CHAPTER ONE

A CRITICAL APPRAISAL OF THE IMPEACHMENT PROCESS UNDER THE 1999 CONSTITUTION (AS AMENDED)

Introduction

Impeachment of public office holders has become a recurring decimal in Nigeria's Political landscape since her return to democratic rule in 1999, after many years of military rule. The impeachment saga took its debilitating tool across the States of the Federation between 2003 till date.

Impeachment thrives in a democratic government; and it is the most effective constitutional instrument put in place to check the excesses of public office holders. This is to prevent abuse of public office by unscrupulous public office holders which would result in plundering of the public coffer.

The effect of impeachment process is still being felt by the victims across the States of the Federation which cut across the Executive, Legislative and Judicial officers of both Federal and States. The rational for the incessant, unrestrained and unabated resort to impeachment proceedings to remove public officer in total disregard to impeachment procedure as entrenched in the 1999 Constitution of the Federal Republic of Nigeria, does not accord with democratic principles. Nigeria practices constitutional democracy. Therefore, the Constitution should be our guide in governance. The dreaded word "impeachment" is fast becoming a norm in our society, looming large like a hydra-headed monster ready to devour and destroy our hard earned democracy, if unchecked.

1.1 **Definition of Impeachment**

Impeachment is a formal process in which an elected official is accused of unlawful activity and which may or may not lead to the removal of that official from office[1]. It is only a legal statement of charges parallel to an indictment in criminal law. An official who is impeached faces a second legislative vote, which determines conviction or failure to convict on the charges embodied by the impeachment. Most constitution requires a super majority to convict. Although the subject of the charges is criminal action, it does not constitute a criminal trial, the only question under consideration is the removal of individual from office, and the possibility of a subsequent vote preventing the removed official from ever again holding political office in the jurisdiction where he was removed.[2]

The *Encyclopedia Americana*[3] states that, Impeachment is a proceeding in which accusations are brought by a legislative branch of a government against civil official (Chief of State, Cabinet members and Judges). Legally, impeachment could also be defined as the process whereby public officers are charged and tried for misconduct or acts amounting to misconduct of such a public officer culminating to his removal from office, normally after a two-third majority of the National Assembly or State Houses of Assembly, as the case may be consents to the removal of such officer.

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[1] The word "impeachment" was not used in the 1999 constitution of the Federal Republic of Nigeria. However, the process leading to removal of a President, Vice President, Governor or Deputy Governor is akin to the impeachment process in the United States of America. The distinction lies in the fact that while an officer impeached in the U.S.A. may not be removed, a person indicted by the panel stands removed in Nigeria if the Legislature adopts the report of the panel.

[2] http://www.senate.gov./artandhistory/history/common/briefing/senate impeachment Role.htm, accessed on 14th February,2010

[3] Jowett's Dictionary of English law (2nd 'edn'), M A Owoade, The Constitution, A journal of Constitutional Development vol.7 N04 Centre for constitutionalism and Democratization Ileja-Lagos, December, 2007 p.1

Impeachment is also defined as the Act of accusing a public official or political office holder of committing a serious crime.[4] For example, a written accusation by the House of Representatives or Senate against the President or Vice-President., House of Assembly against Governor or Deputy Governor or any relevant public officials of the State's government or Federal Government of Nigeria, that he is guilty of gross misconduct. In this respect, impeachment process could be associated with the concept of checks and balances inherent in the doctrine of separation of powers in the three divisions of government, executive, legislature and the judiciary which also is entrenched in sections 4,5 and 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Black's Law Dictionary defines impeachment as:

> A criminal proceeding against a public officer, before a quasi-political court, instituted by a written accusation called articles of impeachment; for example a written accusation of the House of Representatives of the United State to the Senate of the United State against the President, Vice President, or an officer of the United State, including Federal Judges.[5]

Impeachment therefore is an indictment of a public office holder that he is guilty of an impeachable offence such as a breach of the Constitution or any other crime which in the opinion of the legislature is gross misconduct. The indictment of such officer ignites the process of his impeachment and subsequent removal from office on conviction. However, to ground conviction, the constitutional requirement for impeachment must be followed else, the Court will intervene and invalidate the proceedings leading to such

[4] *op cit*
[5] Bryan A Garner, *'Black's Law Dictionary'*,(8th 'edn' Thompson West publishing Co. 1990). P768

impeachment. In Nigeria, the procedure to impeach the President, Vice President, Governor and the Deputy Governor is found in sections 143 and 188 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). To successfully impeach these officers, the criteria set out in sections 143 and 188 of the constitution must be complied with. In *Inakoju v Adeleke*, the Court of Appeal per Ogebe JCA (as he then was) stated thus:

> For all I have said in this judgment I have no hesitation in holding that the learned trial judge was wrong in declining jurisdiction. Indeed he had jurisdiction to examine the claim in the light of section 188 subsections 1-9 of the 1999 Constitution and if he was not satisfied that the impeachment proceedings were instituted in compliance therefore, he has jurisdiction to intervene to ensure compliance. If on the other hand there was compliance with the pre-impeachment process that what happened thereafter was the internal affair of the House of Assembly and he would not have jurisdiction to intervene.[6]

Impeachment therefore, is a process that is used to charge, try, and remove public officials for misconduct while in office. The word impeachment should therefore not be used as a substitute to the removal provisions of section 188. The procedure in section 188 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is one for the removal of Governor or Deputy Governor and not of impeachment. Impeachment does not necessarily result in removal from office. For example, President Andrew Johnson of the United States of America was impeached in 1868 after violating the Tenure of Office Act, but was not removed from office. He was acquitted by the Senate,

[6][2006] 16 NWLR (pt. 1006) P.486

falling one vote short of the necessary two-third needed to remove him from office.[7] Similarly, President Bill Clinton was impeached on 19/12/1998, by the House of Representatives on articles charging perjury and obstruction of justice, but was not removed from office. He was acquitted by the Senate. The Senate vote fell short of the necessary two-third needed to remove him from office.[8]

The power of impeachment is the most effective and potent instrument placed in the hands of the legislature by the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to check the conduct of public officials and restrain them from abuse of their public office. The measure of impeachment process is so drastic that in certain circumstances the threat of an impeachment is enough to send shivers down the spines of a would be victim, as shown by President Richard Nixon of the United States of America when he resigned from office only under a mere threat of his impending impeachment in 1874**.** The Judiciary Committee of the House of Representatives had approved articles of impeachment against him and reported those articles to the House of Representatives; Nixon resigned before the House could consider the impeachment resolutions. He was however, subsequently pardoned by President Ford[9]

In Nigeria, no President of the Federal Republic of Nigeria has fallen victim of impeachment by any means whatsoever. However, there were several threats of impeachment by the National Assembly against President Olusegun Obasanjo who ruled Nigeria from 1999-2007, for his several breaches of the Constitution of the Federal Republic of Nigeria, 1999(as amended). Nevertheless these threats never materialized as

[7] http://www. Rules,house.gov/house_rules precedents.html accessed on , 25/7/2008
[8] *ibid*
[9] http://www.senate.gov/artandhistory/history/common/briefing/SenateImpeachmentRole.html, accessed on 14/2/2010.

such had always been negotiated away by his loyalists by lobbying and/or use of money to influence members of the National Assembly prompting them to back out on such threats. For example, on 14th August, 2002, motion for the impeachment of President Obasanjo was passed by the National Assembly on allegations of misrule and constitutional violations. This was because of the President's order for a probe of the National Assembly, the Senators and members of the House of Representatives. Senator Nzeribe confessed to bribing the leadership and members of National Assembly during President Obasanjo's impeachment saga. This was done in order to dissuade members of the National Assembly from initiating the process of impeachment.[10] But such had always redirected the conduct of the President in his leadership style for fear of being removed eventually.

Alagba Jande and Imbwasch,[11] rightly pointed out that the greatest tools placed in the hands of the legislature to call the executive to order is the machinery for impeachment of the President and Vice President, Governor and the Deputy Governor[12] These officials can be removed whenever their conducts are adjudged "gross misconduct" by the legislature as provided in sections 143(11) and 188 (11) of the Constitution of the Federal Republic of Nigeria, 1999(as amended).

Section 143 (11) provides:

[10] http://allaftica.com/Stories/200703260530.html, accessed on 23/2/2010

[11] Alagba, G G Jande and A Imbwasch, "*The Role of the Legislature in the promotion and protection of Democracy in Nigeria"*, (the proceedings of the 39th Annual Law Teachers Conference, University of Maiduguri 13th -15th October, 200**3)**

[12] *Ibid* P. 109

> In this section "gross misconduct" means a grave violation or breach of the provisions of this Constitution or a misconduct of such a nature as amounts in the opinion of the National Assembly to gross misconduct[13]

This section relates to the removal of the President and Vice President of the Federal Republic of Nigeria. In the same vein, section 188 (11) applies to the removal of the Governor and the Deputy Governor of the States of the Federation.[14] There are also provisions in the Constitution meant to check the misconduct of the Principal Officers of the legislative houses, such as the Senate President, the Deputy Senate President, the Speaker and the Deputy Speaker of the House of Representatives and the speaker and Deputy Speaker of the State Houses of Assembly.[15]

Most cases of impeachment in Nigeria are politically motivated. However, impeachment remains a potent instrument in a constitutional democracy that will constantly keep public office holders on their toes in respect of how they conduct public affairs, though it is rarely employed. The mere inclusion of impeachment clause in a country's Constitution can seriously impact on the conduct of its leaders. In *Inakoju v Adeleke*,[16] Niki Tobi JSC held that, "Impeachment is a political weapon which the House of Assembly must use in appropriate cases to remove a Deputy Governor for gross misconduct". The provisions of impeachment process in our Constitution are, therefore, imperative to keep public office holders on check to prevent recklessness or lawlessness in governance.

[13] Section 143(11) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
[14] *Ibid* section 188 (11)
[15] The Constitution of the Federal Republic of Nigeria, 1999(as amended), section 50(2)(c) and 92(2)(c)
[16] (2007) 4NWLR (pt.1025) p.588

1.2 **The Historical Evolution of Impeachment Process**

The issue of impeachment process is an age-long phenomenon. In the Course of time, as the political development of the countries of the world began to evolve, the realities of political development became more glaring propelling some countries to modify their process and offence(s) that might cause impeachment. Impeachment is said to have its origins in the laws of England and Wales in Britain (the United Kingdom). Impeachment is a judicial action or process brought against an erring public office holder by the House of Commons indicted of a very high treason offence having the Lords to conduct the trial and pass sentence with the sole request of the House of Commons who only can grant pardon to the indicted officer. Impeachment in practice is however scarcely relied on in the United Kingdom. The first case of impeachment was in the 14th Century (1879) when Lord Latimer was impeached. Another impeachment occurred in the 18th Century (1788) by the impeachment of Warren Hastings. There was yet another impeachment of Lord Melville in the 19th Century (1806). One of the most notable impeachments was the impeachment of Francis Bacon in the 17th Century (1640). Today the parliamentary system of government in the United Kingdom does not allow the recourse to impeachment. Thus, impeachment is no longer necessary in this system of government since the cabinet is responsible for the individual actions of the members as they act as a team and therefore must carry the commons along or resign in the event of failing to command a majority of the members or a vote of no confidence will be passed on them. In many instances the British has witnessed a change of leadership baton without rancor

or violence which showed a considerable measure, advance or maturity in their practice of democracy and principles which regulate the institution of British Government[17].

The Constitution of the United States of America made provision for impeachment of some public office holders. Public office holders could be impeached by the House of Representatives and tried by the Senate[18]. Under the American presidential system of government, impeachment seems to be more common and preferable, because the powers of the executive are very wide and almost totally separable from that of the legislature.

