TASLIM ELIAS CHAMBER NOTE SERIES

CONSTITUTIONAL LAW I

Taslim Elias Chamber presents the first edition of its note series and casebook. The note series is divided into five separate documents for the five different courses in 200 level first semester. Then there is a casebook which combines cases from the five different courses in a general document. It is expected that using this note series, along with the regular textbooks and attending lectures should give the student an upper hand in their studies.

May the odds be ever in your favour.

Aliu Funmilola

Academic Secretary

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For the 2016/2017 Executives

Recommended Textbooks

1. Constitutional Law in Nigeria, Mowoe
2. Nigerian Constitutional Law, Ese Malemi

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CONSTITUTION, CONSTITUTIONAL LAW AND CONSTITUTIONALISM

A constitution is the basic law serving as a source of authority for all other laws and if any of such laws is contrary to the provisions of the constitution, it will be rendered null and void. The constitution is a body of rules regulating a country and explaining the powers, functions and relationships of the organs of government. It is a power map. It preserves the rights of the citizens. It is specific to a particular are e.g. Nigeria. The constitution is influenced by constitutional law and practised through constitutionalism. It serves as a check and limitation on the exercise of governmental powers. A constitution comprises the most important rules governing a nation. A set of rules not subject to the will of the sovereign's authority, has legal sanctity, sets put framework of government, states how organs must operate and provide for the fundamental rights of its citizens.

A constitution is a basic norm that establishes organs of government, confers legitimacy on exercise of governmental powers, limits government powers, guarantees fundamental human rights, and regulates relationship between organs of government and its citizens. It helps to keep limitations on the majoritarian rule of the people's representatives in government. Constitution fulfils the purpose of 'definition' and 'evaluation'. In definition, it is both descriptive and prescriptive (normative). It defines the way rules operate and what ought to happen in situations. It sets a standard of conduct or behaviour regarded as correct and which is expected to be adhered to. Thomas Paine stated, "A constitution is not an Act of government, but of people constituting government; and a government without constitution is like power without right....A constitution is a thing antecedent to a government, and a government is only the creation of a constitution."

Peter W. Hogg said the constitution can be seen in the narrow or wide sense. The narrow sense involves rules embodied in a basic constitutional document while the wide sense involves all the important rules which establish, empower and regulate principles of government, some of which are not contained in the basic document and some are non-justifiable. Content of constitution often depends on the forces at work when it is created or amended. Military rule is an aberration as far as constitutional law is concerned.

Constitutional Law

These are principles of the law. Constitutional law is concerned with the role and powers of the constitution within the state and the relationship between citizens and the State. It is a general phenomenon which cannot be applied until it is stipulated in the constitution. It is the principles which guides the rules laid down for a particular society. It is a theoretical concept as opposed to an actual practice. It is that which

guides what is stipulated in the constitution, that is, it influences the making and content of the constitution. In simple terms, it is the law relating to the constitution.

According to Colin Turpin, it is a body of rules, conventions and practices, which describe, regulate or qualify organisation and operations of government in the UK and also includes institutions an offices comprising the government and doctrines and principles which influence constitutional practices."

Constitutional law in a democratic society refer to concepts which affect the making of a constitution, distribution of political power, between the different arms of government, exercise of such functions and relationship between arms of government and individual citizens whose rights are provided for by the constitution. Constitutional law regulates exercise of powers given by a constitution; regulates structure, organisation, and powers of government authorities conferred with constitutional powers.

"It is a body of rules or concepts which affect the making of a constitution, regulates its application, enforcement, and interpretation, regulates distribution and exercise of powers conferred upon government authorities by the constitution and provides remedies for unconstitutional acts."

CONSTITUTIONALISM

This is the concept that ties together constitution and constitutional law. It ensures the effective application of the constitution and constitutional law tests their veracity. It is not enough to have a constitution or constitutional law. What is the point or usefulness of the law if it is put down but not adhered to? The concept of constitutionalism seeks to ensure the practice of constitution. While constitutional law is THEORY, constitutionalism is the actual PRACTICE and ENFORCEMENT. The driving force behind this concept is the need to create a constitution that will not be subject to the whims and caprices of government officials in order to promote democracy, rule of law, and development. Including in the constitution certain rules and regulations geared towards preventing the exercise of arbitrary power.

Generally it is a system of government based on constitution and constitutional law, a government which adheres to the principle of the rule of law, respect for rights of citizens and accountability to the people. It combines the idea of government limited in its action and accountable to the people. The modern concept rests on 2 pillars

i. Existence of certain limitations imposed on the state especially in relation with citizens based on a set of core values
ii. Existence of clearly defined mechanisms for ensuring that these limitations on government are generally enforceable.

1999 constitution has failed to measure up to the standard of constitutionalism due to the absence of free and fair elections coupled with corrupt public officials who are not entirely legitimate as they are a result of rigged elections and the lack of respect of th constitution by these political office holders. Constitutionalism suggests

i. Concept of intra-vires; exercise of power should be within legal limits
ii. Exercise of power must conform to notion of respect of individual rights
iii. Powers conferred on state institutions be sufficiently dispersed to avoid abuse of power
iv. Government is accountable to electorate on whose trust power is held

All constitutions are dynamic organisms. They are dependent for much of their meaning or relevance on social framework which surrounds them.

Classification of Constitutions

Written and Unwritten Constitutions

Written constitutions can be found in a single document while the unwritten ones have their organic laws found in various legislations but not codified in a single document e.g. magna carta, bill of rights etc.

Rigid & Flexible Constitutions

Rigid constitutions have their rules entrenched in them and this prevents or makes amendment or repeal difficult. It has a very rigorous or complex procedure for its amendment. Flexible constitutions have the same mode of amendment as that of lawmaking (UK). The issue of flexibility should not be exaggerated. That there are no legal constraints on amendment does not mean there are no extra legal or non legal constraints.

Federal, Unitary & Confederal Constitutions

Unitary constitutions concentrate authority in one single sovereign legislative body. Federal constitution concentrates power in the centre government and component units. How powers are to be divided will be clearly set down in the constitution. E.g. USA, Canada. Confederal constitution constitutes of loose relations among autonomous states with a common interest.

Monarchical & Republican Constituitions

Monarchical operates a system of sovereignty where all powers are vested in the Queen or King. Monarchy might be absolute, where all the powers are unlimited; or it might be constitutional, where powers of the monarch are limited by the constitution.

Republican constitution has sovereignty vested in the people. This system is one which involves heads of state and other officials being elected as representatives of the people and they must govern in accordance with existing constitution.

Parliamentary, Presidential & Semi-Presidential

Parliamentary system is a system of government which involves executive deriving its legitimacy from and is accountable to the legislature. The Head of State differs from the Head of Government. The Head of State is just ceremonial and he has no real powers while the Head of Government (Prime Minister) is the one with the real power. This is usually operative in constitutional monarchies where the Head of State is the Queen (England) and the Head of Government is the Prime Minister. There is usually a fusion of powers as members of the executive are also members of the parliament.

Presidential System is a system where the Head of State is the same as the Head of Government and there is a clear difference between the executive branch and the legislative branches it operates under the doctrine of separation of powers. The executive is not accountable to the legislature. This system is more common in republican states.

Semi-Presidential is a system where the elected President is also part of the legislature. It is a cross between parliamentary and presidential system but in parliamentary, the Head of State is ceremonial and in Presidential, the Head of State is the Head of Government.

Democratic, Autocratic & Totalitarian

Democratic system is a political ideology where citizens are involved in decision making and usually elect representatives to govern them. It is government of the people, by the people, and for the people. It is a government by the rule of the majority, supreme power is vested in the people and exercised by them directly or indirectly through the representatives usually involving periodic free and fair elections.

Autocratic system: the supreme power here is concentrated in the hands of one person who is subject to neither external legal restraints nor regularized mechanisms for control. An autocrat can be an absolute monarch or a dictator.

Totalitarian: State has no limit in its authority and seeks to control or regulate every aspect of the citizen's life or civil society. It can be headed by a single dictator pr a collective group such as a commune/junta/political party.

CONSTITUTIONAL CONCEPTS

RULE OF LAW

This is by far one of the most basic concepts in that all other concepts cannot operate without it. It has roots in ancient Greek philosophy and theories of natural law especially John Locke's theory of social contract. He believed source of political power was derived from people and not imposed from above. Government should only use their power for the good of the people and not violate their inalienable rights, which was divinely this as natural rights theorist believed. Concept advocates establishment of an ordered community where individuals are aware of areas you can freely operate without interference. AV Dicey's writings finalized the development of the concept. He distinguished 3 meanings

1. **Absolute supremacy of law**: This excludes presence of arbitrariness, prerogative or even wide discretionary Powers. The people should be ruled by law and law alone. A person can be punished for breach of law, but not punished for nothing else, See **Aoko v. Fagbemi** where it was held that no one can be punished for an offence not part of our written laws at the time it was committed. The powers can only be exercised in accordance with the law. There must be no secrets, arbitrary or retrospective laws, they must be made open and accessible.
2. **Equality before the law**: This is subject to so many exceptions that the statement itself is of doubtful value. This is the equal subjection of all classes to the ordinary laws of the land administered by the ordinary law courts. Though judicial or quasi judicial powers are given to some executive authorities. This excludes the idea of exemption of some officials or jurisdiction of tribunal do some people are granted immunity from operations of some laws based on public policy, for example, judges, presidents, diploma and so on. The social and economic inequalities often tend to affect the extent or outcome of subjection of persons to the law. The doctrine was consistent application of law irrespective of status.
3. **Existence and enforcement of certain minimum right usually guaranteed by the Constitution**: Dicey's work was written policy against French Drug Administration where a special court for administrative actions was made. He felt it existed to give more power to the administrative officials but it was actually to compensate citizens aggrieved about administrative actions. Hence, Dicey's view has been criticized a lot. However his views principles existence of some sets of factors before rule of law can truly exist in any society

- Supremacy of the law made by lawmakers
- certainty and regularity of law
- absence of arbitrary or wide discretionary powers of government
- equality before the law
- administration of the law by ordinary law courts
- enforcement of some minimum rights

Dicey's theories have also led to the emergence of various schools of thought on rule of law.

a. **Procedural justice theory**: This stresses supremacy of law and the need for it to be administered in accordance with certain procedural safeguards. This is similar to the concept of due process, which finds expression in concept of natural Justice and the need for law to be certain and unpredictable

b. **Law enforcement theory**: This defines rule of law a strict adherence to a supreme law thereby justifying the actual existence of rule of law in a totalitarian state. This then led to the Material Justice theories of law suggested by international jurists stating rule of law should be employed to protect the people. And also, rule of law relates to, legislature which is the right to represent the government, executive (delegated legislation subject to judicial review), criminal process (Fair trial), independent judiciary.

To Wade rule of law connotes

- Supremacy of law
- All acts of government conducted within the framework of defined rules and regulations that is the Constitution
- independent judiciary
- equality before the law
- no punishments outside before authority of the law

Dicey's connotations can then be added to this list

- certainty and regularity of law
- observance of setting minimum rights
- good governance
- access to Justice

Rule of law can be taken care of and ensured by the concept of due process of law mean law must not be arbitrary in its subject matter and it must be conducted with fairness in its procedures. Criminal laws must not be vague or indefinite. In Britain, rule of law is ensured through common law by Unwritten Constitution. It states everything which must be done according to law to prevent arbitrariness. Government should be conducted within Constitution that restricts discretionary power. In Nigeria, rule of law is performed by a supreme constitution which ensures fair hearing and guarantees protection of Human Rights.

Cases on Rule of Law

- **Aoko v. Fagbemi** (no one can be punished for an offence which was not part of the written laws at the time it was committed)

The accused was charged, tried and convicted fr adultery and in her appeal, her conviction was quashed as adultery was not an offence defined and penalized under the criminal Code. The rule of law states that nobody can be punished for an offence which was not part of our written laws at the time it was committed.

- **AG Federation v. AG Bendel**
- **AG Abia v. AG Federation** (no law enacted by NA can validly alter tenure of office of elected officials in local government councils)
- **Shugaba v. Federal Minister of Internal Affairs**
- **Nigerian Soft Drinks Company v. AG Lagos**

Military and rule of law

It is not possible for rule of law to effectively thrive under a military government because the necessities of rule of law cannot be applied under a dictatorial rule. Firstly, the unconstitutional way of coming into power, coup d'etat, negates principle of supremacy of law and is contrary to **section 1(2)** which states that the federal republic of Nigeria shall not be governed nor shall any group take control of government except in accordance with provisions of the Constitution. Precisely, the only way to take control of government power is through a free and fair election. The first action of the ministry is to suspend, modify and later re-enact the constitution as a military decree, and this is contrary to the idea of constitutionalism and rule of law. Secondly, the nature of laws under military rule, decrees and edicts, reduced the status of judiciary as watchdogs of people's rights also negates the principles of rule of law. These decrees have retrospective effects, curtailing fundamental human right and ousting the jurisdiction of courts. The fundamental powers of courts to review the government are seriously diminished as portrayed in **Decree 107 of 1993** which states that courts have no right to question the validity of the decree as well as other ones on edicts.

