



CONSTITUTIONAL SUPREMACY: MYTH OR REALITY

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ABSTRACT

The supremacy of the constitution was a concept that resonates with the democratic norms and legal drives of nations across the globe, particularly amongst the contemporary and civilized societies, where the constitution is regarded as a grundnorm, which is placed over and above other norms, individuals and institutions for the realization of its validity and potency, with the courts empowered to interpret its provisions, to ensure that acts done in breach of the constitution are declared null, void and of no effect whatsoever. However, notwithstanding the enshrinements of the concept of constitutional supremacy of different countries world over, Nigeria Inclusive, there seems to be several conducts by both individuals and institutions that purport to contravene and indeed contravene the constitution, a scenario that has cast some doubts as to whether or not constitutional supremacy actually exists and given the fact that the judiciary has so far entertained plethora of cases concerning constitutional breaches and consequently arrived at landmark decisions, in order to protect the sacredness of the constitution. Also, with the wave of legislations in the stream as if the said courts' decisions do not have the toga of deterrence, which will aid the seamless practice of constitutional supremacy for the preservation and sustenance of rule of law, either in Nigeria or other jurisdictions, there are yet uncertainties begging for clarity, hence this research which examined the concept of constitutional supremacy and its practice in Nigeria, and selected jurisdictions of Russian Federation, Japan, and the United States of America. It was concluded that the constitutional supremacy is a reality and not a myth notwithstanding the numerous cases of breaches of the Nigerian Constitution of 1999, (as amended) which provides for the supremacy of the constitution. It was further concluded that constitutional supremacy placed institutions of government at equal measure, when they are interposed with the Constitution. The study recommended, inter alia, that institutions of government such as the legislature, executive, and judiciary should be placed over and above all persons and authorities, which underpins the very essence of section 1(1) and (3) of the constitution of Nigeria 1999 (as amended).

Keywords: *Constitutional Supremacy, Rule of Law, Constitution, Institutions and Jurisdictions.*

INTRODUCTION

Every nation of the world is directed by a generally acceptable norm that governs all its affairs. This is more pronounced and transparent in democratic nations of the world, as every institution operates within the prescient of law for good governance and accountability. In Nigeria, there existed constitutions from the independence era that were however, ceased to be the *grundnorm* as a result of military intervention through *coupde'tats* that ousted the then existing civil rules. But for the military coup, the various civil regimes that had existed in Nigeria, anchored their existence and potency on constitutional supremacy, a concept that



makes the constitution equal and or second to no other law or enabling enactment in Nigeria. All the constitutions of Nigeria¹, entrenched the provisions of constitutional supremacy.

For examples, the Constitution of the Federal Republic of Nigeria, 1999 envisages that, the three arms of government, to wit: the Legislature, Executive, and Judiciary to observe and perform their distinct roles as guaranteed in the constitution, for the overall benefits of the citizens and society, at large.

The concept of supremacy of the constitution is a vital organic organ that confers the highest authority in a legal system on the Constitution. It describes the constitution *vis-à-vis* its supremacy as the law that is at the top of the pyramid and it is the source of all other documents and legal regulations. The foundation of the supremacy of the constitution is traced to Section 1 of the Constitution, which provides that:

This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.²

If any other law is inconsistent with the provision of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void.³

Further, the Constitution provides in section 14(2)(a) that sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its power and authority. The Constitution being generally referred to as the fundamental and organic law of a nation or state that establishes the institutions or apparatus of government, defines the scope of governmental powers and guarantees individual's civil rights and liberties. In demonstrating the supremacy of the constitution and its binding nature, the court in the case of *A.G Lagos State v A.G Federation*⁴ declared the action of the President withholding the federal allocation to Lagos State to contrast with section 162(5) of the Constitution and therefore, unconstitutional, null and void.⁵

Also, in *Inakoju v Adeleke*,⁶ some members of Oyo State House of Assembly purportedly removed the Governor without strict adherence to the constitution,⁷ and the Supreme Court in the case declared their actions as unconstitutional, null and void. The legal implication of the foregoing is that the provisions of the

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¹ 1960 Independence Constitution, Republican Constitution of 1963, 1979 Nigerian Constitutions (all repealed), and the subsisting Constitution of the Federal Republic of Nigeria, 1999 (as amended).

² CFRN 1999 (n 1), s 1.

³ Ibid, s I (3).

⁴ (2004) 18 NWLR [Pt. 9041] 5.

⁵ CFRN 1999 (n 1), s 162 (5).

⁶ (2007) 4 NWLR [Pt. 1025] 423.

⁷ CFRN 1999 (n 1), s 188.



constitution are binding on all authorities and persons no matter how high and low. The constitution defines the roles, functions and objectives of each organ of government.

The supremacy of the constitution is the basic tenets of the democratic system of governance. The Constitution assumes that those who wield the powers of the state will be conscious of, and responsive to its obligations and responsibilities. Powers are bestowed upon the institutions and organs of government not for the personal aggrandizement of those who wield them from time to time but for the welfare and advancement of society. Hence, the concept of constitutional supremacy extols the virtue of 'Rule of Law' where every person is obliged to respect the existing laws of the land.