Apart from the above stated facts, the history of impeachment in the United States of America show that it is used with great caution and responsibility and in exceptional circumstances. The only impeachment in the United States of America was the impeachment of President Andrew Johnson, who was the 17th President of the United States of America in 1868. The House of Representatives impeached President Andrew Johnson on the ground that he violated the 1867 Tenure of Office Act prohibiting the President from removing cabinet members without Senate approval. The law was designed to protect Secretary Stanton who oversaw the military occupation of the South and implemented Republican Party reconstruction reforms that Johnson opposed. Johnson disregarded the law and dismissed Stanton. In retaliation Congressional Republicans fearing the return of Southern White Supremacy, impeached President Andrew Johnson. The Senate however, acquitted him.[19]

Impeachment process in Nigeria and its effect on public officers under a presidential system of government has direct bearing on the evolution of political and constitutional

[17] File/localhost/C:/Documents%20Settings/We/Desktop/rule%20of%20law/rul…,accessed on 10/7/2008
[18] U S Constitution, Article II, Section 4.
[19] htt://www.Senate.gov/artandhistroy/history/common/briefing/Senate-Impeachment-Role.html, accessed on 14/2/2010

developments to secure and enforce accountability in Nigeria. On 1st October, 1960, Nigeria as a federation had four bi-cameral legislatures. Pursuant to section 28 of the Dominion Constitution, the executive authority of the federation was vested in Her Majesty, the Queen of Great Britain, although, it was exercised for and on her behalf by the Governor-General. When Nigeria became a Republic in October 1963, the Queen ceased to be Queen of Nigeria and was replaced by a President with ceremonial functions. A cordial relationship existed between the legislature and the executive to the extent that both organs of government were co-extensive at both Federal and Regional levels.

In the same vein, the Ministers of both Federal and Regional governments constituted the Council of Ministers with the Prime Minister as Head of the Federal Government, and the Premier as the Head of a Regional Government. The system of government was parliamentary, thus, Ministers were responsible to their legislatures and because of their functional relationship, and the Ministers were bound by the principles of collective responsibility as they were also members of the legislatures. In this political arrangement the political party that has a majority in the House formed the government and would resign from office if defeated on a vote of no confidence. When this happens, the opposition party if in the majority would be invited to form the next government or a new election would be conducted. This system of government is a negation of the principles of separation of powers, the object of which is to avoid concentration of powers in one arm of government to avoid abuse of powers in governance. In this system of government there is a fusion of Executive and Legislative arms of government which might pave way for corruption and abuse of powers. The system may be workable in advanced

democracies such as Britain, but certainly not in Nigeria because of the attitude of Nigerian politicians who play politics according to their whims and caprices and not according to the rule. They are also amenable to corruption and the tendency of sit-tight-syndrome while in office. Separation of powers is a key characteristic of a liberal democracy where the government has an inherent control system to ensure that no arm of it is able to abuse power. Under this model, the government is divided into three branches with separate and independent powers and areas of responsibility, and it ensures accountability, good governance and developments.

The Governor of a region, on the other hand, could appoint and remove the ministers of government because they held office at the Governor's pleasure. The Governor could also remove the premier from office if he was satisfied that the premier could no longer command majority support of the members of the House of Assembly. At the Federal level the President could also remove the Prime Minister. This system of government allowed for "carpet crossing" from one party to another in the legislature and this in itself weakened public accountability. Any system of government that allows "carpet crossing" from one party to another discourages opposition and encourages one party system of government. One party system of government weakens public accountability as members of one particular party is not likely to criticize itself and thereby gives room for corruption and abuse of power. Democracy is not firmly rooted in Nigeria and because of the attitude of Nigerian politician. This system of government is not recommended as it is amenable to corruption and dictatorship.

The power of the Governor to remove a Premier manifested in the Western Region, in the case of Akintola when Governor Adegbenro removed him as the Premier of Western

Region.[20] In the case that ensued later, the Supreme Court of Nigeria decided the matter in favour of the Governor. However, the decision was upturned on appeal by the Privy Council which upheld the minority decision of Justice Lionel Brett**.** In reversing the judgment of the Supreme Court of Nigeria, the Privy Council held that it was not in dispute that the Governor had the constitutional power to remove a premier, but that he could only do so on the ground of a vote of no confidence in him which must be moved on the floor of the House and that the motion of no confidence must be supported by a majority of the members. It also held that the method of ascertaining loss of confidence in a premier should be by means of a resolution on the floor of the House[21].

Nigeria became a Republic in 1963 but the structure of government remained the same save that the Queen ceased to be Queen of Nigeria and replaced by the office of the President. By this arrangement the external factor which hitherto represented the symbol of the nation and sanctioned public accountability was eliminated in the Republican Constitution of Nigeria. The Constitution provided for the office of the President of the Federation instead of the Governor General. The President under this system was a ceremonial Head of State, a "Paper Tiger". Not being an executive President he had no powers but is only a nominal Head of State. The real government powers resided in the Prime Minister who was the Head of Government and Commander-in-Chief of the armed forces of Nigeria, the *Primus inter pares.* The President and the Governors could withhold assent to bills, except in the Eastern Region, because section 25(4) of the 1963 Eastern Region Constitution stripped the right of the Governor of that Region to withhold

[20] Section 33(10) Western Regional Constitution, see also Akintola v Aderemi, (1962) All NLR p.442
[21] (1962) All N.L.R p.442

assent to bill. The Republican Constitution of 1963 vested final sovereignty in the Constitution.[22] It states:

> This Constitution shall have the force of law throughout Nigeria and subject to the provisions of section 4 of this Constitution, if any 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. Whilst in the presidential Constitution, sovereignty vests in the people.

Section 14(2) of the 1999 Constitution clearly provides that, "sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority." In Nigeria, the people are the sovereign and the people exercise sovereign and sovereign power through Constitution making, their electoral vote and by way of constitutional and democratic government generally, in accordance with the Nigerian Constitution which is the express will of the people, for the regulation of government and national life. The provisions of the Constitution are binding on all authorities and persons throughout Nigeria.[23]

Under the Republican Constitution, the President, Governor, Prime Minister or Premier has no limit to the number of terms he could hold office. The President had power to remove the Governor of a Region but he could only exercise such power on the advice of the Premier of the Region involved, in consultation with the Prime Minister. In this procedure the power was shared by the President, the Prime Minister and the Premier in order to remove a Governor from office. The Governor could dissolve the House if only

[22] Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1963
[23] Section 1(1) of the Constitution of Federal of Nigeria, 1999(as amended)

the Premier refused to resign within three days after a vote of no confidence was passed on him. Therefore, by virtue of the 1963 Republican Constitution, the power of the Premier as the Chief Executive of the Region was more or less enhanced because if he refused to resign he would neither suffer any constitutional legal sanction except to rely on the electorate for support. Thus, the legal right to remove a premier for purpose of public accountability was vested in the electorate as the premier could be removed if his party was defeated after a general election.[24] Government, however, could not have a free flow change of baton. Some legislators would display dishonorable behaviour, while some might cross carpet in an effort to embezzle public funds. These had considerable effect on public accountability and amounted rather to payment of a lip service to accountability.

The military incursion in governance brought about fundamental change in the system of public accountability. The military were in power between 15th January, 1966- 1st October, 1979 and from 31st December, 1983-29th May, 1999, brought about by successive military *coup d'etat.* No matter the failure of the military in governance for the period they held sway in Nigeria, it must be admitted that greater efforts were made to improve public accountability. Infact, if nothing, the military leaders appeared to have recognized the need and acted in some respect. However, some of the measures, they took while in power were reminiscent of military dictatorship such as the so called clean up exercise in the public service of both the Federal and State governments in 1975/1976. The appointments of many innocent public officers were either dismissed or terminated without any hearing whatsoever. Besides, some top government personnel enjoyed

[24] Igbinewedo A Igbinedion, '*Impeachment under the Nigeria Constitution',* (Benfranco Printers, Benin City, Nigeria, 1983) p.13

immunity during the exercise because it was they who decided the fate of others, even though some of them were known to be corrupt and incompetent. [25]

The military improved considerably the tone of public accountability in the country despite some traces of high-handedness and corruption. This was shown by the establishment of a number of Tribunals and Commissions to try public officers who were adjudged to be corrupt and unworthy public office holders. Example is the Tribunal of Inquiry into the assets of public officers of the Western States[26]. Be it as it may, evidence are abound that the army might have perpetuated the ills they set out to dismantle in public affairs, despite visible development, they brought during the period[27]

Consequent upon the above analyses, the need for public accountability in Nigeria grows as its scale appreciates. Today, every society has become increasingly aware of this need at different fora. Thus, public accountability is a universal preoccupation just as it underlines our present system of presidential government. The concept of public accountability is not novel in Nigeria. It is rooted in the rich traditions and culture of the people who from time immemorial have learnt to give an account of their stewardship. This is evidenced in our history, folklores and oral tradition. The people who proved worthy of their honour in their positions, were rewarded, while the unworthy ones were ostracized or received a taboo as sanctions for their gross misconduct.

The modern concept of public accountability as a management tool is designed, among other things, in order to expose public officers who abuse their power or indulged in malfeasance and to accelerate political process and educate the people. Thus, in every system of government there are two forms of accountability. One is a legal

[25] *Ibid,* p .14
[26] Edict No.5 of 1967 of Western States.
[27] *Ibid*

accountability. This ensures that actions and activities of private citizens and public authorities conform to the provisions of the Constitution and other laws under which the society is governed. A breach of them may result in the act being declared null and void. It may also result in other sanctions such as the payment of compensation or any disciplinary action against citizen(s) or public authorities. The second form of accountability is to ensure that public authorities act in accordance with the declared policies of the government as reflected in the laws made by the legislature. In practice, it is the duty of the legislature and the judiciary to ensure compliance by public authorities. Interestingly, in the development of the system of accountability in Nigeria since independence, successive governments have tried in the light of their own appreciation and peculiar circumstances of the problems associated with it to attempt solutions by prescribing procedures and sanctions. Whatever may be the nature of public accountability in every society, in Nigeria there is considerable limitations on both the Federal and State Governments than ever before.

Due to our horrible experience with regard to public accountability in Nigeria since independence, the need for greater or increased public accountability arose. This is because there can never be any certainty that public office holders and authorities will not make mistakes of fact or of law in the exercise of their powers nor can the possibility be excluded that they may deliberately injure those subject to them. The people meet government at every interval especially if a citizen is engaged in business or is an owner of property. This public accountability is one of the fundamental tenets of democratic government; it regulates the conduct of public officers, especially in its deterrent functions. It also subjects them to a detailed scrutiny by the Legislature and the Judiciary

over objective policy, use of resources, manner of performance and results. According to Peter Self:

> The tensions between the requirements of responsibility or accountability and those of effective executive action can reasonably be described as the classic dilemma of public administration" one of the consequences of dilemma is that public officers in an effort not to make mistakes that will earn them public criticisms and or loss of credibility, develop a tendency towards inflexibility in the administration of government. Another is that public officers take extreme precaution in giving and or receiving advice, at least, to avoid being party to any omissions or dishonorable behavour.[28]

The use of impeachment process may not provide the right solutions and enhance public accountability in Nigeria, because of our political and administrative culture. However, the inclusion of impeachment in the Constitution of the Federal Republic of Nigeria, 1999 as a legislative control of public office holders which could be used as and when necessary against erring public officials will pave way for public accountability in the polity.

1.3 **The Nature of Impeachment Process**

Impeachment process is of different nature and its application differs from country to country depending on the political system of each country.

Impeachment had its origins in the Law of England and Wales. In the United Kingdom with a bicameral legislature, it is the House of Commons that are vested with the Power to initiate impeachment process. A member of the House of the Commons may make

[28] Igbinewedo A.Igbinedion, "*Impeachment under the Nigerian Constitution*", Benfranco printers, Benin city, Nigeria, 1983, p.15

accusations of high crimes and high treason against a public official whether elected or appointed before the House of Commons. The accusation must be supported by evidence and brought before the House of Commons by way of motion. Where the motion is carried by the House of Commons, the mover is ordered to go to the Bar of the House of Lords and impeach the accused "in the name of the House of Commons of the United Kingdom". At the House of Lords, a trial of the articles of impeachment is conducted and voted upon by all the Lords presided over by the Lord Chancellor or the Lord Steward where the impeachment relates to a peer accused of high treason. If the verdict of the Lords is that the defendant is guilty, the House of Commons is expected to carry a second motion asking for judgment. Once the officer sought to be impeached is found guilty, he is expected to resign on his honour whether or not penal sanctions are meted out to him. A Royal pardon may reprieve an impeached official from the actual punishment for the impeachable offences but does not relieve such an official of the moral responsibility to resign from his office.

