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Examination of the State Legislative Power of Confirmation on the Gubernatorial Appointments under the Constitution of the Federal Republic of Nigeria 1999

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Abstract

The principle of separation of powers had it that executive power is entirely different from legislative power. In pursuance toward this, it is the constitutional provision that the first 2 tiers of government have separate and independent legislative bodies- National Assembly and House of Assembly. The Houses of Assembly of the states of the federation are apportioned legislative powers, among which is the power to confirm the gubernatorial appointments. This paper aimed at analysing the state legislative powers, emphasizing the state legislative power of confirmation of gubernatorial appointments under the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018). In achieving the aims, the doctrinal research methodology was employed in which both primary and secondary materials were consulted. In the course of the research, the paper found out that the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018) did not make any remedial provision for the resident of a state if the House of Assembly refused to confirm a well-known competent gubernatorial nominee. It has been recommended in this paper that the Constitution be amended to provide remedy through locus standi if the State House of Assembly refused to confirm a well-known competent gubernatorial nominee.

Keywords: State, Legislature, Power, Confirmation, Exercise and Control

1.0 INTRODUCTION

The concept of legislature prompts the importance of two terms- “institution and process”. As an institution, it is a law-making organ of government. As a process, it reflects in the procedures, rules, and conventions that facilitate the enactment of laws as a specialized role of a modern government.⁸⁸⁸ Hence, the organic unity of specialized institution and process accentuates the importance of a legislature in a modern constitutional democracy. The central attribute of any Constitution in the world is the organization of the legislature and function of checks and balances on the executive because of effective delivery of governmental policies.⁸⁸⁹ The legislature may be organized as a unicameral body with one chamber or bicameral body with two chambers. The unicameral legislature is typical in small countries with a unitary system of government (e. g. Denmark, Sweden, Finland, Israel, and New Zealand).⁸⁹⁰ Every state, whether large or small, usually has bicameral legislature, with one house representing the main territorial subdivision and the other representing the constituent units. A classic example is the United States Parliament, which comprises the House of Representatives, and a Senate. The Nigeria practices the same system⁸⁹¹.

It is an arrangement whereby powers of government within a country are shared between Federal Government and State Government in such a manner that each subsists as a government distinctly and autonomously from others, functioning unswervingly on individuals and asset inside its provincial part, with a determination of its own and its own facilities for carrying out its activities. Federalism is thus principally a plan between governments, a constitutional policy through which powers within a kingdom are divided among three tiers of government.⁸⁹²

The doctrine of separation of powers is the rationing of powers and activities of government among the three autonomous and different institution of government, that is, the legislature, executive, and the judiciary, to act as a check and balance on each other and protect the excesses and abuse of powers.⁸⁹³ Thus, separation of powers is the constitutional principle dividing the powers of

⁸⁸⁸ Akande, J. O *Introduction to the Constitution of Nigeria 1999*, Mil Professional publishers Ltd. Lagos, (2000) 279

⁸⁸⁹ *ibid*

⁸⁹⁰ Arowolo, D.E, ‘Democracy and Bicameralism in Nigeria: Issues, Challenges and the Way Forward’, *Review of Public Administration and Management* Vol. 3 No. 7 (2019) 3

⁸⁹¹ Bugaje, U., “The Evolution of the Legislature and Challenges for Democracy in Nigeria: An Overview,” *A Paper Presented at the Seminar on Strengthening Democratic Values through legislation* (2003) 8

⁸⁹² Nwabueze, B. O, *Ideas and Facts in Constitution Making*: Spectrum Books Limited, Ibadan (1993) 43

⁸⁹³ Olayinka, O. ‘Judicial Review of Ouster Clause Provisions in the 1999 Constitution: Lessons for Nigeria, 148 <ajol.info/index.php/naujilj/article/review/168813 pdf> accessed on 22nd January, 2023.

government into the three institutions of legislative, executive, and judicial powers, each to be wielded by a distinct team of individuals as a source of checks and balances in the government. A Single institution of government should not interfere on the realm of another institution of government nor wield the powers of other institution of government.⁸⁹⁴

2.0 STATE LEGISLATURE

In a generic sense of Nigerian constitutional democracy, state legislature depicts a legislative institution and process at the state, provincial, and territorial level of governance as obtained in countries that practice federalism and the presidential system of constitutional democracy. Basically, state legislature represents a decentralized, independent and, democratic institution entrusted with the power to enact laws for the state's governance, security and socio-economic development of the state.⁸⁹⁵ The legislative's authority is derived from the Constitution and the people through the process of elections as seen in advanced democracies.⁸⁹⁶

Nigeria as a federation has a unicameral state legislative system as explicitly provided by the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018), there must be a House of Assembly across the states of Nigeria',⁸⁹⁷.