It is apt to note that lack of respect for the Constitution is the major factor militating against the constitutional supremacy in Nigeria. Therefore, in the course of this research work, several other factors constituting hitches to constitutional supremacy, particularly in Nigeria, shall be adequately examined, with the view to determining whether constitutional supremacy is truly a myth or reality.

CONCEPTUAL CLARIFICATIONS

This work will review a plethora of literature relating to constitutional supremacy for a better understanding.

Constitution

The vast majority of contemporary constitutions describe the basic principles of the state, structures and processes of government and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act. This higher norm is usually referred to as the constitution.⁸ Constitution applies to the system of law and government by which the affairs of a modern state are administered. It is the document that embodies the steps that determine how we do things in the society. Constitution entails whenever we speak with propriety and exactness, that assemblage of laws, institutions and customs, derived from certain fixed principles of reason; the community had agreed to be governed.⁹

The content and nature of a particular constitution as well as how it relates to the rest of the legal and political order varies among countries and there is no universal and uncontested definition of a constitution. Nevertheless, any broadly accepted working definition of a constitution would likely include the following characteristics; that a constitution is a set of fundamental legal political rules that are binding on everyone in the state, including ordinary law-making institutions; concern the structure and operation of the institution of government, political principles and the rights of citizens; based on widespread public

⁸ L.I Lorde, *Grundnorm in Nigeria. Presentation* <(http://www.studocu.com/row/document/Olabisi-Onabanjo-university/public-law/grundnorm-in-Nigeria-presentation/63075420)> accessed 21 May 2024.

⁹ B.O Nwabueze, *The Presidential Constitution of Nigeria*, (Lagos: Butterworths, 1981) 32.



legitimacy; harder to change than ordinary laws (example, a two-thirds majority vote or a referendum is needed).¹⁰

A constitution has the following functions; can declare and define the boundaries of the political community. These boundaries can be territorial. A constitution can declare and define the nature and authority of the political community. They often declare the State's fundamental principles and assumptions, as well as where its sovereignty lies. For example, the French Constitution declares that France is an indivisible secular, democratic and social Republic and that national sovereignty belongs to the people who exercise it through their representatives and by means of referendum.¹¹ The Constitution of Ghana¹² provides that the sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in this Constitution. Section 14 of the 1999 Constitution of Nigeria,¹³ provides that sovereignty belongs to the people of Nigeria, from whom the government through this Constitution derives its powers and authorities.

Constitutions can express the identity and values of a national community. As a nation-building instrument, constitution may define the national flag, anthem and other symbols and may make proclamation about the values, history and identity of the nation. Constitution can declare and define the rights and duties of citizens. Most Constitutions include a declaration of fundamental rights applicable to citizens. At a minimum, this will include basic civil liberties that are necessary for an open and democratic society, For example, the freedom of thought, freedom of speech, freedom of association, freedom of assembly and freedom from arbitrary arrest or unlawful punishment. Many Constitutions go beyond this minimum to include social, economic and cultural rights or the specific collective rights of minority communities

Constitution can establish and regulate the political institutions of the community defining the various instructions of government, prescribing their compositions, powers and functions; and regulating the relations between them. It is almost universal for constitutions to establish legislature, executive and judicial branches of Government. Constitution can diverse or share powers to different layers of government or sub-state communities. Many constitutions establish federal quasi-federal or sub-state communities. Constitution can commit states to a particular economic or development goals. This may take the form of judicially enforceable and politically binding on the governance and the governed.¹⁴

¹⁰ 'Idea, What is a Constitutional Principles and Concept' <<https://www.constitutionnet.org/default.file> > accessed 21 May 2024

¹¹ Constitution of the 5th French Republic.

¹² Constitution of Ghana 1992.

¹³ CFRN 1999 (n 1), s 14(2)(a).

¹⁴ CFRN 1999 (n 1), s 15.



Supremacy

The Blacks' Law Dictionary defines the word 'supremacy' as the position of having the superior or greatest power or authority.¹⁵ The supremacy clause of the Constitution of Federal Republic of Nigeria states thus:

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.¹⁶

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, except in accordance with the provisions of this constitution.¹⁷

If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void.¹⁸

This dictionary definition above accords with the Constitutional provision of Section I(1)(2)(3) which is clothed with the key operative words such as 'superior' or 'greatest power' or 'authority.' These words imply that all persons, bodies, institutions, authorities are amenable to the constitution, and must not do or perform any act that is contrary to the dictates of the constitution, otherwise, such act shall be rendered null, void and of no effect whatsoever.

More so, the court in *MusavInec*,¹⁹ held that all powers of the executive, legislature, and judiciary must ultimately be traced to the Constitution. It further averred that the Independent National Electoral Commission (INEC) must comply with the provisions of section 222 of the Constitution in registering a political party. Thereto, any other provision added either by INEC or the legislature without Constitutional relevancy, is a nullity, *ab initio*.²⁰ In *Ukpe v Nkem*,²¹ the apex court *opined* that the Constitution of Nigeria is the *grundnorm*, that is, the highest law that other laws must obtain their existence and validity. It further held that, it is, in fact, the '*fons juris*' from which, all other laws flow or derive their validity. The court, in its most decision, in *A.G Lagos State v A.G Federation*,²² on upholding the supremacy of the constitution held that the National Lottery Act should no longer apply in all States except the Federal Capital Territory as it is not one of the 68 items, listed on the Exclusive Legislative List of the Constitution, to which, the National Assembly has exclusive powers to legislate on.