Impeachment process however, has never been applied in the United Kingdom since 1806.[29] There have been of recent several attempts to revive the issue of impeachment process. For instance, in April 1995, there were calls by Young Liberals Annual Conference on their leader in the House of Commons to initiate the process against the Lord Advocate; Ronald King Murray.[30] The leader of the Young Liberal did not heed the call but the Lord Advocate admitted that the Commons still have the right to initiate an impeachment motion. Again on 25th August, 2004, a member of Parliament, Adam Smith announced his intention to initiate impeachment moves against the British Prime

[29] http://www.parliament.uk/documents/lib/research/briefings/snpc-02666.pdf accessed on 1/11/2009
[30] *Ibid*

Minister, Mr. Tony Blair for involving Britain in the 2003 invasion of Iraq[31]. The move was however, ignored by the Commons leader, Peter Hein on the grounds that impeachment in Britain was moribund given "modern government's responsibility to Parliament"[32] . Ironically, it was the same Peter Hein that served as President of the Young Liberals when they called for the Impeachment of Mr. Murray in 1977. In 2006, General Sir Micheal Rose revived the call for the impeachment of British Prime Minister, Tony Blair, for leading the country into the invasion of Iraq under false pretences[33] . It is glaring that the reason behind non exercise of the impeachment procedure is the fusion of the Executive and Legislature in the British Parliamentary system of government. In a Parliamentary system of government most key executive office holders are members of Parliament and this arrangement quicken parliamentary procedures for the discipline or punishment of erring parliamentarians.

In Austria, the Austrians Federal President can be impeached by the Federal Convention known as the "Bundiesversammlung" before the Constitutional Court[34].

The President may also be recalled by a referendum. However, none of these procedures has ever been tested. The President of the Federal Republic of Brazil can also be impeached as exemplified in the case of Fernando Color de Mello**.** He was impeached on grounds of evidence of bribery and misappropriation of public funds.[35] State Governors and Mayors may equally be impeached. Only Mayors have, however, suffered the process as no State Governor has ever been impeached.

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[31] *Ibid*
[32] *Ibid*
[33] http://www.parliament.uk/documents/lib/research/briefings/snpc-02666.pdf accessed on 1/11/2009
[34] *Ibid* at p. 4 of 5
[35] *Ibid*

In Germany, the President could be impeached by the Bundestag or Bundestrat for willfully violating German Law. Once the Bundestag or Bundestrat (German National Assembly) successfully impeaches a President, the Constitutional Court tries him/her and decides whether or not the holder is guilty and if guilty, whether or not he should be removed from office. As is the case in the United Kingdom, this has never probably occurred due to the fact that the functions of the President are mostly ceremonial. The Prime minister who wields executive power on the other hand happens to also be a Member of Parliament. Most of the incidents of impeachment in constitutional history emanates from United State of America which practice presidential system of government similar to that of Nigeria.

The American Constitution provides for the removal of the President, Vice-President and all other civil officers of the United States on grounds of high profile crimes, treason, and bribery or other crimes and misdemeanors[36]. Impeachment can occur both at the Federal or State level. The impeachment weapon could also be used against members of the judiciary, some of whom are elected. At the Federal level, the House of Representatives has sole power of impeaching the President, Vice- President and other civil officers of the United States[37]. The removal of an impeached official is automatic upon conviction by the Senate. The House of Representatives is required to first pass articles of impeachment by a simple majority. Once they are passed, the defendant stands "impeached". Therefore, the Senate tries the accused or "impeached" official. During the trial, the Senate is presided over by the Vice-President in his capacity as the president of the Senate or the president *pro tempore* of the Senate. But where it is the President that is

[36] Article 2, Section 4 of the US Constitution
[37] House Rules http://www.rules.house.gov/house-rules-precedents.html accessed on 25/7/2008

being impeached, the Senate is presided over by the Chief Justice of the United States. A two-third majority vote on every article of impeachment is required from the Senate to convict and remove the "impeached" official. The Senate may further vote to punish the removed official by barring him from holding further Federal elective or appointive positions. After conviction and removal by Senate, the impeached official would still be liable to criminal prosecution. Where a two -thirds majority of the Senators present do not vote "guilty" on all the charges, the official is acquitted. An official may be impeached even after he has vacated office in order to disqualify such a person from future office or from certain emoluments (pensions) from their prior office. At the state level, State legislators can impeach State officials including Governors[38.] The procedure may differ slightly from the Federal mode and between States. This is because individual States have their own Constitutions different but not conflicting with the American Constitution: All the fifty States legislatures including that of the District of Columbia City Council could pass articles of impeachment against their own executives[39] . In the State of New York however, the Court for the trial of impeachment is the State Senate acting jointly with seven members of the State Court of Appeals (the States highest Constitutional Court) as jurors[40] . The American presidential system regards impeachment as Power to be used only in extreme cases. It is not something to be toyed with or subjected to the whims and caprices of Political manipulation. The House has initiated impeachment moves 62 times since 1789, most recent being that of Bill Clinton

[38] *Ibid*
[39] *Ibid*
[40] *Ibid*

but only 17 Federal officers have been impeached[41]. President Richard Nixon who would have been the 18th Federal officer to be impeached resigned before the House could consider the impeachment resolution made against him. At the State level, a total of eleven Governors have faced impeachment.[42] The 12th Governor that would have been impeached narrowly escaped impeachment by a single vote in 1912. The most recent impeachment of a State Governor which took place in 1988 was that of Arizona Governor, Evan Mecham. Other Governors who risked impeachment such as John G. Rowland of Connecticut resigned before the impeachment axe reached them.[43]

Nigeria practices presidential system of government patterned after the American presidential system of government. By virtue of the Fifth Schedule Part 1, Paragraph 19 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the officers of the three divisions of government, Executive, legislature and the Judiciary, are classified as public office holders which include President, Vice-President, Senate President, Deputy Senate President, Speaker of the House of Representatives, Deputy Speaker of the House of Representatives, Governors, Deputy Governors of the States , the Speaker and Deputy Speakers of the State Houses of Assembly[44]. Any of these public officials could be impeached if he is found to have violated the Constitution of the Federal Republic of Nigeria and/or defaulted or grossly misconducted himself in the management of public duties or committed any other high profile crimes which in the opinion of the

[41] http://www.senate.gov/artandhistory/history/common/briefing/Senate-Impeachment-Role.html accessed on 14/2/2010

[42] *Ibid*

[43] *Ibid*

[44] Fifth Schedule, part 1 paragraph 19 of the Constitution of the Federal Republic of Nigeria 1999(as amended).

legislature is considered to amount to gross misconduct[45]. The 1999 Constitution also provides for ways of disciplining errant members of the legislature by way of disqualification and recall[46]. The 1999 Constitution of the Federal Republic of Nigeria provides for the removal of the President or Vice-President, in the following manner[47] . First, a notice of any allegation of "gross misconduct" made against the President or the Vice-President is signed by at least one-third of all the members of the National Assembly is presented to the President of the Senate. The notice must specify the detailed particulars of the gross misconduct. The Senate President must within seven days of his receipt of the notice serve the same on all the members of the National Assembly and the affected office holder and shall also cause any reply made by the affected office holder to be served on all the members of the National Assembly[48]. Within fourteen days of the notice to the Senate President, each House of the National Assembly shall resolve by a two-third majority whether or not the allegation shall be investigated and within seven days from the passage of the motion, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a panel of seven persons who in his opinion are of unquestionable integrity and who are not members of any legislative House, Public service or political party, to investigate the allegations of gross misconduct made against the office holder.[49] The panel shall sit judiciary to try and investigate the allegations of gross misconduct made against the office holder and the office holder must be given fair hearing.[50] The panel shall within three months of its appointment report to each House of

[45] Sections 143 (11) and 188 (11) 1999 Constitution of the Federal Republic of Nigeria(as amended)
[46] *Ibid* sections 68, 109 and 110
[47] *Ibid*, section 143
[48] *Ibid*, Section 143 (2)
[49] *Ibid*, Section 143(3)(4)(5)
[50] *Ibid*, section 143 (6)

the National Assembly whether or not the allegations have been proved. Where the panel's report is to the effect that the allegation has not been proved, no further steps shall be taken in the matter.[51] But where the panel reports that the allegation has been proved, then within fourteen days of the receipt of the panel's report, each House of the National Assembly must consider and vote on the report. Where two thirds majority of each House of the National Assembly votes to adopt the report, the officer stands removed from office from the date of adoption of the report.[52] The Constitution further provides that no proceedings or determination of the panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any Court.[53] The Constitution defined "gross misconduct" as any grave violation or breach of the provisions of the Constitution or any misconduct of such a nature as amounts to gross misconduct in the opinion of the National Assembly[54.]

The procedure for the impeachment of a State Governor or Deputy Governor[55] is similar to that of the removal of the President or Vice-President except that in the case of the President or his vice, it is the chief judge of the Federation that constitutes a panel of seven to investigate an allegation upon the request of the Senate President.[56] In the State, it is the Chief Justice of a State who empanels a seven man committee to investigate the allegation upon the request of the Speaker of the House of Assembly.[57] No Nigerian President or vice-president has fallen victim of impeachment process since the constitutional history of the country. However, Former President Olusegun Obasanjo had

[51] *Ibid*, section 143 (7) & (8)
[52] *Ibid*, section 143 (9)
[53] *Ibid*, section 143 (10)
[54] *Ibid*, section 143 (11)
[55] *Ibid*, section 188
[56] *Ibid*, section 143 (5)
[57] *Ibid*, section 188 (5)

on several occasions come under the threat of impeachment of the National Assembly through a motion sponsored by Senator Arthur Nzeribe calling for the impeachment of the President for gross misconduct, in 2002[58]. None of the impeachment threats saw the light of the day due to perhaps powerful lobbing within the leadership coupled with the powerful influence of their Party, the Peoples Democratic Party (PDP). The threats obviously helped to shape the conduct of the then President who was becoming a dictator by his style of leadership.

However, the Governors and Deputy Governors of the States of the Federation have not been so lucky in this regard as many of them had suffered impeachment process and were removed eventually from office, since Nigeria adopted presidential system of government in 1979. The first State Chief Executive to fall victim of impeachment proceedings was the Governor of Kaduna State, Alhaji Balarabe Musa. He was accused of gross misconduct and removed from office in 1981, in rather bizarre circumstances.

In the fourth Republic, Nigeria witnessed a gale of impeachment of a number of State Governors. It all began with ex-governor Chief Diepreye Alemieyeseigha of Bayelsa State who, before his impeachment, disparaged his office and the Nation internationally with his arrest, and subsequently jumping bail, in London on charges of money laundering. Others include Governors Rasheed Ladoja of Oyo State, Mr. Peter Obi of Anambra State, and Joshua Dariye of Plateau State, Ayo Fayose of Ekiti State, etc.

There are also similar constitutional provisions put in place to check the conduct of the principal officers of the legislative houses, such as the Senate President, the Speaker and Deputy Speaker of the House of Representatives,[59] and the Speaker and Deputy Speaker

[58] http://allafrica.com/stories /20070330056.html, accessed on 3/2/2007
[59] Section 50 (2) of the Constitution, 1999(as amended)

of the State Houses of Assembly[60]. The Constitution of the Federal Republic of Nigeria, 1999 (as amended), specified that the Senate President or Deputy Senate President or the Speaker or Deputy Speaker of the House of Representatives shall vacate his office, if he is removed from office by a resolution of the Senate or of the House of Representatives, as the case may be, by the votes of not less than two-thirds majority of all the members of that House.[61]

The Speaker or Deputy Speaker of the House of Assembly shall vacate office by a resolution of the Hose of Assembly by votes of not les than two-thirds majority of the House[62] .This legislative power bestowed on the legislators by the Constitution of the Federal Republic of Nigeria, 1999 (as amended), was fully exercised by the House of Representatives when it removed Hon. Salisu Buhari, the former Speaker of the House of Representatives, for alleged certificate forgery. Also the former Speaker of the House of Representatives, Hon. Mrs. Patricia Ette was forced to resign on allegation of gross misconduct and contract scam. The former Senate President, Senator Evans Enwerem was forced to resign on allegation of previous conviction, callousness and dishonesty. His resignation was hailed as a score for our nascent democracy. Former Senate President, late Dr, Chuba Okadigbo was impeached on grounds of misconduct in handling the finances of the National Assembly. The former Senate President, Adolphous Nwabara was also removed from office on alleged contract scam.

