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JUDICIAL ADMINISTRATION IN NIGERIA'S FEDERAL SYSTEM: MATTERS ARISING

Emmanuel S. I. Ejere [1]
Akerete Anthony Udotim [2]
Department of Public Administration, University of Uyo, Akwa Ibom State [1]
Department of Public Administration, Foundation Polytechnic, Ikot Ekpene, Akwa Ibom State [2]
Corresponding Email: salientanthony@gmail.com [2]

Abstract
Judicial administration in Nigeria's federal system is controversial and meandering, and the issue of intergovernmental relations which is central to the practice of federal system of government has remained problematic in Nigeria due to federal government supremacy over the state governments. The way and manner federalism is practiced in Nigeria does not allow for a proper intergovernmental relations, this in turn affects judicial administration. The study examines the centrality of the judicial system in Nigeria which affects justice dispensation at the State level. The classical or the legal institutional theory used with models of intergovernmental relations in this study explains the relationships between levels of government in a federal system of government. Using Contextual analysis which entails analyzing scholarly text, journals, bulletins, and the constitution, Court cases and statutes within the context of the issue under examination, the paper however indicates that the establishment of the National Judicial Council (NJC) by the 1999 Constitution of the Federal Republic of Nigeria has made judicial administration in Nigeria centralized in nature. This has made the state governments' judicial administration an appendage to the federal government. The superior courts at the State level are under the NJC which is one of the federal bodies whose members are appointed by the President of the Federal Republic of Nigeria. Based on the results of the study, it was recommended inter alia that: The NJC if accorded full independent can take charge of disbursement of its separate funds and disciplinary measures against defaulting members. The federal government should maintain the Supreme Court and members should be elected by member States in the federation based on stipulated statutory requirements from the NJC. The Supreme Court should only entertain appeals from the Appeal Courts of the State governments.

Keywords: Judicial Administration, Federalism, Federation, Federal System, Intergovernmental Relations, National Judicial Council, Constitution.

Introduction

The essence of public administration is to ensure egalitarian society, harmony, development and justice to avert the notion of the state of nature where life was based on "survival of the fittest". The people of the Federal Republic of Nigeria having firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign nation (Constitution of the Federal Republic of Nigeria (CFRN), 1999 as amended)… has adopted a federal system of government. Federalism is an arrangement whereby powers of government within a country are shared between a national (federal government) and the federating units (State governments) in such a way that each exists as a government separately and independently from the other operating directly on persons and property of its own and its own apparatus for the conduct of its affairs, and with an authority in some matters exclusive of all the others (Nwabueze, 2008). The Nigerian federal structural arrangement emerged from her colonization by the former British Colonial Master, an imposition that eventually came up with a somewhat artificial geopolitical synthesis. Nigeria was put together as a country in 1914 being necessitated by some factors such as the size, cultural and traditional diversity, language, historical particularism as well as economic and political considerations that prevailed.

Federalism is more of a political system than an ideological system. The idea originated with the concept of intergovernmental relations… (Amadi, Echem, and Nwoko, 2017). Intergovernmental relations are central to the practice of federal system of government. In this regard, Reagan (1972) cited in Abidoye (2015: p54) stated that "federalism old style is dead, yet federalism new style is alive and its name is intergovernmental relations". This is not to conclude that intergovernmental relation is limited to federal arrangement. In other forms of administrative systems like unitary system, relationship exists between different levels or arms of government within the same political system. For Ojo (2014), in the world over, federalism necessitates the combination of self-rule and shared rule. It accommodates multi-level governance. Federalism is all about sharing, that is, the sharing of powers, functions or responsibilities and resources among levels of Government. In Nigeria, like in most federal systems, the relationship between levels and arms of government is problematic. The general tendency of federating states becoming heavily centralized and the overbearing nature of the central government most especially the executive have over the year heightened intergovernmental relations' conflict in the country.

The Intergovernmental Relations practice in the democratic dispensation since 1999 till date has been characterized by continued federal dominance and state dependency. There have also been ramblings among the various components of government over power limitations and policy implementation. The provisions of the 1999 Constitution have in all emphasized vertical interaction between the federal and state governments rather than horizontal relationships. This imposes limitations to the extent of cooperation among the levels of government and promotes a dependency structure thus typifying the inclusive authority model of intergovernmental relations. Intergovernmental relations and judicial administration in Nigeria's federal system is problematic. Judicial system and administration in Nigeria is highly centralized as manifested in the overbearing nature of the federal level of government in Nigeria's federal system. In Nigeria's federal administration, the judiciary is the statutory custodian of fundamental human rights and the Constitution is the supreme law of the land. Unfortunately, Nigeria's judicial administration is unitary in nature, giving excessive control of the judiciary to the federal level at the expense of the federating units.