The courts later declared that a coup does not entirely affect the rule of law. They were against the ilegitmate rule but nevertheless succumbed to rule of law for societal benefits. In **Lakanmi & Ors v. AG Western State**, the courts stated military government did not intend to rule but to eradicate corruption and if in the process, they inflict punishment or pass judgement which enroaches on court's jurisdiction and tampers with individual rights, the courts must intervene. The Supreme Court however accepted the supremacy of the military government. And since rule of law, as perceived by constitutional law, cannot exist under dictatorial rule and military governments operated under a cover of law, what was actually practiced was 'government under law' or 'law enforcement theory' which defines the rule of law as a strict adherence to the supreme law and also justifies dictatorship. The courts still demanded strict compliance with the decrees or edicts so as to maintain at least some rudiments of concept of rule of law even under dictatorial rule. Under democratic rule, the rule of law and supremacy of constitution are closely linked as the supremacy of constitution helps preserve the rule of law.

Scholars criticized Dicey's writings said he make a mistake is saying rule of law excludes even existence of wide discretionary authority but now the granting of such

through delegation is now a feature of legislation. The law cannot determine everything. **Lord Bingham** broke rule of law into 8 sub rules

a. Law must be accessible and intelligible
b. Questions of legal rights should be resolved by application of law
c. Laws should apply equally to all
d. Adequate protection of Human Rights
e. Means must be provided for resolution of disputes without cost or delay
f. Public officials must exercise the power reasonably, in good faith, for the purpose of the way give in and without going beyond the limit.
g. Adjudicative procedures should be fair
h. The states must comply with its obligations in international law

Dicey's formula involving equal subjection of everyone led to the principle of equal protection before the law on the American and Indian constitution. It is a cardinal part of rule of law that nobody should be above the law.

In **Military governor of Lagos v. Ojukwu,** the forceful eviction of Ojukwu and his relatives from their house by the Lagos state government while their application to the court of appeal was still pending was held to be unconstitutional and did not follow due process of law. If government is to acquire property, it must do so by application to courts not through self help and taking law into its hands. The law was to prevail and the house was to be restored to Ojukwu.

- **Section 6(6)(b)** extends to everyone being able to be tried within jurisdictions of course, it seeks to remove immunity in tort of government. This part also means absence of discrimination based on unfair or personal factors like race or sex and so on.
- **Section 17** States Social objectives like freedom, equality, justice.
- **Section 42** talks about the rights to freedom from discrimination.
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Rule of law also gave birth to the principle of *ultra vires*. Even in nature, there is inequality. Certain people still have immunity.

See **Saidu Garba v. Federal Civil Service Commission** where the plaintiff appellant was a fireman who led a team to salvage the NECOM building which was on fire but two people died before it was put out and the defendant was charged for murder. The charge was quashed by the High Court and he was still later interdicted by the defendant. The interdiction was invalid as the plaintiff was never re-arrested or charged again. The interdiction was held to be illegal, null and void as it was contrary to the Federal Government Civil Service Rules. See also **Shining Star Nigeria v. Akwa Ibom State Steel Nig Ltd.**

Supremacy of Constitution

This was popularized by the positive school of thought especially writings of John Austin and Hans Kelsen. They believed the constitution is the most supreme law, substantively and procedurally, as it is the brand name and all other legal norms are from it; any norm not traceable to the Constitution is invalid. Modern concept confers superiority on Constitution and inferiority of other norms because the former gives legal effect to the latter. This principle is entrenched in the Constitution by provisions of **Section 1(1) & (3)** which states the Constitution is supreme and its provisions shall have binding force on all persons in Nigeria, and if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law to the extent of its inconsistency shall be void. The supremacy of Constitution has been ascribed to the Supreme Court's decision in **Marbury v. Madison** adapted from American constitutional law, where the Supreme Court declared that a court can invalidate on an Act of Congress if it is inconsistent with the constitution. The plaintiff was appointed Justice of the Peace during the last times of the Adams administration. Madison refused to deliver Marbury's commission and Marbury petititoned for a writ of mandamus compelling the delivery. The C.J denied the petition even though the plaintiff was entitled to it. It was held that the constitution did not give the Supreme Court the power to issue writs of mandamus. **Section 13 Judiciary Act 1789** provided that such writs might be issued; it was inconsistent with the Constitution and therefore invalid.

It is further promoted by **section 6 (6) (b)** granting power of judicial review to extend to all matters of government and persons. Supremacy of constitution means that the constitution is the ultimate of all laws and others must conform to its provisions. Before independence parliamentary supremacy was practiced. Here, the parliament is supreme and not subject to any authority, their powers were absolute. They were granted powers by people because rule by representatives was preferred to rule by unpopular dictator. Meanwhile, in constitutional Supremacy, powers of government are limited. The supremacy of constitution is guaranteed in **section 1**.

See **Balewa v. Doherty** where the provisions of Commission of Tribunal and Inquiry Act sought to oust jurisdiction of courts in relation to commissions by prime minister contrary to **section of 21, 51, and 108** of the 1960 Constitution, thus null and void.

- **Adewole v. Jakande;**
- **AG Bendel v. AG Federation;**
- **AG Abia v. AG Federation**
- **AG Ogun v. AG Federation.**

The military rule and supremacy of Constitution

Constitutional Supremacy is always the first to go down upon the existence of a military regime. Their very act of coming into power is unconstitutional as it

contradicts **Section 1(2)** which states that the federal republic of Nigeria shall not be governed nor shall any person or group of persons take control of the government of Nigeria or any part thereof exception accordance with the provisions of this constitution. Under military rule, there is rather what is called supremacy of decree, that is, a constitution can still operate provided a decree has not provided otherwise, where there is an inconsistency, and the decree shall prevail.

The power of the courts was often ousted and courts initially resisted decree supremacy but the federal government further insisted on the supremacy as seen in **Lakanmi v. AG Western State**. A military regime succeeded in overhauling existing legal order, makes a binding decree results in a legal Revolution. The courts later accepted the decree supremacy but still insisted on strict compliance with provisions of decree to have at least some semblance of rule of law. Edicts were also usually rendered null and void when inconsistent with decrees which include provisions of suspended Constitution. The doctrine of supremacy of constitution is not workable on the dictatorial rule as held in **Ojokolobo v. Alamu.**

Separation of powers

"Power corrupts but absolute power corrupts absolutely" - **Lord Acton**

The doctrine of separation of powers is one which opposes the concentration of all power is required to run a government in the hands of a single body thereby preserving the liberty of citizens and ensuring the rule of law. It is generally believed that absolute power corrupts absolutely. If all government powers are vested in a single authority, there will be little equitable value in the society as the sole authority is prone to exercise power arbitrarily. This Doctrine was espoused by the writings of John Locke who felt it was foolish vesting lawmakers with executive and legislative powers as it is likely they would exempt themselves from the observance of those laws. Madison opines that there can be no liberty where legislative and executive powers are united in the same person or same body of magistrates or if the power of judging be not separated from the legislative and executive powers. The modern concept of separation of powers was dealt with by Baron Montesquieu while John Locke distinguish between legislative, executive and federative functions that is, those concerned with foreign relations. Baron Montesquieu viewed it in three aspects

- separation of function (lawmaking, Administration, adjudication)
- separation of personnel (legislative, executive, judiciary)
- checks and balances

It should be noted that the rigid distinction of function amongst the three arms with no overlapping, that is, complete compartmentalization of powers, is not exactly practicable in the contemporary society as it will make government powers inoperable and bring government to a standstill. This is due to the vast amounts of complexity of government operations. This is where the corollary principle of checks and balances comes into play. According to Professor Abiola Ojo, "incomplete separation of powers is neither practical nor desirable for government. What the

doctrine can be taken to mean is prevention of tyranny by conferment of too much power on anyone or body and check of one power by the other. Checks and balances is a principle which seeks to limit the powers of one arm of government by enabling another arm to check their activities and exercises. It involves each branch having some control over others to check the exercise of powers thereby preventing arbitrary exercise of powers. It is possible for powers to be separated and still exist the exercise of arbitrary power or wide discretionary powers hence it is necessary for each arm to act as watchdogs. For example,

- Executive is involved in rule making through delegated legislation
- **Section 58 (3)** gives the president the power to give assent to or veto any bill passed by the parliament. If vetoed, the parliaments can in turn can ensure the bill becomes law provided two thirds of the house votes in support of it.
- The appointment of Judges is done by the president on recommendation of the national judicial Council subject to confirmation by the Senate in some cases.
- **Section 88** gives the parliament the power to investigate all the arms of government. No arm of government is absolute in the exercise of powers conferred upon them.

The principle of separation of powers has been a feature of Nigerian Constitutions since 1979. The 1999 Constitution vest power to make laws in the legislature (**Section 4**), execute them (**Section 5**), and interpret them (**Section 6**). The separation is evident in Chapter 5 (legislation), Chapter 6 (Executive) and Chapter 7 (Judiciary). Members of the legislature who are appointed into the executive are required to give up their legislative seats as no one is allowed to hold office in two different arms of government.

This principle is meant to

- guarantee good to go for now
- uphold the rule of law
- prevent abuse of power
- Ensure liberty

Military rule and separation of powers

Organization of government under military rule is automatically contrary to the doctrine of separation of powers. Note that primary purpose of separation of powers is to prevent tyrannical rule due to conferment of too much power in a single body. Ministry operates contrary to these principles. Upon the intervention, Decree No 1 of 1966 created the Supreme military Council as the legislation, and Federal Executive Council as the executive. The Supreme Military Council comprised the head of state, military Governor, attorney general, service Chiefs while the Federal Executive Council was similarly composed excluding the Military Governor but including the inspector-general of police. This goes against the principle of separation of powers that no one must hold office in two different arms of government. Subsequently there was no clear demarcation between executive and legislative powers. The Supreme

Military Council controlled bodies, there was no limitation to the powers of the Supreme military Council as the controlling body exercising all powers including judicial powers are some judgements were subject to review by Supreme military Council.

Under Babangida, Armed Forces ruling Council was created as the legislature and Military presidents no longer exercised his executive powers with it and a decree was subject to presidential assent. The National Council of States comprised the presidents commander in chief, chief of general staff. National Council of ministers; comprised the same, including Attorney General of federation and so on. Under the military decree, judiciary was often left separately although their traditional roles with severely altered or reduced. Fundamental powers of Courts to review with were generally curtailed. Despite the Constitutional changes, military rule made rubbish of doctrine of separation of powers as head of state and service chiefs were members of all bodies created by the decrees. Legislative bodies controlled or the bodies. Although, during Babangida and Abacha regime, it is said that perhaps military rule is Rule of one man at the Apex. Legislative bodies were dissolved, could the presidents have been ruling alone? It was previously thought that the legislation controlled all but one thing. It is certain that separation of powers is a myth under military rule.

Fundamental human rights

They are specifically guaranteed by the constitution as distinct from other human rights recognized in international human rights, treaties and instruments, it covers civil and political rights (life, liberty, freedom from discrimination, freedom of expression and so on), economic, social and cultural rights (Education, Health, employment, Housing). Unless these rights are expressly granted by the Constitution, a human rights provision in international treaties to which Nigeria is under, cannot be enforceable in Nigerian municipal courts unless such clause has been domesticated by the National Assembly and is not inconsistent with constitutional provisions. See **Chapter IV** on fundamental human rights.

Every successive constitution since 1960 has contained entrenched fundamental rights clauses. Each successive one is an improvement on the former. A legal rights is that which the law protects and can be enforced by courts of law. There are other rights which stand above ordinary laws of land and are primary conditions to civilized existence. They are not only fundamental and unlike ordinary laws which can be fully altered or Changed by legislature. They cannot be suspended or curtailed except in a manner laid down by the Constitution. Since they are backed up by law, provisions of ordinary law of land which conflict with its must at least to the extent of the conflict be void. No government can act in contravention of such rights.

In administrative law, potential for government functionaries to contravene right is greater than any other aspect. Some rights are directed at inhibiting or limiting actions of government officials. The acts of citizens can also sometimes infringe on rights of

others but more often than not it is the wrongful act of an agency being questioned. If an act of Parliament can be declared unconstitutional for being contrary to fundamental rights provisions, even more so an act or omission of Agents of Parliament which all government officials are. The scope for utilisation of fundamental rights Provisions become much wider in administrative law matters. There's hardly any wrongful acts of executive that cannot be classified as constituting an infringement of one fundamental right or the other. Although it is not possible to envisage every act that would be deemed to have infringed a particular fundamental right. It befits a diligent lawyer to discover appropriate fundamental rights Provisions under which the wrongful act is classified. The **fundamental rights enforcement procedure rules 1979** sets out a procedure for securing redress for alleged violations of fundamental rights. The rules are not meant to be exclusive procedure for seeking redress for infringement of fundamental rights. The rules are clearer and less cumbersome than some other procedures. It should be used in seeking redress but it does not prevent a willing party from using a more imprecise procedure to assert his right. It is likely to be denied justice although in holding that a party has not come by way of fundamental rights enforcement procedure rules, should be denied sharing. Military regime often gives the feeling there's nothing fundamental about human rights. There was the tendency to tamper with human rights Provisions but they never seek to obliterate human rights conflict.

Democracy and democratization

Democracy refers to a system of government where the people participate in matters affecting them or decision making either directly or through Representatives periodically elected by them. It comprises the idea of social contract, there must be Representatives, it's must have free and fair elections, there is the requirements of political parties, and an ideology, that is, a Manifesto.