The above quotation in the Constitution is far from equivocal regarding the unicameral nature of state legislature in Nigeria. Remarkably, the state legislature is unicameral, dissimilar from the National Assembly, which is bicameral in Nigeria. Based on the provision of the Constitution, a State Assembly is composed of 3 (three) to 4 (four) times the number of seats it has in the House of Representatives, divided among the various constituencies so as 'to replicate' an equivalent populace.⁸⁹⁸

Subsequently, the composition, leadership, voting pattern, powers, committees, membership qualification, tenure, and state constituencies of the State Houses of Assembly in Nigeria are also provided for in the Constitution.⁸⁹⁹ It is also enlightening to know that the State Legislative Assemblies perform crucial roles in the concurrent and residual lists.⁹⁰⁰ The concurrent legislative list provides items that the Federal and State Governments can legislate on. Items on the

⁸⁹⁴ Malemi, E. *Administrative Law*, Princeton Publishing Co, Lagos. 2008 56

⁸⁹⁵ *ibid*

⁸⁹⁶ Section 90 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁸⁹⁷ *ibid*

⁸⁹⁸ Kahinde, M. M *Constitutional Law in Nigeria*, Malthouse Press Limited Lagos, (2008) 113 and Section 91 of the Constitution of the Federal Republic of Nigerisa 1999 (as amended 2018)

⁸⁹⁹Section 91 to 112 of the Constitution of the Federal Republic of Nigeria 1999(as amended 2018)

⁹⁰⁰Dibie, C. *Essential Government*, Tonad Publishers Ltd Lagos, (2003). 229

simultaneous lawmaking list, comprises sharing of revenue; antiquities and monuments; archives; collection of taxes; electoral law; electric power and exhibition of cinematography films. The concurrent legislative list also includes; industrial, commercial or agricultural development; scientific and technological research; statistics; trigonometrical; cadastral and topographical surveys; universities; technological and post primary education.⁹⁰¹

The federal law making list gives the Federal Government customized law making powers upon 68 things, but it also donates to the Federal Government supremacy over the remaining things. The grundnorm sanctions this - promulgations of the National Assembly takes precedence on any law promulgated by the State House of Assembly where there is contradiction.⁹⁰² It has been succumbed that the simultaneous law making list is somewhat inventive in its method since the Constitution wisely defines the limitation of the Federal and state powers regarding 12 things and these particularizations and limitations donate customized powers respectively to both Federal and State Governments.⁹⁰³

2.1 Nature of State Legislature

Unlike the National Assembly, state legislature is a unicameral legislature i.e (a single chamber legislature, unicameral).⁹⁰⁴ The State House of Assembly shall comprise three or four times the number of constituencies which the state has in the House of Representatives shared in a manner to replicate, as far as feasible, nearly equal populace, in so far as a House of Assembly shall comprise not less than twenty-four and not more than forty members⁹⁰⁵. There shall be a Speaker and Deputy Speaker of a House of Assembly who shall be selected by the members of the House Assembly from among themselves⁹⁰⁶. There are other officers of the House such as House Leader and his Deputy, Chief Whip and his Deputy, Minority Leader, Minority Leader e.tc. ⁹⁰⁷

2.2 State Legislative Powers

Under the Nigerian constitutional democracy, the legislative power of a state of the Federation is vested in the State House of Assembly.⁹⁰⁸

⁹⁰¹ Paragraph 1 of the 2nd Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁰²Section 4(5) Of the Constitution of The Federal Republic of Nigeria 1999 (as altered 2018)

⁹⁰³ *ibid*

⁹⁰⁴ Section 90 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁰⁵ Section 91 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁰⁶ Section 92 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁰⁷ Section 101 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁰⁸ Section 4(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

2.3 Type of State Legislative Powers

There are several powers bestowed upon the State House of Assembly by the Constitution of the Federal Republic of Nigeria.⁹⁰⁹ The following are some of the powers of the House of Assembly under the Nigerian Constitution;

