

SEPARATION OF POWERS: PANACEA FOR GOOD GOVERNANCE IN NIGERIA*

Abstract

Democracy or Representative Government has been treasured world over as the best system as against despotic or autocratic government and indeed any other form of governmental system that allows the fruits of governance to be manifest and to be felt both by the leaders and the led. Thus, good governance which flows from democracy as a system of government cannot be realizable without some principles or doctrines formulated by some political philosophers which today have been recognized and entrenched into various Constitutions as the oil which lubricates the modern democratic government. This paper examined an aspect of so many of these principles which is 'Separation of Powers'. It views this doctrine 'Separation of Powers' as a panacea for Good Governance in Nigeria. The scope of this paper is limited to this concept of Separation of powers in the light of current issues in Nigerian Democracy relating to vetoing Presidential Assent to a Bill, that is overriding the assent of a President to a Bill, Election sequence Bill Vis-à-vis relevant laws on elections and the Executive Orders/Proclamation of the President. The author concludes with proffering some solutions to the apparent crisis between the Executive and Legislative Arms of Government which sometimes overflows into Judiciary.

Keywords: *Separation of Powers, Good Governance, Panacea, Nigeria, Constitution*

1. Introduction

Power according to Chambers Dictionary is 'control and influence exercised over others,¹ while Authority is the power or right to control or judge others or to have final say in something as when it is delegated to someone else². Viewed from another perspective, 'authority is a legal power or right, power derived from office,³ while 'power is the ability to do anything –Physical, mental, spiritual, strength, energy...⁴ From these expose it is evident that power and authority seem to be referring to ability to exercise power, control and influence or dominance over others, power derived from as in a legal document granting legal authorization.⁵ It is however pertinent to point out that the power as envisaged in our context is power derived from a legal framework. Thus, is that which is created and defined by law as an organ of government, as a document granting legal power and it is the authority or functions exercisable by a body or agency responsible for carrying out a particular function as mandated and defined by a legal framework. As regards panacea, it means the provision of direction for doing something with the end result in contemplation which in our context is good governance and this is achieved by strict adherence to the rule of law.

Good governance on the other hand simply means government according to Rule of Law which ensures peace, order and stability of the polity in any democratic government. In government or any democratic government 'where everything is done according to law, all persons and government are subject to law, governance conducted within the framework of recognized rules and principles, discretionary powers of government restricted and disputes between persons and authorities are decided by impartial and independent judges,'⁶ such government is said to be enjoying good governance. In any democratic government that these attributes are lacking especially where rule of law and court judgments are disobeyed, it cannot be said that

* **Fidelis C. UWAKWE, PhD**, Senior Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam campus, Email: uwakwefidelis@yahoo.com. Phone No. 08033921593.

¹ Vicky Aldus *et al* (editor), *Concise Dictionary*, 2009, Chambers Harrap Publishers Ltd, P.954

² *Ibid*. P. 79

³ E. M. Kirkpatrick (editor), *Chambers 20th Century Dictionary* 1983, The Chaucer press, Great Britain, P. 82

⁴ *Ibid* P. 1007

⁵ B. A. Garner (ed), *Black's Law Dictionary*, 7th (ed.) 1999, St. Paul Minn. P.

⁶ A. U. Murtala, 'The Observance of the Rule of Law and Fundamental Human Rights', P. B. Ajibola *et al* (eds). *Law Development and Administration in Nigeria, 1990 Federal Ministry of Justice Law Review Series. Vol.I.*

good governance is prevailing in that polity. Over and above all these, there must be a proper and effective separation of powers with Checks and Balances to check abuse of power.

2. Concept of Separation of Powers

By separation of powers is meant that the exercise of the powers or organs of government must be by independent body or group of persons and that there would be no fusion of powers. In other words, the totality of all organs of government must not be consolidated in the hands of one person or group of persons but must be separated, checked and balanced as to avoid discretionary exercise of powers or functions, it is: 'The division of governmental authority into three branches of government – Legislative, Executive and Judicial – each with specified duties on which neither of the other branches can encroach'⁷ Therefore, the Legislative Power should exclusively be vested with the power of making Laws and members of the Legislature should not be part of any other organ like Executive or Judiciary. The Executive power should exclusively be vested with the power of enforcing the laws made by the Legislature and a person vested with the Executive powers should not be a member of the Legislature or Judiciary, and finally the Judicial Powers should exclusively be vested in the Judiciary for the purpose of interpreting the laws (giving effects to the meaning and intent of the laws made by the Legislature). It is 'a preventive measure against abuse of power, which will occur if the three powers are exercised by the same person or group of persons.'⁸

The idea of making separation of power an imperative in modern democratic dispensation is not to make governance efficient or competent but to 'fragment governmental power in such a way as to defend liberty and keep tyranny at bay. This is because of the insatiable human nature and the assumption that if unrestrained by external checks, any given individual or group of individuals in power will go beyond the limit of their authority'⁹ as it is usually said that 'power corrupts and absolute power corrupts absolutely'.

