

# **SEPARATION OF POWERS**

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## **SEPARATION OF POWERS**

The doctrine opines that the three main department of government, not only be separated into three distinct functional departments, but must also be each managed by different and distinct personnel

It would be erroneous to say that separation of powers is a contemporary phenomenon. It can be argued that evidence of separation can be found in manuscripts as old as the Bible and the Quran. In the Bible, Moses is reputed to have been advised by his father in law to share the powers of administration in the Israelite camp among other individuals in order to reduce his stress. During the time of the prophet (SAW), there were judges that adjudicated the law of the Quran. These judges were distinct people from the rulers.

John Locke propounded the principle of separation of powers in the then British empire. He argued that the concentration of powers in a single authority could lead to autocracy. It should however be noted that separation of powers cannot be absolute in a political society.

## **SEPARATION OF POWERS IN NIGERIA**

During the period of the first republic, there was partial separation of powers; the executive and legislature were fused while the judiciary was independent. This is portrayed in cases where the actions of the executive/legislature were reviewed by the judiciary. For example we have the courts decision in Williams vs Majekodunmi where the court held that the action of the executive in restricting the movement of the plaintiff was void.

When the military came into power in 1966, law making and executive powers were fused in the supreme military council while the judiciary was distinct from the other arms of government. It can also be said in this case that there was also partial separation of powers.

With the advent of the presidential system of government in 1979, a new era of separation of powers was ushered in. In this constitution, unlike the previous ones, the separation of powers among the three organs was clear-cut. This was contained in S.4; 5 and 6 of the constitution which is identical to the present 1999 constitution. S.147(4) of the 1999 constitution implies that a person cannot be a member of both the executive and legislature at the same time.

It is worthy of note that as previously said, separation of powers is not absolute in the Nigerian situation. There are built in mechanisms to curb the excesses of a particular arm of government. For example, the executive is involved in the appointment and removal of judges as contained in SS.292 & 231. Also pursuant to S.58(3) CFRN 1999, before a bill can be passed into law, it has to be assented to by the president.

The legislature on the other hand pursuant to S.147 CFRN 1999 performs executive functions by confirming appointees of ministerial positions. It is also the custodian of the revenue of the federation according to S.80 and S.81 CFRN 1999. The judiciary, through the power of judicial review checks the activities of the other arms of government.