2.3.1 Representative Power

Being a member of the State House of Assembly is matter of the constituency arrangement of the state for the active representation of the electorates. Every member, thus, represents a part of the individuals in the State (Constituents) to avoid marginalization in the scheme of things.⁹¹⁰ While the Governor as chief executive of the state, oversees the day-to-day running of the affairs of the state, the lawmakers that are closer to the background with smaller constituencies.⁹¹¹ Legislation made by a State House of Assembly after extensive consultation with interest groups from their constituencies will be more robust and vibrant. Though the law-making process may be prolonged during consultation with the various constituencies, the advantages outweigh the disadvantages⁹¹². Though a member of a legislative House is elected along party lines by the provisions of the Constitution⁹¹³, the truth must not be forgotten that a member represents a particular constituency⁹¹⁴ comprising of communities that are divided along party lines. Thus, legislator, as an elected representative of the people, must work more to the good of his constituency within a state than dance to his party's agenda. It is the considered view that where constituency interest contradicts party interests, a member of a legislative House would do well to represent the view of his constituency than that of the party⁹¹⁵.

2.3.2 Law Making Power

House of Assembly of a State shall have power to enact laws for the concord, order and good administration of the state or any section thereof regarding the matters approved by the grundnorm.⁹¹⁶ A study of the Constitution's provision will unveil almost identical powers been vested in the State House of Assemblies within their domains of operation with sometimes a few essential discrepancies.⁹¹⁷ Most significantly, section 4 (6) of the Constitution grants the law

⁹⁰⁹ Section 120 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹¹⁰ Dibia, C. op. cit p. 32

⁹¹¹ *ibid*

⁹¹² *ibid*

⁹¹³ Section 106 (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹¹⁴ Section 110(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹¹⁵ *ibid*

⁹¹⁶ Section 4(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹¹⁷ Kahinde, M. M op. cit. 114

making power of a state in the House of Assembly, and also the grundnorm of the country gives the House of Assembly the authority to promulgate laws for the concord order and good governance of the state or any section of it as regards any matter not part of the exclusive legislative list and any matter that is part of the concurrent legislative list in which national assembly has not made any law.⁹¹⁸ The Constitution delimits the legislative jurisdictions of the National Assembly and the State House of Assembly⁹¹⁹. The Supreme Court held that the House of Assembly of a State has the power to make law concerning any matter not included in the Exclusive Legislative List and any matter included in the Concurrent Legislative List.⁹²⁰

The authority to promulgate laws for the harmony, order and good governance of the state cannot be wielded in such manner as to be in contradiction or inconsistent with laws enacted by the National Assembly, any law made in such a manner is to the level of its inconsistency null and void.⁹²¹ The modes by which a State House of Assembly enacts laws are laid down in the Constitution⁹²². Whereas:

- 1) The power of a House of Assembly to enact laws shall be wielded by bills passed by the House of Assembly and except as otherwise provided by this section, assented to by the Governor.
- 2) A bill shall not become law unless it has been duly passed and, subject to subsection (1) of this section, assented to in accordance with the provision of this section.
- 3) Where a bill has been passed by the House of Assembly it shall be presented to the Governor for assent.
- 4) Where a bill is presented to the Governor for assent, he shall within thirty days indicate that he assents or that he denies assent.
- 5) Where the Governor denies assent and the bill is again passed by the House of Assembly by two thirds majority, the bill shall become law and the assent of the Governor shall not be required.

2.3.3 Deliberative Power

Before any bill is passed into law, or a resolution taken on any matter before the House, members must procedurally engage in a careful and meticulous deliberation of all the facts therein, to arrive

⁹¹⁸ Section 4 (7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹¹⁹ Section 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹²⁰ *Attorney General of Abia State v. Attorney General of the Federation* (2002) 6 NWLR 763 at 264

⁹²¹ Section 4 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹²² Section 100 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

at definite and worthy decisions.⁹²³ This is the second duty of the legislature but because of its importance in governance it is pushed to the forefront.