The doctrine of the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy¹⁰

Nigeria in adopting the principles of separation of powers and Presidential Constitution of the United States entrenched the doctrine of separation of powers in 1979 as well as 1999 Constitutions. Thus, relevant section of the 1999 Constitution placed each arm of government into separate branch. Thus Section 4 of the 1999 Constitution vests the Legislative Arm with the power of making law, Section 5 vest the Executive power in the hands of the President while section 6 vests the Judicial Powers in the Courts. Thus, in separation of powers according to the Nigerian Constitution 1999 (as amended), the roles, functions, and responsibilities of the Legislative, Judiciary and Executive are clearly spelt out. There is no doubt therefore that the 1999 Presidential Constitution of Nigeria made provisions for separation of powers which clearly made provisions for smooth running of the nation as to ensure prevalence of the rule of Law and good governance.

3. Separation of Powers as Panacea to Good Governance

There is no doubt that separation of power as conceived and adopted by modern democratic governments was not to achieve efficiency in governance but to facilitate good governance and to act as 'bulwark against tyranny.'¹¹ In ascribing the legislative functions to arm of the legislature or National Assembly, the 1999

⁷ Note no 5, p. 1369.

⁸ Ese Malemi, *Administrative Law*, 3rd Edition, (Princeton Publishing Co., Lagos, 2008), p.52

⁹ Maduekwe Vincent Chuks *et al* Judiciary and The Theory of Separation of Powers in Achieving Sustainable Democracy in Nigeria (The Fourth Republic) published in '*British Journal of Education*, Vol. 4. No. 8 pp84-104, published by European Center for Research Training and Development UK, August 2016 at p. 86

¹⁰ Note no.5, at p.1370

¹¹ *USA v Brown*, 381, US 437, see also Ese Malemi Note No.8,p585

Constitution of Nigeria (as amended) makes it clear that the power to make law is for ‘...the peace, order and good government of the Federation or any part thereof...’¹² However, there seem to be infractions by one arm of the government in flagrant violation of the Constitution even with impunity thereby heating the polity or giving rise to political shenanigan and friction. Such instances include for example, when the executive arm disobey the order of the Court which is a violation of the Constitution which the holder swore to uphold. In the case of the *A.G. Lagos State v. A. G. Federation*,¹³ the Supreme Court directed the Federal Government and in fact the then President Olusegun Obasanjo to pay the Revenue accruing to the Lagos State Government which Order was never obeyed by the President but was obeyed by his successor, President Umaru Musa Ya’ardua. This Executive disobedience to court orders does not make for good governance but for recklessness and disorder. Such Executive disobedience can be seen in the current administration of President Muhammadu Buhari which has refused to obey several of Court Orders like the order¹⁴ to release the former National Security Adviser, Col. Dasuki on bail and many others, are clear sign of bad governance which impinges on the other arms of the government which violates the principle of separations of Powers.

As a corollary to the above, was executive meddling into the province of the Judiciary. The third arm of the government in Nigeria. It behooves constitutionally, the National Judicial Council, an arm of the Judiciary empowered by the law to discipline any Judicial Officer found wanting or alleged to be corrupt¹⁵. But the Executive arm of government under the watch of President Mohammadu Buhari or rather at his behest, ordered the invasion of the residences and arrest of some senior Judicial officers comprising of some Supreme Court Justices and other Federal High Court Judges nationwide which was well planned and coordinated on the night of 8th day of October, 2016 which gave rise to heating of the polity. Indeed there was a national condemnation which led to the President leaving the country for a period of more than six months under the guise of ill health in order to douse the tension created by the president and to attract the sympathy of the International Community and the National Assembly who ordinarily would have commenced impeachment proceedings against the President. This act of the Executive impunity no doubt violated the Principle of the separation of powers which makes for good governance.