Rule of Law

¹⁵ B. A. Garner (ed), *Black's Law Dictionary* (8th edn, Thompson West, 2004) 8.

¹⁶ CFRN 1999 (n 1), s 1(1); *Amaechi v Inec*, (2007) 9 NWLR (Pt.1040) SC.

¹⁷ *Ibid*, s I (2).

¹⁸ *Ibid*, s 1(3).

¹⁹ (2003) Capital AHRLEL 192 (NGSC)

²⁰ *Amaechi v Inec* (2008), CLR 1 (F) (SC) The Supreme Court held that the Constitution of Nigeria is the *grundnorm*, that is, the highest law that other laws must obtain their validity from.

²¹ (2003) AHRRL 208 NGCA 2000.

²² Suit marked SC/1/2008.



It was the English legal theorist, A. V Dicey, who gave the idea of rule of law its most concentrated and definite attention and exposition. Writing in his book, *‘Law of the Constitution’*,²³ Dicey propounded that Rule of Law has three major facts, viz: supremacy of the law; equality before the law and an independent judiciary that enunciates the general principles of rights and obligations of citizens. It is important to note that Dicey wrote against the backdrop of his English Legal system with which he was familiar with. On supremacy of the law, Dicey wrote that it means absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness of prerogative, or even of wide discretionary authority on the part of government.²⁴

On the second aspect of the Rule of Law, that is equality before the law, he stated that rule of law entails equality before the law or the equal subjection of all classes of people to the ordinary law of the land administered by the ordinary law courts. The rule of law in this sense excluded the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals.²⁵

On the third aspect, Dicey was of the view that the concept of rule of law may be used as a formula for expressing the fact that within the law of the Constitution, the rules which in foreign countries naturally form part of Constitutional Code, are not the source but consequences of individual rights as defined and enforced by the courts.²⁶ Note that the 1999 Constitution is founded on the doctrine of Rule of Law. For example, in the Preamble,²⁷ it is stated that the people have solemnly resolved among other things, to provide for a constitution for the purpose of promoting the good government and welfare of all persons in Nigeria on the principles of freedom, equality and Justice.

This exposition is in accord with the pronouncement of Justice Ignatius Chukwudi Pats-Acholonu J.S.C in the case of *Abaribe v Speaker, Abia State House of Assembly*,²⁸ on the impeachment of the Deputy Governor of Abia State, Enyinaya Abaribe wherein, he reechoed his self-restraint posture of the court as it relates rule of law. He affirmed that since impeachment is a political matter, the court should not venture to brazenly enter into miasma of the political cauldron and have itself bloodied and thereby losing its respect. The court, in *Abubakar Danladiv Nasiru Audu Dangiri & Ors.*,²⁹ frowned bitterly at the gross disrespect to the rule of law and the hallowed doctrine of constitutionalism. In this case, the court set aside the holding of the panel against the appellant for not granting timely sought adjournment, by the appellant.

Constitutionality

²³ AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, London: Macmillan Education Ltd, 1959) 3.

²⁴ *Ibid.*, 4.

²⁵ *Ibid.*

²⁶ Dicey (n 23), 7.

²⁷ CFRN 1999 (n 1), Preamble.

²⁸ (2000) 14 NWLR (Pt. 788) 466 at 486 paras. 1 and 2.

²⁹ (2007) 4 SC (Pt.111) 118 at 162-163 para 40.



The meaning of constitutionalism is the theory that the best forms of governments are those which are laid out in a formal Constitution, which establish the guidelines for the formation and operation of governments and the laws by which citizens live. Constitutionalism also states that politicians and government leaders should operate strictly according to the Constitution. Adherents to constitutionalism are called constitutionalists and it is found on both the right and left sides of the political spectrum, as well as the center.

Constitutionalism is both a political theory and a form of governance. The central tenet of constitutionalism is that the authority of the government to make and enforce laws are legitimized by the approval and will of the people. The emphasis on the restriction of the government based upon the writings in a constitution is derived from the belief that government should be limited. Over the course of history, constitutionalism has evolved in its meaning as a term and its use as a tool. No one knows who first used the term constitutionalism, but it was created in the late eighteenth century, and had a relatively strong surge in use which started in the 1840s.

The foundation of constitutionalism, the concepts of the limitation of government based around the will of the people, is based upon the idea of a social contract. The government agrees to protect the interests, the lives and property of its citizens and the people agree to support and sustain their government. This idea was created by English politician and philosopher Thomas Hobbs and expanded by John Locke in his two treaties on government.³⁰

Federalism

Nigeria is a Federation as explicitly provided in Section 2 of the Constitution thus;

Nigeria shall be one Indivisible and Indissoluble Sovereign State to be known by the name Federal Republic of Nigeria, and that Nigeria shall be a Federation consisting of States and a Federal capital territory.³¹

This is a political structure in a nation where there is a national or central government which has specified and overriding powers over citizens of the nation on certain subject matters and over constituent parts of the nation which have powers set out in the constitution to deal with matters considered essentially local.³² This, in modern times, seems to be the accepted idea of a federal state.