2.3.4 Power over Public Funds

Asides from powers similar to that of the federal legislature, which the state legislatures also exercise within their spheres as provided for in Chapter 5 II of the Constitution, other powers being exercised by the State House of Assembly. Going by the provision of section 162 (6) of the Constitution, the state shall preserve an account called the state joint local government account into which all allocations to the local government council in the state from the federation account are to be paid.⁹²⁴ Sub Section 8 of the same section provides that the amount stranding to the credit of the Local Government Councils of the state must be shared among the Local Government Areas of the state on such term and on such style as may be approved by the State House of Assembly.⁹²⁵

2.3.5 Power of Confirmation of Gubernatorial Appointments

It is the process and tradition of any fresh administration in any of the states of the Federation for the Governor to exercise his executive gubernatorial powers to make appointments in order to get some fit people that will occupy existing vacancies in public offices. Some appointments cannot have the flavour of law without the involvement of the House of Assembly by way of confirmation. The Governor is legally empowered to appoint key functionaries of government institutions. But the legislature is also empowered to screen such nominees to ascertain their credibility to hold such positions based on the provisions of the Nigerian Constitution. As there are many gubernatorial powers of appointment, the same way also there are many legislative powers of confirmation of such appointments. The followings are the legislative powers of confirmation of appointment.

2.3.5. 1 Power of Confirmation of Commissioners

Every nomination to the position of Commissioner of the Government of a State must, if the selection of every individual to the position is confirmed by the State House of Assembly, be done by the Governor of that state and in doing any of such appointments; the Governor shall comply with the provisions of the Constitution⁹²⁶. A nomination to the position of Commissioner under this section shall be considered to have been done only where no return has been received from the

⁹²³ Section 98(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹²⁴ Kahinde M. M op. cit 116

⁹²⁵ Section 162 (8) of the Constitution Federal Republic of Nigeria 1999 (as amended 2018)

⁹²⁶ Section 14(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

House of Assembly inside 21 (twenty-one) official days of the receipt of appointment by the House of Assembly as enshrined in the Constitution⁹²⁷. It cannot be dubitable that where a Governor of a state failed to comply with the constitutional provision that mandated him to seek the House of Assembly's confirmation before making an appointment, such appointment no matter how competent the appointee may be, will be unconstitutional null and void.⁹²⁸

2.3.5.2 Power of Confirmation of Chief Judge of a State High Court

Constitution permits the Governor of any Nigerian state to appoint a competent person as Chief Judge of the state. However, such an appointment is not in any way absolute from Governor's desk as the same is placed under confirmation by the State House of Assembly. The appointment of an individual to the rank of Chief Judge of a State shall be done by the Governor of the state upon the endorsement of the National Judicial Council, subject to approval of the appointment by the State House of Assembly.⁹²⁹ Based on the previous constitutional provision, the only way such an appointment can be valid is to send such nominee for screening to the House of Assembly and, if found fit, to be confirmed; otherwise it will not have the constitutional blessing.

2.3.5.3 Power of Confirmation of State Statutory Bodies (Chairmen, Director General, Executive Secretaries)

All the states of the Federations have their statutory establishments created by their extent laws designated to serve certain purposes; the Governor of a state, in pursuance to executive gubernatorial power, can make appointments to fill existing vacancies of the heads of such establishments. Although such establishments are not directly the creation of the Constitution, the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018) mandated the Governor to send any person nominated to be the head of any establishment to the State House of Assembly for Screening if found fit and worthy. Save in the issue of ex-officio members or it has been provided in the Constitution, the Chairman and members of any of the bodies so created shall, based on the provisions of this Constitution, be appointed by the Governor of the state and the appointment shall be subject to approval by a determination of the State House of Assembly.⁹³⁰ The constitutional provision above has made it compulsory for the Governor to seek the House of Assembly's confirmation as the word 'shall' does not take exception regarding compliance.⁹³¹ In

⁹²⁷ Section 192(5) of the Constitution of the Federal Republic of Nigeria 1999(as amended 2018)

⁹²⁸ Section 1 (2 and 3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹²⁹ Section 271(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹³⁰ Section 198 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹³¹ *Menakaya V Menakaya* (2001) 16 NWLR (Pt.738) 203

appointing chairmen and members of boards and governing bodies of statutory organizations and corporations over which the government of the state has significant shares or interests and councils of Universities, the Governor shall be confined within the Constitution.⁹³²

2.3.5.4 Power of Confirmation of Auditor-General

The Auditor General of a state shall be nominated by the Governor of the state on the endorsement of the State Civil Service Commission subject to approval by the State House of Assembly⁹³³. Save with the sanction of a resolution of the State House of Assembly; no one shall hold the position of the Auditor-General for a state for a period exceeding 6 (six) months.⁹³⁴ A person holding the office of Auditor-General can only be uninvolved from the position by the Governor of the state functioning upon an address backed by a two-third majority of the House of Assembly urging that he be so uninvolved for failure to carry out the business of his position (whether as a result of illness of mind or body or any other cause) or for wrongdoing.⁹³⁵ The constitutional provisions regarding appointment and removal of Auditor General are very explicit and emphatic regarding compliance; hence any infraction of by the Governor will make such appointment void ab initio.