In the same vein, the different State Houses of Assembly have also at different times checked effectively their leaders who were found to have misconducted themselves while

[60] *Ibid*. Section 92 (2) (c)
[61] *Ibid* Section 50 (2))(9)
[62] *Ibid* Section 50 (2) (c)

in office.[63] The Speaker of Edo State House of Assembly and Speaker and Deputy Speaker of Ondo State House of Assembly Hon. Taofik Olawale Abdulsalam and Hon. Mayowa Akinfolam were impeached. For example, on 6th September, 2010, the Speaker of Ogun State House of Assembly, Hon. Tunji Egbetokun was removed by the minority members of the State House of Assembly in the circumstances described by Prof. Wole Soyinka as a "rape on democracy and crudest assault on the Nation and her people".[64] Many of the Houses of Assembly leaders from across the States of the Federation are severally subjected under the threat of impeachment by members of their respective Houses of Assembly.

1.4 Essential Features of Impeachment.

Impeachment as a constitutional provision is vested in the legislative arm of government to check the excesses and abuse of office by erring public officers, has certain essential features which consist of the following factors:

a) Impeachment is a culpable act or omission. A public office holder who is found unworthy of his office and held culpable for misconduct stand the risk of being impeached as doing otherwise would amount to endorsing bad leadership and undemocratic principles

b) Impeachment consists of a willful act or omission which prejudices the proper administration of the business of government or its order and discipline or which brings the government into disrepute.

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[63] Tunde Raheem, 'Ondo State House of Assembly Speaker Impeached' *Daily Sun Newspaper*, Friday April 9, 2010 p.6

[64] Razaq, Bamidele, '*Ogun Crisis Crudest Assault on Nigerians- Soyinka, Bakare*', *Daily Sun Newspaper* , Thursday, 23rd September 2010, p.9

c) Impeachment also is the commission and or a conduct involving a breach of a legal duty or duties by someone to which by law of the land there are sanctions by way of punishment.

d) It is an act which results from a settled intention which either is implicit in an act or omission or it can reasonably be inferred that the person involved intended to abuse or misuse his power contrary to the law under which the society is governed.

e) Impeachment is an indictment which seriously affects the probity and character of the person involved for which he receives a punishment in the interest of the society and as a deterrent to others.

f) It is also a violation of the Constitution by a public officer which he has sworn to protect for the peace, order and good government.

g) Impeachment could also amount to an act injurious to society and meriting deterrence by sanctions[65] .

From the foregoing, it is easy to see the reason the Constitution of the Federal Republic of Nigeria, 1999(as amended)[66], relating to impeachment is seen as a source of anxiety, affliction and social taboo for the impeached person, his colleague's family friends and the entire society. The provisions of sections 143 subsection (11) and 188 subsection (11) as articulated by subsection (10) respectively lend credence to this assertion. This provision of the law is so strong and powerful that even at the mention of it, sends shiver down the spines of the would be victims and that the long arm of the law is no respecter of any one no matter his status or station in the society, except of course, the legislators

[65] *op. cit* p.10
[66] Sections 143 and 188 of the Federal Republic of Nigeria, 1999(as amended), deal on impeachment

decide otherwise having regard to subsection (11) of sections 143 and 188 of the Constitution, respectively. Any public officer worth his onions ought to conduct himself properly and in an orderly manner in the management of public affairs while in service to avoid being caught by the provisions of this law. The legislators on the other hand, in the exercise of their constitutional powers as law makers ought also to exercise restraint and avoid fallen prey to greedy political gladiators who might attempt to use them to settle political scores or command loyalty from such a public officer to the detriment of the society that he serves. Moreover, by the cumbersome nature of impeachment procedure as provided in sections 143 and 188 of the Constitution, the intendment of the draftsmen is that resort to exercise of impeachment powers of the legislature, should be seldom nor is said provision intended to subjugate the President, Vice-President, Governor or Deputy Governor or any other relevant public officer to the whims and caprices of the legislators in other to avoid the exercise of such powers.

1.5 **Impeachment and Separation of Powers**

> The term "separation of powers" is an essential concept in modern democracies. It denotes the practice of dividing the powers of a government among different branches thereof. Like the principle of "division of labour" in Adam Smith's Economics[67], the doctrine of separation of powers is geared towards efficiency but also more importantly, towards guarding against abuse of authority. Hence, it is a liberty sensitive concept. A government of separated powers assigns

[67] file///C:/Documents%20and%20Settings/we/Desktop/law/oraegbunam1.htm accessed on 5/3/2010

> different political and legal duties to the legislature, executive and the judicial arms. This means that while the legislature has the power to make laws, the executive branch has the authority to administer and enforce the laws made by the legislature. The judiciary on the other hand, tries cases brought before the Courts and interprets the laws. It is this later function that constitutes the Court's power of judicial review[68].

The above described concept is referred to as a "Horizontal" separation of powers. There is another type seen in Federal structure known as "Vertical" separation of powers in which governmental powers are shared between the central Government, the State and the Local Governments. The 1999 Nigerian Constitution made provision for separation of powers for the three arms of government. The legislative powers of the Federal Republic of Nigeria are vested in the National Assembly by Section 4 of the Constitution. The executive powers of the Federation is vested in the President by section 5, whereas section 6 vests the Judicial powers of the Federation on the Supreme Court and other Courts named by the Constitution. There was even some resemblance of separation of powers during the Military regime. During this period, the legislative powers could be said to vest in the Supreme Military Council (SMC) (or like bodies), through which Military Decrees/Edicts, are promulgated for the governance of the country. The executive power may be said to reside in the Federal/State Executive Council and the judicial powers lie in the Supreme Court and the other Courts named in the Constitution. This underscores the relevance of the concept separation of Powers in governance.

[68] htt: www. dawodu. Com./oraegbunam/.htm accessed on 23/7/2009

According to Professor Ben Nwabueze, concentration of governmental powers in the hands of one individual is the very definition of dictatorship, and absolute power is by its very nature arbitrary, capricious and despotic[69]." However, Davis has cautioned that, if the doctrine of separation of powers is intended as a weapon against tyranny, it could hardly operate. The protection against tyranny comes not from separating the powers but from a system of legislative supervision of administration and from a system of judicial review of administrative action. We have learned that danger of tyranny or injustice lurks in unchecked power not in blended power[70]. Justice Oputa stated that,[71] the concept of separation of powers arose from the need to ensure the restraint of governmental power, by dividing that power, without carrying that division to an extreme, incompatible with effective government. A constitutional democracy thus, presupposes a balanced system of divided or shared powers. It is only within a system that individual citizens can ever hope to enjoy any measure of independence and freedom from arbitrariness and governmental lawlessness and thus, retain the civil rights and liberties conferred on them by the Constitution.

There is however, no clear cut separation of powers. Separation of powers has never been practically applied *stricto sensu* anywhere in the world. This is because various categories of governmental functions are so mixed and juxtaposed that they run into one another in such a way that makes it absolutely impossible for anyone to sort them out neatly into their appropriate groups. Generally, it is said that the legislature makes the

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[69] Ben Nwabueze, '*The Presidential Constitution of Nigeria'*, (London, C. Hurst & Co. Published in 1981), p.32

[70] Iluyomade etal, '*Cases and Materials on Administrative Law'*, (Published by Obafemi Press Ltd, Ile ife Nigeria, Second ed., 1992), p.8

[71] L. Oputa: *"Independence of the Judiciary in a Democratic Society"* (An unpublished paper or Nigeria issues in the 1999 Constitution Edited by –I.A. Ayua, etal published in 2000 by Nigeria Institute of Advanced legal studies), p.8

law, the executive enforces and applies the law, and the judiciary interprets the law and applies it in the adjudication of disputes. But the three categories of governmental functions are often not exclusive of one another. Thus; there is no clear and natural division between the three departments of government and no divine injunction that a function distinctly classified as legislative should never be exercised by the executive or judicial arms of government. Infact, the classification of governmental functions is generally dictated by administrative convenience and not by any natural or inherent quality distinguishing one function from another. It has always been rough and inexact for the functions do not bear clear distinguishing marks that link them up with one area of government or the other. Therefore, it is difficult if not impossible, to conclude that a given governmental function or task is legislative, executive or judicial functions; with the Court often trying to shy away from the classification.

Though the concept is difficult to apply *stricto sensu,* in practice, some Constitutions have the principle entrenched, hook, line and sinker. For instance, Article XXX of the Constitution of Massachusetts, (1780) stipulates:

> In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers or either of them; to the end it may be a government of laws and not of men[72]

Similarly, Article VIII of the Declaration of Rights of the Constitution of Maryland also states:

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[72] file://C:/Documents and settings/user/Desktops/Christ9/Law/Rule of Law/htm, accessed on 9/12/2008, p.4

> That the legislative and judicial powers of government ought to be forever separate and distinct from each other; and no person exercising the functions of one of the said departments shall assume or discharge the duties of any other.[73]
>
> The importance of this doctrine was also emphasized in the case of *Liyanage v The Queens*[74], where the Judicial Committee of the Privy Council pointed out upon the facts of the case, that there existed under the Ceylonese (Sri Lanka) Constitution a tripartite division of powers- legislative, executive and judicial, and that it would be unconstitutional for judicial functions to be allowed to be interfered with by the legislature through an Act of Parliament.

Modern Constitutions use the tripartite classification of governmental functions as the basis for sharing out the functions to various departments of government even though at the margin the dividing line between any two classes of the functions is hazy and difficult to identify. Thus the 1999 Constitution of the Federal Republic of Nigeria provides Inter alia, "the legislative powers of the Federal Republic of Nigeria shall be vested, in the National Assembly, and the legislative powers of a State of the Federation shall be vested in the House of Assembly of the State" -Section 4., "the executive powers of the Federation shall be vested in the President and the executive powers of a State shall be vested in the Governor of the State",- section 5; and the judicial powers of the Federation shall be vested in the Courts to which this section relates being Courts established for the Federation. The judicial powers of a state shall be vested in the Courts to which this

[73] *Ibid*
[74] (1967) AC p. 259.

section relates, being courts established, subject as provided by this Constitution, for a State"-section 6(1) and (2).[75] In this circumstance, it was left to the Courts as a matter of constitutional interpretation to draw the line between one class of function and another and to say whether a given governmental action was legislative, executive or judicial. In *Lakanmi & Ors v Attorney General Western States,*[76] what the Federal Military Government thought to be a legislative matter was classified by the Supreme Court to be judicial, so it held what purported to be legislative government, to be a judicial adjudication which violated the separation of powers principle entrenched in the 1963 Constitution of the Federal Republic of Nigeria.

In that case, the appellants were among the persons whose assets were investigated by the Tribunal of Inquiry set up by the Western States Government under Edict No.5 of 1967. The Tribunal made an order under section 13(1) of the Edict prohibiting the appellants from further dealing with their properties except with the permission of the Military Governor, Western State. The order further provided that all rents from the properties should be paid into the State sub-treasury pending the determination of the three issues involved in the investigation. The appellants thereupon applied to the High Court for an order of certiorari to quash the order on the ground that it has contravened section 22 and 31 of the 1963 Constitution of Nigeria and that it was contrary to the Public Officers (Investigation of Assets) Decree No. 51 of 1966. The High Court dismissed the appeal on the ground that Decree No. 51 was not in operation in the Western State when Edict No. 5 of 1967 was made and that section 21 of the Edict ousted the jurisdiction of the court.

[75] Section s 4,5&6 of the 1999 Constitution of the Federal Republic of Nigeria, 1999(as amended).
[76] (1971) UILR. p. 201

The appellants appealed to the Court of Appeal which dismissed the appeal. On appeal to the Supreme Court, It was held:

a) That the doctrine of separation of powers is still the structure of our system of government.

b) That section 3 (a) of Decree No.1 of 1966, does not ouster while the matter was pending, the Federal Military Government possessed no legislative powers nor was it intended that the Federal Military Government should, in its power to enact Decrees, exceed the requirement or demands of the necessity of the case. In the absence of anything to the contrary it has to be admitted that the structure of our Government was based on the separation of powers that is following from the American model. The same view was expressed in the case of *Unongo V. Aper Aku & Ors*[77]: The issues canvassed in this case were:

1) Whether it is constitutional to use legislation to control the exercise of judicial functions.