For effective administration of justice in a democracy, the Judiciary has a definite and decisive role to play. It has constitutional right to settle legal disputes and administer justice

impartially. All courts irrespective of type and jurisdiction are presided over by Judges. In many cases, the Judge decides the truth or falsity of claim(s) presented by disputants. The Judiciary also has the power to review the actions of both Executive and the Legislature. Indeed, the Judiciary is the impartial arbiter and the last hope of the common man, the fulcrum and bastion of sustainable democracy. The Judiciary requires the ambit of the theory and practice of separation of powers to optimally discharge its onerous constitutionally stipulated duties (Maduekwe, Ojukwu, and Agbata, 2016).

If the doctrine of judex est lex loquens is something to go by; it therefore means that the centrality of the judicial administration does not only stifle justice and egalitarian society at the State level, but thwarts intergovernmental relations being the principles through which federalism thrives. The doctrine of judex est lex lequens means that "the judge is the law speaking, that is, he is the mouthpiece of the law. It is obvious that the judge at the State level being an appointee recommended by the National Judicial Council is likely to be influenced by the central government and by implication; the State government of his domicile has no or little checks and balances on him. The central and focal point of this study is to assess judicial administration in Nigeria's federal system.

Statement of the Problem

The practice of federalism in Nigeria put the federating units, the State governments in a dependency position and relationship with the federal government. This dependency equally affects the judiciary at the State level, a hindrance to justice adjudication and appropriate practice of federalism. Being a country with diverse cultures, religions, Languages and ethnic nationalities make federalism a suitable form of government for Nigeria. The Nigerian federalism is a creation of the British. Before the arrival of British colonialists, the area now known as Nigeria was inhabited by peoples who belonged to different empires, kingdoms and societies, which were traditionally administered. (Adigwe, 1974) cited in Majekodunmi (2017, p107). The relationship between those various entities was characterized by much conflict and little co-operation, hence the adoption of federalism by the British colonialists. In a federal structure, adequate autonomy is required for each level of government to enable it performs its responsibility. These entails that Nigeria as a heterogeneous society is not suitable for a unitary system of government or a centralized administration.

Intergovernmental relation is central to the practice of federal system of government, but in relation to judicial administration at the State government level, intergovernmental relations is inappropriate due to the establishment of NJC as enshrined the 1999 constitution of the Federal Republic of Nigeria. It is said that federalism old style is dead, yet federalism new style is alive and its name is intergovernmental relations. Apparently, the provisions of the 1999 Nigeria Constitution (as amended) accords with the settled principles of federalism in which States or other federating units share sovereignty with the central government and the States comprising the federation have constitutional existence and power/functions that cannot be unilaterally changed by the central government. Section 2 (2) of the Constitution provides that 'Nigeria shall be a Federation consisting of States and Federal Capital Territory that is to say, there are two constitutionally recognized levels of government in Nigeria comprising the Federal Government and the States as the federating units. Nigeria with over four hundred lingo-cultural groups, a population of over 130 million, thirty-six States and Federal Capital Territory and 774 Local Governments make intergovernmental relations inevitable for the administration of justice.

The provisions of the 1999 Constitution have in all emphasized vertical interaction between the federal and state governments rather than horizontal relationships. This imposes limitations to the extent of cooperation among the levels of government and promotes a dependency structure thus typifying the inclusive authority model of intergovernmental relations. Judicial administration in Nigeria's federal system is problematic. Judicial system and administration in Nigeria is heavily centralized as manifested by the overbearing nature of the federal level of government. In Nigeria's federal administration, the judiciary is the statutory custodian of fundamental human rights and the Constitution which is the supreme law of the land. Unfortunately, Nigeria's judicial administration is unitary in nature, giving excessive control of the judiciary to the federal level at the expense of the federating units. This scenarios are made possible by the establishment of the National Judicial Council, responsible for the recommendations and discipline of judicial officers (Majekodunmi, 2017).

The appointments of justices and heads of superior courts of record are constitutionally done by the President through the recommendation of the NJC. Appointment of heads of superior courts is subjected to the recommendation of the same NJC. The NJC is one of the Federal Executive Bodies created by virtue of Section 153 of the 1999 Constitution of the Federal Republic of Nigeria. The composition of the NJC comprises of the appointees of the President who has the right to reject recommendation of NJC of any judicial officer recommended for appointment. This scenario hinders the administration of justice in Nigeria's federal system, where the Constitution is the guiding principles binding on all citizens and its interpretation saddled on the judiciary, requires an independent judiciary for each federating unit devoid of the federal government meddling. The problem with the NJC is that the State courts such as the State High Court, Customary courts of Appeal and Sharia court of Appeal are superior courts under the control of the NJC, a federal body capable of being controlled by the federal government.

