THE JUDICIARY IN SEPARATION OF POWERS

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THE JUDICIARY

The judicial powers of the federation shall be vested in the courts which are established by the constitution;S.6(1) CFRN. These include the power to adjudicate between individuals and between persons and the government s. 6(6). It also extends to interpretation of the constitution (ibid: s. 231(1)). In all, the decision of the court, especially the Supreme Court is final and binding on all authorities and persons in the federation except in electoral matters where the decisions of the court of Appeal are final and binding on all (Nigerian Constitution, 1999: ss. 235, 287)

Judicial control refers to the means by which the judiciary interfere in the activities of the other arms. It could also be referred to as judicial review. Judicial review is the power of the judiciary to screen the activities of the other arms of government in order to determine its constitutionality. This is due to the fact that according to S.14(2)(a), government gets its power through the constitution. Also, the judiciary as an implication of the joint provisions of S.6 & S.1 has to protect the constitution. This, the judiciary did in AG Lagos vs AG federation where the court declared that the president has no constitutional power to withhold statutory allocation of a state.

Also, in the case of Inakoju vs Adeleke, the judiciary checked the activities of the legislature. In that case, a splinter group of the Oyo state house of assembly purportedly impeached the governor. However, the provisions of S.188 of the constitution were not adequately followed. Thus, the judiciary declared this act of the legislature null and void.

It is argued in some quarters that judicial review is part and parcel of presidential system. However it can be seen as in the case of Nigeriaâ€™s first republic that there was judicial review. The correct position is that in most written and supreme constitutions there is usually judicial review. The exception to this is the case of the fifth French republic and Canada. Examples of cases where judicial review was utilised in Nigeriaâ€™s first republic are: Doherty vs Balewa, Chike Obi vs DPP, Adegbenro vs Akintola.

History Of Judicial Review

The word â€˜judicial reviewâ€™ was a coinage of Edward Samuel Corwin in 1910. Then there was judicial review but it didnâ€™t go by the name it is now called. The earliest case of judicial review is that of Dr Thomas Bonham vs College of Physicians delivered by Sir Edward Coke in 1610. In the case the college had already incarcerated the plaintiff because they alleged that he practised medicine in London without a licence. The plaintiff then sued for false imprisonment.

The college relied on its statute of incorporation which gave it the power to administer medical practitioners in London. It also had the power to incarcerate offenders and receive half of the money from the fine imposed on each offender.

Justice Coke said that the defendant could not be plaintiff, prosecutor and judge in its own cause. This was in contradiction to the natural law principle Nemo Judex in Causa sua. Thus justice coke declared that if a statute is in conflict with common right, reason and the common law it would be declared void.

The pronouncements of justice Coke did not go down well with the English society and the king. Thus, Sir Coke was removed from the court of common pleas and he was made the chief justice of the kings bench. However, sir cokes replacement, sir henry hobart still continued in the principle of Bonhamâ€™s case. He declared in the case of Day vs Savadge that any statute that contradicts the principles of equity will be declared void in itself.

It should be noted that in the long run the principle of judicial precedent did not survive in Britain. What obtains now is the principle of parliamentary sovereignty. William Blackstone described parliaments powers to make law as â€œabsolute, despotic and without controlâ€.

Although the decision in Bonhamâ€™s case received little or no recognition in Britain, in America, the principle of judicial precedent has found solid footing. It is said that the case of Marbury vs Madison establishes judicial review in America. Although there might be some truth in is, it is technically incorrect. This is due to the fact that there have been cases of judicial review before Marbury vs Madison.

One of such cases is that of Bayard vs Singleton (N.C (mart) 5 ,48 1787) where the court declared a statute passed by the north Carolina legislature void. This is due to the fact that the statute provided that loyalists to the British or those who acquired title from them could not challenge the seizure of their property in court. The statute provided that the court should dismiss any such action brought before it. The court held that the provision of the law was contrary to Article 1 S.25 of the North Carolina constitution which provided that in any property dispute every citizen had an inviolable right to trial by jury. Other cases before Marbury vs Madison include: Tredell vs Weeden, Holmes vs Watson etc.

However, the reason for these cases not being popular was because they were decisions of lower courts. The decision of Marbury vs Madison was given by the US supreme court hence that is why it is so popular. It is also the most authoritative. It is in this case that chief justice Marshall declared that an act of the legislature that is repugnant to the constitution will be void.