Furthermore, there were some notorious cases of Executive procured impeachment of some of the State Governors by invoking relevant sections of the Constitution,¹⁶ such as the impeachment of former Governor of Anambra State, Mr. Peter Obi and others without recourse to due process of the law. Again, the meddling of the Legislative Arm of Government in the matter of Appropriation Bill and Budget proposals are instances of violation of the Principles of separation of powers. It is the Executive Arm of Government (President in the case of the federation or the State Governor in the case of a State) that presents the budget to the Legislative arms of the National Assembly or the State Houses of Assembly. The Legislative arms in order to insert their illegal amount of their usual ‘constituency project’¹⁷ meddle into the budget. In most cases they inflate the budget proposed to accommodate their own share or alternatively employ delaying strategies in not approving the budget as presented in order to frustrate the Executive arm, thus leading to lobbying the members of National or State Houses of Assembly. This in most cases has turned into what is now known in our political Lexicon as Budget Padding or Budget Disappearance. This does not make for proper separation of powers and amounts to inviting disorder in the polity. It is an invasion into executive province

¹² Section 4(2) CFRN 1999 (as amended).

¹³ (2004) 11-12 S.C. P. 85

¹⁴ ‘The six Times Court has granted bail to Dasuki’ published on online at ‘the Cable News’ of July 2nd 2018 at 18:54 at <https://www.thecable.ng/file-six-times-court-granted-bail-dasuki/>, accessed on 12/10/2018, at 1:10am. Government refused to honour the orders but always bring up fresh charges against him.

¹⁵ Paragraph 21(b) and (c) of the Third schedule, Part 1 of the CFRN 1999 (as amended).

¹⁶ Section 143 and 188 CFRN 1999 (as amended).

¹⁷ B. O. Nwabueze, *Current Issues and problems in the working of constitutional Democracy in Nigeria* (Gold Press Ltd. Ibadan, 2011) p. 67.

since the legislature cannot initiate budget bill but by the executive.¹⁸

The implication of the Assembly's lack of power to initiate financial Legislation in the first instance is that, whilst it may reduce the total amount of expenditure contained in an appropriation bill initiated before it by the President, it cannot increase it. This is because any increase over and above the total amount in the President's appropriation bill must be regarded as having been initiated, not by the President, but by the Assembly in violation of section 81(1), (2) and (4), and is therefore unconstitutional¹⁹

Furthermore,

A legislature that proceeds to pass law, the content and purpose of which are in flagrant violation of the spirit and later of the Constitution is not acting within the ambit of the law making powers granted it... this becomes an open invitation to anarchy²⁰

Another area that needs to be emphasized is election sequence or ordering. According to our Constitution, it is the Independent National Electoral Commission (INEC) that has the power to organize and specify the order of elections in Nigeria. In other words, it is the constitutional or statutory duties of INEC and not the National Assembly that has the statutory powers to organize elections and fix the days and sequence of election²¹ without prejudice to their Power of constitutional amendment devoid of an abuse. In the case of the National Assembly, it is provided that '...elections to each House of the National Assembly shall be held on a date to be appointed by the Independent National Electoral Commission'²² And as regards that of the President it is provided that: 'An election into the office of the President shall be held on a date to be appointed by the Independent National Electoral Commission'²³ The Electoral Act²⁴ which was made pursuant to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), provides also that elections to the both Houses of the National Assembly, the President and etc, shall hold on a date to be appointed by the Independent National Electoral Commission in accordance with the Constitution and the Act. Thus, the combined effects of these provisions is that it is only the INEC which is an arm of the executive that has the power to organize and specify the dates of elections in Nigeria and that the Electoral Bill of 2018 which the president refused to assent was an attempt to usurp the powers of the INEC and invariably an incursion overreaching into the ambit of the executive which does not augur well with the principles of the separation of power.

In the election timetable released by INEC, it ... fixed Presidential and National Assembly (NASS) elections on Saturday, Feb. 16, 2019, and Governorship and state Assembly elections on Saturday, March 2, 2019. The National Assembly, however changed the arrangement, demanding that the National Assembly elections come first and the presidential poll last...²⁵

¹⁸ Section 81 and 121 of the CFRN 1999 (as amended).

¹⁹ *Ibid*,

²⁰ D. A. Guobadia, 'The Legislative and Good Governance Under the 1999 Constitution' Published in 'Nigeria: Issues in the 1999 Constitution' edited by Ignatius A. Ayua et al, published by Nigerian Institute of Advanced Legal Studies, Lagos, 2000), p.47.

²¹ Sections 76(1) & (2), 116(1) & (2), 133(1) & (2) CFRN 1999 (as amended), cf. also section 25 of the Electoral Act 2010 (as amended) in 2015.