Theoretical Framework

Classical theory of federalism is used as a theoretical framework for this paper with the theoretical models of Intergovernmental relations. The classical theory of federalism is based on the study of the constitution and system of government obtaining in the four classical federations, namely, the United States of America, Switzerland, Canada and the Common Wealth of Australia. The classical or the legal institutional theory explains what federalism is. The outstanding exponents of the classical theory are A. V. Dicey (1939), Harrison Moore (1902), K. C. Wheare (1963), Jethrow Brown (1912), James Bryce (1921), M. J. C. Vile (1961), Robert Garren (1929), John W. Burgess (1891) among others (Wheare,1964). K.C. Wheare's analysis of the classical theory also regarded as legal institutional theory of federalism is directly applicable to this study.

Federalism in America by the founding fathers meant a political system in which two levels of government existed side by side and neither of which was able to dominate the other. Each level was to have sufficient autonomy to be able to make political decisions over a range of governmental affairs without having to obtain the express approval of the other level, but neither level would be sufficiently independent of the other that its decisions could be taken in a vacuum without regards to the political attitudes of the other. Thus was established a system of government which was dependent upon the maintenance of a balance between mutual independence of the two levels of government, moderated and tempered by their political and constitutional interdependence (Wheare, 1964). Thus, if the balance of power shifted towards states, the integrity of the federal government would be threatened, and the breakup of the

federal system into a loose confederation, or into a system of quite distinct and separate entities would be the likely outcome; on the other hand, if the federal government becomes so powerful that the states were simply subordinate, whether in law or in political reality, the system would have moved from a federal system to a decentralized unitary state. Federation, therefore, represents the middle ground between these two alternatives. Its exact borders cannot be determined precisely, but once the real interdependence of the two levels ceases to exist so then does federalism cease to exist (Wheare, 1964).

In relation to Intergovernmental relations, Wright provides three models of intergovernmental relations that may exist between political entities namely: coordinate – Authority model; inclusive authority model and overlapping – Authority model (Wright 1985). Wright used his three theoretical models of intergovernmental relations to explain the processes and institutions through which governments within a political system interact. According to Wright (1985), in the coordinate-authority model of Intergovernmental Relations, sharp and distinct boundaries separate the national government and state governments. Local units, however, are included within and are dependent on state governments. The Coordinate-Authority Model is that model of intergovernmental relations in which the various levels of government within a nation-state have functional competence in certain critical services as measured by their technical competence. Within this model, functional autonomy is usually emphasized. An example of this is where the various levels of government have concurrent responsibility in the discharge or provision of health, educational and agricultural services. This model is an opposite pole to the Inclusive-Authority Model. It posits federal-state authority relationship as autonomous. Their jurisdictions have distinct domains of power and control. The model aims at the element of coordination of the activities of all the units in the overall interest of the polity and the society. All the units, as per this model, are to work in accordance with the basic spirit of the constitution and established conventions of the land (Wright, 1972, p2; Egomwan, 1984). This model is represented in fig. 3.1 below:

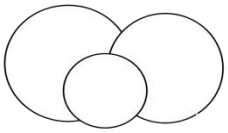

Figure 1.1: The Coordinate-Authority Model

In a sense, therefore, the functional dualism model attempts to integrate both the elements of the partnership and the principal/agent models of intergovernmental relations. The significant distinguishing element is the emphasis on functional competence within the concurrent responsibility arrangement (Bello, 2014). In the Inclusive – Authority Model, a hierarchical view of the relationship between the Federal, State and Local Governments is presented. This model is represented in fig. 3.2 by concentric circles diminishing in size from national to state to local government (Wright, 1985, p59):

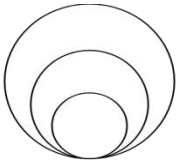

Figure 1.2: The Inclusive –Authority Model

Within this model, Local Government is grossly limited operationally by central rules and regulations. This level of Government has some degree of local discretion but does not have any real independence of action. Within the model, the Central Government sees the Local Authority as spending its own money as the expenditure of the lowest tier of government is subsumed in the annual budget of the Central Government. Consequently, it exercises checks and controls on Local Government activities (Bello, 2014). A further consequence of the imprecise laws that govern relationships in this model is that, between the various tiers of government, the Central Government arrogates to itself the power to issue guidance and advice to the Local Governments on the way and manner they should execute their functions. The Central Government subsequently follows up the guidelines with inspection to ensure compliance. The inclusive model sees the state and local governments as mere appendages of federal government. Here the national government maintains dominance over the state and local government. In this manner, there is no area of state or local autonomy.