2) Whether the section of the Electoral Act, 1982, dealing with time limitations for the determination of judicial functions are unconstitutional and therefore null and void.

The appellant was one of the unsuccessful candidates for election to the office of Governor of Benue State. The first respondent was duly returned as Governor. The appellant dissatisfied filed a petition in the High Court and questioned the validity of the return of the first respondent and praying that the election was null and void. In the High Court the appeal was struck out on the ground that the immunity accorded to a Governor by section 267 of the 1979 Constitution protected him. On appeal, this decision was set

[77] (1983) 2 SCNLR p. 332

aside by the Federal Court of Appeal but the Court did not know what relief to grant to the appellant because sections 129(3) and 140(2) of the Electoral Act set the time limit of 30 days within which the Court must complete the trial of the petition. The appellant appealed to the Supreme Court which held that, it was within the province of the National Assembly to prescribe the practice and procedure to be followed by a Court which hears an election petition. The court further held that: The power to prescribe the practice and procedure to be followed by the Court cannot in view of the constitutional doctrine of separation of powers amongst the three arms of government, that is the executive, legislature and judiciary, extend to the limitation of the time within which a case properly instituted in a Court can be heard and determined. If the power were to apply as it applies under the Electoral Act, then it would be *ultra vires* because it amounts to unconstitutional interference with judicial functions.

The importance of this doctrine was reiterated by Oputa C.J (as he then was), in the case of *Ekeocha v The Civil Service Commission of Imo State & Anor*[78]**,** re-affirming the incorporation of the separation of powers concept into the 1979 Constitution which is *inpari materia* with the Constitution of the Federal Republic of Nigeria, 1999(as amended), stated thus:

> In the presidential system entrenched in our Constitution, powers are deliberately separated and balanced between the legislative, executive and the judiciary. However, there are some borderline cases which call for judicial interpretation. It is not the function of the legislative arm of government to interpret the laws. If it does, that will amount to usurpation of the powers of the judiciary and it will be declared unconstitutional.

[78] (1981) 1 NCLR p. 154-155

The same decision on the relevance of the doctrine was stressed in the case of *Ahmad v Sokoto House of Assembly*[79] where it was held:-

(a) That the same person should not be part of more than one of these three arms or divisions of government.

(b) That one branch should not dominate or control another arm. This is particularly important in the relationship between the executive and the courts;

(c) That one branch, should not attempt to exercise the function of the other; for example, a President, however powerful ought not to make laws or indeed act except in execution of laws made by the legislature. Nor should a legislature make interpretative legislation, if it is in doubt, it should head for the court to seek an interpretation.

Be it as it may, experience has shown that total and complete separation of powers is impossible. In short, rigid separation of powers will inevitably frustrate governmental activities to extinction. According to Hood Philips**:**

> A complete separation of powers in the sense of a distribution of the three functions of government among three independent organs with no over lapping or co-ordination would (even if theoretically possible) bring Government to a standstill[80].

Lord Diplock in the case of *Duport Steels v Sirs,* commented on the operation of the doctrine of separation of powers in the British government that, "It cannot be too strongly

[79] [2003]15 NWLR (pt.791) p.539
[80] file:///C:/Documents%20and%20settings/we/Desktop/law/oregbunam1.htm., accessed on 5/3/2010

emphasized that the British constitution, though largely unwritten, is firmly based on the separation of powers".[81]

According to Justice Jackson in the case of *Youngstown Sheet & Tuber Co. v Sawyer:*

> While the Constitution diffuses power, the better to secure liberty. It also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness, but interdependence, autonomy but reciprocity.[82]

There is therefore no strict or water tight separation of powers. There is flexibility; the essential thing is to avoid tyranny by concentration of powers in one person or body. One branch should act as a check on the others within the permissible scope allowed by the Constitution or other enabling laws. As James Madison, a Republican and one time President of the United States of America put it:

> In framing a government which is to be administered by the men, the great difficulty lies in this: you must first enable the government to control the governed and in the next place oblige it to control itself.[83]

In *Kilburn v Thompson*,[84] it was held by the US Supreme Court that for separation of powers to work, those entrusted with power in one branch of government should not be allowed to encroach on the power of another branch and that each branch of government shall be limited to the power given to it by the Constitution. And in the Nigerian case of *Commissioner of Local Government, Anambra State v. Ezemokwe*,[85] it was held that under the 1979 Constitution, a state executive has its constitutional duties just as the

[81] (1980) 1 All ER p.529
[82] 343 US 579, 635 (1952)
[83] Alexander Hamilton, *'et al' The Federalist* (No 51, Harvard University Library), p.356
[84] *Ibid*
[85] [1991] 3 NWLR (pt. 181) p.615

judiciary has its own duties. The judiciary ought not to interfere with the right of the executive to perform its duties. Therefore, the Executive cannot be inhibited from performing its duties by the judiciary simply because the Judiciary is also called upon to perform its own functions in similar circumstances. No arm of government is entitled to infringe on the functions of the other, except in recognized situations where one branch of government exceeds or abuses its constitutional powers.

In the Nigeria situation, the President or the Governor shares the law making power of the legislature by virtue of the constitutional provision for Presidential or Governors assent to bills before they become laws. This is provided in section 58(1) & 100 (1) of 1999 Nigerian Constitution[86]. It states thus:

> The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives, and except as otherwise provided by sub-section (5) of this section, assented to by the President. And section 100(1) provides, thus: the power of a House of Assembly to make laws shall be exercised by bills passed by the House of Assembly and except as otherwise provided by this section assented to by the Governor.

If however, on the other hand, the President or Governor refuses to assent to the bill, the respective legislature can override the said refusal with two-third majority ($^2/_3$) vote at fulfillment of relevant conditions as stated in sub-sections 58(5) and 100(5) of the Constitution.

Section 58(5), stipulates that where the President withholds his assent and the bill is again passed by each House by two-third majority, the bill shall become law and the assent of

[86] Sections 58 (1)(5) & (100) (1) (5)of the Constitution of Federal Republic of Nigeria, 1999(as amended)

the President shall not be required. Whereas section 100(5) provides, that where the Governor withholds assent and the bill is again passed by the House of Assembly by two -third ($^2/_3$) majority, the bill shall become law and the assent of the Governor shall not be required.

In the same vein, the presidential power to issue executive orders in some aspects is yet another exception to the doctrine of separation of powers as entrenched in the Constitution. The orders include that of prerogative of mercy or grant of pardon as provided in section 175(9) of the 1999 Nigerian Constitution. Section 175 states that: the President may grant any person concerned or convicted of any offence created by an Act of the National Assembly, a pardon either free or subject to lawful condition.[87] The condition in question are outlined in sub-sections (1)(b)- (d) and (2) and (3) of section 175 of the Constitution. There is also similar provision for the State Governor in section 211 of the Constitution.[88] This clearly is interference by the executive arm of government on the functions or powers of the judiciary to impose sentence after a due process of adjudication. The constitutional provision for the confirmation by the legislature in the event of President's or Governor's appointments of the members of the executive council and the legislature as contained in sections 147(2) and 192(2) of the 1999 Nigerian Constitution is a clear derogation of the powers of the executive and therefore an exception to the principle of separation of powers. This is also applicable to the appointment of Judges even though with the approval of the legislature.

Section 147(2) of the 1999 Nigerian Constitution states, that, any appointment to the office of Minister of the Government of the Federation shall if the nomination of any

[87] Section 175(a)-(d), (2) & (3) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
[88] *Ibid*, section 211.

person to such office is confirmed by the Senate, be made by the President.[89] Section 192 (2) of the Constitution provides that; Any appointment to the office of Commissioner of the Government of a State shall if the nomination of any person to such office is confirmed by the House of Assembly of the State, be made by the Governor of that State and in making such appointment the Governor shall conform with the provisions of section 14(4) of this Constitution.[90]

Section 14(4) provides that: The composition of the government of a State, a Local Government Council or any of the agencies of such Government or Council and the conduct of the affairs of the Government or Council or such agencies shall be carried out in such manner as to recognize the diversity of the people within its areas of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation.

Furthermore, subject to the provisions of any Act or law of relevant legislative bodies, the respective Heads of each constitutional court may make laws for regulating the practice and procedure of the said Court.[91] Sections 236, 248, 254, 259, 264, 274, 279 and 284 of the Constitution are also relevant to the above stated principle of law. These stipulate thus:

i. Section 236: Subject to the provisions of any Act of the National Assembly, the Chief Justice of Nigeria may make laws for regulating the practice and procedure of the Supreme Court;

[89] Section 147 (2) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
[90] *Ibid*, section 14(4)
[91] *Ibid*, section 6(5)

ii. Section 248: Subject to the provisions of any Act of the National Assembly, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal.

iii. Section 254: Subject to the provisions of any Act of the National Assembly, the Chief Judge of the Federal High Court may make rules for regulating the practice and procedure of the Federal High Court.

iv. Section 259: Subject to the provision of any Act of the National Assembly, the Chief Judge of the High Court of the Federal Capital Territory, Abuja, may make rules for regulating the practice and procedure of the High Court of Federal Capital Territory, Abuja.

v. Section 264: Subject to the provisions of any Act of the National Assembly, the Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, may make rules for regulating the practice and procedure of Sharia Court of Appeal of the Federal Capital Territory, Abuja.

vi. Section 274: Subject to the provisions of any law made by the House of Assembly of a State, the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State.

vii. Section 279: Subject to the provisions of any law made by House of Assembly of the State the Grand Kadi of the Sharia Court of

Appeal of the State may make rules regulating the practice and procedure of the Sharia Court of Appeal and

viii. Section 284: Subject to the provisions of any law made by the House of Assembly of the State, the President of the Customary Court of Appeal of the State may make rules for regulating the practice and procedure of the Customary Court of Appeal of the State.[92]

The power of making rules and laws is conferred on the legislature by the Constitution. Consigning such powers as enumerated above by the same Constitution to another arm of government is clearly a deviation from the principles of the separation of powers theory. Making of bylaws by bodies other than the legislature is equally located therein.

The provisions of the Constitution above stated, serves to point to the fact that the Constitution of the Federal Republic of Nigeria does not provide for total separation of powers for the three departments of government. Thus, in Nigeria, the principle of separation of powers needed for maintenance of peace, order and liberty are reconciled with the necessity for the cooperation of the three arms with and dependent on each other. However, it is an indisputable fact that some combination of powers encourages and promote harmony in government and some separation makes for peace and liberty while both are important for efficiency.

According to James Madison**:**

> Unless these departments of government be so far connected and blended, as to give each a constitutional control over others, the degree of

[92] *op. cit.* sections 236, 248, 254, 259, 254, 274, 279 & 284

> separation which the maxim require as essential to a free government can never be, in practice maintained[93].

This position was also aptly captured by Eso JSC in the case of *Unongo v Aper Aku*[94] wherein he stated thus:

> The Constitution established the legislature, the executive and the judicature respectively and the real connecting link among these three is that they provide checks and balances on one another. Though there are these checks and balances one cannot and must not usurp the functions of the other. The checks and balances are certainly to preclude the exercise of arbitrary power.