²² Section 132(1) CFRN 1999 (as amended)

²³ Section 132(1) CFRN 1999 (as amended)

²⁴ Section 25(1)-(2) of Electoral Act 2010 as amended in 2015, see Paragraph 15(a) of the Third Schedule to the CFRN 1999 as amended

²⁵ The news an online publication of News Agency of Nigeria published on 25th April, 2018 at 3:02pm, on thenewsnigeria.com.ng/2018/04/national-assembly-wrong-onrecording-ofelections-sequence-courts-rule/ accessed on 6/7/2018 at 3:40am

The Federal High Court therefore declared the said section 25 of the Electoral Act (Amendment Bill) 2018 seeking to re-order the election sequence for 2019 general elections in Nigeria as provided by INEC null and void. Justice Ahmed Mohammed said that in arriving at his ruling that he was persuaded by the submission of the learned counsel for the Plaintiff that the ‘Constitution gave INEC the sole responsibility to conduct, organize, issue election time table and decide election dates’²⁶. He held that the ‘Electoral Act by the National Assembly could not override the constitutional powers granted to INEC in paragraph 15(a) of the Third Schedule to the Constitution’.²⁷ However, court ought not to have given the ruling because the bill is yet to become a Law/Act²⁸

Even when the intention has been formulated into a bill no question of law arises at that stage, for a bill is not law; as such it cannot be unlawful exercise of the power of law-making inasmuch as it may be abandoned or amended before the processes of its translation into law are completed. ...it cannot affect the rights of any person.²⁹

It is worth knowing that the court of the Appeal on this issue had heard the appeal and reserved its judgment on the matter. We await the final ruling on this matter by the Supreme Court of Nigeria because it is the Court that says what the law is even after its enactment by the Legislature; it becomes definite once the supreme court of the land had made a pronouncement on that law. Thus, it is obvious that Judges can make law also through their pronouncements.

Another thorn on the flesh of democracy which invariably touches separation powers is what one may refer to as the Executive Order or in extreme cases Executive Decree. Executive Order refers to ‘an order issued by or on behalf of the President intended to direct or instruct the actions of executive agencies or government officials or to set policies for the executive branch.’³⁰ It is also a constitutional power invested on the President or the State Governor as the appropriate authority to modify some aspects of the laws or existing laws for the purpose of modifying and bringing such laws into conformity with the law or the provisions of the Constitution.³¹ By existing law is meant ‘any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force’³² and modification ‘includes addition, alteration, commission or repeal’.³³ Thus, in the case of *A. G. of Ogun State & Ors v. A.G. of the Federation* which case tried to show the competence of the Federal Legislature and the State Legislature to make law in relation to Public Order where Public Order Act an existing law was challenged by the State Governments as unconstitutional and a total invasion of the legislative powers vested in the National Assembly and State Houses of Assembly. The Supreme Court held that the Public Order Act was a Federal law and that all State laws on public order and public safety which were inconsistent with the Public Order Act (Adaptations) were held invalid.³⁴

Another issue bothering on Separation of Powers which came up recently was the Executive promulgation or declaration of June 12 as the New Democracy Day in Nigeria and conferment of the Grand Commander

²⁶ *Ibid*

²⁷ *Ibid*

²⁸ Dozie Onyerka ‘Professor Nwabueze Faults Court’s Ruling on recordered election sequence’ an online Publication of ‘Home News Nigeria’ published on March 16th, 2018 at <https://www.today.ng/news/Nigeria/professor-Nwabueze-faults-court-ruling-recordered-election-sequence/> accessed on 6th July, 2018 at 3am.

²⁹ *Ibid*

³⁰ *Black’s law Dictionary*, Note No.5 p.591

³¹ Section 315(1)(a) & (b), (2),(3) & (4)(a)(1)-(iii). CFRN 1999 (as amended)

³² Section 315(4)(b) CFRN) 1999 (as Amended).

³³ Section 315(4)(c) CFRN 1999 (as amended). see also *A.G of Ogun State v A.G of Federation* (1982) 3 NCLR, 166, SC

³⁴ (1982) 3 NCLR, 166, SC, see also note no 13 above p 67-68

of the Federal Republic (GCFR), the highest honour in the land on MKO Abiola while the investiture would take place on June 12, 2018, without recourse to the National Assembly. It has to be recalled that following the annulment of June 12, General Elections which the presidential Election was won by the late Moshod Abiola of Social Democratic Party (SDP) and the Nigenan struggle for the actualization of the June 12, the Abulsalami Abubakar led Military Government quickly held another election and handed over to the democratically elected government led by Olusegun Obasanjo of the PDP on May 29th, 1999 which day has been declared as the Democracy Day in Nigeria. Buhari led Federal Government on 6th June 2018, announced that ‘for the past 18 years, Nigerians have been celebrating May 29th, as Democracy Day. That was the date when for the second time in our history, an elected civilian administration took over from a military government. The first time this happened was on October 1st, 1979³⁵. Continuing, President Muhammadu Buhari said:

June 12th 1993 was the day when Nigerians in millions expressed their democratic will in what was undisputedly the freest, fairest and most peaceful election since our Independence. The fact that the outcome of that election was not upheld by the then Military Government does not distract (sic) from the democratic credentials of that process³⁶

Thus he said:

...the Federal Government has decided that henceforth .. June 12th will be celebrated as Democracy Day. Therefore, Government has decided to award posthumously the highest honour of the land, GCFR, to late Chief MKO Abiola, the presumed winner of that election. The commemoration and investiture will take place on June 12, 2018, a date which in future years will replace May 29th as a National Public holiday in celebration of Nigerian Democracy Day³⁷

This declaration or promulgation besides being a ‘deceitful’ suddenly and mischievously trumped up to rescue his dying image three years after his installation as president³⁸ raises so many legal and constitutional issues bothering on:

- (a) whether what he calls the cancellation of the June 12 election by the then Military Government is binding legally on him and Nigerians generally, or putting it differently, whether as President he has the power or competence to overturn or disregard the cancellation without an Act of the National Assembly repealing it;
- (b) the legal effects of the cancellation; and (c) whether the President’s 6th June Declaration does not require, as a condition for its effectiveness in law, that the results of the June 12 election should have been officially announced and Chief Abiola officially declared winner³⁹

Since we are in a democratic era as against the Military authoritarian regime, the Rule of law should have prevailed because of the bindingness of the decree annulling June 12 Election 1993. Thus, the Learned Jurist Professor Nwabueze rightly opined:

It is as indisputable that a presidential election was, as a matter of fact, held on June 12, 1993, as that, the said election was, as a matter of both fact and law, annulled by a Decree of the Federal Military Government (FMG) Decree No. 61 of 1993.... The binding force,

³⁵ Chinedu Asadu, Nwabueze June 12 declaration, illegal... Buhari trying to rescue his dying image. Online ‘the Cable News Publication’ published on June 15th 2018, at 12:52pm. At <https://www.thecable.ng/nwabueze-june-12-declaration-illegal-mischieveious-burari-trying-rescue-dyingimage/> accessed on 6/7/2018 at 2.45am

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ *Ibid*

³⁹ *Ibid*

or rather the supremacy of Decrees of the FMG was settled with finality 48 years ago by the Federal Military Government (Supremacy and Enforcement of Powers) Decree 1970 re-enacted by Decree 13 of 1984 made by Gen Buhari as the then Head of the FMG.... Even the 1999 Constitution from which he derives his authority as President to make the June 6 Declaration is the product of a Decree, Decree 24 of 1999 to which that Constitution is scheduled. The 1999 Constitution itself, in Section 315(4) (d), recognizes the annulment Decree 61 of 1993⁴⁰

From the foregoing, it is clear that Buhari's June 6 Declaration or promulgation unilaterally without an Act of the National Assembly is an authoritarian Decree which negates the principles of the Rule of Law and the Separation of Powers. He ought to have presented a Bill to the National Assembly for the repeal of the Decree annulling the June 12, 1993 elections for him to have the competence to proclaim the Decree or the Order which accounted for the absence of members of National Assembly on the day of the investiture. Furthermore, it is axiomatic in law that when a thing or a law is annulled, such a thing or law is presumed to have never existed as clearly stated by Lord Denning in *Macfoy v United Africa Co. Ltd*, that

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an Order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there, it will collapse.⁴¹

In the case of *Adejumo v Ayantegba*, Oputa JSC described a thing declared as a nullity as amounting to nothing thus: 'If a transaction is void, it is in law a nullity, not only bad, but incurably bad and nothing can be founded on it, for having no life of its own, it cannot vivify anything'⁴² It follows that the annulled June 12, 1993 election, is deemed in law not to have taken place and to have no existence and therefore amount to nothing and June 12 cannot be declared a public Holiday Both the declaration and the award are illegal, null and void; the annulment Decree No. 61 of 1993, an existing Law under section 315(4)(d) of 1999 Constitution must first be repealed with effect from a date before June 12, 1993 - before the declaration and the award can legally or lawfully be made.⁴³ It suffices to say for the umpteenth time that everything done under the so called June 6th, 2018 declaration by President Buhari amounts to usurpation of legislative function and therefore against the principles of separation of powers which makes for good governance.