In the Overlapping-Authority Model, the three or two levels of government are regarded as equals before the law. The Constitution and Parliament usually delineate and regulate the activities of all the levels of government. Consequently, both the powers and responsibilities of the various tiers of government could be added and subtracted from, over time. As a result of the co-equal assumption of the model, Local Governments usually command considerable financial autonomy as they are given powers to tax their citizens and discretion on the nature, form and level of services they wish to provide. In the partnership model too, there is an inbuilt cooperation and understanding among the various levels of government, such that the functions of one tier of government can be performed by another tier on its behalf. The authority relationship under the overlapping model is that of interdependence. In comparative terms, the area of governmental relation and cooperation are more substantial than area of single tier jurisdiction. In this model, there is emphasis in bargaining and cooperation in formulation and implementation of policy (Ailojie, 2002; Igbinosa, 2000) cited in (Bello, 2014). The overlapping model unlike the inclusive and coordinate models reflects a typical governmental relationship in practice Figure 3.3 depict the authority relationship under this model:

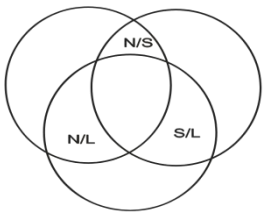

Figure 1.3: The Overlapping –Authority Model

The Centrality of the Nigerian Judicial System and Judiciary in other Climes

If federal system is a practice to go by, the state government ought to have its distinct judicial administration devoid of federal executive meddling into its affairs. The Nigeria's federal system ties the judicial administration to the apron strings of the federal government through the composition and appointment of Justices of superior courts of record. Section 6 of the 1999 Constitution of the Federal Republic of Nigeria vested the judicial power in the courts. Section 6, subsection (1) states: "The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation". Subsection (3) states: "The courts to which this section relates established by this Constitution for the Federation and

for the States specified in subsection (5) (*a*) to (*i*) of this section shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record". Subsection (5) outlined all the superior courts in which appointments are expressly made by the President and the Governor in the case of the State government. It states: (5) this section relates to:

a. the Supreme Court of Nigeria;
b. the Court of Appeal;
c. the Federal High Court;
d. the High Court of the Federal Capital Territory, Abuja;
e. a High Court of a State;
f. the Sharia Court of Appeal of the Federal Capital Territory, Abuja;
g. a Sharia Court of Appeal of a State;
h. a Customary Court of Appeal of the Federal Capital Territory, Abuja;
i. a Customary Court of Appeal of a State (1999,CFRN as amended).

The appointments of heads or presiding officers of these courts are made through the recommendations of the National Judicial Council (NJC). The National Judicial Council (NJC) is established by virtue of section 153 of the 1999 constitution as one of the *federal executive bodies*. Subsection (2) of 153 states: "the composition and powers of each body established by subsection (1) of this section are as contained in Part I of the Third Schedule to this Constitution. In relation to who the constitution is vested with appointment of members of the body, section 154, subsection (1) states saddled such responsibility on the President subject to confirmation by the Senate". The National Judicial Council composed mainly members of superior courts of record who are all appointees of the President recommended by the same body for appointment. The implication is that the NJC recommend their members with the President's preference. Judicial discipline policy is instituted for the entertainment of complaints and allegations of misconduct against judicial officers. The investigation for such allegations or complaint is not done openly to the knowledge of the public. The implication is that, the NJC is in a position to do as they wish in respect of disciplinary measures meted on any ailing member of the judiciary. In the process of recommendations by the Federal Judicial Commission and State Service Commission, the NJC have provided a Procedural Rules they should follow in their recommendations for it to be acceptable.

Rule One: states

> The Federal Judicial Service Commission, State Judicial Service Commission and the Judicial Service Committee of the Federal Capital Territory shall comply with these Rules in their advice to National Judicial Council for nominations or recommendations of candidates for appointment of Judicial Officers for the Superior Courts of Record under the 1999 Constitution of the Federal Republic of Nigeria (as amended).

The irony in the above rule is that the federal judicial commission comprise of the same members who are equally members of NJC and appointees of the President. While the state judicial service commission has major members who are also under the discipline and control of the NJC. The 1999 Constitution stated in third schedule, part 11 that:

> A State Judicial Service Commission shall comprise the following members
> (*a*) the Chief Judge of the State, who shall be the Chairman;
> (*b*) the Attorney General of the State;
> (*c*) the Grand Kadi of the Sharia Court of Appeal of the State, if any;
> (*d*) the President of the Customary Court of Appeal of the State, if any;(*e*) two members, who are legal practitioners, and who have been qualified to practice as legal practitioners in Nigeria for not less than ten years; and
> (*f*) two other persons, not being legal practitioners, who in the opinion of the Governor are of unquestionable integrity.

