclusive. This paper recommends that Constitutional Court or Tribunal be created that will be manning the Gubernatorial and legislative feuds.

⁸² Isawa E. J. Op. Cit. <[Http://Www.Forumfed.Org/Libdocs/Global_Dialogue/Book_2/BK2-C08-Ng-Elaigwu-En.Htm](http://Www.Forumfed.Org/Libdocs/Global_Dialogue/Book_2/BK2-C08-Ng-Elaigwu-En.Htm)>