Nwabueze defines federalism as an arrangement whereby powers of government within a country are shared between a national government and a number of regional governments in such a way that each exists

³⁰ J Locke, *Second Treatise on Civil Government, Chapters 12/13* <<http://www.Worldcat.Org>> title> accessed, 13 December 2024.

³¹ Publius, 'Annual Review of American Federalism' (2024)(54) *The Journal of Federalism*, 13. <<http://dot.org/10.20319/pjss.2022>> accessed 12 December 2024.

³² Publius (n 31).



as a government separate and independent from the others within its territorial area, with a will of its own and apparatus for the conduct of its affairs, and with an authority in some matters exclusive of all others.³³ Relatedly, a federal state differs from a confederal state of independent states of common purpose in that federal organs have direct powers not only over member states but over the citizens of these states.³⁴

CONSTITUTIONAL SUPREMACY UNDER THE 1999 CONSTITUTION AND OTHER JURISDICTIONS

The supremacy of the Constitution is ably captured in the 1999 Constitution as the supreme law of the land, against which all inconsistent enactments and conducts are null and void. It is the *grundnorm* or supreme law by which every other law is tested for constitutionality and upheld.³⁵

According to section 1 of the Republican Constitution, this Constitution shall have the force of law throughout Nigeria and subject to the provision of section 14 of this Constitution, if any other law (including the constitution of a region) is inconsistent with this constitution, this constitution shall prevail and the other law shall to the extent of the inconsistency be void.³⁶ Similarly, section 1(1) of the Constitution of the Federal Republic of Nigeria 1999, which is the supremacy clause of constitution provides thus: ‘This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.’³⁷ Furthermore, section 1(3) in completion of it, provides that if any other law is inconsistent with the provision of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void.³⁸

In light of the above, the 1999 constitution compels all authorities and persons to act within the limit of the constitution, otherwise such act will be declared null and void and of no effect by the court of competent jurisdiction. Hence, the National Assembly which is saddled with the responsibilities of law enactment can only do so and even amend any existing law in accordance with the laid down procedures stipulated by the Constitution. Any purported amendment otherwise made is null and void and of no effect whatsoever and cannot be part of the Constitution.³⁹

From the above, it is therefore gleaned that, by observing the procedure stipulated by the Constitution, parliament of the National Assembly may amend any provision of the Constitution, provided that parliament cannot repeal Section 1 of the Constitution which is the supremacy clause. The reason is that by the doctrine of constitutional sovereignty, the Constitution is supreme and its provision are binding on all persons and authorities in the country, including parliament.

³³ Nwabueze (n 8), 4.

³⁴ Publius (n 31), 4

³⁵ *A.G Bendal State & 22 Ors. v A.G. Federation* (1982) 3 NCLR 1 SC; *Doherty v Belewa* (1961) All NLR 631; *Balarable Musa v People Redemption Party* (1981) 2 NCLR 763

³⁶ Republican Constitution of 1963 (n 1); E Malami, *The Nigerian Constitutional Law* (3rd edn., Lagos: Princeton Publishing Co.,2012) 49

³⁷ CFRN 1999 (n 1), s 1(1).

³⁸ *Ibid*, s 1(3).

³⁹ Malemi (n 36), 50.



In a constitutional supremacy, the Constitution, which is the will of the people, is sovereign. It is supreme and binding on all persons and authorities in a country including the parliament. It is the rule against which every other law and action are tested.⁴⁰ The supremacy of the Constitution as exemplified by section 1(1) and (3) of the 1999 Constitution is very clear on the supremacy of the constitution over all authorities and persons in the country. For example, the argument that a legislature has power to amend the Constitution is sovereign and therefore, its power supersedes the authority of the Constitution or a sovereign parliament operating in a constitutional sovereignty which is bound to respect the Constitution was tightly rejected by the Judicial Committee of the Privy Council of the House of Lords in the case of *Bribery Commissioners v Ranasighe*.⁴¹ Legally, the decision in this case is very much in line with the truth of doctrine of constitutional sovereignty. The supremacy provisions clearly place the Constitution high and above other laws and make it binding on all authorities and persons in Nigeria.

JUDICIAL AUTHORITIES ON CONSTITUTIONAL SUPREMACY IN NIGERIA There are numerous case laws in which the action of the President, institution and other individuals were declared unconstitutional and no effect whatsoever, particularly in Nigeria, reinforcing the supremacy of the Constitution to every individual, organ of government and other private and public institution. One popular case is the case of *Attorney-General of Lagos State v Attorney-General Federation*.⁴² In this case, it was declared that the actions of the President in withholding the federal allocation to Lagos State was in contrast to Section 162(5) of the Constitution, therefore, they were unconstitutional, null and void.

Another case is that of *Inakoju v Adeleke*.⁴³ In this case, some members of the Oyo State House of Assembly purported to remove the Governor of the State. However, they did not follow the full provisions of Section 188 of the 1999 Constitution. Due to this, the Supreme Court, through a leading judgement by Tobi JSC declared their actions unconstitutional, null and void.