With the foregoing, it is very clear that the independence of the judiciary is a myth in Nigeria's federal system. The judiciary being the third arm of government has the onerous function of interpreting the laws. Its functions may be expressed in the latin words *jus-dicere non jus dare* which is to declare the law and not make one (Abdullahi, 2014). Woodrow Wilson (1887) cited in Adamolekun (2002) defined public administration as "detailed and systematic execution of law. Every particular application of law is an act of administration…" the principal role of an independent judiciary is therefore to uphold the rule of law and to ensure supremacy of the law. The Constitution of the Federal Republic of Nigeria (1999) divides legislative powers between two main tiers of government: the Federal Government and the government of a state. Generally, legislative powers are divided between these tiers of government in the manner prescribed in the Exclusive Legislative List and the Concurrent Legislative List contained in the Second Schedule of the Constitution. Items on the Exclusive Legislative List can only be legislated on by the National Assembly. Items on the Concurrent List can be legislated on by both the federal and state legislatures, with the caveat that federal legislation shall override state legislation where there is a conflict between them.

There are cases where a subject matter is neither contained in the Exclusive Legislative List nor in the Concurrent Legislative List. In such cases, the courts would look first at whether the subject matter can be deemed incidental or supplementary to any of the items contained in the Exclusive Legislative List. If yes, then the National Assembly would have exclusive legislative power to legislate on that subject matter as if it were contained in the Exclusive Legislative List. If the answer is no, then the subject matter would be deemed residual. It falls within the residue of the legislative powers of the states. On residual matters the National Assembly can only legislate for the Federal Capital Territory, Abuja ("FCT"), whilst each state is entitled to legislate for itself, without Federal interference.

Item 35 of the Exclusive Legislative List empower the National Assembly (exclusively) to legislate on "*legal proceedings between Governments of States or between the Government of the Federation and Government of any State or any other authority or person*." The law is settled that where the wordings of a statute are clear and unambiguous, they should be given their ordinary meaning. In view of this, the above provision of the Constitution is clear to the effect that only the National Assembly can legislate on legal proceedings between, *inter alia,* the Government of the Federation and any other authority or person. To that extent, it is elementary that any state law that purports to govern such legal proceedings would be null and void (Okanga, 2019). Statute of limitation is another restriction and over concentration of power at the federal level and centrality of judicial administration.

The judiciary is commonly and rightly referred to as the last hope of the common man. This presupposes that it guarantees equal access to justice and equity; and equally ensures that the rights of citizens are adequately accommodated, and judgments handed down in accordance with the dictates of the law and facts presented to the court. The judiciary can only act as the last hope of the common man where it is independent, well-funded, courageous, unbiased and proactive; this is because it plays a fundamental role in sustainable national development. By efficaciously resolving disputes and upholding civil rights and the rule of law, it creates a stable environment that is indispensable to economic development and social cohesion. Justice must be rooted in confidence and that confidence is destroyed when right thinking people doubt the neutrality of the judge. To achieve this, the judiciary must naturally be above board (Maiyaki, 2018).

Judicial independence is a mirage in Nigeria and the much talked about separation of power is in principle without a corresponding practice. In line with this observation, Ibrahim (2018, p1) made a critical observation of the provisions of the constitution in relation to independence of the judiciary thus:

> …ironically, the word "independence" was mentioned only nine times in the 1999 Constitution of Nigeria and the phrase "judicial independence" or "independence of judiciary" has never been mentioned at all. Nevertheless, under section 17(1)(e) of the non-justiciable Chapter II in furtherance of its social order the Nigerian state shall strive to ensure the maintenance of the "independence, impartiality and integrity of courts of law and easy accessibility thereto". It can also be argued strongly that Section 36(1) only guarantees one's rights to have one's cause (sic) heard by an independent and impartial judge and does not guarantee institutional independence of Nigerian judiciary at all. And this could have been the reason why the fortunes of Nigerian judiciary is day by day dwindling as it is compelled by lack of constitutional guarantees to always beg either the executive or the legislature for one financial favour or another.

The above observation has shown that the independence of the judiciary is not guaranteed in the constitution, but it is attached to the apron strings of the executive arm of government. This is a scenario that is not healthy in a democratic setting and in a federal system. Lack of independence of the judiciary is another means in which the federal executive arm of government centralizes judicial administration in Nigeria.

A study of how the judiciary is constituted in other countries shows that there are some degree of checks and balances which promote and guarantee judicial independence. In New Zealand for instance, Justices of the Supreme Court, Court of Appeal and judges of High Court, are appointed by the Governor-General on the recommendation of the Attorney-General advised by the Chief Justice and the Solicitor-General. For appointments to district courts, the Governor-General is advised by the Attorney-General who receives advice from the Chief District Court Judge and the Secretary for Justice. In Canada, a federation consisting of a central government and 10 provinces and 3 territories appointment of judicial officers to both superior (federal) and provincial or territorial courts are being made by Governor General (appointed by the Prime Minister) to represent Canadian Monarch who currently is Queen Elizabeth II. All federal justices and judges including justices of the Supreme Court of Canada and federal Court of Appeal are being appointed by Governor General on the recommendation of the federal cabinet.