2.3.5.5 Power of Confirmation of the Grand Kadi of Sharia Court of Appeal

The Governor of a state is authorized to appoint a person to the office of Grand Kadi of the Sharia Court of Appeal upon endorsement of the National Judicial Council but subject to confirmation of such appointment by the State House of Assembly.⁹³⁶ The Constitution mandates Governor to send nominee for the position of the Grand Kadi of a State to House of Assembly for screening and in the event is found competent, to be confirmed. This is necessary as the Constitution's provision is too emphatic as the word 'shall' is used.⁹³⁷

2.3.5.6 Power of Confirmation of the President of the Customary Court of Appeal

It has also been the provision of the Constitution that the Governor of the state has the power to appoint a person to the office of the President of Customary Court of Appeal based on the recommendation of the National Judicial Council but subject to confirmation by the State

⁹³² Section 14(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹³³ Section 126 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹³⁴ Section 126(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹³⁵ Section 127 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹³⁶ Section 276 (1) of the constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹³⁷ *Menakaya V Menakaya* op. cit. 203

House of Assembly.⁹³⁸ Needless to say, the appointment will not be lawful if the Governor failed to abide by the constitutional provision.

2.3.6 Oversight Power

This function, as contained in the Constitution empowered the State House of Assembly to conduct inquiries inside its capability to tackle and unveil corruption, incompetence, or waste in the implementation or management of laws⁹³⁹. It has mandate to obtain evidence documentary or parole, direct or inferred as it may consider necessary, and to examine any witness whose evidence may be material to the subject matter⁹⁴⁰.

2.3.7 Judicial Power

The State House of Assembly has authority to standardize its Proceedings, authority on the dispositions of the members during Sessions inclusive. Such members or even non-members may be tried instantly for disrespect and castigated without the right of appeal to law Courts.⁹⁴¹ Again the State Assembly can carry out a trial like it were a court of law or tribunal. It may thus grant a warrant to force the presence of any individual who, after having been summoned to appear, fails to be present.⁹⁴² The State House of Assembly discharges this significant duty via the impeachment and removal from office, of members of the executive. The state Governor and his Deputy are responsible to impeachment⁹⁴³. This is the method by which the legislature officially prepares charges against the Governor or his Deputy with an intention to his trial and removal from office if found guilty as charged.⁹⁴⁴

3.0 EXERCISE OF STATE LEGISLATIVE POWERS

The authority of a State House of Assembly to promulgate laws shall be wielded by bills passed by the House of Assembly and save as contrarily provided by this section consented to by the Governor. When the House of Assembly has passed a bill, it shall be tabled before the Governor for assent and the Governor shall give his assent within 30 (thirty) days of its presentation to him,

⁹³⁸ Section 281 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹³⁹ Section 88 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁴⁰ *ibid*

⁹⁴¹ Section 101 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁴² *ibid*

⁹⁴³ *ibid*

⁹⁴⁴ Section 188 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

if he is withholding his assent, he must also signify within 30 (thirty) days.⁹⁴⁵ Where the Governor withholds his assent and the House of Assembly by a 2/3 majority again passes the bill. The bill shall become law and the consent of the Governor shall not be needed.⁹⁴⁶

The House of Assembly shall have power to regulate its own procedure, including the summoning and recess of the House. It is under this power that a House of Assembly enacts standing orders and rules of procedure in the House.⁹⁴⁷ It is under this power that a House of Assembly enacts standing orders and rules of procedures in the House. The House of Assembly has the power to set any committee for any special or general purpose of the House.⁹⁴⁸ It is trite that in exercising its power, the State House of Assembly should do everything concerning its proceedings on the floor of the House. Notwithstanding that, a committee established by the House may have a venue for holding its meeting outside the floor of the House but must present its report before the plenary of the House when and where necessary.