The judgement of court in the case of *Charles Apildo James v the Governor of Edo State & Ors*,⁴⁴ delivered by the Court of Appeal, Benin Judicial Division on the 8th day of May 2021 is key. The fundamental issue that the court sought to determine was; whether a verbal order made by a Governor restricting movement through the use of motor cycles in some parts of Edo state, is justified under section 41(2) of the 1999 Constitution. The court reasoned that a verbal order made by a Governor or by the executive arm of Government at whatsoever level in Nigeria, restricting movement through the use of motorcycles cannot

⁴⁰ Malemi (n 36), 54.

⁴¹ (1965) 2 ALL ER 785 PC.

⁴² (2004) 18 NWLR (Pt. 906) 1 SC.

⁴³ (2007) 4 (Pt. 1025) 423 SC.

⁴⁴ (2021) LPELR 54203 (CA).



on its own be justifiable under section 41(2) of the 1999 Constitution if the verbal order was not made or issued pursuant to an existing law, which is justifiable under section 41(2) of the 1999 Constitution.⁴⁵

The fact of the case under review is that the 1st respondent, the Governor of Edo State on the 11th day of June, 2013, issued a verbal order banning the use of motorcycles in Oredom Egor, Ikha Local Government Areas, Oluku and Ekosadin areas of Ovia North East Local Government Area and Eyea Area of Uhumwonde local Government Area, respectively. The Governor further ordered law enforcement agencies: Edo State Police, Edo State Security Services, the Nigerian Security and Civil Defence Corps (Edo State) and the Nigerian Army (4Mechanized Brigade Benin City) to arrest, confiscate and prosecute any person in violation of the verbal order.⁴⁶

On the 17th day of June, 2013, the 1st appellant was on his way to work on his duly licensed motor cycle when he was accosted by some security officers and was compelled to stop, and his motorcycle was almost seized on the ground that he violated the verbal order made by the 1st respondent. The 2nd Appellant was ordered to ride his motorcycle to the police station, but he zoomed off and returned to his house. The 2nd Appellant was a marketer who employed the services of duly licensed commercial motorcycles to enable him convey his goods to his customers. On the 20th Day of June, 2013, 2nd Appellant was on board a commercial motorcycle to supply goods to his customers, but was stopped by some security operatives who seized the said motorcycle on the ground that they were in violation of the verbal order issued by the 1st respondent.⁴⁷

The 1st and 2nd Appellants thereafter instituted an action at the Federal High Court, Benin Judicial Division, claiming *inter alia*; (a), a declaration that the 1st respondent's action of verbal making a ban on the use of motorcycle from plying the roads in those areas was ultra vires the powers of the 1st Respondent and constituted a violation of the appellants right to fair hearing and freedom of movement and was therefore unconstitutional, illegal, null and void; (b), a declaration that the action of the agents of the Edo State Government enforcing the 1st respondent's verbal ban on the use of motorcycles with the threat to confiscate and destroy the 1st Appellant's motorcycle constituted a gross violation of the 1st Appellant's rights to fair hearing and freedom of movement.⁴⁸ The court in its ruling, entered judgement against the appellants and therefore dismissed their claims against the respondents for lacking merit. Not satisfied with the decision of the trial court, the appellant appealed against the judgement at the court of appeal seeking the setting aside of the judgement.

The Court of Appeal while upholding the appeal, granted the reliefs of the appellants in part. The court declared that the Governors verbal ban on the use of motorcycle was unconstitutional, illegal, null and void

⁴⁵ N Nduka, Constitutional Analysis <<https://www.igwpavillion.com/blog/james-v-governor-of-edo-state-examining-the-decision-of-the-decision-of-the-court-of-appeal-in-the-light-of-the-1999-constitution-of-the-frn-as-amended/>> accessed 26 November, 2024.

⁴⁶Ibid.

⁴⁷(n 46).

⁴⁸Ibid.



and of no effect whatsoever.⁴⁹ Furthermore, the court set aside the Governor's verbal ban on the use of motorcycles, and went ahead to award the sum of Three Hundred and One Thousand Naira (#301,000,00) as compensation and cost in favour of the appellants against the Governor.⁵⁰

Also, in *Okedana v Attorney-General Federation*,⁵¹ the court rejecting the Appellant's argument that section 24(1) of the Cybercrime Act⁵² 2015 does not satisfy the requirements of section 36(12) of the Constitution, stated that the words in section 24(1) of the Act are explicit and leave no room for speculator or logical deductions.⁵³ The court held that the offence in the relevant section of the Act is clearly defined and the punishment is also clearly stated. It is therefore concluded that the provision of section 24(1) of the Cybercrime Act is not in conflict with the provision of sections 36(12) and 39 of the 1999 Constitution.