In United States each state has its own state judiciary, including the Supreme Court. There are varied strange patterns of appointment that have evolved over time. Generally, for appointment to the high court, there is a pattern in about eight states i.e Alabama, Illinois, Louisiana, New Mexico, New York, Pennsylvania, Texas, and West Virginia in which judges run on a party ticket as republicans or democrats and get appointed on that platform. Thereafter, they run for uncontested non-partisan elections to retain their offices. And in Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio, Oregon, Washington, Wisconsin judges are initially appointed on merit and years after they run for an election to retain their offices on the basis of their judicial record. In 1986 three Justices of the Supreme Court of California were recalled because of their vocal opposition to death penalty.

Just like in Japan, where judges of the lower bench are appointed by the Supreme Court, but will be subjected to election by public every ten years. It appears there are good lessons that the Nigerian judiciary could learn from states in the US and from Japan. If our judges of superior courts know very well that upon their initial appointments they have to run for elections, not necessarily under political parties, to retain their offices based on their integrity, honesty and dedication to work, majority of them could have changed their attitude (Ibrahim, 2018). It has been argued that the composition of NJC in Nigeria has grossly violated the principle of federalism and intergovernmental relations, and it's full of federal dominance and hence State governments have not been given any role to play in the appointment of Chief Judges for their respective states. One may argue that the United States of America's system of judiciary which gives states distinct sphere to operate its judiciary is civilized. But at the same time, civility is not automatic, but it evolved with time. The system of appointment of judicial officers in the United States is a clear reason why people coin the word "true federalism". That is federalism in its truest form and if it's not federalism, it can't possibly be federalism. It is in this regard that Wheare (1964) termed such a semblance of federalism (like in the case of Nigeria) as "quasi-federalism".

The principal role of an independent Judiciary is to uphold the rule of law and to ensure the supremacy of the law. The idea of judicial independence can be resolved into the following elements, namely, appointment of judicial officers and judiciary staff, security of tenure, remuneration of judges and supporting staff, budgetary provisions and processes, individual and institutional freedom from interference by the executive arm of government and politicians in the course of judicial process. The issue of appointment of judicial officers lies with the NJC's recommendations, the NJC being a federal body in which members are appointed by the President. Funding of the judiciary is subjected to the executive and the legislative scrutiny and there is no security of office for judges because the constitution does not make provision for that like other arms of government. In more developed democracies, judges of superior courts, except in cases of corruption, have appointments for life until they choose to retire. This makes it easier for the judges to stay far removed from political pressure. In this case, independence means that once the judges are appointed, they cannot be easily removed. The situation in Nigeria whereby judicial officers can be readily and recklessly removed should they fail to satisfy certain political selfish interests of the ruling class surely detracts from this norm. Life appointments may be a desideratum to most problems bugging the Nigerian democracy and federal systems of government.

According to the 1999 Constitution, section 292(1): (i), (ii) and (b) mandates the President to remove any judicial officer from office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct. This section does not in any way provide the necessary security of tenure to Nigerian judicial officers based on the best practices globally. In light of realities of the global trends on security of tenure of judicial officers, the shallowness of section 292 of the 1999 Constitution literally left the mechanism for removing judicial officers on the hands of politicians. All that the section requires for the President or the Governor to do is to garner 2/3 political support in the Senate or House of Assembly for an ordinary letter stating that the judicial officer be removed for misconduct or contravention of Code of Conduct, inability to discharge his functions as a result of infirmity of mind etc. The most surprising constitutional defect of the section 292 is that it does not at all provide any opportunity to the judicial officer to be removed to defend himself or by a legal practitioner of his own choice. It does not contemplate a hearing at all, either before the President or the Governor as the case may be makes his political address before the Senate or the House of Assembly. This is a clear dreadful breach of section 36 of the 1999 Constitution guaranteeing right to fair hearing. It appears that the Constitution is against itself and it is calamitous to find this arrangement in the constitution of the Federal Republic of Nigeria, especially as it relates to the offices of highly placed judicial officers like the Chief Justice of Nigeria, Chief Judges of States etc (Ibrahim, 2018).

Federal Government supremacy in judicial matters at the expenses of the State Governments

The case below buttress federal government supremacy in judicial matters or centralized judicial administration at the federal level. This is a case of rendering the States appendages to the Federal government through the NJC in judicial administration.