Another issue to be considered is Executive Order No. 6 of President Buhari issued on July 5th 2018 which aimed at seizing assets of corrupt persons and institutions in Nigeria. In other words, any assets of any person whether being prosecuted or not and which is suspected to have been gotten by unlawful or corrupt means shall be confiscated and be forfeited until proven otherwise or pending the final determination by a court. A careful observation of this Executive Order No. 6, 2018 will reveal that the purport of this Order is not only to prosecute the alleged victims but also to persecute all perceived opponents of the government in power. This is because our existing Laws or Acts have provisions on how to deal on assets or properties acquired by unlawful or through corrupt means by anti-corruption agencies as provided by Economic and Financial Crimes Commission (EFCC) Act, 2004 and the Independent Corrupt Practices Commission (ICPC) Act, 2000 which clearly made provisions for forfeitures or seizing the properties or monies etc, gotten through corrupt means. Thus, section 27(4) of EFCC Act Provides that 'subject to the provisions of section 24 of this Act, whenever the assets and properties of any person arrested under this Act are attached, the General and Assets Investigation Unit shall apply to the Court for an interim forfeiture order under the provisions of this

⁴⁰ *Ibid*

⁴¹ (1961) 3 WLR 1405 at pp409-410.

⁴² (1989) 3 NWLR (pt. 110) 417 at p. 451.

⁴³ *Ibid*.

Act'.⁴⁴

Furthermore the ICPC Act of 2000 provides that:

Where in respect of any property seized under this Act there is no prosecution or conviction for an offence under this Act, the Chairman of the Commission may, before the expiration of twelve months from the date of the seizure, apply to Judge of the High Court for an Order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under section 3 to 19⁴⁵

In dispensation of fair hearing and justice, the Act provides however that the judge to whom the application is made should conduct the matter to avoid persecution and acts of vindictiveness. Thus, the Act provides that:

The Judge to whom an application is made under subsection (1) shall direct to be published a notice in the Gazette and in at least two newspapers circulating in Nigeria, which shall be in English language calling upon any person who claims to have an interest in the property to attend before that Court on a date specified in the notice, to show cause why the property should not be forfeited to the government⁴⁶

It is clear that our Laws have taken adequate measures in respect of forfeiture of assets or property or money even to the extent of giving notice where such assets are not attached to any person or the Court or the prosecution is not aware of the owner. The Executive Order No. 6 of 5th July, 2018 was no doubt '...to give naked powers to the government agencies to confiscate any Nigerian property on allegation or suspicion of corruption'⁴⁷ Further on this, Abeny Mohammade (SAN) said that: 'the Executive Order ... will ridicule the Doctrine of separation of powers, adding that no section of the country's Constitution authorizes the president to make the orders.'⁴⁸ For Edward Omega Esq., the Executive Order No. 6, 2018 is 'anti-people, draconian, and should have no place in a democratic society.'⁴⁹ Continuing, the learned Senior Advocate of Nigeria (SAN) said that:

By obtaining an order of court, you must have found that the person can be indicted based on preliminary investigations; not that the person is already guilty, but that there is a prima facie case established that can lead to a charge, that has been the provision of the law under Act⁵⁰

Furthermore, he opined that:

...the Executive Order which says once you are suspected of a crime the property can be confiscated without going to court to obtain an order to that effect, such order is draconian, uncalled for and not in line with the tenets of laws as far as prosecution of corruption cases is concerned. This order has taken us back to the era of draconian military era where such pronouncement can be made and it becomes binding on the people⁵¹

Executive Order No. 6, 2018, violated the doctrine of separation of powers and does not make for good governance. Nigeria is no longer in authoritarian regime of 1983 when Buhari as military Head of State

⁴⁴ Economic and Financial Crimes Commission Act LFN 2004.

⁴⁵ Section 48(1) Independent Corrupt Practice Commission (ICPC) Act, 2000

⁴⁶ Section 48(2) *ibid.*

⁴⁷ John Chuks Azu and Clement A. Oloyede, 'Weighing Buhari's Executive Order No.6 online News of 'Daily Trust' published on 17th July 2018 at 3: 42am at www.dailytrust.com.ng/weighing-buhari-s-executive-order-no-6-261259.html

⁴⁸ *ibid.*

⁴⁹ *Ibid*

⁵⁰ *Ibid*

⁵¹ *Ibid*

scuttled or ended the democratically elected civilian government then in a military coup.

