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Zebras and Colours: Redefining the Alteration of the Constitution of the Federal Republic of Nigeria 1999: Prospect and Challenges

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Abstract

This paper indulged in empirical observation of the process of amending the salient provisions of the Constitution of the Federal Republic of Nigeria, 1999. Towards this end, it appealed to the clarity of purpose to identify the working tools for appropriate alteration accurately. The process of modification of the Nigerian constitution is akin to a discourse on zebras and colours. Zebras are known for their stupefying arrays of colours. These colours are not human-made, but a product of nature as well as creation. Notwithstanding the peculiar nature of Zebras, it remains a product of colour. In this case, colour is the genius while zebra species. Analytically, the Constitution of the Federal Republic of Nigeria remains an object of controversy, while the peculiar process of alteration of the Constitution is the species. Therefore, the paper submits that Sovereign Constitutional Conference is recommended on account of its potency in affording individuals and groups extensive participation as against resort to parliamentary alteration of the constitution.

Keywords: Democratization, Good Governance, the rule of law and Powers

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Introduction

We have taken the liberty to indulge in empirical observation of the process of amending the salient provisions of the Constitution of the Federal Republic of Nigeria, 1999. Towards this end, we intend to appeal to the clarity of purpose to identify our working tools accurately.

The process of alteration of the Nigerian constitution is akin to a discourse on zebras and colours. Zebras are known for their stupefying arrays of colour. These colours are not human-made, but a product of nature as well as creation. Notwithstanding the peculiar nature of Zebras, it remains a product of colour. In this case, colour is the genius while zebra species. Analytically, the Constitution of the Federal Republic of Nigeria remains the object of discussion, while the unusual process of alteration of the Constitution is the species.

Every constitution stipulates inbuilt mechanism for amending or altering its provisions. As a general rule, any alteration outside the contemplation of the said constitution is usually rendered null and void, and consequently illegal.

Against this backdrop, the question remains whether the 1999 Constitution of the Federal Republic of Nigeria, is bereft of procedure spelling out the process of alteration? Furthermore, the plural nature of the Nigerian society should inform that; there is an apparent need to consult the opinion of the over 300 ethnic nationalities as to the issues to be altered in the constitution. What danger(s), if any, of the resort to parliamentary alteration of the constitution? What is legally safer in the process of revision of the constitution? For the time being, we submit that legislative alteration of the constitution is very likely to constitute an ill-wind that blows no one good in this enterprise called 'Nigeria.' The Sovereign Constitutional Conference is recommended on account of its potency in affording individuals and groups broad participation.

Law and Constitution

There are always subsisting laws in every human society which tend to make up a given legal system.No matter how crude these laws may be, they are usually intended to regulate human interaction in the given society. Law is generally and continually perceived as 'sets of normative rules' governing human interaction in the society. Laws may be teleological or commonly evolved from the mores, ethos, and customs of a given collectivity. When a law is teleological, it serves a purpose. Laws do not operate in a vacuum. There must be a societal challenge provoking the enactment of the given law. Furthermore, some laws are homegrown, a mere elevation or transmutation from the customary regime to effective laws. Such laws when operational negate any hitherto intrinsic content masquerading in the form of moral, religious or customary values. Significantly, it commands the force of effective law, separate and separable from any values-otherwise referred to as being value-free. On the other hand, a constitution is a law, albeit the supreme law of the land. The quality of its supremacy is ordinarily referred to as the *'Grundnorm.'* To this end, any other law that is inconsistent with the provisions of the constitution becomes invalid to the extent of its inconsistency. The constitution as the supreme law has implicated notions of giving validity to other laws of the land as well as being the standard for reference in any subsisting or related issue.

Significantly, constitutions are made by mortals, and consequently, suffer the imperfections associated with mortal beings. When any provision in the constitution is perceived to be incapable of accommodating the exigency inherent in the legal system, such regulation is usually subjected to alteration to meet with that need as well as any other emerging or noticeable heuristic factors in the society.

There is a pervading viewpoint both in the Nigerian legal community and socio-political sphere that issue of alteration of the constitution is exclusively reserved for the legislature. Against this backdrop is the other viewpoint that once the legislature is bereft of power to make a constitution in the main, they are also incapable of altering the provision(s) of the constitution.