Democratization is the process by which democratic government is being entrenched in the states where totalitarian government has ruled for a period of time. The legal regime is different from the totalitarian one and there's a multi-party democracy of government through elected representatives. A one party state is antithetical to democratic government as it often leads to dictatorship. A democratic Society is one where everyone has imbibed the spirit of democracy.

Transparency & Accountability

Transparency focuses on publicity, asset information, responsiveness and involvement, bringing things to public domain. Government actions should be conducted in a way that it is easy for others to see what is performed. It implies openness, lack of secrecy, information should not be hidden. **Section 22** discusses the publicity of mass media.

Accountability involves accepting responsibility and being open to discipline, sanction and punishment. Government is answerable to their actions, acknowledgements and assumption of responsibility for actions and encompassing obligation to report, explain and be answerable for results and consequences. Behavior expected would be set out and some officials will be investigated and judged on whether the amount up to the standards.

CONSTITUTIONAL HISTORY

The constitution is the organic law of a nation in which the basic rights and corresponding obligations of students and non-students, lawyers and non-lawyers, the rich and the poor, the old and the young, the strong and the weak are contained. In 1914, the Northern and Southern Protectorates were merged into one to form the Colony and Protectorate of Nigeria. Since 1914, apart from the still birth 1989 and 1995 constitutions, Nigeria has operated 8 different constitutions

- Imperial (4)
- Independence (1)
- Republican (1)
- Presidential (2)

After 15 years of military rule, democracy came back on 29th of May, 1999 and the 1999 constitution became operative. Like the 1979 constitution, it was processed by the military leaders and has generated a lot of controversy as to whether it is truly autochthonous. The 1999 constitution was seen as a fraudulent document because its preamble gives a false impression that it was authored by WE THE PEOPLE. "Because although it was in truth and in fact enacted by military authorities, it falsely declared it was made by WE THE PEOPLE of the Federal Republic of Nigeria". – Chief F.R.A Williams.

There is a continuous search for a constitution that will satisfy the need of Nigerians and there have been agitations for either a Sovereign National Conference or a Constitutional Conference. What exactly do we need?

AUTOCHTHONOUS CONSTITUTION

Constitutions processed under colonial government are referred to as imperial or Governor's constitution. Autochthonous ones are those ones which are home made, home grown and home processed. Autochthonous means native or indigenous, found in a place of origin. Therefore a constitution that is home made, home grown and home processed which has been wholly and exclusively formed by the representatives of the people without foreign interference is autochthonous. It is unlike the imperial constitution which has been imposed on the people.

Niki Tobi JSC said it is autochthonous if it derives force and validity from its own native authority. Once an entire constitution making process is indigenous and home processed, the element of autochthony is fulfilled.

TIMELINE OF CONSTITUTIONAL HISTORY

We start with 1914 where the Protectorates were merged through 3 legal instruments; The Nigerian council Order-in-council 1912, Nigerian Protectorate Order-in-Council 1913, Letters Patent of 1913. Between 1922 and 1954, there were four different constitutions by the British Parliament; Clifford's Constitution of 1922, Richards Constitution of 1946, Macpherson Constitution of 1951 and Lyttleton Constitution of 1954. They were enacted and processed by imperialists and were therefore non-autochthonous. They were characterized by non-consultation with Nigerians. The British Parliament was the legal source of the pre-independence constitutions.

The 1951 constitution was a serious attempt at a homemade constitution as Governor Macpherson ensured that the people participated through public opinion polls. It was observed that there was probably no other constitution in the world that was put through such an elaborate or democratic process and discussion. Although the legal source was still the British Parliament, it is argued that 1951 constitution even in a colonial setting could be said to be the people's constitution. The 1951 constitution established a quasi-federal structure replaced by the full fledged federal structure of 1954. Like its predecessors, the legal source of the 1954 constitution is the British Parliament.

Independence Constitution of 1960

Section 1(2)(a) provided that the Queen of England will cease to have responsibility for the government of Nigeria. But she was still the Queen of Nigeria. The Constitution was also passed by the British Parliament and strictly speaking, they are non autochthonous constitutions. Appeals from the federal Supreme Court were subject to consideration by the Privy Council.

Republican Constitution of 1963

Nigeria attained a Republican status in 1963. The Queen ceased to be of Nigeria and rights of appeal from Federal Supreme Court to Privy Council were abolished. There was neither a Constitution Drafting Committee nor Constituent assembly which examined the constitution. The 1963 constitution was hardly autochthonous as it derived its authority from the British Parliament. Although Dr. Elias believed that in spite of that, the 1963 constitution was still autochthonous. Ben Nwabueze feels it was enacted by a Nigerian parliament pursuant to the power derived from the imperially processed 1960 constitution. It was authorized by the British Government though not directly enacted by them, and as such was ineffective to break the tie linking Nigeria to the British Parliament. It did not give Nigeria its complete new constitutional experience.

In 1966, there was the first military coup and there arose the unification Decree by Major General Ironsi. This abolished regions and the people protested against it. A counter coup occurred a few months later and Gowon came into power, re-establishing the federal structure and creating more states.

1979 Constitution

This was the beginning of a transition to civilian rule and departed military administration enacted this constitution. The process began in 1975 with the appointment of members and inauguration of Constitution Drafting Committee. The 49 members ere selected not elected and they produced a draft forwarded to the Constitutional Assembly then to the Supreme Military Council. The Council made some Decrees including the NYSC Decree.

The 1979 Constitution can be said to be the nearest to how a constitution can be properly and democratically produced but from the Purist School of Thought, it is still non autochthonous. However in 1983, a military intervention happened and began constitutional process of 1987. The 1989 constitution which was designed to come into force was jettisoned in 1993 following annulment of presidential election results by Ibrahim Babangida.

1995 Constitution

A still birth because it was neither promulgated into law nor adopted before Abacha died in 1998. 270 elected members; 96 of them nominated. The inclusion of selected members denied it the right to be referred to as an autochthonous constitution.

1999 Constitution

A product of the 12 month rule of General Abubakar. His administration did not attempt to organise an elaborate process for the 1999 constitution. A 25 member constitution debate and co-ordinating committee was inaugurated to organise a debate on the 1995 constitution. The committee requested and received memoranda from Nigerians and report of the committee was submitted to the Head of State with conclusion that Nigeria preferred the 1979 constitution to the still birth 1995 constitution. Report was debated and amended by the Provisional Ruling Council and produced by the Federal Ministry of Justice and finally enabling law enacted the constitution into existence from 29th of May 1999.

THE AUTOCHTHONY QUESTION

The preamble contains the famous words WE THE PEOPLE. 1963 constitution was the same except with the inclusion of 'by our representatives' in the preamble. The autochthony of the constitution has been questioned against the backdrop of the insertion of these words because it was in fact processed by the departed military rulers and not the people or their elected representatives.

But does the Preamble really determine what can be considered and autochthonous constitution? Assuming it does contain some falsity, does it really affect the autochthony of the constitution? Why exactly is the Preamble even relevant? The phrase is not even contained in some written and unwritten constitutions but their autochthony has never been questioned. Therefore autochthony of a constitution does not really depend on the inclusion or exclusion of the words WE THE PEOPLE. The preamble is neither integral nor operative unless specifically declared so. It indicates general purposes for which the people ordained and enacted the constitution and has never been seen as a source of substantive powers of the USA.

Preambles not only make strong political, social, cultural and religious statements but also promote specific ideologies. They identify leading ideological and religious foundations. The 1999 constitution shows its goals as firm resolution to live unity and harmony as one indivisible and indissoluble nation, promotion of African solidarity, world peace, inter co-operation and so on. The preamble reminds us that Nigeria is one indivisible and indissoluble sovereign in accordance with Section 2(1), whose sovereignty is traceable to the people and from whom government derives authority to govern, **Section 14(2)**.

WE THE PEOPLE does not mean ALL the Nigerians met to draft or enact the constitution as it is basically impossible. Political power resides in the people who exercise it through their representatives.

SEARCH FOR AUTOCHTHONY

1. Pure Autochthony Test

This insists on a completely people led and people processed constitution as an immutable test for autochthony. This theory postulates that constitution making must be monopolized by the people and their elected representatives. Bola Ige stated that a constitution not only conceived by WE THE PEOPLE must also be thoroughly debated by representatives of the WE THE PEOPLE through a Constituent Assembly of representatives democratically elected by WE THE PEOPLE and subjected to debate in the mass media.

Indirect consultation was rejected as they agitated for popular free opinion. The 1979 constitution failed this test due to the inclusion of selected members in the

Constitution Drafting Committee and the fact that the Constituent Assembly didn't pass the enabling law which birthed the 1979 constitution. The test emphasizes the need for a constitution making process to be handled by the people and their elected representatives. But, will the elected members be fully competent to draft a sustainable constitution for the people? Will the elected representatives not begin to see their position as a profit yielding venture? In Nigeria, electoral fraud is everywhere and results are hardly authentic. There is also no assurance that a popular election will produce selfless and experienced members. The 1979 constitution was marred by this act as elected members were busy securing their political future. But popularity is not the same as common sense and knowledge of the constitution making, hence a major criticism of this test.

Our past and present constitutions based on the pure autochthony test, on the monopoly of constitution making process by the people and their elected representatives, therefore, are non-autochthonous.

2. Substantiality of Process Test

Here, a constitution is autochthonous provided there is no imperial influence or intervention in its process. It isn't compulsory that the constitution making process be monopolized by the people and their elected representatives. A constitution with the inclusion of selected members can therefore be autochthonous e.g. the 1979 constitution. But the 1979 constitution was tampered with by the military rulers in the introduction of Decrees; otherwise it would have passed this test because it was substantially a product of the will of the people. Once totality of constitution making process moves in favour of a home grown or homemade content, constitution can be regarded as autochthonous.

The 1963, 1979 and 1999 constitutions were processed under an exclusively non imperial Nigerian government. Their processes were not completely monopolized by elected representatives but still qualify to be labelled as autochthonous under the substantiality of process test.

3. Acceptance Theory

Proponents of the Sovereign National Conference argue that as the people were not fully engaged in birthing of the constitution, there is need to remedy this through the convocation of a National Conference. None of our constitution has ever been completely people-driven hence the need to have a constitution designed by the people – Dr. Lateef Adegbite.

An alternative test of autochthony is the acceptance of the constitution by the people in contradistinction to its legal source. A constitution with extra legal origin accepted and applied by the people is as autochthonous as one processed by the elected representatives. A constitution can have extra-legal origin through revolution, acquiescence or permission of a revolutionary regime. The British Constitution is unwritten and revolutionary because no elected representatives came to draft the constitution. The autochthony of the British constitution has never been challenged as it was accepted and supported by the people.

Likewise the American Constitution was not drafted by elected representatives and has not been challenged by Americans who accepted and applied the Constitution. The acceptance of the American Constitution is the hallmark of autochthony for it. A constitution can only become the organic law if accepted and allegiance is given by the people to the government. No autochthonous constitution can sustain a bad government. But a good constitution can sustain the autochthony of a constitution that was never really drafted by their elected representatives. Legitimacy as well as autochthony breaks down when a bad government fails to serve its people. It is easier to associate with a good government which is not strictly autochthonous than with a bad government which is the result of a people driven constitution.

THE CRISIS

Much of the agitation for a strictly autochthonous constitution cannot be divorced from the political history of Nigeria and failure of Nigerian government to meet the people's aspiration for a just and equitable society. The 1960 and 1963 constitutions embraced the parliamentary system of government which caused a distinction between the Head of State and the Head of Government. The shared powers of the President and Ministers strained political system and Western Region presented a crisis example that can result from such shared powers. Nigeria experienced military rule between 1966 – 1979 and 1984 – 1999 and during this periods, the country became a pawn in the hands of amateur military rulers. A democratic government was not even better, corruption, election malpractices etc.

INTER-GOVERNMENTAL RELATIONS

Past/present constitution misunderstood concept of federalism. A federal government is a plural government of at least 2 tiers and there must be interaction and co-operation between the tiers. Most government have perceived federalism as an instrument of oppression, some see it as weapon of confrontation. This evidenced by the problems arising from applications of Land Use Act under 1979 constitution. This

Act was 1979 and has also been inserted under the 1999 constitution through **Section 315(5)** but its not still an integral part of constitution.

State Government holds land in trust for use and benefit of all Nigerians and is empowered by the Act to grant right of occupancy to anyone. Where the Federal Government needs land for federal projects, it should notify the state government that it requires such land and upon such request, the State Government should make the land available for use to the Federal Government according to **Section 28(4)** of the Land Use Act. In states like former Bendel and Oyo, the State Government refused to grant land to the Federal Government and the Federal Government in the latter state went ahead to acquire it. The State Government later demolished these houses and there was an unhealthy rivalry between the two tiers. Though the Federal Government lacks power of direct acquisition of land in any State, the State Government is under constitutional obligation to make the land available to the federal government for federal projects. The ultimate losers in the tier clash are the good people of the States who were deprived the benefit of enjoying the demolished.

States should endeavour to be like Ogun State as the co-operation between it and the Federal Government is wonderful in the construction of roads and so on. The judiciary has also been adversely affected by the wrong conception of federalism.