According to late Chief Obafemi Awolowo:

> Man loves power. In the family, village, town and state, in the club, group, association, businesses, in the institutions of learning, newspaper office … in all these spheres, you see him always exalting in the use and abuse of power.[95]

Also, explaining the concept of separation of powers as enshrined in the Constitution and practiced in Nigeria, late Chief Obafemi Awolowo said:

> Under our Constitution, the three organs of government are separate and distinct both in respect of the functions which they perform, and of the functionaries who are entrusted with the performance of those functions. In other words, under our Constitution, no government functionary belongs to more than one organ, and none performs the

[93] *op. cit.* p.332
[94] *op.cit* p..340
[95] Ese Malemi, *The Nigerian constitutional Law,* (1st 'edn' Princeton Pub. Co. 2006), p.66

functions of more than one organ. This is one of the three well known forms of separation of powers, and functionally the neatest of them all … Our own form of separation of powers is fashioned after the American system. The idea of this system is the provision of effective checks and balances in the government structure itself. By the adoption of this form, absolutism or oligarchy of any kind is outlawed; true democracy is entrenched and manifestly seen to be entrenched in the Constitution. In other words, each of the three organs is obligated to keep within and guard its bounds of authority… But does this all mean that each must operate in a water tight compartment regardless of consideration for each of the other two? … Whilst the judiciary must be detached and independent from the other two organs and be manifestly seen to be so, the legislature and the executive must work in close and harmonious collaboration with each other, if the welfare of the people is to be truly and effectively served … It is quite clear that the objective of the legislature and the executive are one and the same – to promote and serve the best interests of the people. If they work at cross purposes or refuse to cooperate and collaborate with each other, the interests of the people would be seriously endangered. This point is reinforced on the ground of plain commonsense. When two persons or agencies are charged with joint responsibility to achieve a common objective, the two of them must constantly seek a consensus or, in the event of disagreement, one of the two must be allowed to have the last say. If

> each of the two, in the absence of consensus, claims the right of last say then, the common objective will either be unattainable, or be very slow of attainment[96].

In the same vein, Carl J. Friedrich warned:

> Many who today belittle the separation of powers seem unaware of the fact that there clamour for efficiency and expediency easily leads to dictatorship.[97]

And John Adams said:

> A legislature, an executive, and a judiciary comprehend the whole of what is meant by government. It is by balancing each of these powers against the other two that the efforts in human nature towards tyranny can alone be checked and restrained, and any freedom preserved in the constitution.[98]

Again Peter Calvert stated thus:

> The doctrine of separation of powers, lauds the advisability of distributing ultimate authority among different entities, none of which is subject to control by the others within its sphere.[99]

The whole idea of separation of powers is that, the Legislature, Executive, or Judiciary should encroach on, or exercise the powers of another branch. And no branch is subject to control by the others within its sphere of power. Experience has shown that to leave power in the hands of one person without any form of check would be a catastrophe.

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[96] *Ibid*, p.172-175
[97] *Ibid*, p. 175
[98] Cited in Agbaje v Commissioner of Police Western State (1969) 1 MNLR p. 176 at 177
[99] *op. cit*, p. 68.

According to Sir Wilson Churchill, "to make a permanent system of dictatorship hereditary or not is to prepare a new cataclysm"[100] . This fear has added to the development of the concept of separation of powers and has given birth to the concept of impeachment. Impeachment in a democratic dispensation is meant to serve as a check on the Chief Executive to prevent unnecessary and undesirable display of abuse of office such as corruption, lawlessness and conduct generally incompatible with the office of a chief Executive. However, while the responsibility of the legislature include, among others, serving as check on the executive branch of government through impeachment process. Impeachment notice could be a means of forcing the President or Governor to accept a proper balance of power and redistribution of resources. The legislature should exercise its impeachment power sparingly and judiciously. It does not entail the legislature running their respective States aground. Five impeachments, most of each were carried out in bizarre and undemocratic circumstances, within a spate of one year does call a lot into question. According to Lord Acton, "power corrupts, and absolute power corrupts absolutely". In Nigeria, this warning by Lord Acton appears to have fallen on the politician deaf ears as some legislators have decided to use the impeachment tool to the detriment of Nigerians. Whatever is the origin of the impeachment process, and irrespective of its initial purpose, it needs to be checked before it throws governance and democracy to the dogs. The lack of procedural uniformity in the implementation of impeachment process leaves much to be desired. The legislature in their exercise of legislative powers on impeachment must have recourse to the Constitution from where it derives its powers for guidance. The Constitution of the Federal Republic of Nigeria,

[100] Alero Akeredolu, *The Supreme Court on impeachment Proceedings,(* St Paul's publishing House, Ibadan, 2007),p.1

1999 (as amended), is clear on how a Governor or the Deputy Governor of a State may be removed from office if found guilty of gross misconduct in the performance of the functions of his office.

1.6 **Impeachment and the Rule of Law**

Every given society has its own peculiar law, rules and regulations formulated for the guidance of the conduct of its citizens in order to create orderliness in that society. The Constitution of the Federal Republic of Nigeria is the organic law of the land and therefore an embodiment of the rule of law. Rule of law presupposes that the law is supreme and simply means equality before and obedience to law. For an individual or group of persons or Government to assume the right to invoke the authority of the State against any breach, such a person or body must point at the aspect of his right that was breached or threatened. Several actions of persons and government alike that impinge on the right of individuals have been declared unconstitutional on the ground that the law providing for such right was breached or violated. Example is a breach of the fundamental rights conferred in section 36(1) of the 1999 Constitution. Section 36(1) of the 1999 Constitution provides for the right to fair hearing. It sates thus:

> In the determination of his civil rights and obligation including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.[98]

[98] *op.cit*. section 36(1), of the Constitution of the Federal Republic of Nigeria, 1999(as amended).

It means therefore that if any person is accused of having breached any law of the land, that person has constitutional right to be heard before any court or tribunal. It becomes an outright breach of the Constitution if such person is charged and convicted unheard as that amounts to a breach of the rule of law with regard to his fundamental rights as stipulated in section 36 of 1999 Nigerian Constitution. In the case of *Umaru v Onwudiwe,*[99] It was held that: (a) the court or tribunal shall hear both sides not only in the case but also in all material issues in the case before reaching a decision which may be prejudicial to any party in the case.

(b) That the court or tribunal shall give equal treatment, opportunity and consideration to all concerned.

(c) That the proceedings shall be heard in public and shall have access to and be informed of such a place of public hearing.

(d) That having regard to all the circumstances in every material decision in that case, justice must not only be done but must manifestly and undoubtedly be seen to have been done.

In *Re-Maclean Okoro Kubeinji***,**[100] a Chief Magistrate was written a letter by the Public Service Commission asking him to accept transfer to the Ministry of Justice or regard the letter as a notification that he has been summarily removed from the public service of the state. This was as a result of the Commission having found him not a fit and proper person to continue to perform the duties of his present post. The Trial Judge found that the Applicant had no opportunity to prepare and to present his case; he had no access to the documents that concerned him; and no explanation was given to him for refusing him

[99] [2002]10 NWLR (pt.774) p. 129
[100] (1974) 11 S.C P. 79.

the documents. Thus the Public Service Commission acted in contravention of the rules of natural justice as the facts or evidence which led the Commission to decide on the removal of the Chief Magistrate were not at any time communicated to him. The Supreme Court of Nigeria agreed with the Trial Judge that the Commission was bound to comply with the rules of natural justice which "import primarily and necessarily that the person accused should know the charges against him and be given an opportunity of answering those charges except where by his conduct the person concerned has waived a statutory provision which is permissive. The Chief Magistrate should have been given the opportunity of answering the charges before a decision was taken to punish him. Again in the case of *Dr. Tunde Bamgboye V University of Ilorin,*[101] it was held that in order to justify the dismissal or termination of appointment of an employee, the employer must prove to the trial court's satisfaction:

a) That the allegation was disclosed to the employee.

b) That he was given a fair hearing and

c) That the panel believed that he committed the offence after hearing witnesses. In the instant case, to justify the termination of the Appellant's employment, the Respondent must prove to the trial Courts satisfaction that the Council believed the Appellant committed acts of gross misconduct after hearing the case. This was exactly what the Trial Court held in the instant case where the Council was said to have believed that the Appellant committed the acts of gross misconduct alleged.

The foregoing cases underscores the importance of the fundamental rights of an individual as provided in the Constitution, the breach of which amounts to disregard of

[101] [1999] 10 NWLR (pt. 633) p. 290

the rule of law, the result would be a nullity of the action taken in breach of the rule of law. Once there is a laid down rule or procedure to be followed in a given circumstance and the rule is not followed as specified, it becomes a breach of the rule and disrespect to the rule of law. This was the decision in the case of *Dr. Denloye v Medical & Dental Practitioners Disciplinary Committee*[102] where the Supreme Court of Nigeria held that although the tribunal ie the Medical and Dental Practitioners Disciplinary Committee Tribunal was entitled to decide its own procedure and lay down its own rules of procedure, the rules it laid down were not followed in the matter, therefore, the decision was invalid and must be set aside. The same decision was reached in the case of *Agwaramgbo v Nakande*[103] where it was stated that, it is highly very necessary that parties must be notified of the hearing date and its importance or fundamental nature cannot be over emphasized because failure to serve such notice on the parties renders the proceedings at the hearing null and void as the Court lacks jurisdiction. Section 1 (1) of the Constitution provides that the Constitution is supreme and its provision shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. Sub-section 2 of section 1 states that, "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 provision of this Constitution". Sub-section 3 of section 1 provides that, "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".[104]

[102] (1968) All NLR p. 306
[103] [2000]9 NWLR (pt. 672) p. 341
[104] *op. cit* section 1(1) (2) &(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The above sections of the Constitution brings to the fore the importance of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as an embodiment of the rule of law. Any action taken by a person or group of persons, body or government that contravenes or violates any section of the Constitution is a breach of the provisions of the constitution and the rule of law and therefore will be declared null and void and of no effect by a court of law. An act that is null and void amounts to "nothing" being deemed in law not to exist or not to have taken place at all. This is in line with one of the memorable pronouncements of Lord Denning, upon the law, in *Macfoy v United African Co. Ltd.*[105]

> If an act is void, then it is in law a nullity….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.

Also decided on this principle of law, is the case of *Sanusi v. Danniel,*[106] wherein Jibowu Ag F C J held that an action to set aside an act that is null and void "is misconceived as there is nothing for the court to set aside". The above is the inevitable effect of a violation of the rule of law, in a democratic society as the court of law is bound to declare such action null and void and of no legal effect. As John Locke, put it:

> Freedom of men under government is to have a standing rule to live by, common to everyone of that society and made by the legislative power created in it, and not to be subject to the inconstant, unknown arbitrary will of another man[107].

In *Arthur Yates & Co. pty Ltd. V. Vegetable Seeds Committee*, Herring CJ has this to say:

[105] [1961]3 NWLR. p. 1405 at p. 1409
[106] (1956)1 F S C p. 93 at p. 95
[107] J Locke, *"Essays on True Extent and Exit of Civil Government"*, 1860, p.51

> It is not the English view of the law that whatever is officially done is law….On the contrary, the principle of English law is that what is done officially must be done in accordance with the law[108].

Again, the rule of law also implies respect for judicial decisions. It means therefore that there should be respect for the orders, decisions and processes of the courts. This is the decision of the court in the case of *Military Governor of Lagos State v Ojukwu.*[109] An aggrieved party may appeal against a decision of a lower court up to the Supreme Court. Respect for rule of law is necessary for civilization to flourish in a society. According to late Dr. Nnamdi Azikiwe on the importance of the judiciary and obedience to its decisions:

> The judiciary is the bulwark of the liberty of citizens. Rule of law therefore, is indispensable in any given democratic society. And also means any ordered structure of norms in a given society.[101]

Rule of law literally implies that no one, no matter his station or status in life is above the law. There can be no democracy unless the life and affairs of people in a given society are governed by law, and not by the momentary and changing whims and caprices of the rulers or individuals. According to John Locke, "the inconstant, uncertain, arbitrary will" of the rulers". Again he stated, "In all states of created beings capable of laws, where there is no law there is no freedom of the individual and the freedom of the people to elect their rulers"[111].

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[108] (1945) 7 C.L.R 168.

[109] [1986] 1 NWLR (Pt. 18), p.621

[101] Dr. Nnamdi Azikiwe, *"Essentials of Nigerian Survival" Foreign Affairs*, (Vol. 43, N0. 3, 1965), p. 451

[111] *op. cit.*, p.139

Aristotle is no less clear and emphatic upon the point, when he stated:

> A government, he maintains in which "everything is determined by majority vote and not by law or which centers all power in votes of the people cannot properly speaking be a democracy[112].

Rule of law is also described by Halsbury's Laws of England**,** as:

> ……every official from the Prime Minister down to a Constable or a Collector of Taxes, is under the same responsibility for every act done without legal justification as any other citizen, the reports abound with cases in which officials have been brought before the courts, and made in their personal capacity, liable to punishment or the payment of damages for acts done in their official character but in excess of their lawful authority (appointed government officials and politicians alike)…… And all subordinates though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person**[113]**.