The court unanimously held that the Appellant's appeal was devoid of merit and deserved to be dismissed. It accordingly dismissed the appeal and affirmed the judgement of the lower court delivered by Baba J of the Federal High Court wherein the Federal High Court per Baba J. of the Federal High Court in dismissing the Appellants application reasoned that section 24(1) of the Cybercrime Act was not vague and that cybercrime is 'incapable of direct definition.' Furthermore, that the restriction on freedom of speech as contained in section 24(1) of the Cybercrime Act was necessary in a democratic society as it relates to the interest of defense, public safety, public order, public morality or public health pursuant to section 45 of the 1999 Constitution. Reasoning from the Constitutional provision of section 45(1), which states that nothing in sections 37, 38, 39, 40 and 41, shall invalidate any law that is reasonably justified in a democratic society⁵⁴ and that the legislature has the power to enact laws that are reasonably justifiable in a democratic society and that such laws shall not be declared invalid merely because they appear to be in conflict with the right and freedom extended to citizens under the constitution. However, the court noted, for example, in the case at hand that, the right of freedom of speech guaranteed under section 29 cannot be taken away except for the purpose of preserving the interest of defense, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of another person.⁵⁵

Furthermore, in *Onuoha Kalu v The State*,⁵⁶ the Supreme Court affirmed that the death penalty violated neither the right to life nor human dignity under the 1999 Constitution. The appellant had appealed a death sentence that was imposed under section 319(1) of the Criminal Code of Lagos State,⁵⁷ contending that the penalty contravened Sections 30(1) and 31(1) of the Constitution of Nigeria, 1979, which guaranteed the rights to life and human dignity. Section 319(1) of Criminal Codes prescribes the death penalty for murder.

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹ (2019) LCN//12768 (CA).

⁵² Cybercrime Act 2015.

⁵³Ibid.

⁵⁴ (n 51).

⁵⁵ (n 17).

⁵⁶ (1963) CLR 10(a) SC <<https://www.ahrl.up.ac.za/badejogbin-0>> accessed 26 November 2024.

⁵⁷ Cap 31, Laws of Lagos State of Nigeria, 1973.



The appellant argued that the penalty and its execution violated Constitutional guarantees of life and human dignity.

Furthermore, in the case of *Ishola-Noah v His Excellency, the British High Commissioner to Nigeria*,⁵⁸ the Supreme Court held that action commenced against the British High Commissioner to Nigeria was incompetent, null and void, by invoking the provision of section I of the Diplomatic Immunities and Privilege Act. The reason behind this judgement is hinged on the ground that the provision of section 9 of the Act cannot be invoked or enforced as diplomatic immunities have their origin from International Convention and Treaties like the Vienna Convention on Diplomatic Relation⁵⁹ which has force of law in Nigeria by virtue of section 12(1) of 1999 Constitution. More so, is the fact that courts have held that international conventions and treaties having force of law in Nigeria are superior to municipal law and municipal laws cannot distract from them.⁶⁰

Also, in *A.G Abia State v A.G Federation and Ors.*,⁶¹ the court held that by virtue of the 1999 Constitution, it is the National Assembly that gives authorization to the President for all expenditures from the Consolidated Revenue Fund, and any unauthorized expenditure by the executive is unconstitutional, null and void.⁶² Thus, affording the representative body an opportunity to rigorously debate and rationalize the budget.

Furthermore, the African Charter On Human and Peoples' Rights (ACHPR) domesticated into an Act of the National Assembly has been held by the supreme court in *Abacha v Fawehinmi*,⁶³ not to be of the same status as the Constitution, that is, inferior to the constitution, and the provisions of the Act were subject to the provisions of the Constitution which will include section 6(6)(c) of the 1999 Constitution.

More so, in the case of *Police v ANPP*,⁶⁴ the Court of Appeal applied 'the blue pencil doctrine and inconsistency rule' and declared as void and contrary to the fundamental rights to freedom of expression and association under sections 39 and 40 of the Constitution, and the provision of the Public Order Act, which provided to the effect that a permit must be obtained from the Governor before people could assemble in Public. As a common law jurisdiction, Nigeria enjoys the blue pencil doctrine⁶⁵ enshrined in the Constitution. Accordingly, if any other law is inconsistent with the provision of this law, that other law shall to the extent of the constituency be void.⁶⁶

⁵⁸ (1980) 8-11 SC 100.

⁵⁹ 1 Ehighelua, *Environmental Protection Law* (Effurum /Warri, New Pages Law Publishing, Co, 2007)99.

⁶⁰ Ibid ,99-100.

⁶¹ (2001) 11 NWLR [Pt. 725] 689.

⁶² Ibid.

⁶³ (2000) 4 SC [Pt. 11], P.I.

⁶⁴ (2007) 18 NWLR [Pt. 1066] 4.57 at 498-499.

⁶⁵ Ibid.

⁶⁶ CFRN 1999 (n 1), s 1(3).



In *A.G Abia State & 35 Ors. v A.G Federation*,⁶⁷ the Supreme Court held that the State Government and the Local Government should not have joint account and that the Local Government allocation should be paid to them directly and not through the State Government, a scenario that has caused a shift from what *hitherto* used to be the practice by virtue of section 162(5-7) of the 1999 Constitution. It is however, hoped that section 162 of the Constitution should be amended to reflect the fiscal autonomy granted to the Local Government by the judgement of supreme court in the instant case

From the foregoing cases, it can be seen that any act which contravenes the provision of the constitution will be declared null and void because the constitution is supreme and shall have binding force on all persons and authorities throughout Nigeria. It is argued that the plethora of cases on constitutional supremacy in Nigeria is a testament of the fact that disregard to the supremacy of the Constitution is at alarming proportion Nigeria.