Having said so much on this issue, it behooves to ask as between our Legislation which is the Act and the Executive Order No 6, which one is legal? There is no doubt that our Act is legal. 'It has covered the field hence the Executive Order is by the doctrine of covering the filed a nullity.⁵² Even in the United State of America, 'Executive Orders as practiced in the US is to take care of areas where there is (sic) no legislation but the government needs to act fast to tackle the issue.⁵³ But once that said Executive Order violates any constitutional provision or people's right, such Executive Order will be challenged and subjected to the power of Judicial Review which is an indices of the separation of powers as in the Case of Trumps Executive Order on Travel Ban which was declared unconstitutional by US Circuit Courts but the modification of same Order as opined by the Supreme Court which removed some aspects of policies and acts that violates people's right and the Constitution in the Order and specifically tagged it as ' protecting the Nation from Foreign Terrorist Entry into the United States⁵⁴. The United Supreme Court Upheld the revised and modernized Executive Order on Travel Ban. It held thus:

An American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee can legitimately claim concrete hardship if that person is excluded. As to these individuals and entities, we do not disturb the injunction. But when it comes to refugees who lack any such connection to the United States, for the reasons we have set out, the balance tips in favor of the Government's compelling need to provide for the Nation's Security⁵⁵

Put in other words, the Court further restated its holding thus:

Section 6(a) [suspending the refugee resettlement program] may not be enforced against an individual seeking admission as a refugee who can credibly claim a bonafide relationship with a person or entity in the United States. Nor may s 6(b) [reducing the cap to 50,000]; that is, such a person may not be excluded pursuant to s 6(b), even if the 50,000 person cap has been reached or exceeded. As applied to all other individuals, the provisions may take effect⁵⁶

4. Conclusion and Recommendations

There is no doubt that separation of powers is a cardinal principle or theory which when duly adhered to by all modern Democratic Government world over, particularly Nigeria would produce the desired result of good governance which is the aspiration of a modern man. Concentrating all organs of government in one person or group of persons is an invitation to autocracy, oppression, anarchy and eventual collapse of peace in any political set up. This is because power corrupts and absolute power corrupts absolutely. Thus, the compelling need for separation of powers to enthrone peace and good governance. America as we have seen above as one of the founding fathers of Democracy cherishes Democratic Institutions or Organs of governments and each arms respects the order and acts within the ambit of the law. Even when one arm errs and is called to order either by way of judicial review or public outcry as in the case of Trump's Travel Ban, the arm of government concerned readily complies. That makes for good governance. But unlike in Nigeria, where good governance is thrown overboard because of an individual's autocratic disposition characterized by flagrant disobedience of Court Orders, there is negation of separation of powers.

⁵² *Ibid*

⁵³ Weighing Buhari's Executive Order

⁵⁴ 'All the Laws and Executive Orders Trump has signed so far' Published online at <https://www.vice.com>-pggbp2//published on 21/01/2018, accessed on 23/08/2018 at 2:50am>

⁵⁵ The Supreme Court's opinion on the Revised Trump Executive Order: what does it mean for refugees? Published online on June 12, 2017 at <https://www.migrationpolicy.org>new> accessed on 23/8/2018 at 2:10am

⁵⁶ *Ibid*

The President Buhari's Executive Order No.6, 2018, is unconstitutional, illegal and violative of the Principle of separation of powers and Rule of Law and remains as such notwithstanding that some government agents went to Court to obtain a Court Ruling that it is valid and therefore upheld it.⁵⁷ It is when individual cases as they affect citizen in their real live cases are ceased of by higher Courts that the reality of its illegality will be pronounced. Buhari has no power to limit Citizens movement or right to travel or move about as granted and guaranteed by our Constitution⁵⁸ simply because a Federal High Court in its purported ruling upheld the Executive Order no 6. That judgment though valid till it is set aside by higher court, it is a derogation of the concept of the separation of powers capable of hitting up the polity.

It is obvious that lack of good governance in Nigeria is a mockery of democracy which is governed by the Rule of Law and inviolability of Constitution which is always the grundnorm of our Laws. We have seen that the arm of government mostly affected by this anomaly or ill is the Executive and the Legislative arms, but because the Executive wields enormous powers under our laws as the Chief Executive and the Commander in Chief, he is always predisposed to violate the principle of separation of powers and ready - to sink the boat called Nigeria.

