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Doctrine of Separation of Powers under the Nigerian Constitution



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CHAPTER ONE

ABSTRACT

Separation of powers or classification of government powers is the division of government powers into the three branches of Legislative, Executive and Judiciary learning of each to be exercised by a separate and independent arm of the government as a preventive measure against abuse of power, which will occur if the three powers are limited in the same person or group of people.¹ It is a constitutional doctrine or means of exercising checks and balances in the government structure to protect the people against tyranny. Under this constitutional doctrine, one branch of government should not encroach on the domain of another branch of government.²

The phrase is also a basic political/philosophic doctrine that states that when the legislative and executive functions and powers are in the hands of the same person or agency, tyranny exists. Liberty of the people in a constitutional system is ensured when 'power is separated and fragmented.'³

BACKGROUND TO THE STUDY

The constitutional growth of Nigeria makes interesting reading. After the amalgamation of the

¹ Eze Malemi Administrative Law: Cases and Materials (2004) 1st Edition Grace Publishers Inc. Lagos Pg. 32.

² Eze Malemi Ibid pg. 32

³ N.A.O. Ijaiya The Role of the Executive in the Presidential System of Government. (1984) Long Essay LL.R Bayero University, Kano.

CHAPTER TWO

GENERAL INTRODUCTION

The phrase "Concept of separation of powers" is one of the most confusing in the vocabularies of political and constitutional thoughts. It has been used with varying implications by historians and political scientists. The concept of separation of powers between different bodies becomes necessary so that no power centre can act without the cooperation of the others, and without each checking the other to ensure checks and balances in the system.²⁵

The rule of law and the roles of the Executive, the Legislature and the Judiciary in a democracy have been referred to as checks and balances by Professor Ben Nwabueze, writing in 1981 posited that presidential tyranny had acquired a frightful reality which had earned for the system a rather pejorative appellation. African Presidentialism, he further defined checks and balances as: a concept in the relationship between the executive and the legislature whereby the political organs with a view to the balancing of powers are able to check one another in the exercise of their respective functions.²⁶

Since the time of the definition given by Professor Ben Nwabueze until only recently, the

²⁵ John Alder - Constitutional and Administrative Law (1994). Macmillan Professional Masters 2nd Edition pg. 54.

²⁶ Eso K. JSC (rtd). "The rules of law: The roles of the Executive, the legislature and the Judiciary in a Democracy, the New Millennium Jurist" Journal of the Law Society, Unilorin (2000) 5 Edition pg. 8

CHAPTER THREE

LEGISLATURE AND EXECUTIVE

The legislatures as an arm of government in tripartite classification of powers has come to be accepted as a constitutional imperative.

The cardinal principle of the doctrine of separation of powers is that each department of the government should be so constituted that it holds one office and exercises the duties attached to that office. Practically, it is found that each department has a partial control over the other department. Thus, belonging to or exercising functions of two organs, especially legislative and executive, at the same time, is a violation of the principle of separation of powers. It is realized that though the relation between executive and legislature is necessarily more intimate and continuous, both powers ought not to be concentrated in one person as it was the case in Nigeria under Military Rule.⁷⁵ The Constitution⁷⁶ provides "that no member of the National Assembly or of a House of Assembly can be appointed as Minister of the Government of the Federation. Where he is so appointed, he shall be deemed to have resigned his membership from the National Assembly or from a House of Assembly on his taking the oath of office as a Minister". No one can belong to more than one of the organs of government at the same time.

⁷⁵ Asari Young: *ibid* page 20

⁷⁶ S. 147 (4) 1999 Constitution