CONSTITUTIONAL SUPREMACY IN OTHER JURISDICTIONS

The Constitution of Russian Federation 1993 and its Supremacy Clause

In the erstwhile Soviet Union, the Communist Party enjoyed supreme position. The Constitution was the handmade of the party and it could be manipulated the way the Politburo of the Communist Party or its General Secretary so wanted.⁶⁸ However, the Constitution of Russian Federation⁶⁹ has been accorded supreme legal position.⁷⁰ It is applicable throughout the entire territory of Russian Federation. The laws and other legal acts adopted by the Russian Federation may not contravene the constitution. The organs of State power, Local self-government officials, citizens and heir associations are required to comply with the constitution. The provision of the constitution constitutes the foundations of the constitutional system of the Russian and cannot be changed except as provided in the constitution. It has been clearly laid down that no other provision of the constitution may contravene the foundation of constitutional system of the Russian Federation.⁷¹ Like that of American Constitution, the Russian Federation enjoys supremacy.⁷²

Note also that the Constitution of Russian Federation emphasizes sovereignty of people.⁷³ The multinational people of Russian constitute the vehicle of sovereignty and the only source of power in the Russian Federation.⁷⁴ The Russian people exercise their power directly and also through the organs of State power and Local self-Government.⁷⁵ The provision of referendum and free election reflect the supreme direct

⁶⁷ (2024) LPELR 62576 (SC)

⁶⁸ V Bhagwan. V Bhushan, *World Constitutions: a Comparative Study* (9th edn, Sterling Publishers Private Ltd, 2009) 612.

⁶⁹ Constitution of Russian Federation 1993.

⁷⁰ Ibid, art 3.

⁷¹ Ibid, art 16.

⁷² Ibid, art 3.

⁷³ (n 69), art 3.

⁷⁴ Bagwan and Bhushan (n 68), 613.

⁷⁵ Ibid.



manifestation of the power of people.⁷⁶ The sovereignty of the Russian Federation as derived from people applies to its entire territory. The Russian Federation ensures the integrity and inviolability of its territory.⁷⁷

The Constitution of Japan 1971

The extant Constitution of Japan, referred to as the Shova Constitution⁷⁸ contains supremacy provisions. Chapter X of the Constitution declares that the Constitution is the supreme law of the land.⁷⁹ In Article 97, it has been stated that there shall be no violation of the fundamental rights guaranteed in the citizens. Article 90 provides, thus;

This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other Act of Government or part thereof, contrary to the provisions hereof, shall have legal force or validity.⁸⁰

Article 99 states;

The Emperor of the Regent as well as Ministers of State, Members of Diet, Judges and all other Public Officials have the obligation to respect and uphold the Constitution.⁸¹

The United States of American Constitution 1789

The present Constitution of the United States of America was adopted at the Philadelphia convention held in 1787 and came into force in 1789, after it has been ratified by the minimum required number of states.⁸² The Constitution provides for a supremacy clause which expositis that the Constitution is the supreme law of the land.⁸³ Neither the center, nor the states can override it. A law or an executive order repugnant to the Constitution can be declared unconstitutional and invalid by the America Supreme Court.⁸⁴ Further, the above Article stipulates that the Constitution, federal laws, made pursuant to it, and treaties made under its authority constitutes the supreme law of the land and thus, take priority over any conflicting state laws. The United States supremacy clause underpins the broader doctrine of preemption where if laws are in conflict, the law of a higher authority can preempt the law of a lower authority if the superiority of the former is stated directly or impliedly.

THE IMPLICATIONS OF CONSTITUTIONAL SUPREMACY IN NIGERIA

The implication of the supremacy in Nigerian Constitution is that the people are sovereign. Section 14(2)(a) of the Constitution provides that the sovereignty belongs to the people from which government derives its

⁷⁶Ibid.

⁷⁷Ibid.

⁷⁸Ibid, 399.

⁷⁹ Constitution of Japan 1947, chapter v.

⁸⁰Ibid, art 90.

⁸¹Ibid, art 99.

⁸² United States of American Constitution 1789, art vi, para ii; Bagwan and Bhushan (n 68), 131.

⁸³Ibid, art vi, clause 2.

⁸⁴ (n 82), art vi, clause 2.



power through the constitution.⁸⁵ It means that every power in the country, be it executive, legislative or judicial, answers to the people through the provisions of the Constitution as laid down by the people. Also, the supremacy of the constitution makes it the supreme law of the land against which all inconsistent enactments and conducts are null or void. It is the *grundnorm* and authority base of the country derived from the people, the power base of the country. It is supreme law by which every other law and conducts are tested for constitutionality and upheld on the one hand and declared unconstitutional and null and void and of no effect, on the other hand.⁸⁶

Although, they have been arguments about the truth of the provision of section 14 (2)(a) of the Constitution. It is contended in many quarters that this present Constitution was foisted on Nigerians by military government. It is said that in as much as the people did not choose their representatives to fashion out the Constitution for them, therefore, it is not the peoples' Constitution. However, on the other side of the divide are those that contend that since the present 1999 Constitution is to a large extent in *pari materia* with the 1979 constitution, it can be called the peoples' Constitution. This is because, in the formation of 1979 Constitution, the representatives of the people sat down and fashioned it out.⁸⁷ Whatever side of the divide one may be in, the truth remains that the present Constitution has been in use from 1999 till date. It is the most successful democratic Constitution in the history of Nigeria due to the fact that it is the longest lasting Constitution.⁸⁸

LESSONS FOR NIGERIA

This section examines how Nigeria can enhance the practice and enforcement of constitutional supremacy from the selected jurisdictions of this research work. The three jurisdictions of Japan, Russia and the United States of America have a sound and strong constitutional supremacy which is fully entrenched in their Constitutions and observed, and should be a great lesson for Nigeria to learn. Nigeria should be able to ensure that the concept is fully observed by ensuring that institutions of government are built over and above persons and authorities.