In an honest effort to proffer solutions to the abuse of the principle of separation of powers as propounded by philosophers in their effort to ensure and enthrone good governance and peace the following are recommended. There is need for self-introspection and examination by all aspiring into political offices by implication, those aspiring for leadership posts in this country for them to assure themselves that they really want to serve and offer quality leadership to the nation and not to seek for self-aggrandizement or to enrich themselves or engage in other acts of corrupt practices incidental to their offices or various organs of government one might find himself. The guiding principle should be 'what impact am I going to make to bring a positive change in the governance far more better than I met it' In other words, 'what can I do for my country and not what my country will do for me or what I will gain from my country'. Contentment among our leaders is absolutely necessary.

Flowing from the above, is the need for our political leaders to see governance as a service as those in the civil service who earn and depends on their salaries. The salaries or wages and other basic allowance of all politicians need to be reviewed and harmonized in line with minimum wages to assuage and nip in the bud the inclination to steal, embezzle, and engage in corrupt practices. It is very unfortunate that up until now, the salaries and allowances of our political leaders even though are highly scandalizing are still shrouded in secrecy and they do not want to legislate on it. Our handicap is that the Constitution we are operating is a schedule of the military Decree and has no stipulation of what should be the basic salaries or allowance of these men in the gab of selfish attire. If they had done so, it would have appeared to all that those going into leadership are really those who want to 'SERVE' and those who want their own 'care' which give rise to all other incidental anomalies that give rise to violation of the Constitution and negation of the Rule of Law thus making none sense of the principle of the separation of power which guarantees good governance. There is need for National Sovereign Convention to discuss all these and to enact them into law since members of our Parliament cannot embark on that. They cannot legislate on anything that adversely affects their pocket or pulse. Thus, the country has continued to nose dive into deterioration and governance. The military would have made provisions on this to dissuade people from going into politics to steal before handing over power to democratically elected government in 1999.

Furthermore, there is need to make some further inputs in our Constitution by way of either amendment or

⁵⁷ John Chuks Azu ' Court upholds President Buhari's Executive Order No 6 ' an online publication of 'Daily Trust' of 12th October, 2018 at www.dailytrust.com.ng/court-upholds-president-buhari's-executive-order-6-html accessed on 15th October, 2018 at 10.15am., see suit No FHC/ABJ/CS/740/2018.

⁵⁸ Section 41(1),2(a) etc. CFRN 1999 (as amended).

further legislation to make meddling into other arms of government and the disobedience of Court Orders a strict liability offence and where necessary, an impeachable offence so that the principle of separation of powers shall be sacrosanct. In view of this, there has to be a national retreat twice a year or even more by all the three arms of government together to examine governance and appraise each other arm's contributions in advancing good governance and they will proffer advise to each other and correct themselves in area where they are infringing especially as it touches separation of power. Such things as invasion of State Government Houses or Judicial Officers residences should be thrown open and looked into by the three arms of government. This will make for good governance.

The Executive Arm of the Government, especially the president should not because he is the Commander in Chief engage in autocratic and dictatorial acts of vendetta against political opponents but pursue always the common good and national interest. Inasmuch as he must be firm in executing the laws and maintaining the Constitution, he must at the same time be prepared to obey court orders or judgments or face impeachment or removal in the event that legislature should put off their gab of legislative ineptitude and corruption. For good governance to prevail also, the Executive must be prepared to obey and follow the prescription of the Chapter two of the Constitution respecting 'Fundamental Objectives and Directive Principles of State Policy: Federal Character as it is known in our political lexicon must be strictly adhered to and the Legislature must intervene where it is not by invoking their powers of impeachment, though these may not be feasible because of ethnic and religious inclinations. But for good governance they have to.

The Legislature also should divest its institution of wide scale ineptitude and face their legislative duties and oversight functions as provided by the Constitution to effect checks and balances for good governance. To this end they must eschew meddling into executive functions as to budgeting. They must avoid budget padding and making the budget as presented by the executive to develop wings and flyaway and disappear which is called 'budget disappearance etc. In other words they must rid themselves of all corrupt practices to make room for good governance to prevail.

The Judiciary also must also put off its gab of timidity and put on the gab of judicial activism in obvious cases of constitutional violations especially as it touches meddling into another arm of government by any of the three organs of the government. To this end there is the need for a further amendment of our Constitution to protect the third arm of the government which is the Judiciary from the executive intimidation and harassment. There is the need to establish a Judicial Force akin to Sheriff of the United States with Powers to protect and to enforce Orders and Judgments of the Court to which other armed forces or police force once their duties touches on orders or rulings of court should give way to their duties - of Sheriff.