SOVEREIGN NATIONAL CONFERENCE OR A CONSTITUTIONAL CONFERENCE

We need a forum where representatives can convene to address the problems of Nigeria. The Sovereign National Conference was argued to be the best because of the assurance that decisions would not be altered by government and will become automatically binding. This Sovereign National Conference however raises constitutional problems in a nation already characterized by a sovereign government. A Sovereign National Conference is normally convoked in nations without a sovereign government. Its resolutions are automatically binding because there is no superior power to which the conference reports. The 1999 constitution already formed a sovereign government in **Section 2(1).** It will be controversial if the Federal Government legislates itself out of existence by giving clamour for the Sovereign National Conference.

A Constitutional Conference is perhaps the best option; it would identify defects in the 1999 constitution. It should comprise of elected representatives of the people and should benefit from the experience of people skilled in constitutional law and constitution making. They should be selected to promote quality. Involvement of the Federal Government, State Government and Local Government in selecting experts should be dissuaded to avoid interference by the government. A clause should also be provided restricting members of conference from holding elective posts for a period

of not less than 5 years, to prevent people with political ambitions from using the Conference to secure their political future.

A NEW CONSTITUTION?

If the Constitutional Conference is done; two things could happen. Its either we have a new constitution or an amendment to the existing one. The provision of **Section 9(2)** should first be amended. Amendment proposal is more supported by arrangements in older federations. Amendment should therefore be done strictly in line with the decisions of the Conference.

Constitutional interpretation

The Supreme Court, whose decisions are binding on all other courts within the Nigerian legal system from which rules and theories of constitutional interpretation have been evolved from time to time, it saddled with an interpretive role fundamental to the development of any new approach on constitutional interpretation. In **AG Abia v. AG Federation**, the Supreme Court interpreted the provision of **Section 162** in order to resolve controversies between the federal government and state governments on revenue allocation. This decision is significant as it reaffirms supremacy of constitution on primary jurisdiction of the Supreme Court in interpreting the Constitution. It also highlight the dynamism of Supreme Court as conflict resolution mechanism between the federal government and state government through its limited original jurisdiction. It evolved a purposive theory of constitutional interpretation that enriches the court's jurisprudence on constitutional interpretation.

Constitutional interpretation is the process by which legal decisions are made which are justified by the Constitution by employing the text, the purpose and objective of the Constitution, the historical evidence on the intention of the drafters, values and circumstances of this society and to give meaning to the constitution statutory Provisions before using them to resolve disputes brought before the courts. Constitutional interpretation theories are different from rules of interpretation of statues in jurisdictions with written or Supreme Constitution. British constitutional law has developed rules of interpretation of legislation which include the Mischief rule, liberal, Golden Rule and purposive approach that enable courts interpret legislation. The Nigerian Supreme Court has evolved theories and principles of constitutional interpretation. Niki Tobi enlisted random principles judges must bear in mind when interpreting

a. Effects should be given to every word
b. A construction nullifying specific clause will not be given unless absolutely required
c. Constitutional power cannot be used to attain unconstitutional results
d. Language when clear or unambiguous must be given its plain evident meaning
e. Constitution is an organic scheme to be dealt with as entirety, particular provision cannot be discovered from the rest
f. Language of constitution does not change, changing circumstances of progressive society yields new and further import to its meaning
g. Under Constitution granting specific Powers, a particular power must be granted else it can't be exercised
h. Delegation by National Assembly is precluded by Constitution
i. When words are expressed plainly, it is not necessary to have recourse to other means of interpretation

j. Principle upon which Constitution was founded rather than literal meaning of words used measure purpose of provision
k. Constitutional provision should not be interpreted so as to defeat evident meaning
l. Constitutional provision should not be read narrowly

Principles of constitutional interpretation employed by Supreme Court can this phone be characterized as

1. Textual or literal approach

Here, decisions are based on actual words of the law if its meaning is clear, precise and unambiguous. The court should prefer such approach as it would be the best carry out its objective and purpose. Its relevant provision must be read together not separately and when words are clear and not vague, they must be given their ordinary meaning unless meaning of the word leads to absurdity or contradicts constitutional provisions. See **Tinubu v. IMB Securities** and **Ojokolobo v. Alamu**. If words are used clearly, courts must give effect to it as such word speak intention of legislature, words must not be overruled by the judge.
Note: Six main recognized principles of constitutional interpretation are textual, historical, functional, doctrinal, Prudential, equitable, natural.

2. Liberal or broad approach

This was described as proper approach to constitutional interpretation. Not only words of constitution should be given proper meanings, it also means that where alternative constructions are equally open, courts should prefer a broader construction which would promote effectiveness and consistence with intention of legislature.
See

- **AG Kaduna v. Hassan;**
- **Military Governor of Ondo v. Adewunmi**
- **AG Ondo v. AG Federation.**

3. Purposive approach

This seeks to give effect to the true purpose of legislation and is prepared to look up too much extraneous material being on background against which legislation was enacted. This is quite new, just adopted tape from constitutional law. Uwaifo stated the court should consider materials which will help us determine the true intention of the statute or constitutional provision in a purposive approach which will lead it to assess accuracy of the meaning it has given to such a provision. This applies to a provision which is either ambiguous or has become controversial. Purposive approach not only focuses on words of legislation according to their ordinary meaning but also the context. Context is limited to language of rest of legislation or constitution in the lights they throw on legislation as a whole. Importance of subject matter is not lost sight of. Equal attention is given to scope and purpose of legislation

as well as background of legislation. Grammatical usage, contextual sense, scope and purpose are all important.
A constitutional document must not be given liberal and broad meaning alone, it must also be construed without usual technical inhibition of ordinary statutes. It should be construed in a way that justifies hope of those who enacted it. The purposive approach frees courts from restraints of mere literal meaning or context, enables it to consider antecedent history, framers intent and purpose to be achieved.

THE LEGISLATURE

Section 4(1) vests legislative powers for the Federation in the National Assembly. These are the powers to make laws and other functions, including the power to alter, amend or repeal laws. It cannot delegate its lawmaking powers / essential powers but

it can delegate rule making powers to the executive or administrative agencies. The legislative powers of Federal Government are vested in a bicameral legislature, that is, the House of Senate and the House of Representatives.

National Assembly

Composition

The Senate is composed of 3 Senators from each State and one from the Federal Capital Territory making the sum total 109 Senators (**Section 48**) while the House of Representatives constitutes 360 members (**Section 50**). The Senate is headed by the Senate President and Deputy Senate President while the House of Representatives is headed by a Speaker and Deputy Speaker.

Qualification

Section 65 states that members of the Senate and House of Reps must be

i. Nigerian citizens
ii. Thirty-five and thirty years respectively
iii. Part of a political party and sponsored by it
iv. Have at least school certificate or its equivalent.

Section 307 states that a citizen by registration or naturalization cannot seek elective office within 10 years of registration or grant. Only a woman married to a Nigerian man is eligible to register as a citizen.

Disqualification – **Section 66**

No person shall be qualified for election to Senate or House of Reps if

a. subject to the provisions of **section 28** of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, has made a declaration of allegiance to such a country; This means that, due to the dual citizenship system practised in Nigeria, if one acquires the citizenship of a third country, he will be disqualified;
b. under any law in force in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind;
c. he is under a sentence of death imposed on him by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for an offence involving dishonesty or fraud (by whatever name called) or any other offence imposed on him

by such a court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court;

d. within a period of less than 10 years before the date of an election to a legislative house, he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of a contravention of the Code of Conduct;
e. he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Nigeria;
f. he is a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment 30 days before the date of election;
g. he is a member of a secret society;
h. he has been indicted for embezzlement or fraud by Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunals of Inquiry Law or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Governments respectively; or.
i. He has presented a forged certificate to the Independence National Electoral Commission.

Note that: One who appeals against accusations of lunacy, bankruptcy or an imposition of death sentence will still be eligible for contesting. See **Section 66(2)**

Mode of Exercise of Business

The Senate President presides over any joint sitting and the Speaker of the House of Reps presides in his absence (**Section 53**). **Section 58 and 59** discusses the mode of exercising federal legislative powers for general bills and money bills respectively. When passed in one House, it is sent to the other House to be passed by simple majority and sent to the President for assent. He must assent or withhold assent within thirty days. If assent is withheld, the bill is passed back to the Houses to be passed again by 2/3 majority of each House. This overrides the President's veto and his assent is no longer needed. See National Assembly v. President of the Federal Republic of Nigeria.

In the case of money bills, if it is passed by one House and not the other, within 2 months of beginning of financial year, the Senate President convenes meeting of the joint finance Committee of both Houses to resolve matters. If it fails, bill is presented to the National Assembly at the joint sitting for passage then sent to the President for assent. If assent is not given within thirty days, it will be passed by 2/3 majority of the national Assembly. The National Assembly has no discretion whether or not to follow these rules and procedures which are mandatory. In **AG Bendel v. AG Federation**, the

appropriation bill was sent to the President by the Joint Finance Committee without first going back to the House. Until the bill goes back to the House, it is not yet law.

Regulation of procedure – **Section 60**

This gives each House the power to regulate its procedure and courts cannot interfere with such procedure. In **Honourable Edwin Ume-Ezeoke v. Alhaji Isa Aliyu Makarji**, it was held that courts cannot question matters relating to legislative procedure. In **Akinwolemiwa v. Ondo State House of Assembly**, it was held that that ouster clause only applies to procedural matters and the courts will intervene if

- legislature failed to comply with provisions; and
- there is a breach of fundamental human rights

Section 311 states that when there is a delay in rule making, standing orders made under 1979 will be in operation. During business, the House can summon a Minister to explain the conduct of his Ministry (**Section 67(2**)). The President can attend a meeting to discuss national affairs (**Section 67(1)**)

Tenure / Loss of Seat – **Section 68**

A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if –

a. He becomes a member of another legislative house.
b. Any other circumstances arise that, if he were not a member of the Senate or the House of Representatives, would cause him to be disqualified for election as a member;
c. He ceases to be a citizen of Nigeria;
d. He becomes President, Vice-President, Governor, Deputy Governor or a Minister of the Government of the Federation or a Commissioner of the Government of a State or a Special Adviser.
e. Save as otherwise prescribed by this Constitution, he becomes a member of a commission or other body established by this Constitution or by any other law.
f. Without just cause he is absent from meetings of the House of which he is a member for a period amounting in the aggregate to more than one-third of the total number of days during which the House meets in any one year;
g. Being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected;

Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored; or

h. the President of the Senate or, as the case may be, the Speaker of the House of Representatives receives a certificate under the hand of the Chairman of the Independent National Electoral Commission stating that the provisions of section 69 of this Constitution have been complied with in respect of the recall of that member.

Powers of the National Assembly

Section 4(2) gives NA the power to make laws for the peace, order and good government with respect to any matter in the Exclusive Legislative List. **Section 4(4)** gives it the power to make laws on matters in Concurrent Legislative List. The Exclusive List contains 68 matters. Can the National Assembly in exercise of these powers, go out of the sphere of its authority? Similar powers are given to the Houses of Assembly in **Section 4(6**) and **(7)** to legislate for respective states and on matters in the Concurrent Legislative List. Apart from this, the constitution confers other powers on the National Assembly.

Power over Public Funds

Item 59 of the exclusive list gives National Assembly the power to make laws concerning taxation, income, profit and capital gains, and the authority to determine how public fund is to be spent. All revenue or money raised by the Federal Government must be paid into a Consolidated Revenue Fund in accordance with **Section 80(1).** Only money for expenditure or where Appropriation or Supplementary Appropriation Act authorised it, can be withdrawn from the Consolidated Revenue Fund. The president must prepare and lay before each House estimates for the financial year. Expenditure already charged directly on the fund do not need to be included in the bill e.g. remuneration and salaries. Amendment can be made by either house of National Assembly but it is not possible for the amount to be increased. Amounts can however be reduced from one particular head and added to another. If there is a delay in the passage of bills, the president can authorise withdrawal from the consolidated revenue Fund for 6 months until the Act is passed according to **Section 82**. The amount withdrawn must however not be more than the one withdrawn in previous years. Such withdrawn fund must later be included in a Supplementary Appropriation Bill. **Section 83** provides that a Contingency Fund may be established to meet urgent and unforeseen expenditure. The use of the word 'may' shows that the creation of the fund is within discretion of the National Assembly.

Salaries & Remuneration – **Section 84**

The National Assembly prescribes the Remuneration, salary and allowances to the Federation and State but must not be more than what the Revenue Mobilisation Allocation and Fiscal Commission and it cannot be altered to their detriment after appointment according to **Section 84(3).**

Appointment & Removal

Appointment of public officers e.g. Auditor General in **Section 154**, The Chief Justice of Nigeria, Justices of the Supreme Court in **Section 231** etc. Must be confirmed by the Senate else such appointment will be nullified. The process for removal follows the same procedure.