Case of Justice Raliat Elelu-Habeeb V Attorney-General of the Federation & Others

The 1st appellant was appointed Chief Judge of Kwara State on 28th March, 2008. On 30th April, 2009, the Governor of Kwara State forwarded an address to the House of Assembly of Kwara State, wherein allegations were made against the chief judge and her removal was recommended, on the grounds of inability to discharge the functions of her office and acts of misconduct which contravened the code of conduct for the chief judicial officer of a state. The Kwara State House of Assembly invited the chief judge to appear before it with a view to exercising disciplinary control over her. However, without giving the judge an opportunity to defend herself, the House of Assembly found the allegations made against her as established and took steps to remove her as the head of the judiciary of Kwara State in her absence. The notice of her removal as chief judge was also not communicated to her subsequently (Yusuf, 2018). Summary of the judgment as delivered at the Supreme Court on Friday, the 17th day of February, 2012 with Suit No: SC.281/2010(lawaspire.com.ng/2014):

> By an originating summons filed on 6/5/09 at the Federal High Court Ilorin by Justice Raliat Elelu-Habeeb Chief Judge Kwara State, against the A-G Federation, the A-G Kwara State and the House of Assembly Kwara State. Two questions were submitted for determination and five distinct reliefs sought from the Federal High Court, herein after referred to as trial court. All the defendants, with the exception of the 1st defendant, Hon. A-G of the Federation, raised an objection one way or the other, as to the jurisdiction of the trial court to entertain and to determine the action by the plaintiff. In their preliminary objections they maintained that since the

plaintiff's action relates to an action or complaint against the Executive and legislative decisions of the Kwara State Government with no allegation against the Federal Government or any of its agencies, Federal High Court lacks jurisdiction to hear her case. Various affidavits and further counter-affidavits were filed by all parties in support of their respective stand on the issue raised in the preliminary objections and the originating summons. It was decided by the trial court that all the preliminary objections have no merit and same were dismissed by the trial court on 23/7/2009. That court's reasoning was to the effect that the plaintiff's case involved the serious interpretation of the provisions of the 1999 Constitution; the Federal High Court was therefore conferred with the jurisdiction to hear and determine the action. The trial court then held that the plaintiff, the Hon. CJ, Kwara State, was entitled to all her reliefs claimed and granted them. See pp. 676 at 719 - 720 of the record where learned trial Judge has this to say:

1. By the combined effect of section 6,153(1)(i), paragraph (d) of the 3rd schedule to the Constitution, Section 271(1), and Section 292(1)(a)(ii) of the 1999 Constitution, the 3rd defendant has no power to initiate disciplinary proceedings against the plaintiff as the Chief Judge of the Kwara State. The power to initiate such disciplinary proceedings and make recommendations for the removal of the plaintiff as the Chief Judge of Kwara State is conferred by the above provisions of the Constitution to the 1st defendant, the National Judicial Council.
2. Consequently, the proceedings of the 3rd defendant triggered by the letter of the Governor of Kwara State written to it, and which led to the purported removal of the plaintiff as the chief Judge without the recommendation of the 1st defendant are declared null and void, and hereby set aside.
3. Any action or decision taken in pursuant of the proceedings of the 3rd defendant aforesaid against the plaintiff as the Chief Judge of Kwara State, without the recommendation of the 1st defendant are hereby declared null and void.
4. The 3rd defendant and the Government of Kwara State represented by the 4th defendant in this case are restrained from further acting on the conclusions reached against the plaintiff based on the letter dated 4th May, 2009"

Aggrieved by the above decision, 2nd, 3rd & 4th defendants/Respondents appealed to the Court of Appeal Ilorin Division. The three Notices of Appeal excluded the 1st Defendant/Respondent at the trial court from the list of parties in the appeals. However on a second thought the 1st defendant has applied to be joined on the side of the respondents which application was granted. Full court formed a panel in the Court of Appeal. Split judgments of 4 - 1 were delivered on 2/7/2010.

The majority judgment was delivered on 2nd July, 2010 to show that the trial Federal High Court lacked jurisdiction to adjudicate upon the case of the plaintiff and held that the matter ought to have been taken to the High Court of Kwara State for hearing and determination having regard to the parties and subject matter of the action.

> The Court of Appeal proceeded to hear the matter on its own merit and held that the decision they earlier on set aside was after all correctly decided by the trial court and the decision of the trial court was affirmed by the court below.
>
> All the parties in the Court of Appeal, with the exception of the Hon. A-G of the Federation, were aggrieved and decided to lodge an appeal and cross-appeal to the Supreme Court against parts of the judgment that the parties were not satisfied with, appeal was then lodged to the Supreme Court. The supreme court after due consideration of the appeal before it held that the cross appeal lacks merit and dismissed it and it went ahead to uphold the decision of the trial court.
>
> The Supreme Court held per Mohammed JSC that:
>
> It is for the foregoing reasons that I hold the view that in the resolution of the issue at hand, the entire provisions of the Constitution of the Federal Republic of Nigeria, 1999 in sections 153(1)(i)(2), 27(1), 292(1)(a)(ii) and paragraph 21 of Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999, dealing with the appointments, removal and exercise of disciplinary control over judicial officers, must be read, interpreted and applied together in resolving the issue of whether or not the Governor of a State and the House of Assembly of a State can remove a Chief Judge of a State in Nigeria without any input of the National Judicial Council.
>
> This is because the combined effect of these provisions of the Constitution has revealed very clear intention of the framers of the Constitution to give the National Judicial Council a vital role to play in the appointment and removal of judicial officers by the Governors and Houses of Assembly of the State.
>
> In the result, I entirely agree with the two courts below that having regard to these relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999, the Governor of Kwara State and the House of Assembly of the State cannot remove the Chief Judge of Kwara State from Office without the participation of the National Judicial Council in the exercise.