Redefining the Alteration of the Constitution of the Federal Republic of Nigeria

Constitutions are products of humans and invariably subject to mortal imperfections. This notion of imperfection equally affects the Nigerian constitution. Against this backdrop, the question may be posed - should the Nigerian constitution continue in this regime of the flaw and unattained height of constitutional immaturity? If not, are we not vested with the legal power to alter the hazy, vexing and inadequate provisions of our constitution, to reflect our ideals as a nation and people?

What then is the safest process of alteration of this constitution? The constitution in question provides for parliamentary modification.

In reality, however, it appears the heterogeneous nature of the country cannot conveniently accommodate parliamentary alteration of the constitution. There are challenging practical reasons for this option.

Constitutional revision or amendment presupposes a change to the constitution of a nation or a state. The process of adjustment is reflexive of the type of constitution a country has; whether or not its constitution is'rigid' or 'entrenched.' If the answer is in the affirmative, then the alteration demands a special procedure quite different from what is obtainable in the process of altering ordinary 'laws.'

Amendment in some other cases may only be possible with the direct consent of the electorate, consent obtained through the process of conducting a referendum on the method of alteration of their given constitution. In such a situation, the decision to submit an amendment to the electorate may be reserved for the legislature or a product of a citizen's initiative. It is fashionable in countries like Republic of Ireland, Denmark, Japan and Australia. These countries seek in the process of altering their constitution first to have it submitted to the electorates for a referendum, before a proposal by parliament.

A. Alteration Through Parliamentary Process

The constitution of Nigeria envisages modification of its provisions vides parliamentarian process. To further create a myth around the same constitution, section 9 dealing with alteration is made to be reflexive of artificial gravity or relevance of matters sought to be altered. In fact, S. 9 (1) states: The National Assembly may, subject to the provisions of this section, modify any of the provisions of this Constitution.

The process of alteration is subject to a manner akin to colours. Colours are colours and 'descriptive perspective.' The description of a colour is derived from the spectrum. That is what the constitution of Nigeria is. There are many and varied ways of alteration, however subject to the nature of the item or matter sought to be altered.

For instance, section 9 (2) envisages items/matters outside section 8 (dealing on new states and boundary adjustment) votes of not less than two-thirds majority of the National Assembly and approval by a resolution of the state Houses of Assembly of not less than two thirds. This very S. 9 (2) reads:

> An Act of the National Assembly for the alteration of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two thirds of all the States.

However, an Act of the National Assembly to alter the provisions of this section 8 or items appertaining to Ss. 33-46 (i.e., Chapter IV-Fundamental Rights) requires:

I) Votes of not less than the four-fifths majority of members of each house, and

II) Approval by resolution of the State Houses of Assembly of not less than two-thirds of all the states (This is another color factor).

Flowing from the above, it is evident that there is a subsisting observed difference in the regime of section 9. On the one hand, it stipulates a majority of not less than two-thirds of each House of the National Assembly jointly with the state Houses of Assembly. On the other hand and subject to the item/matter involved, requires a majority of four-fifths of each of the Houses of the National Assembly and a resolution by the state Houses of Assembly of not less than two-thirds of all the states to amend the constitution. Furthermore, in the matter of creation of new states, the number of members of each House of the National Assembly shall be deemed to be the number specified in sections 48 and 49 of the constitution.

A combined reading of sections 48 and 49 states:

> The Senate shall consist of three Senators from each State and one from the Federal Capital Territory, Abuja.
> Subject to the provisions of this Constitution, the House of Representatives shall consist of three hundred and sixty members representing constituencies of nearly equal population as far as possible, provided that no constituency shall fall within more than one State.

The powers of the National Assembly and State Houses of Assembly are enormous in the process of alteration of the constitution. What remains pending is whether the Legislature can exercise their power without the assent of the President. Length constraints will permit a detail examination of this 'assent controversy.' However, suffice it to add that there are evolving viewpoints towards this end.

The first insist on the validity of an Act once the process stipulated for its coming into force is fulfilled.

The second approach emphasizes a Presidential assent. There are a couple of lawyers and jurists and even professional bodies in favour of this approach. The National Association of Law Teachers has argued that such a step requiring the assent of the President, before validation, is unavoidable. They reasoned that a presidential assent to amended provision(s) of the constitution guarantees a free and fair exercise for the forthcoming 2011 general elections.