Impeachment – **Section 143**

Notice in writing of allegations against the President or the Vice-President supported by 1/3 of National Assembly is presented to the Senate President and if any of them is guilty of gross misconduct in performance of official functions, the Senate President must, within 7 days, serve a copy of such allegations on the indicted person and all members of the National Assembly, and any reply by the indicted person must also be served on the members of the NA. Gross misconduct i a breach of the constitution or any misconduct which amounts, in the opinion of the NA, to gross misconduct. This means that what constitutes 'gross misconduct' is a subjective matter of the National Assembly and can be to the detriment of the President or Vice President when dealing with a recalcitrant legislature. The misconduct must be in relation to the performance of official functions not things relating to the personal life of the President or vice. Within 14 days after notice to the Senate President, the National Assembly must decide whether the allegation should be investigated and the motion must be supported by 2/3 of the House. Then, within 7 days, the Chief Justice of Nigeria must set up a panel of 7 persons who are of unquestionable integrity in his opinion, and who are not part of the public service, legislative house or political party to investigate the allegation. The President or Vice may defend themselves in person or by a legal practitioner of their choice. If the allegation is proved, within 14 days, each House considers it, 2/3 vote in support and the indicted person is to be removed. But if 2/3 of the House did not vote, the effect will differ. If the allegation goes unproved, proceedings will terminate at that point.

Section 143(10) ousts the jurisdiction of the courts relating to determining proceedings of the panel or National Assembly. This seems to contradict **Section 4(8)** which subjects legislative powers to the court's jurisdictions but opens with 'save as otherwise provided by this constitution' meaning the constitution can create exceptions to such limitations. The section also promotes separation of powers preventing an arm of government from interfering with the affairs of another.

Miscellaneous Powers

Section 214 gives National Assembly the power to determine organizarion and administration of the police force and may make provisions for the establishment of different branches of the force.

Section 217 gives NA the power to make laws for the adequate equipment and maintenance of forces for the purposes of defence, maintenance of territorial integrity, suppressing insurrection, and performance of other functions as prescribed by the Act.

Section 221, 225(3) and 227 gives NA the power to make laws on punishment of those involved in offences relating to the forming and organisation of political parties.

Power to Conduct Investigation (Power of Oversight) – Section 88

Each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed investigation into –

a. any matter or thing with respect to which it has power to make laws, and
b. the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for –

- executing or administering laws enacted by National Assembly, and
- disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to –

a. make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
b. expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

This power is very potent and should often be checked by courts. This power cannot be used in such a way as to derogate from rights granted by the constitution, see **Adikwu v. National Assembly and Tony Momoh v. Senate**. Investigative powers cannot be used for purposes other than those stated in the constitution. After investigation, the legislature must inform the Attorney general so he can prosecute. The section isn't for them to usurp the role of the courts, see **El Rufai v. House of Representatives**. It was also held in **Akomolafe v. House of Representatives** that the investigative powers of the legislature cannot be used to try criminal offences.

State Legislature (House of Assembly)

This is unicameral unlike National Assembly which is bicameral.

Section 115 states its composition. The State House of Assembly are subjected to same qualifications, disqualifications, tenure etc as members of the Federal House of Reps.

Powers of the House of Assembly

It has almost identical powers with National Assembly. **Section 4(6) and (7)** vests legislative powers of the State in the House of Assembly and gives it the power to make laws on matters in the Concurrent Legislative List. This power cant be wielded in a way that it contradicts laws made by the National Assembly, see **AG Abia v. AG Federation**. **Section 4(7)(b)** says the House of Assembly can legislate on matters in the concurrent list as well as other matters not on either of the lists except where such matter is incidental to the matters on the exclusive list. The National Assembly does not have the power to legislate on the tenure of elective officers of the local government council and such power is reserved for the State House of Assembly; also powers assigned to the House of Assembly in **Section 7(1) and Fourth Schedule**.]

When there is no federal law on matters, the state legislature can legislate until a federal law is made to take care of it. A situation where item on exclusive list has not been legislated upon by the National Assembly and a problem relating to it occurs in a State, it could be dealt with executive or the state legislature can make laws until a federal law is later enacted.

Power over public fund

Section 162(6) establishes the State Joint Local Government Account. Each State is to pay to the local government council in its domain such proportion of total revenue prescribed by the National Assembly. It is a mandatory obligation of the State. This is because local governments are a creation of constitution and their existence cant be left to the whims and caprices of the state government.

Power to create additional Local Government Areas – Section 7 & 8

The proposal of this must be approved by 2/3 of people in the Local Government area demanding for its creation. In **AG Abia v. AG Federation**, it was held that silence on the tenure of the local government elective officers becomes a residual matter for the states to legislate upon. See **Section 7, item 11 & 12** of the Concurrent List which state that the National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a local government council and this shall not preclude a House of Assembly from making laws with respect to election to a local government council in addition to but not inconsistent with any law made by the National Assembly. The National Assembly has no power except in relation to FCT, to legislate on the qualifications or disqualifications of a person as candidate for election as Chairman, Vice Chairman or councillor of the local government.

Impeachment – Section 188

This follows the same procedure at the federal legislature. See **Inakoju v. Adeleke**

Limitation of Legislative Powers

Any law inconsistent with the constitutional provision will be void.

Any state law inconsistent with a federal law will be null and void as the federal law will prevail. In **Adegbenro v. AG Federation**, it was stated that once a law is found to be inconsistent, there is no need for another law to invalidate it. Inconsistent means mutually repugnant or contradictory, contrary to the other so that both cannot stand, so that the acceptance of one implies abrogation of the other. In AG **Bendel v. AG Federation**, the court nullified the Appropriation Bill passed by the National Assembly in a manner contrary to constitutional provisions. In **Akinwolemiwa v. Ondo State House of Assembly**, it was held that that ouster clause only applies to procedural matters and the courts will intervene if legislature failed to comply with provisions; and there is a breach of fundamental human rights or where they act ultra vires. It also isn't within the powers of the legislature to investigate or try criminal offences.

Section 4(8) provides that National Assembly or House of Assembly is subject to the court's jurisdiction and shall not enact any law ousting such jurisdiction.

Section 4(9) provides that the legislature cannot make retrospective laws in relation to crime.

It amounts to contempt of the court for the House of Assembly to initiate a bill that would frustrate an earlier ruling of the court. Also legislative powers of local governments must not be used to enact laws inconsistent with state laws or constitutional provisions.

Military Rule & Legislative Powers

Under military rule, legislative power of government was supreme and seemed unlimited. Limitations put in place under civilian rule was often displaced then modified and re-enacted under a decree. Under this modified constitution, unlimited power was given to the legislature to perform acts which are normally prohibited under civilian democratic constitution. The legislative bodies at various times were designated Supreme Military Council, Armed Forces Ruling Council, Provisional Ruling Council. The Chairman was always the Head of State. Legislative bodies could make laws for the peace, order and good government of Nigeria. The legislative authority of centre pervasive especially because there were no legislative bodies in component states under military rule and the power of the military government to enact edicts were subject to prior consent from the centre.

Supremacy of this legislative authority was further entrenched by the provision that 'no question as to the validity of any decree or edict is to be questioned in any court of law.' Jurisdiction of court is often ousted. Despite the court's resistance, military government maintained their legislative supremacy and sometimes nullified the court's decision by decree. Courts eventually accepted legislative supremacy. There is no doubt that military rul is an aberration of all principles of constitutional law and it is not possible to operate a proper constitution under it.

THE EXECUTIVE

Nigeria has operated 3 major forms. First was under the parliamentary system where the President was just a ceremonial head and executive powers were vested in the Prime Minister. The second was under military rule where the executive authority was vested in the military head of state who was also the chairman of the legislative body.

The third is under the presidential system which is what the 1999 constitution operates. Here the Head of State is the same as the Head of Government and he is the Commander-in-Chief of the Armed Forces.

Executive powers generally mean power to execute laws and carry them into effect. **Section 5(1)** vests executive powers of the Federation in the President and provides for delegation to the Vice President and Ministers. It also states the executive powers shall extend to execution and maintenance of the constitution and all laws made by the National Assembly. These powers go beyond mere execution or maintenance because of the phrase 'shall extend to' and they don't apply where the power is expressly prohibited by constitution or Act of National Assembly. The section provides for powers which go beyond those expressly granted to the President. This is because the constitution or National Assembly cannot include all issues which may confront the President in his duty of execution.

Title of Office

Section 130 establishes the office of the President and also confers on him the title of Head of State, Chief Executive of Federation and Commander-in-Chief of the Armed Forces. As Chief Executive, he's the Head of Government and in charge of and responsible for the whole administration of government.

Qualification – Section 131

A person shall be qualified for election to the office of the President if –

a. he is a citizen of Nigeria by birth;
b. he has attained the age of forty years;
c. he is a member of a political party and is sponsored by that political party; and
d. he has been educated up to at least School Certificate level or its equivalent.

School Certificate or its equivalent was further clarified by **Section 318** to include secondary school certificate, primary school certificate, and experience gotten in public or private sector for at least 10 years or any other qualification acceptable by INEC. The Primary School Certificate has been criticized for seeming inadequate as office of the President of Nigeria will be entrusted to such person.

Disqualification – Section 137

Candidates are disqualified on the same grounds as members of the legislature. See **Section 67.**

Section 142: The President must nominate a Vice President from his own party who is regarded as duly elected once the presidential candidate is elected. When none of the candidates satisfy the criteria for election, within 7 days, INEC must conduct another election between one with the highest votes and the other one with the majority of votes in the highest number of states. In **Awolowo v. Shagari**, the interpretation of what 2/3 constituted was discussed. The election of a President is only valid if he nominates an associate as the Vice President. The relationship between the President and his Vice should be throughout their joint term and principle of collective responsibility binds the Vice President to all government decisions or actions whether they emanated from the President or his executive council. The Vice President isn't to oppose public decisions of the latter even if he personally disagrees with them. The Vice President isn't given any particular role in the constitution. It is the President that determines what he does in government. Once the Vice President is appointed, he becomes a potential President who can be sacked at will.

Tenure – Section 135

The president and Vice President must declare assets before taking office. They are both elected for a term of 4 years. **Section 136** states that if the President dies before being sworn in, the Vice President becomes the new President and he then nominates a new Vice subject to simple majority approval at joint sitting of the National Assembly. If they both die before sworn in and the National Assembly has not yet been inaugurated, INEC must conduct another election immediately. But if National Assembly has been inaugurated, Senate President will hold office for 3 months in which another election will be held.

The President or Vice President's tenure ends where 2/3 of the executive council declares him unable to resume his office due to infirmity. The Executive Council is made up of Ministers of Government. This is verified after a medical examination appointed by the Senate President comprising 5 medical practitioners, one of whom must be the President's personal physician. If the panel confirm incapacity, it would be signed by the Senate President and Speaker of House of Reps and the President will cease to hold office. This is according to Section 144.

Powers and Duties of the President

1. Execution & Maintenance of the Constitution and Laws

This is provided for in **Section 5(1)(b).** It confers executive powers on President and mandates him and ensures that provisions of constitution are brought into effect. **Section 153** provides for the establishment of federal executive bodies, commissions and councils. The President is to execute such sections. The National Assembly is empowered to make laws in relation to establishment of such bodies and the President is obliged to ensure the execution of such laws. Duty of execution and maintenance involves vigilance of the President to make sure constitutional provisions are strictly adhered to. Where there is infraction, he can subdue it judicially or through force. Whatever method used by the President, it's no doubt he has the duty of makings sure those problems are resolved.

The section also implores President to execute and maintain all laws made by the National Assembly. The President's executive powers also extend to matters which the NA can make laws on for the time being. That is, when there is a situation relating to a particular matter under the legislative authority of the NA (exclusive and concurrent list), but for which a law has not yet been made, the President has the duty to deal with it administratively till a law is enacted by the National Assembly. Apart from the general powers, the President is also subjected to other powers and duties in other sections.

2. War powers

Section 217 establishes armed forces for the Federation comprising the army, navy, airforce and such other branches as may be established by an Act of NA. The President is to appoint chiefs and heads of all these branches. The President and Commander-in-Chief determines operation of the army and often delegates power to senior members of the armed forces. In accordance with **Section 5(4)** he cannot declare war with another country without the resolution of the NA. He also cannot deploy members of the armed forces of combat duty outside the country without the NA's resolution.

If Nigeria's security is threatened, President, on advice of the National Defence Council, shall deploy members outside Nigeria but must seek the Senate's consent within 14 days. National Defence Council is an executive body created by the Constitution and President and Vice president are the Chairman and Vice Chairman respectively. Its duty is to advise the President on matters of defence though he isn't bound to take such advice. Putting the President as Commander-in-Chief is justifiable because it is dangerous to put it on one who is not the responsible political leader and the Senate may be slow in its decision making.

3. Appointment and Removal

a. Ministers and Special Advisers – Section 147

In doing this, the President must respect the principle of federal character which requires each state to be represented. Ministers have the same qualifications as the House of Representatives. If appointment isn't confirmed by Senate within 21 days, appointment is deemed to have been approved. Appointment of ministers is subject to judicial review. The President determines the duties of the Ministers. See Section **151** for Special Advisers.

b. Attorney General of Federation and the Minister of Justice – Section 150

In addition to the other Ministers, he must be someone qualified to practise in Nigeria for not less than 10 years. The duties of the Attorney General are enumerated in **Section 174**

- Institute and undertake criminal proceedings against anyone in Nigeria
- Take over and continue any such criminal proceedings that may have been instituted by another person.
- Discontinue at any stage such criminal proceedings instituted by him or anyone else. This is the power to enter a "nolle prosequi".