Halsbury's laws of England equally viewed the concept of the rule of law as:

> The legal basis of government gives rise to the principle of legality, sometimes referred to as the rule of law. This may be expressed as a number of propositions, as shown below[114].

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[112] *op. cit.*, p.99

[113] file://C:\Documents and Settings\user\Desktop\chris9\law\Rule of law.htm, accessed on 5/3/2010

[114] *Ibid*, p.3

1) The existence or non-existence of a power or duty is a matter of law and not of fact, and so must be determined by preference either to the nature of legal personality of the body in question and the capacities that go with it, or to some enactment or reported case. As far as the capacities that go with legal personality are concerned, many public bodies are incorporated by statute and so statutory provisions will define and limit their legal capacities. Individuals who are Public office-holders have the capacities that go with the legal personality that they have as natural persons. The Crown is a corporation sole or aggregate and so has general legal capacity, including subject to some statutory limitations and limitations imposed by European law, the capacity to enter into contracts and to own and dispose of property. The fact of a continued undisputed exercise of a power by a public body is immaterial unless it points to a customary power exercised from time immemorial. In particular the existence of a power cannot be proved by the practice of a private office.

2) The argument of State necessity is not sufficient to establish the existence of a power or duty which would entitle a Public body to act in a way that interferes with the rights or liberties of individuals. However, the common law does recognize that in case of extreme urgency, when the ordinary machinery of the State cannot function, there is a justification for the doing of acts needed to restore the regular functioning of the machinery of government.

3) If effect is to be given to the doctrine, that the existence or non-existence of a power or duty is a matter of law, It should be possible for the courts to determine whether or not a particular power or duty exists to define its ambit and provide an effective remedy for unlawful action. The independence of the judiciary is essential to the principle of legality:- The right of access to the courts can be excluded by statute, but this is not often done in express terms. A person whose Civil or Political rights and freedoms as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) have been infringed is entitled under the convention to an effective right of access to the courts and an effective national remedy. On the other hand; powers are often given to bodies other than the ordinary Courts, to decide questions of law without appeal to the ordinary Courts, and sometimes in such terms that their freedom from appellate jurisdiction extends to their findings of fact or law on which the existence of their powers depend.

4) Since the principal elements of the structure of the machinery of government and the powers and duties which belong to its several parts are defined by law, its form and course can be altered only by a change of law. Conversely, since the legislative power of parliament is unrestricted save where European Community law has primacy, its form and course can at any time be altered by Parliament. Consequently there are no powers or duties inseparably annexed to the executive government.

In American law, the most famous exposition of the principle was drafted by John Adams, for the Constitution of the Common Wealth of Massachusetts in justification of the principle of separation of powers:

> In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers or either of them, the judiciary shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men[115].

A similar concept is found in common sense by Thomas Paine:

> ……..the world may know that so far as we approve of Monarch that in American the law is King. For as in absolute governments the King is Law, so in free Countries the law ought to be King; and there ought to be no other[116].

The basic function of rule of law is to ensure Justice, Peace and Order in society. It has the two following aspects:

1) Substance content: this implies that the content of law should reflect the basic standards of society, exhibit regularity and consistency and place the human personality above all else. It should include freedom from government intervention and right to minimum material means. Thus the obligation of citizens to obey the law should arise out of its morally justifiable nature.

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[115] *op. cit.*, p.157

[116] file://C:\Documents and Settings\user\Desktop\chris9\law\Rule of law.html, accessed on 5/3/2010

ii) Procedural machinery: This includes legal institutions, procedures and traditions, all of which must pay attention to the Judgments of individuals and the values of society. The legislature, executive, judiciary and the legal profession have a part to play.[117]

One definition of the rule of law is; "the idea of law based on respect for the supreme value of human personality and all power in the state being derived and exercised in accordance with the law".[118]. Alternatively, it may be understood, as "the safeguards offered by principles, institutions and procedures and the different weight being attached to them in different parts of the World.[119]The rule of law, comprising the principles of equity and due process, exists in different forms in each Country. It may contain in the power of judicial review, the separation of powers, the doctrine of *ultra vires* (Prevents State Organs from proceeding beyond their Scope) and the principles of equity and statutory interpretation.[120] This is true of the Nigeria situation, as this postulation find support in the provision of section 14(2)(a)(b) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), that sovereignty belongs to the people, section 36 of the Constitution dealing on fair hearing and a plethora of judicial decisions.

A number of cases were decided on the principle of *ultra vires* and in consonance with the concept of the rule of law. In the case of *Lakanmi v AG Western Nigeria***,**[121] It was held that, a legislature has no power to ignore the conditions of law making that are

[117] N.S. Marsh, "*International Commission of jurists-the Rule of Law in a free society"* (Switzer land, 1959)p.191

[118] *Ibid*, p.193

[119] .*op. cit.*, p. 196-197

[120] . T.R.S. Allan, "*Constitutional justice-A Liberal Theory of the Rule of Law"* (Oxford) (Oxford University press, 2001) p1-29

[121] *op. cit.*,P . 111

imposed by the instrument which itself regulates its powers to make law; and their action in this instant was declared *ultra vires* its powers. Also in the case of *Doherty v Balewa*[122], it was held that the act of the legislature was *ultra vires* its powers in that it denied the citizens their right of access to the High Court for the determination of their Civil rights and obligations within section 21(11) of the 1963 Constitution of the Federal Republic of Nigeria. What should be inferred from the above cases is that a legislature whose constitutional instrument places procedural restraints upon the forms of law making may not ignore them simply because it is sovereign in the sense of having power to make law for the peace, order and good government of the territory.

In the recent case of *Alhaji Atiku Abubakar V Attorney General of the Federation,*[123] the Court of Appeal held that, a Vice President upon being elected, into office by the electorate cannot be removed from office at will by the President.

Abdulahi, JCA held:

> The President and the Vice President of the Federal Republic of Nigeria are jointly elected at a general election and the relationship between them is not that of a master and servant. In other words, the Vice-President is not an employee of the President or of the political parties on whose platform he was elected, he cannot be impliedly or constructively removed by either of them[124].

The Supreme Court unanimously affirmed this landmark decision of the Court of Appeal and authenticated the Court's stance that the office of the Vice President, being a creation

[122] (1963) NLR . P..949

[123] [2007]3 NWLR (pt.1022) P. 601

[124] [2007]3 NWLR (pt. 1022) P. 601

of the Constitution, the holder of the office can only be removed in accordance with the Constitution and not at the whims or behest of a single individual no matter how highly placed. The concept of rule of law was first written by the Greek thinkers. Plato,[125] in his work "The Law", wrote that, "In any great State, the law must be the ultimate sovereign and not any person whatsoever", exhibiting a clear understanding of the rule of law. Aristotle**,**[126] too in his "Politics" says that the legislator's task is to frame a society that shall make the good life possible.

The Magna Carta[127](1215) contains several clauses that reflect the principles of rule of law. Among the clause, is that "no freeman shall be arrested or imprisoned or deprived of his land or banished or in any way molested, save by the lawful judgement of his peers or by the law of the land". John Locke,[128] the proponent of one of the Social Contract theory, laid down several principles of the rule of law in the course of his work. Firstly, "the same laws must exist for the favourite at court and the country man at plough". Secondly, laws should be designed for the good of the people. Thirdly, the State cannot raise property taxes without the consent of the people. Fourthly, the legislature may not transfer law making power to any other body. In his speech on 16th November, 2006 for the Sir David Williams lecture in the Law Faculty of Cambridge University, Lord Bringham of Cornhill postulated eight sub-rules of the rule of law thus:

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[125] file://C:\Documents and Settings\user\Desktop\chris9\law\Rule of law.htm, accessed on 5/3/2010

[126] P Surianarayanan, "*Development of Rule of Law"* (1st 'edn,' Madurai: Madurai Kamraj University, 1983) p. 3

[127] *Ibid* p.4135

[128] *op. cit*., p.167

i) the law must be accessible and so far as possible, intelligible, clear and predictable,

ii) questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.

iii) the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation

iv) the law must afford adequate protection of fundamental human rights

v) means must be provided for resolving without prohibitive Civil disputes which the parties themselves are unable to resolve.

vi) ministers and Public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred on them and without exceeding the limits of such powers.

vii) adjudicative procedures provided by the State should be fair.

viii) the State must comply with its obligations in international law, the law which whether deriving from treaty or International Custom and practice, governs the conduct of nations[129].

Nevertheless, the rule of law is frequently opposed by authoritarian and totalitarian States. The explicit policy of such Governments as evidenced in the Night and Fog Decrees of Nazi Germany is that the Government possesses the inherent authority to act purely on its own volition and without being subject to any checks or limitations.

[129] file://C:\Documents and Settings\user\Desktop\chris9\law\Rule_of_law.htm, p. 5

Dictatorships generally establish secret police forces which are not accountable to established laws, which can suppress threats to State authority.

In Nigeria the regime of the maximum leader, General Sani Abacha who became Nigeria's Head of State from Nov. 1993-28 May, 1998 epitomized the above facts. General Abacha was a dictator and oppressor who wanted to perpetuate himself in power by attempting to change from Military Head of State to become a Civilian President. In the attempt to do this, he was greatly opposed by Nigerians of different shades of endeavour; and Abacha himself in an effort to achieve his evil desire, established a killer squad known as Strike Force led by Sergent Rogers who came upon perceived enemies and stiff opposition of the government of the day. Prominent Nigerians who were opposed to the regime of Abacha fell victim of his dictatorial administration resulting to the untimely death of some of them, such personalities as late Chief Relwane Lukman, Chief Alex Ibru and many others, Alhaja Kudirat Abiola. Some of the culprits in this case are still under trial[130] such as the former Chief Security Officer to the Late Head of State, General Sani Abacha, Major Hamza Al-Mustapha who is currently in detention at the kirikiri prison, Lagos.[131] During this period, the other arms of government especially the judiciary were muzzled up, rule of law was rubbished and thrown to the dogs, the Constitution was suspended and replaced with a number of draconian Decrees with which he ruled Nigeria at his whims and caprices and thus wrecked havoc on the entire civil populace. By providence, Abacha died on 28th May, 1998 and Nigeria was saved of his iron fist regime. Dictatorships generally establish secret force which is not accountable to

[130] Emma Amaize, Al-Mustapha, *welcomes Bode George to Kirikiri Prison,* Vanguard Newspaper, Wednesday, 28th October, 2009, p.1-5

[131] . *Ibid*, p.5

established norms which can suppress threats to State authority. In its critique to the concept of the rule of law, Maxist theory asserts that the capitalist State is an instrument of oppression of the proletariat at the hands of the bourgeoisie which set the laws to suit itself. Following this, some critical theorists analyze the "rule of law" as a judicial fiction which aims at disguising the reality of violence and in Marxist terminology, Class Struggle. This theory presumes that the bourgeoisie: holds the power to set the laws.[132] The Italian Philosopher, Giorgio Agamben**,**[133] argues that the State of exception is at the core of the concept of sovereignty and not the "rule of law" as liberal thinkers has it. While the sovereign claims to follow the rule of law, any protection the people have however fundamental, can be jettisoned once the government finds it convenient to do so. The concept rule of law is generally associated with several other concepts such as:

a) Presumption of innocence. All individuals are presumed innocent until proven otherwise. This principle of law can be found in section 36(5) of the Constitution of the Federal Republic of Nigeria 1999[134]. It states that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.

b) Legal equality. All individuals are given the same rights without distinction to their social stature, religion, political opinions etc. As Montesquieu would say "law should be like death, which spares no one".

[132] *op. cit*., p.5
[133] file://C:\Documents and Settings\user\Desktop\chris9\law\Rule of law.html, accessed on 5/3/2010
[134] Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)

c) *Habeas Corpus*. In full, *Habeas Corpus* and *subjiciendum***,** a latin term, meaning "you must have the body to be subjected to (examination)". A person who is arrested has the right to be told what crimes he or she is accused of and to request that his or her custody be reviewed by judicial authorities. Persons unlawfully imprisoned have to be freed. Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria, states: Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law and in this subsection a written law refers to an Act of the National Assembly or law of a state, any subsidiary legislation or instrument under the provisions of a law.