The above case buttresses the centrality of judicial administration occasioned by NJC which is a federal agency established by the Constitution of the Federal Republic of Nigeria. The establishment and the functions of the NJC conferred by the Constitution makes it possible for the federal government to interfere in the judicial administration at the State level, this depict a vertical and inclusive intergovernmental relations rather than horizontal and coordinate intergovernmental relations.

Recommendations

Based on the findings of this study, the following recommendations are hereby advanced:

i. It is obvious that some provisions of the 1999 Constitution does not allow for state governments to take care of their judicial administration; proper practice of the federal system of government based on its principles; and suitable model of intergovernmental relations, hence the need to amend these sections of Constitution for proper and effective practice of federal system of government in the country. The mode of altering provisions of the Constitution appears difficult, but the whole process to the amendment of it begins with the legislature. Therefore, members of the legislature, at the Senate and the House of

Representatives should have Senatorial offices at places that are accessible to the people and those of House of Representatives should have their Federal constituency offices in all the local governments representing each federal constituency. The motive should be to not only brief the people about government policies and developmental strides, but also to sensitize them on the need to support the idea of amending relevant sections of the Constitution. The people should be effectively sensitized about the way some provisions of the Constitution hinders growth and proper practice of federalism which is detrimental to development and their wellbeing. Federal law makers should also liaise with law makers in their respective States government with a view to having a synergy towards the actualization of Constitutional amendment. It follows that the whole issue of amendment of any section or provisions of the Constitution lies with the legislature both at the federal and state levels. Proper autonomy should be given to the judiciary through the amendment of the Constitution to correct all tendencies that tie the judiciary to the apron strings of the federal executive arm of government. The NJC should be expunged from section 153 as one of the Federal Commissions and Councils. The NJC should be independent, whose members should be elected by respective states in the federation. This would check any undue influence from the executive arm.

ii. Judicial officers should have fixed tenure and funding should not be subjected to the executive or legislative approval or appropriation. Membership into Superior Courts should be done through election based on proven track records of integrity, academic, years of experience and moral uprightness. Their membership should be renewable every five years through re-election based on performance. For proper intergovernmental relations, the federating units should have its High Courts and Appeal Courts. The Appeal Courts should comprise of members drawn from among federating member States to avoid biases and undue influence by the State executives in the dispensation of justice. The judicial officers' salaries should come from a mandatory and statutory fund derivable from member States. The NJC having its full independent can take charge of disbursement of its separate funds and disciplinary measures against defaulting members. The federal government should maintain the Supreme Court and members should be elected by member States in the federation based on stipulated statutory requirements from the NJC. The Supreme Court can only entertain appeals from the Appeal Courts of the State governments. These would go a long way in the decentralization of the judicial administration and also giving the State governments its proper sphere of jurisdiction and effective intergovernmental relations as expected in a federal system of government.

iii. Experience have revealed that the seemingly impossibility to the amendment of the Constitution, irrespective of its cumbersome and stringent procedures is as a result of corrupt elites who do not want the status quo to embezzling public funds to be changed. In this vein, it should be incorporated into the Constitution that political office holders should earn salaries based on their experience and qualification and all other benefits similar to that of civil and public servants. The legislature should be on a part-time basis and allowances paid based on sitting sessions to avoid unnecessary expenses and juicy benefits that will lure people into politics as a source of revenue rather than to serve. This arrangement could curb the insatiable desire to go into politics for personal benefits and give way for real administrators with administrative, educational and technological know-how who are willing to serve the people with slight marginal benefits-since they are used to the system of payment arrangement.

iv. The amendment of the Constitution should take into cognizance the institutionalization of agencies to check financial impropriety and other corrupt practices in the public service. The Constitution should spell capital punishment for corrupt public officers. This can be achieved through a strong, independent, determined and undeterred judiciary in order to tame the tide of corruption in the country. Death sentence enshrined in the Constitution is enough to divert the attention of people whose intention is not to serve but to loot the public treasury through politics. The above recommendations are to promote and encourage proper practice of federal system of government and judicial administrations at both federal and state levels of government. The recommendations stem from the fact that, with the amendment of the constitution, all other things to make the judiciary independent as the custodian of the constitution will follow.

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