The Attorney general must perform his duties in interest of justice and public interest. He must also prevent abuse of legislative process. Even though he is appointed by the President, he is to maintain some level of independence, see **State v. Ilori**; **FRN v. Osahon**. The word 'public interest' is subject to the Attorney General's discretion, see **Iayiwola v. The Queen** and **State v. Adekola**. It is advisable to separate the office of the AG from the Minister of Justice so the AG can perform without fear or favour as President still has overall authority and can remove the AG from office. In **FRN v. Osahon**, it was debated whether or not the police can institute criminal proceedings without the fiat of the AG and it was held that they can. Though it should be advisable that the police officers should be legal practitioners.

An individual cannot insist that the State should continue with the criminal proceedings or that a private one be terminated. In **AG Kaduna v. Hassan**, it was held that the power of nolle prosequi is with the AG and only he can exercise such rights unless he expressly delegates it to someone else.

c. Civil Service – Section 169

The president is to appoint persons to offices of

- Secretary to the Federal Government
- Head of Civil Service – **Section 171**
- Ambassadors
- Permanent Secretary

- Personal staff

Section 153 creates the Civil Service Commission to appoint, dismiss, and exercise control over its civil servants.

d. Executive Commissions and Councils – Section 153

There are 14 councils and commissions. The powers are in **Part 1; Third Schedule**. The president is to appoint Chairman and members, Heads etc subject to confirmation by the Senate. Qualifications are the same with the ones for the House of Reps. Tenure is 5 years. The President can remove any member supported by 2/3 of the Senate for incapacity or misconduct (defined in **Section 161(d)**). **Section 158** states that certain bodies shall not be subjected to foreign control in relation to exercise of appointment powers.

e. Members of the Judiciary

The President appoints them in federal courts on recommendation of the National Judicial Commission subject to confirmation by the Senate

4. Power over public revenue

The President as Head of Government is in charge of collection, accumulation and declaration of federal revenue. He is to prepare a budget and lay it before the National Assembly. **Section 162** establishes the Federation Account into which all federal revenue must be paid except for personal income tax of armed forces, Minister of Foreign Affairs who executes foreign policy and residents in Abuja. Any amount credited to the Federation must be shared amongst the Federal Government and State Government and the Local Government in each State according to **Section 162(3)**. Amount to the local government councils must be allocated to the State not the local governments directly. Recurrent expenditure of judicial officers are a charge on the Consolidated Revenue Fund not the Federation Account. Each state must pay to the federation, expenditure incurred by it in each financial year.

5. Treaty-Making Powers

No express provision including this as a power of the Federal Government, but under international law, it is the Chief Executive or Head of Government that is given express or implied authority to enter into international treaties. See **Abacha v.**

Fawehinmi. **Section 12** is a domestication clause stating that international treaties cannot be enforced in Nigeria unless such treaty has been enacted into law by the National Assembly e.g. The African Charter on Human and People's Rights has been domesticated and is thus applicable in Nigeria.

6. Prerogative of mercy – Section 176

The President has the power to pardon convicted members especially those convicted by federal courts. See **Okongwu v. State** where it was held that the effect of pardon is to remove from the person, all penalties and punishments whatsoever arising due to the conviction, but not to wipe out the conviction itself. It forgives one but the conviction is still in the record of courts. The President can only exercise this power in relation to federal laws not state laws.

7. Declaration of State of Emergency

Section 305 enumerates the procedure for the declaration of a state of emergency, see **State v. Eyitemi**. He may declare a state of emergency for the federation. This is when the federation is at war or imminent danger of the invasion of war or when there is a breakdown of law and order in the federation, occurrence of disaster, public danger etc. The president cannot declare state of emergency in a state except where circumstances require it and the Governor fails to request it.

This power can be potent in the hands of an unscrupulous President and it can be used to remove the Governor of the State. Exercise of this power is purely executive and must not be made subject to the oversight function of the legislature.

8. Other powers

- Power to make regulations relating to citizenship matters in **Section 32**

STATE GOVERNORS

Section 176 establishes the office of the State Governor. The governor shall be the Chief Executive of that state. The qualifications for such Governor are listed in **Section 177**. A person shall be qualified for election to the office of Governor of a State if

a. he is a citizen of Nigeria by birth;
b. he has attained the age of thirty-five years;
c. he is a member of a political party and is sponsored by that political party; and

d. he has been educated up to at least School Certificate level or its equivalent.

Their tenure is recorded in **Section 180** to be 4 years and their disqualifications are listed in **Section 182** to be the same as that of the President. The Governor must nominate a Deputy Governor to be validly elected, **Obi v. INEC, Laodja v. INEC**

The executive powers of the Governor are mentioned in **Section 5(2)(a) and (b)**. He can exercise those powers himself or through his deputy or commissioners. A Deputy Governor cannot insist on powers being delegated to him, this depends on the discretion of the Governor. **Section 5(3)** states the manner in which executive powers are to be exercised. They are not to impede the executive powers of the federation, endanger any asset of the federal government, or endanger the continuance of the federal government. Acts encouraging others to ignore the President's roders or to secede or to incite them against his office are unlawful. Federalism also dictates that the President should not exercise his powers in a way that encroaches on the Governor's executive powers. See **Governor of Kaduna State v. State House of Assembly Kaduna State.**

Appointment of Commissioners is done by the Governor in accordance to **Section 192**. The State Civil Service is established in **Section 197**. Prerogative of mercy is contained in **Section 212**. The power of the Governor over public funds is controlled in **Section 162(6)** which states that each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State.

Section 308 is a clause providing for immunity of certain executive officials. It provides that no civil or criminal proceedings shall be instituted or continued against a person to whom the section applies during his period of office and the section applies to a person holding the office of President or Vice-President, Governor or Deputy Governor. They cannot be sued while in office but they can be investigated. They can be sued in their official capacity but not in their personal capacity. See Bola Tinubu v. IMB Securities.

Civil proceedings cannot be instituted or continued for acts done in private capacity. If there was a case pending against the official at the time they took office, it will be discontinued. An action against an incumbent Governor for misappropriation or embezzlement or anything which should prevent him from holding office will not be discontinued. In **Media techniques v. Alhaji Lam Adesina**, it was held that they cannot be arrested or imprisoned on any grounds nor can they be compelled to appear in court. However this immunity does not apply in relation to election petitions challenging the election or re-election of the President or Governor. They are not immune from prosecution in cases of election petition relating to the validity of such elections. See **Alliance for Democracy v. Fayose**. If immunity affects election matters

then this will encourage gross wrongful and illegal activities among political parties and it means that once the official is sworn in, he cannot be investigated even if he partook in election malpractices.

The purpose of immunity is to prevent the Governor from being inhibited in performance of executive functions by fear of civil or criminal litigations arising from performance of his duties during his tenure. A Governor is allowed to sue in his personal capacity although he cannot be sued.

Impeachment – **Section 143**

The section which defines misconduct as 'misconduct of such a nature as to amount in opinion of the National Assembly as gross misconduct' is subjective and does not protect the President or Governor from an unscrupulous legislature. The misconduct must be in relation to performance of official functions. If there is evidence of forgery or perjury against the Governor, this can be misconduct demanding impeachment. There are no cases in this respect because there has been no successful impeachement at the federal level though there have been threats; case law is therefore limited to state law. The locus classicus on impeachment is **Alhaji Balarabe Musa v. Kaduna State House of Assembly** where the Governor of Kaduna State brought application for order prohibiting speaker of the House of Representatives and embers from proceeding with consideration of notice of allegation of gross misconduct against him. The respondent challenged the jurisdiction of the court to hear the suit relying on **Section 170(10)** which is now **188(10)** in the 1999 constitution which provides that No proceedings or determination of the Panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court. This is an ouster clause ousting the jurisdiction of the courts on subject matter of application.

In **Section 188**, the Governor and Deputy Governor are subject to the same removal procedure as president. If there is a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, the speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office, to be served on each member of the House of Assembly. Within 14 days of the presentation of the notice to the speaker of the House of Assembly (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice-, the House of Assembly shall resolve by motion, without any debate whether or not the allegation shall be investigated. A motion of the House of Assembly that the allegation be

investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-thirds majority of all the members of the House of Assembly. Within 7 days of the passing of a motion under the foregoing provisions of this section, the Chief judge of the State shall at the request of the speaker of the House of Assembly, appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provided in this section. The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented before the panel by a legal practitioner of his own choice. A Panel appointed under this section shall have such powers and exercise its functions in accordance with such procedure as may be prescribed by the House of Assembly; and within three months of its appointment, report its findings to the House of Assembly. Where the Panel reports to the House of Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter. Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, the house of Assembly shall consider the report, and if by a resolution of the House of Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.

Section 188(10) ousts the jurisdiction of the courts relation to decisions of the panel or House of Assembly. It was held in the locus classicus case of **Inakoju v. Adeleke** that the impeachment of the Governor is subject to judicial review.

Power over existing laws – Section 315

Section 315(5)(b) defines existing law as any law which was in force or was made before the constitution came into force. A court can declare invalid any provision of existing law on grounds of inconsistency with provisions of other existing laws, laws of House of Assembly, Acts of National Assembly and so on.

THE JUDICIARY

Section 6(1) & (2) provides for judicial powers being vested in the courts established for federation and state. Judicial power is the power of a court to decide and pronounce a judgment and carry it out into effect between parties who bring disputes before it. That is, the power to adjudicate, state the law and give binding decisions. **Section 6(6)(a) & (b)**. Power of judicial review prevents ouster of jurisdiction of courts

by the federal or state legislature. The inherent powers of the court include the right to control and conduct their order of business, enforce its judgment, grant remedies. The courts can determine questions as to civil rights and obligations of persons; make pronouncements on actions of legislature and executive. Judicial independence is not for the protection of the corrupt judge but for the benefit of the public whose interest it is that judges should be free to exercise their functions with independence and without fear of consequences.

Section 6(3) provides for superior courts of record. **Section 6(4)** empowers the National Assembly and House of Assembly to establish or abolish courts with subordinate jurisdiction to the high courts; thus making them inferior courts of records.

Note: By virtue of the **1999 Constitution, Third Alteration Act**, the National Industrial Court is now a superior court of record.

Federal Courts

1. Supreme Court: Established by **Section 230** comprising of the Chief Justice of Nigeria and other Justices of Supreme Court of which must not exceed 21 and who are appointed by the President on recommendation of National Judicial Council subject to confirmation. They must have been qualified to practise for at least 15 years.
2. Court of Appeal: Established by **Section 246** comprising the President and Justices of the Court of Appeal who must not be less than 49 (now 90 according to the Court of Appeal Amendment Act 2013), 3 of which must be learned in Islamic law and another 3 learned in Customary Law. The required qualification is 12 years.
3. Federal High Courts: Established by **Section 249** comprising the Chief Judge and other Judges required to have at least 10 years experience.
4. High Court of the Federal Capital Territory – **Section 255**
5. Sharia Court of Appeal – **Section 260**
6. Customary Court of Appeal – **Section 265**

State Courts

1. High Court of State
2. Sharia Court of Appeal of State
3. Customary Court of Appeal of State

Federal Courts of Appointmemt

- Appointment is made by the President on recommendation of the National Judicial Council (NJC) subject to confirmation by the Senate. This applies to the Chief Justice

of Nigeria, Justices of Supreme Court, President of Court of Appeal and heads of various courts.

- Appointment is made by the President on recommendation of NJC. This applies to Justices of the Court of Appeal, judges of various courts.

The NJC is to be advised by the Federal Judicial Service Commission.

The independence of judiciary is better ensured because the President does not have full discretion due to his appointments being subjected to recommendation of NJC and approval of Senate. He is not bound to accept such recommendation but he cannot appoint without it. The NJC comprises the Chief Justice of Nigeria as the Chairman, the most senior Justice of Supreme Court as his Vice, President of Court of Appeal, Chief Judge of Federal High Court, 5 retired Justices, 5 Chief Judges, 1 Grand Kadi, 1 President of Customary Court of Appeal, 5 members of the Nigerian Bar Association (15 years experience), one of whom is a Senior Advocate of Nigeria, 2 people who are not legal practitioners but are of unquestionable integrity in the opinion of the Chief Justice.

Dismissal – Section 292

A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances –

a. in the case of –

- Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-thirds majority of the Senate.
- Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State,

Praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct;

b. in any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

Any person who has held office as a judicial officer shall not on ceasing to be a judicial officer for any reason whatsoever thereafter appear or act as a legal practitioner before any court of law or tribunal in Nigeria.

Remuneration

Salaries are to be charged on the Consolidated Revenue Fund as provided by **Section 80**. NA prescribes salaries but it must not exceed what the Revenue Mobilisation Allocation and Fiscal Commission have determined in accordance with **Section 84(1).** Remuneration allowance and conditions of services are not to be altered to their detriment after their appointment so as to secure their independence.

Tenure – Section 291

Justices of Supreme Court and Justices of Court of Appeal retire at 65 voluntarily and at 70 compulsorily. After retirement, they cannot act as legal practitioners before any court of law in Nigeria.

Conduct of business – Section 236, 248, 259, 264 & 269

Courts have the power to make rules for regulating the practice and procedure of their courts. Judges enjoy immunity in the exercise of their judicial functions.