Further, it is no doubt that the researcher found that these jurisdictions have an independent judicial system that ensured that the provisions on constitutional supremacy are fully observed and adjudicated upon especially, if breached. This is another significant lesson that Nigeria should learn as our judicial system has been bastardized in that the appointing authorities now appoint their wives, husbands, cronies, and political apologists as judicial officers. Capable persons qualified to perform judicial functions should be allowed to be appointed on merit as to give effects to constitutional supremacy provisions, *inter alia*.

CONCLUSION

⁸⁵ 1999 CFRN (n 1), s 14(2)(a).

⁸⁶ O Olamwaju, *Supremacy of the Constitution* <<http://www.djetlawyer.com/supremacy-of-the-constitution/#;;text=one%20popula%20case%20is%20AG,that%20of%20Inakaju%20vas%20Adeleke>> accessed 26 November 2024

⁸⁷ Ibid.

⁸⁸ Ibid.



From the above, it is no gainsaying that the supremacy of the constitution is a reality, particularly in Nigeria and few other jurisdictions cited in this work. The 1999 Constitution provides for supremacy of the constitution in its section 1. Thus, for an act to be enforceable, it must be in *tandem* with the dictates of the Constitution otherwise, such act shall be deemed void. Apart from acts or omissions not in *tandem* with the Constitution, the 1999 Constitution is also clothed with the toga of ‘blue pencil doctrine’ which places the Constitution over and above every other law.

The constitutional supremacy places the organs or institutions of the government at equal measure, when they are interposed with the Constitution. Hence, every institution of government must act or function within the purview of the Constitution for a seamless separation of powers, checks and balances and rule of law. The court has given landmark judgements on the preservation of sanity of the supremacy of the Constitution mandating every institution and person to act within the confines of the law as any act done contrary to that, would be declared null and void and of no effect whatsoever. These novel judgements have undoubtedly helped to strengthen institutions and created the niche for all persons irrespective of their social status and offices, including the President to realize the fact that they are amenable to the laws of the land. Thus, they are duty bound to operate in a manner duly guaranteed by the Constitution and rule of law so that their acts would not be declared a nullity by the courts.

Furthermore, the supremacy of the constitution places the toga of sovereignty on the people of Nigeria by virtue of section 14(2) of the Constitution, which has limited the excesses of government and ensures sense of belonging and participation by citizens. The recent decision by the Appeal Court in the case of *James v Edo State Governor*⁸⁹ has not only become a defining instrument in the Nigeria’s Constitutional jurisprudence, but has created a pragmatic position for judicial precedence and protection of fundamental rights. To this end, any law purported to operate or to stand on its own or at least from an existing law, which is also tied to the Constitution, is inconsistent with the Constitution and therefore void.⁹⁰ The verbal order made by the 1st respondent banning the use of motorcycles in some parts of the Edo State, with the penalty of confiscation and destruction of any offending motorcyclist, is not supported by any known law and therefore, unconstitutional, null and void. In fact, the supremacy of the constitution is a global trend forming part of the legal jurisprudence of countries across the globe, Nigeria, inclusive.

RECOMMENDATIONS

In view of the foregoing, therefore, the following recommendations are key for purposes of strengthening its functionality and ensuring adherence thereto, for a robust and better democratic culture, norms and institutions in Nigeria;

- (1) Institutions such as the executive, judiciary and legislature have to be structured over and above persons and activities. In Nigeria, it has been observed that the individuals are becoming more powerful than the government’s institutions to the extent that they are being celebrated and even

⁸⁹ CFRN 1999 (n1), s 14 (2).

⁹⁰Ibid.



regarded as institutions. These persons seemed to be wielding more powers than the institutions particularly, in the judicial arm of the government as they make promises to the judicial officials and induce them with their money and wealth in order for them to compromise justice and their oath of office in favour of these persons. This act undermines the integrity of the judiciary as the last hope of the common man and makes it unable for the judiciary to uphold the supremacy of the constitution, which its officers have sworn to protect.

- (2) There should be judicial independence. The executive arm of government must not exercise any modicum of influence on the judiciary. If the judiciary is free from the executive interference undoubtedly, the judiciary will appreciate and discharge its primary responsibility and ensure that justice is done to all manner of persons in line with the dictates of the constitution hence, their financial autonomy should be implemented to the fullest, to dissuade the judges and other judicial officers from engaging in into bribery and corrupt practices, which are antithetic to the spirit and letters of the constitution.
- (3) The National Judicial Council should prioritize the discipline of erring judges on matters brought before the courts for determination, a scenario that has the potential to restore sanity amongst the judicial officers. It can also serve as a deterrence to those with the propensity and inclination to always err in any dimension.
- (4) There should be constitutional amendments with the view to changing some provisions of the constitution that are no longer in tune with the contemporary society or present reality.