B. Alteration Through Sovereign Constitutional Conference

The "Nigerian State" as an entity is first and foremost a colonial conjecture. Consequent on this, the conjecture popularly called "Nigeria" is yet to harmonize the broad interests and claims of ethnicity or specific collectivity inhabiting the length and breadth of the country-Nigeria.

There is this insistence that the sovereignty of the Nigerian state is a mere concept, attracting not more than a "fiction" or "myth" of colonialists who coined the acronym "Nigeria." Accordingly, such argument as "power of the state" is a fiction, since power resides in the individuals who make up the collectivity called Nigeria.

At inception, there were entities or enclaves which did not want to be part of Nigeria. For instance, minority groups in the Niger Delta, especially the Ijaws, were afraid and voiced their concerns. They did not trust post-colonial Nigeria to take care of their needs and interests.

Some of their fears and grievances were documented in the Willink Commission Report of 1958. These misgivings associated with post-colonial Nigeria were equally felt by the Middle Belt, the Igbos, and the Yorubas. To the North, it was a heritage of Uthman Dan Fodio.

This was the situation before the introduction of constitutional democracy in Nigeria. The Military officers of northern origin foisted the present day constitution on Nigerians. The process of alteration of the constitution has been examined above but remains a shortfall expectation of Nigerians. An alternative has been mooted. It is the sovereign constitutional conference. This envisages the gathering of a national referendum in many and different parts of the federation to deliberate on items or matters deserving of alteration in the constitution of Nigeria.

Without gainsaying the fact, the advantages are many and varied. In the main, they include the benefit of broader participation by all. This process will afford citizens of different ethnic groups, states, and political zones, the opportunity to air their views on all matters of importance incidental to the provisions of the constitution sought to be altered, and after that facilitate the process of collection and collation of emerging viewpoints and or contributions, for final and eventual deliberation.

The significance of this approach is aimed at encouraging extensive coverage and participation by the citizens of this enterprise Nigeria. Given the above, there is need to consider the element of mass involvement through the instrumentality of party politics, and then an examination of alteration of the constitution through the sovereign constitutional conference.

The concept of democracy presupposes in the first instance, widespread participation or limited participation, by the citizenry in the formation and running of the affairs of government in their locality, community, state or in the wider context, country. This process encompasses the formation of a political party, grooming of the party, registration of the party and eventually, the talent-spotting of candidates for elective offices, and nonetheless, the management of the affairs of the party.

On the other hand, democratisation is not necessarily about democracy as a form of government, but it is about developing a political culture or specific behavioural norms that protect individual

and group rights in the political process. In other words, democracy is seen as focused on the society through the instrumentality of voting system, while democratisation is inclined towards individual and group rights, in any given political system.

The evolution of the concept of good governance is a non-government organisational effort coupled with civil society and political activism responses to the failure of bureaucracies to create enabling environments in developing countries. It seeks to achieve development objectives cost-effectively and accountably. It is imperative to add that such development objective is potentially circumscribed in ensuring that a sustainable democratic culture is impacted on both the citizen and the government. Development objectives cannot create rights, but it strives to reawaken inherent rights of citizens in the society.

Conclusion

Cogent alteration of items in a constitution through sovereign constitutional conference is suitable to a multicultural and secular entity-Nigeria. There are prospects for amendment of the Nigerian constitution through 'sovereign constitutional conference.' However, there are distinct challenges.

The inbuilt mechanism for the alteration of the constitution is parliamentary oriented. Impliedly, it will be considered an insult against the Nigerian parliament to share, waive, limit or modify their constitutional powers as contained in sections 4, 9 and 53. Our democratic appeal seems not yet matured to the extent of our parliament accommodating such a controversial national issue albeit to their detriment. Heaven will fall. What happens to the payment of their sitting allowances? Should it be their turn to appropriate their national cake?

Significantly, a sovereign constitutional conference geared towards alteration of the constitution is ideal on the following grounds:

I. It will operate to accommodate the near possibility in the future of a disintegrated country. This may likely occur as a result of the divisive and prolonged struggle for power.
II. It will conveniently swallow the increasing murmurs by secessionist groups.
III. It has the potential to enhance speedy developmental progress

in the socio-economic and politico-legal spheres.

IV. It is capable of creating a national turn around psychology that will propel this nation to greatness. Thus the wasted period of stagnation and fear associated with the so-called 'learning process in nation building' will be eased.

A sovereign constitutional conference holds the key to Nigeria's continued unity and future progress.

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