Jurisdiction

This is the power of a court to hear or try a case and a court can only exercise judicial powers within the authorized jurisdiction. It depends on

- character of the cause no matter who the parties are; or
- character of parties no matter the cause

All courts have judicial powers but their jurisdiction is limited to certain matters. When a case comes before a court, first issue is whether or not it has jurisdiction. A court may exercise procedural jurisdiction where it cannot try the substantive matter. If no one raises the issue of jurisdiction, it can be raised in the court suo motu, that is, by itself.

Qualifications for proper jurisdiction:

a. proper constitution as regards number and qualification of judges

b. subject matter must be within its jurisdiction
c. case must come before court initiated by due process.

Jurisdiction can be original, appellate or exclusive.

Original Jurisdiction

Section 232(1) confers original jurisdiction on Supreme Court on disputes between the Federation and a state or between states if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. In addition, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly provided that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter. This jurisdiction is also to the exclusion to any other court. A mere complaint of breach of constitution isn't enough to invoke the original jurisdiction of the Supreme Court.

a. There must be a dispute
b. It must be between the State Government and Federal Government or between States
c. It must be on questions which existence or extent of a legal right depends.

See **AG Ondo v. AG Federation** where it was held that the Supreme Court is granted original jurisdiction because it is independent of both federal and state government.

Section 239 grants the Court of Appeal original jurisdiction in matters relating to

a. Valid election of President or Vice President
b. Whether their term of office has ceased
c. Whether their office has become vacant

Exclusive Jurisdiction

Supreme Court has exclusive jurisdiction to hear appeals from the Court of Appeal. No other court can hear such appeals. **Section 240** gives Court of Appeal the exclusive jurisdiction to hear appeals from all superior courts of record below it. Appeals cannot lie directly from the Federal High Court or High Court to the Supreme Court, it must first go to the Court of Appeal. The Federal High Court has exclusive jurisdiction notwithstanding anything to the contrary in criminal and civil causes in relation **Section 251(1) & (2).** This limits the jurisdiction of the State High Court in such matters. The Federal High Court also has jurisdiction in respect of treason. High Court of State can exercise concurrent jurisdiction sometimes with the Federal High Court.

Appellate Jurisdiction

Appeal is the judicial examination of decision of an inferior court by a superior court. It performs judicial review of a lower court. It can be divided into appeals as of right and appeals with leave of court.

1. Appeal as of right: These are appeals on grounds of constitutional rights which do not require leave or permission of the court. It cannot be derogated from or taken away. See **Section 233** for Supreme Court and **Section 241** for Court of Appeal.
2. Appeal with leave: See Section 242. Where leave of court isn't obtained, appeal court is incompetent to hear the appeal as grant of leave inst automatic.

Other Jurisdiction – **Section 262 and 267**

Finality of Decisions

Section 235 makes the Supreme Court the court of last resort, from which there can be no further appeals. This is without prejudice to the powers of the prerogative of mercy of the President and Governor in **Section 175 and 212** respectively. The decision of Supreme Court is binding on all lower courts by doctrine of stare decisis. The Supreme Court can however overrule itself if its earlier decision was wrongly decided.

STATE COURTS

The highest court for states is the State High Court. Appeals lie from lower courts to it. Its jurisdiction is contained in **Section 257**. **Part 2(c) of the Third Schedule** makes provision for setting up of State Judicial Service Commission established in **Section 197** comprising the Chief Judge of the High Court, Attorney General of States, Grand Kadi, President of Customary Court of Appeal of State, 2 legal practitioners and t others of unquestionable integrity. This body advises NJC on appointments. This negates the concept of a federal state if it is a national body which determines state appointments.

Section 292 talks about the procedure for removal. The State Judicial Service Commission to NJC for removal. **Section 84** talks on remuneration.

Jurisdiction

There is the original and appellate or supervisory jurisdiction. **Section 257 and 272** are for the jurisdiction of the High Court of FCT and State High Court respectively. State courts cant try federal matters. It has the jurisdiction in state causes like inheritance etc. Each state has its own High Court. It has unlimited jurisdiction in matters that can be tried by it.

For referral of questions of law, that is, certain general jurisdiction of some courts in relation to interpretation of constitution, see **Section 295 and 294**. For the enforcement of judgements, **Section 287** reinforces the doctrine of stare decisis. In **Dalhatu v. Turaki,** the High Court here blatantly refused to follow the decision of **Onuoha v. Okafor** in a matter pertaining to internal affairs of a political party and declared that the Supreme Court amend its position in respect of such affairs. The Justices of The Supreme Court condemned this act calling it a show of 'gross insubordination' and such a judge was a 'misift in the judiciary'. The Supreme Court is the apex court and its decisions bind every other court. Such doctrine is essential to the practice of application of law and the attitude of the trial judge is the height of 'judicial impertinence', 'daring and most unfortunate.'

For the limitation of judicial powers, see Section 6(6)(c) & (d). Jurisdiction is limited by justiciability of a case and locus standi. Section 308 also restricts judicial powers on executive heads.

For immunity of a judicial officer to hold, he must be

- A judge of superior court
- Acting within jurisdiction
- If acting outside jurisdiction, he must believe himself to have such jurisdiction

LOCAL GOVERNMENT

This is a political subdivision of a nation. It is government at the local level exercised through representative councils established by law to exercise such powers within defined areas, has substantial control over local affairs as well as staff and institutional and financial powers to initiate and direct provisions of services and to ensure that

local initiative and response to local needs and conditions are maximized." – 1976 Local Government Reforms

Two types of Local Government

- Primary Local Government: where members of the body are directly elected by people of the area itself
- Secondary Local Government: This is responsible for the public service.

Schools of Thought

There are those who believe local governments exist only for the purpose of democracy, political participation and socialization. Another school believes essential function of the local government is to provide essential services. Then there is the group that believes local government is to contribute and help achieve national integration, evolution and consciousness.

Establishment

It is established by **Section 7(1). Akan v. AG Cross River** and **Etim Akpan v. Peter Umah**. In **Akan v. AG Cross River**, the Governor of the then Cross River state purported to act under authority of a law passed by the House of Assembly named Dissolution of Local Government Councils Law No 4 of 1979 and dissolved all local government councils in the state then proceeded to appoint caretaker committees. It was contended that such law was valid but it was held to be in conflict with Section 7(1) of 1979 constitution and was therefore null and void. Section 7(1) guarantees the local government system by means of democratically elected local government councils and mandates every state to ensure their existence. Setting up caretaker committees to replace a local government council was therefore unconstitutional and illegal.

In **Etim Akpan v. Hon Peter Umah**, eight out of ten councillors passed a vote of no confidence on the Chairman of the Local Government council and a crisis arose because of this. The state house of assembly set up a committee to look into this crisis and then recommended the dissolution of the local government council which the Governor accepted then set up caretaker committees in their place. Upon dissolution, the vice chairman lost his office and filed a suit against the government challenging the competence of the Governor to dissolve democratically elected Ini local government guaranteed under Section 7(1) and replacing it with a caretaker committee. Such act was declared to be unconstitutional, null and void.

A State House of Assembly cannot enact a law which provides for nomination of local government council members but they can dissolve such councils.

Creation of new local government area

The House of Assembly can do this in accordance with the procedure laid down in **Section 8(3).**

Functions

1. The functions of the local government are set out in the **Fourth Schedule** to include

a. The consideration and the making of recommendations to a State commission on economic planning or any similar body on –
- the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected, and
- proposals made by the said commission or body;

b. collection of rates, radio and television licences;
c. establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;
d. licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;
e. establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences;
f. construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;
g. naming of roads and streets and numbering of houses;
h. provision and maintenance of public conveniences, sewage and refuse disposal;
i. registration of all births, deaths and marriages;
j. assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and
k. control and regulation of –
- out-door advertising and hoarding,
- movement and keeping of pets of all description,
- shops and kiosks,
- restaurants, bakeries and other places for sale of food to the public,
- laundries, and
- licensing, regulation and control of the sale of liquor.

The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters -

a. the provision and maintenance of primary, adult and vocational education;
b. the development of agriculture and natural resources, other than the exploitation of materials
c. the provision and maintenance of health services; and
d. such other functions as may be conferred on a local government council by the House of Assembly of the State.

Qualifications of Chairman and Vice Chairman

- he must be Nigerian
- he must be at least 25 years of age
- he must be a member of a political party and is sponsored by such party
- he must have been educated up to at least School Certificate level or its equivalent

ELECTORAL SYSTEM

Election is the process through which people participate in choosing their representatives; a means by which society organizes itself and makes specified formal decisions. The cornerstone of every democracy is free and fair election which aims at legitimizing government, strengthening people's attachment to state and creating

assurance to the people about the political system. An election marred by violence, theft, thuggery, snatching of ballot boxes cannot b held to be credible.

The Independent National Electoral Commission is the institutional Framework for elections in 1999 constitution. INEC is one of the federal executive bodies established in **Section 153** and its powers are contained in **Part 1 of the Third Schedule; Paragraph F. Section 14** talks about the composition of INEC

- Chairman who is the Chief Electoral Officer
- 12 other members who are the National Electoral Commissioners

They must be non partisan and of unquestionable integrity. The Chairman must not be less than 50 years of age while the National Electoral Commissioners must not be less than 40. Each state and the FCT will have its Resident Electoral Commissioner who is to be appointed by the President, subject to confirmation of Senate and must not be less than 40 years of age.

Section 15 states the powers of INEC. The Commission shall have power to –

a. organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;
b. register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;
c. monitor the organisation and operation of the political parties, including their finances;
d. arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
e. arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;
f. monitor political campaigns and provide rules and regulations which shall govern the political parties;
g. ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the Oath of Office prescribed by law;
h. delegate any of its powers to any Resident Electoral Commissioner; and
i. carry out such other functions as may be conferred upon it by an Act of the National Assembly.

The Electoral Act controls regulations of the commission and its establishment, power and functions are integrated in it. Section 2 of the Electoral Act 2010 states some more powers of INEC. INEC has no power to conduct elections into local government

councils. This power belongs to the State Independent Electoral Commission (SIEC). See item 22 of the Exclusive Legislative list.

In **AG Abia v. AG Federation,** the National Assembly enacted the Electoral Act stating increase in tenure, election date, qualification and disqualifications. But it is the House of Assembly which has the power to legislate on elections into local government councils including fixing of dates, determining tenure of councillors, qualifications, disqualifications etc due to **Section 7** of constitution and **item 12** of the concurrent list. It was held that silence of the constitution on a matter not under the exclusive or concurrent list made it a residual matter to be dealt with by the House of Assembly. Hence, no law enacted by the National Assembly can validly increase tenure of office of elected officers of the local government.

Why do we have INEC & SIEC?

This is to insulate electoral processes from influence of political partisanship that the process will be prone to if they are handled by departments of political establishments. See **Haruna v. Modibbo** where it was held that INEC is an independent body and should never place itself in a position where allegations might be made that it favoured one party or the other. INEC should be neutral and non partisan.

Powers of INEC to make bye-laws and subsidiary legislations.

Section 153 of Electoral Act 2010 grants INEC power to issue regulations, guidelines or manuals. **Buhari v. Obasanjo** held that INEC did not have the power to amend the Act. The court declared as void, provisions of INEC's manual for the 2003 elections which granted a registered voter, whose name had appeared on the list, the access to vote without a voter's card.

Political Party & Candidacy for Election

One of the qualifications for election into National Assembly, House of Assembly, President, Vice President, Governor, Deputy Governor is being a member of a political party and being sponsored by one. Constitution does not support an independent candidate. See **Lado v. CPC; Gwede v. INEC**

Section 31(1): Every political party must submit list of candidates not later than 60 days.

Section 32 prohibits double nomination

Section 33: on political parties changing candidates. Changing a candidate is now only permitted in case of death or withdrawal.

Ugwu v. Ararume.

Appellant emerged winner at the governorship primaries by PDP for Imo State as he had scored 2,061 votes as against 36 votes scored by the 2nd respondent, Engineer Ugwu who came 16th. The appellant's name was forwarded to INEC by PDP as their candidate for Governor on 14th December 2006. On 19th of January 2007, PDP then sent Ugwu's name to INEC as the candidate it was sponsoring for the Imo State Governorship election. It was argued that the political party acted within their power to substitute candidates in accordance with **Section 34** of the Electoral Act 2006 which stated that such change must be in writing not later than 60 days and cogent and verifiable reasons for the change in candidate must be given. The trial judge held that the political party exercised this power validly but the Court of Appeal reversed this decision and allowed the appeal holding that it did not meet the requirements of **Section 34(2)** which needed cogent and verifiable reasons for change.

Amaechi v. INEC

The appellant contested at the primaries for the Governorship election for Rivers State on PDP's platform and he won with a total of 6,527 votes out of 6,575 votes. The 2nd respondent, Celestine Omeiha, did not contest at the primaries.PDP forwarded the appellant's name to INEC on 14th of December 2006 which then had his name published as the PDP candidate for the election. On 2nd of February 2007, PDP sent Omeiha's name as its candidate and the appellant filed a suit claiming that a candidate whose name had been submitted cannot be substituted unless disqualified by a court order. INEC claimed that PDP had exercised its right in accordance with Section 34 of the Electoral Act 2006 and Amaechi, being indicted by EFCC was good enough reason for the substitution. Omeiha claimed that Amaechi's name was substituted in error and PDP claimed that it had the right to substitute its candidate provided it was done within 60 days. The trial court held that the substitution was valid. On appeal to the Court of Appeal, **Ugwu v. Ararume** was decided declaring Ararume the valid candidate and PDP expelled them both, Ararume and Amaechi, and then claimed that Amaechi's case be struck out because the court lacked jurisdiction as Amaechi was no longer a member of the party. The Court of Appeal did so but the Supreme Court ordered the case to be heard expeditiously. The Court of Appeal then held that Amaechi's case was different from Ararume's case because of his indictment hence the substitution was valid.