4.0 CONTROL OF STATE LEGISLATIVE POWERS

In Nigerian constitutional democracy, executive and judiciary powers are under control as provided by the Constitution of Federal Republic of Nigeria 1999 (as amended 2018) and the respect for the principles of separation of powers, checks and balances and constitutionalism. In the same development, legislative powers of State House of Assembly are not left behind when it comes to the issue of control. In essence, it has been put under control through some modalities as follows;

4.1 Constitutional Control

Apart from the specific jurisdiction of the State House of Assembly conferred on it by the Constitution in the concurrent legislative list, the Constitution also constricts the legislative power of the House of Assembly in this manner; the Constitution provides that if any law enacted by the State House of Assembly is in contradiction with any legislation lawfully done by the National Assembly, the legislation done by the earlier shall take precedence and that other legislation shall to the level of the contradiction be invalid.⁹⁴⁹ This is a control on the legislative power of the State House of Assembly. This restriction is to the extent that even while exercising its legislative power

⁹⁴⁵ Section 100(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁴⁶ *ibid*

⁹⁴⁷ Section 101 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁴⁸ Sections 121 - 123 of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁴⁹ Section 4(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

on the items on concurrent legislative list, such power should be exercised with caution so that it should not act ultra vires the National Assembly and the Constitution.

4.2 Judicial Control

Judicial review is considered on either as an authority or a course. It is the authority of the court or the course by which the court wields supervisory jurisdiction over the acts of the executive and legislative arms of government. Judicial review is the supremacy of the court in proper proceedings before it to proclaim a governmental action either contrary or in accordance with the Constitution or other extant laws, with the effect of rendering the action invalid or void or vindicating its validity⁹⁵⁰ In a practical sense, it denotes the judicial control by superior courts of record characterized by the High Court of both executive and legislative use of powers covering to the use of supremacies by lower courts and tribunals, such supremacies being wielded by the superior courts in their supervisory duty. The court's supervisory jurisdiction is not limited to the executive branch of government. It extends to the legislative arm of government. Thus, the Court of Appeal held that ⁹⁵¹ the Courts have supervisory influence on the use of lawmaking authority by the legislature, and the National Assembly or a House of Assembly must not to make any law that does away or reasons to do way with the jurisdiction of the courts.⁹⁵²

The courts must and commonly do regard that the statutory duties for carrying out an identified administrative charge belongs first and foremost to the administrative agency (or legislative House, as the case may be) and that no other individual or establishment is capable under the law to use that authority. Consequently, the courts can only evaluate the function done by the establishment singly to determine whether or not the establishment has performed inside the extents approved by the extant enactment.⁹⁵³ In the same factual development, the legislative power of the State House of Assembly is subject to judicial control or judicial review. That means any law enacted by the State House of Assembly is subject to judicial control or review by the High Court when the Constitutionality of the law is in question.⁹⁵⁴

⁹⁵⁰ Nwabueze B O, *Judicialism in Commonwealth Africa* : Spectrum Books Limited, Ibadan, (1999) 229

⁹⁵¹ *Orobu v. Anekwe & Ors*(1997) 5 NWLR (Pt. 506) 618 at 634-635

⁹⁵² 4(8) of the Constitution of the Federal Republic of Nigeria 1979

⁹⁵³ Ese malemi op. cit p. 43

⁹⁵⁴ Section 100 Of the Constitution of The Federal Republic of Nigeria 1999 (as amended 2018)

4.3 Covering the Field Control

The doctrine of covering the field is another control of the legislative power of the State House of Assembly. Under this doctrine, whatever the National Assembly has legislated upon the concurrent legislative list cannot be legislated upon again by the House of Assembly of a State.⁹⁵⁵ The power of a government to legislate on a given matter must be traceable to the body of the Constitution either in the exclusive or concurrent legislative lists and or residual list. Any other resort to any legislation outside the ambit of the said Constitutional provisions is null and void.⁹⁵⁶ The doctrine of covering the field can also arise when a State House of Assembly purportedly exercises legislative powers on a subject matter already enacted by the National Assembly.⁹⁵⁷ A competent legislature expressly or impliedly manifests its intention to cover the whole field which is a decisive assessment of contradiction where other legislature undertakes to go into any level on the same field. The inconsistency is demonstrated, not by the contrast of comprehensive provisions, but by the sheer subsistence of the both sets of provisions.⁹⁵⁸