On further appeal to the Supreme Court, it looked at the meanings of the word cogent and verifiable. Cogent means powerful and convincing, while verifiable means true and authentic. Hence it means a reason self demonstrating of its truth which can be checked and found to be true. The reason by PDP as error for its substitution hence failed to meet the reuirement of Section 34 and the Court of Appeal wrongly admitted judgment. Also, there was no actual proof that Amaechi was indicted. It was held that the substitution was not done in accordance with the law and Amaechi remained the valid candidate for Governorship election.

FEDERALISM

This is a concept relating to the division of power between a national government and a regional or state government and sometimes local government. It is division of powers and duties between at least two levels of government. According to KC Wheare, it is the arrangement whereby powers of government within a nation or

country are divided between a national government and a number of regional governments in such a way that each exists as a separate entity independent of the other and operates directly on persons and property within its territorial area. Key features we can pick out can be said to include

- separateness or independence of each government
- decentralization or division of powers
- mutual non interference
- equality
- supreme constitution

There is actually no universal agreement on what federalism actually is. See Niki Tobi's definition in **FRN v. Anache**.

Federalism involves the same territory being controlled by two or more levels of government where central and regional governments exercise powers constitutionally granted to them within jurisdiction delineated for each level; both have power to govern and have certain level of autonomy from each other. Section 2 emphasizes the federal nature of Nigeria.

Federalism is subjective, that is, it is different from specific constitution of nations and different constitutional arrangements of each country show brad of federalism obtainable in each country. The 1999 constitution embodying federalism differs from that of the US, Australia and so on.

Essentials of Federalism

Voluntary submission of autonomy

A true federal system involves submission of some powers belonging to various units to the central government's. Nations like the United States of America and Switzerland with Federation has thrived achieved so because such is based on a voluntary submission of powers to the central government. In absence of this, a sovereign national Conference would be organized and if this is not done in a multi-ethnic society, Federation will be continuously threatened. It is because of absence of such that in Nigeria, every action of the president is suspected of favouring a particular ethnicity. But what would be constitutional and legal implications of such a conference when there's no provision for it in the Constitution. Sovereignty resides in the people according to **section 14(2).**

Cooperation among various levels of government

Wheare's concept of dualism has become a workable under modern systems of governance because of need for government to be involved in certain aspects of the

lives of people and because certain problems in the state might be of national significance, for example, environmental disasters. The two levels of governments, independence, need to cooperate to promote development. In Nigeria, especially during disasters in States, the federal government gives financial aid and this cooperation often extends to the state and local governments.

Division of powers

Political power is usually allocated between the various levels of government in such a way that constitutional limitations are placed on the exercise of such powers

a. legislative powers

Section 4(1) vests legislative powers in the National Assembly comprising the Senate with 3 members from each state and one from the federal capital territory making the same to the 109 members on the House of Representatives comprising 316 members

Section 4(2) provides for the power of the National Assembly to make laws for the peace, order, good governance of the Federation with respect from others in the exclusive legislative list which is to be to the exclusion of the state government.

Section 4(4) states that the National Assembly can legislate on matters in the column concurrent legislative list. **Item 3** provides that the National Assembly can legislate on things seen as national with the consent of the State. But if the state refuses such designation, the National Assembly would not be allowed to legislate on its validity.

Oil palm company v. AG Bendel State held the Bendel States could not investigate of affairs of limited liability companies because such powers were reserved for the National Assembly by virtue of its being included in the exclusive legislative list of the 1979 Constitution.

In **AG Ondo v. AG Federation**, did the National Assembly have the power to enact the ICPC Act? Corruption i neither in the Exclusive or Concurrent List and is only found in Section 15(5) which is under the fundamental objectives of a state and is made non-justiciable by Section 6(6)(c). Corruption was ths seen as a residual matter within the domain of the state house of assembly. The AG federation argued that Section 4(2) states that the federal government should treat exclusive maters and item 60(a) of the exclusive list vests National Assembly with the power to make laws promoting the observance of matters in Chapter 2 under which Section 15(5) falls under. The National Assembly was thus held to have validly enacted the ICPC Act.

Doctrine of covering the field

This is supported by **Section 4(5)** which states that any law made by the House of Assembly which is inconsistent with any one validly made by the National Assembly, the law made by the National Assembly will prevail and the other law shall to the extent of its inconsistency be void. This doctrine is invoked when there is an inconsistency. It refers to the Concurrent List since the House of Assembly cannot

normally legislate on matters included in the Exclusive Legislative List. In **AG Ogun v. AG Federation**, it was held that if the National Assembly evinces an intention to cover the whole field, that is, override everything, the state law will be inconsistent and therefore invalid. The Supreme Court gives pre-eminence to the National Assembly on concurrent matters resolving conflicts in favour of laws made by the National Assembly over those made by the House of Assembly holding the latter to be in abeyance.

In **Ogun State v. Agberuagba**, it was held that both the federal and state government can legislate on sales tax but only the federal government can legislate on inter state trade and commerce and the state government can only legislate on residual and intra state trade and commerce. In Nigerian Soft Drinks Company v. AG Lagos, the VAT decree covering the whole field including intra state trade and commerce encroached on the residual powers of the State Government.

In Berry v. City of Fortworth, inconsistent was stated to mean contradictory such that the two cannot stand. Therefore if the state government makes similar legislation with the National Assembly, it wont be seen as inconsistent though it would remain inoperative and invalid. When the state law is not inconsistent, Kayode Eso JSC holds the view that the state law will be in abeyance and if the federal law is repealed, the state law will become operative. Fatayi Williams CJN felt that the state laws should be invalidated because the federal law has legislated to cover the whole field. The doctrine of pre-emption supports the view that there can be a state law when there is no federal law on a particular matter, but will become inoperative as soon as the federal government eventually legislates on it.

It is important for the centre and region to co-operate and this is seen where states legislate on exclusive issues where there is no federal law but a later federal law will annul the state law and put it in abeyance in other matters.

Section 4(6) vests legislative powers of the state in the House of Assembly.

Section 4(7) states that the House of Assembly can make laws relating to concurrent matters not exclusive ones.

Executive Powers

Section 5(1) vests executive powers of the Federation in the President who can exercise it directly or through Vice President, Ministers or other officers.

Section 5(2) vests executive powers of the State in the Governor who can exercise it directly or through his Deputy Governor or Commissioners.

Section 5(3) states that the executive powers of the state shall not be exercised in a way that does not

- impede or prejudice the exercise of the executive powers of the Federation;
- endanger any asset or investment of the Government of the Federation in that State; or
- endanger the continuance of a Federal Government in Nigeria. This refers to a secessionist tendency, for example, the declaration of the Ogoni people during Abacha's regime is contrary to this provision.

Section 305 says the President can declare state of emergency in any part of the Federation and the Governor can also request for such. If the Governor fails to do so, the President will issue it in the respective state.

The establishment of some federal executive bodies under **Section 153** is a flaw of the concept of federalism since the Revenue Mobilisation Allocation and Fiscal Commission determines the salaries of federal and state officials. The president and Governor can execute and maintain constitution and if the President perceives there is an infraction of constitutional provision which could result in breakdown of law and order in that state, he can enforce executive authority over and above that of the Governor.

Judicial Powers

Section 6 vests judicial powers between federation and states through certain superior courts of record established for both levels of government. Other courts can be established by National Assembly or House of Assembly although with subordinate jurisdiction to the superior courts of record. The federal judicial body, National Judicial Council, recommends members of courts to the President or Governor. The Federal Judicial Service Commission submits list of judicial officers to the National Judicial Council which then recommends to the President subject to confirmation of the Senate while the State Judicial Service Commission submits list to NJC who then recommends to the Governor subject to confirmation by the House of Assembly.

Independence & Autonomy

Each component unit must be able to operate without interference from or control by any other unit. The relationship between the centre and states or among various states mustn't be one of superiority or inferiority. This doesn't discourage co-operation but despite this co-operation, there's often express or implied prohibition of interference so as to preserve independence and autonomy. The units must be

equal, independent and of co-ordinate status. They should have as much power as the central government and vice versa. But though strictly independent, co-operation must be involved.

There is no express prohibition of interference in the 1999 constitution but it can be implied. In **FRN v. Anache**, it was held that mutual non interference is not universally applicable in federal constitutions and concept of autonomy will in appropriate cases bow to the overall sovereignty of the federal government. However **section 5(3)** expressly prohibits the Governor from impeding the President in exercise of his executive powers.

A major way in which independence and autonomy can be assured in a federation is through balanced division of power and resources by virtue f power sharing formula. Under the 1999 constitution, power is lopsided in favour of the central government being able to legislate on 94 items in the two legislative lists.

Creation of certain bodies encroaches upon the concept of independence e.g. The Revenue Mobilisation Allocation and Fiscal Commission made up of the Chairman who is appointed by the President subject to confirmation by the Senate and one member from each state and the FCT. Only the president can remove them. RMAFC advises federal and state government on revenue and determines remuneration of federal and state public office holders. The body is federal but contradicts the principle of federalism and reduces the degree of independence of states by making them subject to decision or advice of a federal body despite the fact that each state is represented on the body.

Another index for measuring degree of Independence and autonomy is method of Revenue allocation. **Section 162** provides for a federation accounts into which all revenues collected by the federal government must be paid but which excludes personal income tax of the Armed Forces and police members, public officials in the ministry of external Affairs and residents of the federal capital territory. The revenue mobilisation allocation fiscal Commission advises the president on Revenue allocation from the accounts which in determining the formula must consider population, equality of states, Internal Revenue generation, land mass, terrain, population density and so on. All revenue accruing to the federal government is to be paid into the Federation account.

Equality of size and power

State government should be equal in terms of size and allocation of power. No state must be so big as to make others easily susceptible to its control and influence. Relationship between states and centre must not be based on any preference. Once in 1967, then Northern region was larger than the others put together taking 75% of land area and 60% of population. The northern region government was able to

dominate the central government and dictate its actions. States are now 36 and despite this, as long as the federal government continues to control not less than 95% of revenue of states, they cannot be truly independent and autonomous.

Supreme Constitution

A federal system is like an agreement between at least two levels of government to come together under a single political system and exercise certain powers granted by the Constitution. This constitution allocates powers and jurisdiction of the levels and for this purpose, the Constitution is seen as the supreme law and basic norm of the Federation. Such a constitution should be written so that there are no doubts about the powers and functions of each level. It should also be rigid to preserve its supremacy. Main purpose of this requirement is to ensure Independence and autonomy of various tiers of government. Despite all these, it is possible for a federal system to exist under a non supreme constitution if the levels of government pledge to respect rights and powers of the other. Though a supreme constitution is still preferable.

Independent Judiciary

An independent Judiciary is needed to pronounce on the extent and scope of the rights of various tiers, in cases of conflict. The extent of Independent judiciary is determined by issues like appointment, removal, remuneration and so on. Only the Supreme Court has jurisdiction to try cases between the states or between the Federation and the states. The Nigerian Federation cannot be properly called since there is an absence of voluntary submission and most especially the power-sharing arrangement which has seriously affected the independence and autonomy of various units.

National Resources and the Principle of Derivation

Section 162(2) was the controversy in **AG Federation v. AG Abia**. The president upon advice from the revenue mobilisation allocation fiscal Commission shall table before the National Assembly proposals for Revenue allocation from the Federation accounts. The principle of derivation says that 13% of total sum or revenue realized from the exploration of natural Resources in the state will go back to such state. The federal government should take deductions for certain purposes from its own share of the fund. Any sharing formula must include allocation of at least 13% of Revenue on basis of derivation. For example, revenue from oil extracted in Rivers State brings about 50 billion naira into the Federation account, then, not less than 13% of such revenue must be allocated to that states.

The problem of how to determine the natural resources that would constitute the basis of division based on derivation especially with respect to mining of petroleum products in littoral states was treated in **AG Federation v. AG Abia**. It was argued that

in the case of littoral states in relation to Mineral Resources, the sea ward boundary of each state, which would entitle its Revenue based on the derivation, should be the low water mark of land surface. Natural resources located within the territorial waters of Nigeria are deemed to be derived from the Federation not the State. The states argued that natural resources located off shore ought to be treated as derivable from their respective States. And that there should not be a division between offshore and on shore revenue as its seaward boundary extends beyond its coastline and the natural resources derived from this should accrue to them. The sea ward boundary of Nigeria as well as international boundaries of Nigeria are subjects of international law in the event of disputes between Nigeria and any of its neighbouring countries or between Nigeria and any other nation states through territorial waters or high seas. Nigerian courts, including the Supreme Courts may not have jurisdiction over such disputes but international tribunals like international court of justice.

On shore belongs to the state government, within 200m belongs to the state government. Beyond 200m belongs to the federal government.