4.4 Public Hearing

Committees usually held hearings during the considerations of bills that are due to become laws. The opportunity for the hearing usually occurs during the second reading of a bill. After the Second Reading, the presiding officer puts the question that; “*this Bill be now read the second time*” and as soon as the clerk reads the long title of the bill, the Presiding Officer commits the bill to a standing committee or a combination of committees.⁹⁵⁹ The committee or committees hereafter proceed to process the bill, which usually includes the conduct of a public hearing. Such public hearing must be made public through advertisement in the media and publication in the legislative journal. Interested and affected institutions, officers of the relevant departments of the executive branch, officials of the relevant private sector, non-governmental organizations, and the media are usually invited. Communities or citizens likely to be directly or indirectly affected by the proposed policy or law are usually invited or volunteer to attend. At the end of the public hearing, the committee collates all the information and uses its discretion as to which input to admit or omit in

⁹⁵⁵ Maxwell M. Gidado, “*The Constitutional Role of the Legislature Viewed from a Nigerian Prism*,” University of Jos Law Journal, vol. 10, no. 1, (2015) . 249.

⁹⁵⁶ Section 1(3) Of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁵⁷ *Sani v Kogi State House of Assembly and ors* LCN/4972(SC)< <https://lawcareNigeria.com/sani-v-kogi-State-House-assembly-ors-2021>> accessed on 22nd January, 2023.

⁹⁵⁸ Maxwell M. Gidado op. oit. 297

⁹⁵⁹ Adigwe, F., *Essentials of Government for West Africa*, University of Ibadan Press Ibadan (2008) 58

the bill. The bill is then represented to the House with amendments and the House will now debate the bill and adopt or propose new amendments, before going to the third reading on its way to becoming a law with the help of a public hearing.⁹⁶⁰

4.5 Executive Control

The power of a State House of Assembly to make laws is used by bills passed by the House of Assembly and, save as contrarily provided by the Constitution, be consented to by the Governor.⁹⁶¹ A bill shall not become law except it has been accordingly passed and consented to in agreement with the content of the Constitution.⁹⁶² The above principles abundantly underscore the prescribed effect of executive control upon the law-making function Nigeria's legislative branch. Thus, apart from the exceptions provided for in sections of the Constitution,⁹⁶³ a bill passed by the legislature cannot become a law until the Governor gives his assent to it. However, there are some instances where the legislature overrides the veto of the Governor, and the requirement for executive assent shall be dispensed with.⁹⁶⁴ This constitutional demand for the assent of the executive for a bill to become a law is thus stressed by the Interpretation Act- an Act is passed when the Governor assents to the bill for the Act whether or not the Act then comes into force.⁹⁶⁵

5.0 CONCLUSION

This paper has made clear that the State House of Assembly has power to approve or confirm Governors' nominees for some executive positions. We have also shown that this legislative power to approve or confirm Governor's nominees is not general or absolute in nature but circumscribed by the Constitution itself. Furthermore, efforts were made to highlight the, types, limitations, and modes of exercising such power by the state legislature. In Nigerian constitutional democracy, the powers of State Houses of Assembly are not being wielded absolutely, same have ways through which are being controlled so that the institution will not go astray. The study found that Governor's power to assent is not absolute as Constitution empowers the House of Assembly to pass it with a 2/3 majority without Governor's assent

⁹⁶⁰Wade & Philips, *Constitutional and Administrative Law*, 9th edn. (Bradley) 45.

⁹⁶¹ Section 100(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁶²Section 100 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁶³Section 100(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁶⁴ Section 58(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2018)

⁹⁶⁵ Section 2 (1) of the Interpretation Act, Laws of the Federation of Nigeria (LFN), Cap I23 2004

therefore defeating the main objective of separation of powers. It is recommended that Constitutional amendment be sought in order to provide other strict measures to checkmate this legislative power such as seeking approval from the judiciary of the State, before the application of the legislative veto to assent without the Governor's consent.

This paper also found that the Constitution has not made provision that will address a situation if the House of Assembly refuses to confirm known competent nominee. It is the recommendation of this paper that whenever House of Assembly failed to confirm known competent nominees, locus standi should be created in the Constitution in favour of the resident of the state for instituting an action against the State House of Assembly. This paper found that no constitutional tribunal/court in Nigeria is empowered with responsibility of handling legislative matters be it at the National or State Level. This paper finally recommends that a provision for a constitutional tribunal/court be made in the Constitution that will be handling the affairs of legislature be it at the Federal or State.