The concept of rule of law per se, says nothing of the "justness or rightness" of the laws themselves, but simply how the legal system uphold the law. As a consequence of this, a very undemocratic nation or one without respect for human rights can exist with or without a rule of law**,** a situation which is applicable to Nigeria under Military rule which spanned from 1966 -1979 and from 1983-1999 respectively.

Nigeria under Military dictatorship was ruled by harsh draconian and completely unjust Military Decrees and Edicts devoid of democratic principles and with absolute disregard to the concept of the "rule of law" and separation of powers. The experience of Nigerians both high and low during this period is better imagined than described. However, they rule by law (Decrees) purporting it to be just and their regimes could be regarded as government under the law. Under the military regime, Government do things with impunity and with total disregard to the rule of law. For instance during military era, the

action of the Lagos State Government in disobeying a court order and thereby resorting to self help to evict Chief Odumegwu Ojukwu from No. 29 Queen's Drive, Ikoyi, Lagos, drew the ire of the Supreme Court in the case of *Military Governor of Lagos State & Anor v Chief Ojukwu*[135]**,**wherein ESO, JSC, in condemning the action of the military government of Lagos State, stated thus:

> I think it is a very serious matter for anyone to flout a positive order of a Court and proceed to taunt the Court further by seeking a remedy in a higher Court while still in contempt of the lower Court. It is more serious when the act…..is by the executive….I think for one organ and more especially the executive which holds all physical powers to put itself in sabotage, deliberate contempt of the order is to stage an executive subversion of the Constitution which it is to uphold. Executive lawlessness tantamount to a deliberate violation of the Constitution…..the essence of the rule of law is that it should never operate under the rule of fear. To use force to effect an act and while under the marshal of the force, seek the Court equity is an attempt to infuse timidity into Court and operate a sabotage of the cherished rule of law. It must never be.

Similarly, the same view was expressed in the case of *Obeya Memorial Hospital v Attorney General of the Federation & Ors,*[136] where the Supreme Court of Nigeria pointedly and roundly stood up in defence of the rule of law. The Court held *inter alia:*

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[135] *op. cit*., p.106

[136] [1987]10 NWLR (pt. 60) p. 325 at 343

> The seizure of the hospital building by heavily armed Army and Air Force personnel from unarmed law abiding citizens should not be encouraged or applauded in a democratic society such as ours where the rule of law reigns. It is more honourable to follow the due process of law. It is also more respectful and more rewarding to follow such…

The culture of disregard to the concept of the rule of law implanted in the polity during almost three decade of military rule in Nigeria was made worse by President Olusegun Obasanjo himself a former Military Head of State and President of the Federal Republic of Nigeria, a Military –turned civilian leader who came into power in 1999, maintained and extended the military lawlessness in governance in some respects as he was more comfortable with his military mentality attitude. In what may be regarded as an exercise of executive recklessness, President Olusegun Obasanjo unilaterally and arbitrarily through Presidential fiat removed the Vice-President from office and stripped him of all rights, privileges and perquisites accruing to him by virtue of his position. Peeved by this show of naked power and abuse of position, the Vice President invoked the original jurisdiction of the Court of Appeal under and by virtue of section 239 of the 1999 Constitution(as amended) to ventilate his grievance. He prayed the Court to make specific pronouncement on whether or not the President has any power whatsoever to remove a sitting Vice President who was elected by Nigerians with the President to serve a specific or definite term. He also asked the Court to pronounce on the legality or otherwise of the action of the President in arbitrarily removing him from office, in *Atiku Abubakar v Attorney General of the Federation***,**[137] the Supreme Court held that the holder of the office can only be removed in accordance with the Constitution and not at

[137] **[**2007] 3NWLR (pt. 1022) p.601

the whims or behest of a single individual no matter how highly placed. The leaders involved in the scenario pointed above could be said to have ruled by law whether just or not and no matter how the law is twisted to suit their purpose at different times hence, they could be said to have governed under the law "though their own laws." However, the "rule of law" is considered a prerequisite for democracy. The case of *Onagoruwa v Inspector-General of Police*[138] is supportive of this assertion. In that case, Niki Tobi, JCA (as he then was) stated that:

> Nigeria is a democracy and by the grace of the Almighty God, it will remain a democracy for all times. The foundation of any democracy is anchored on the rule of law both in its conservative and contemporary meaning. Putting it naively, we are paid mainly and essentially to uphold the rule of law in the entire polity. And so, once we fail to uphold the rule of law, anarchy, despotism and totalitarianism will pervade the entire society. The social equilibrium will be broken. Law and order breaks down. Everybody will be his own keeper and God for us all. We as Judges cannot afford to see society decay to such an irreparable level. We must rise up fully to our duties by vindicating the tenets of the rule of law in our practiced democracy.

For there to be rule of law there must be a constitutional democracy where the Constitution is rigid, supreme and above all other laws of the land. The rule of law is the

[138] [1991] 5 NWLR (pt.173) p.593 at 650

pillar of constitutional democracy of very great importance. According to President Abraham Lincoln (1809-1865) a Republican and the 16th President of the United States of America, democracy is "the government of the people, by the people and for the people"[139]. And in the words of Justice S O Uwaifo, democracy is the popular control of the government by the will of the people.[140] Thus, democracy is a government where the people write the constitution set out the structure of government, delegate powers to it, vote in their representatives to form the government assess the government and at period elections renew or withdraw its mandate to continue to govern. Therefore, for there to be true democracy, the government must be a government of the people formed by the people and exists for the welfare of the people. It follows therefore that where there is no constitutional and a democratic government in place in a given county, it will be a mirage to expect much respect for the rule of law or human rights because democracy provides the environment for civil rights to take root and thrive.

The rule of law without doubt is the most important feature of democratic governance. Nigeria runs a constitutional democracy. Unfortunately however, rule of law which is one of the cardinal principles of democracy suffered serious set back due to the antecedent of the operators of the system "politicians" who seem to have learnt nothing from the past experience of military dictatorship. These leaders flout the law, abuse their powers of office and trample upon the fundamental rights of the citizens and go scot free because of the weak structure of the government. Impeachment process is one of the most vital

[139] The World Almanac & Book of Facts, 1979, p.477

[140] S O Uwaifo, "*Rule of Law as a reliable catalyst for sustainable democracy"*, "*Triumph of the Rule of Law in Nigeria, a Historical Judgment, Anambra State",* (Lagos, U.E Communications, 2007) p.564

constitutional means of removing a public officer from office and placed in the hands of the legislature to check the excesses of a public officer and ensure public accountability in governance. The procedure for impeachment of a public officer is adequately provided in the Constitution of the Federal Republic of Nigeria, 1999. But this constitutional provision relating to impeachment process was trampled upon with impunity under the regime of former President Olusegun Obasanjo from1999-2007. Impeachment then was seen as a weapon by the powers that be to settle political scores and victimize perceived enemies of the government. Hence, it was randomly applied by the legislature to impeach the various State Chief Executives without regard to rule of law. Impeachment is such a very serious weapon of destruction that destroys its given victim (s) completely. The legislature in the exercise of this must be cautious given the potency of impeachment process. In highly sophisticated advanced democracies of the world especially the United States of America where we copied our presidential system of government, the weapon of impeachment is sparingly mentioned let alone employed ostensibly because of its damaging potency. However, when used appropriately, impeachment is a means by which the government of the day is put on its toes. It is a means to make government more responsive and responsible. Rule of law states that everything must be done according to law. In other words, every act of government must be carried out according to laid down procedure. Ordinarily, where the legislature invoking section 188 of the Constitution to remove the Governor of a State does not follow the laid down constitutional procedure, then any aggrieved party especially the incumbent Governor ought to insist on following the rule of law. If this is done, recourse to Court of law

should be the last resort. However, Section 188 (10) of the Constitution forecloses any recourse to Court of law. It provides:

> No proceeding or determination of the panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any Court.

This section of the Constitution has allowed all sorts of abuses in our practice of democracy in relation to impeachment process. In the words of Aniagolu JSC in *Safekun v Akinyemi & ors*

> it is essential in constitutional democracy such as we have in this country, that for the protection of rights of citizens, for the guarantee of the rule of law, which include according to fair trial to the citizen under procedural irregularity, and for checking arbitrary use of power by the executive or its agencies the power and jurisdiction of courts under the Constitution must not only be kept intact and unfettered but also must not be nibbled at….indeed so important is this preservation of and non interference with the jurisdiction of the courts that our present Constitution has specifically provided in section 4(8) that neither the National Assembly or House of Assembly shall enact any law that outs or purports to oust the jurisdiction of a court of law or a judicial tribunal established by law.[141]

The Constitution of the Federal Republic of Nigeria[142]preserved in section 4(8) the jurisdiction of the courts; this is commendable of a constitutional democracy deep rooted

[141] (1980) 5-7 SC p.25

[142] Section 4 (8) of the Constitution of the Federal Republic of Nigeria, 1999,(as amended)

in the rule of law. Hence, there are cheeks and balances and arbitrariness is reduced to the barest minimum. In *Ojukwu v Lagos State Government,* the Supreme Court dealt passionately and extensively on the need to obey court orders and thus held inter alia; that "it is a very serious matter for anyone to flout a positive order of a court of competent jurisdiction and proceed to insult the court further by seeking a remedy in a High Court while still in contempt.[143] Due process in the impeachment of some State Governors by the legislature through the instrumentality of the Federal Government led by Olusengun Obasanjo, was not followed. The method used in the impeachment saga by the Legislature tantamount to violation of the principles of rule of law which is one of the cardinal concept of democracy. Infact, of great concern was the purported impeachment of Governor Joshua Dariye of Plateau State,[144] by only six members of that State's House of Assembly. However, reprieve came the way of Nigeria when late President Alhaji Umaru Musa Yar'Adua came to power and with the advent of his administration, rule of law gained ascendance as he pledged to uphold the rule of law and as a mark of his seriousness on this point, made it one of his seven (7) point agenda. Evidently, he made good his promise to uphold the rule of law in the case of *Peter Obi v INEC*[145] among others with regard to tenure of office, wherein the High Court declined jurisdiction and dismissed the case. On appeal, the Court of Appeal equally declined jurisdiction. On further appeal to Supreme Court, it was held that jurisdiction should be examined not when it is invoked, but when the cause of action arose. It is the claim of the plaintiff that

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[143] [1986] 1NWLR(pt.18) p.622
[144] *op.cit* p. 332
[145] [2007]11NWLR (pt. 1046)p. 436-616

determines the jurisdiction of a court entertaining same. That the four-year term of the office of Peter Obi as Governor of Anambra State starts to run from the day he took his oath of allegiance and office, from the 17th day of March, 2006 to 17th of March, 2010 as is provided by section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria, 1999, and that the Federal High Court has unfettered jurisdiction to entertain and determine the suit.

What is interesting in this case, is that the decision was welcomed by the President who ordered that the Court Order should be obeyed and ordered the immediate reinstatement of Peter Obi as Governor of Anambra State, as ordered by the court? This is evidence of rule of law in action and the Supreme Court is hailed in this instance. The legislature is one of the three arms of Government empowered by the Constitution of the Federal Republic of Nigeria, 1999(as amended). Thus, in the exercise of its constitutional duties, it is imperative, that it adhere strictly to the provisions of the Constitution not only as it relates to impeachment process but also in the performance of its legislative functions. It is only in so doing that stability will be maintained in the polity and survival of our nascent democracy ensured and rule of law guaranteed as it is the rule of practice in all democracies from across the globe.

1.7 The Democratic Process and Impeachment

Democracy encompasses many ideas and conceptions and has many meanings ascribed to it. Democracy is difficult to define. It is both a very old term and a new one. It was used in a loose sense to refer to various undesirable things: “the masses, mobs, and lack of standards and as a term that encourages demagogues (leaders) who gain their powers by appealing to prejudices of the rabble. The distinguishing feature of democracy is that

government derives its authority from citizens of a given society. In fact the word democracy comes from two Greek words, *demos* (the people) and *kratos* (authority or power). Thus democracy means government by the people, not by one person (monarch, dictator, a priest) or government by the few (Oligarchy or Aristocracy).

There is no uniformity of views about what democracy is. At most what could be achieved is a description of the features of what this political system entails. However, attempts have been made to encapsulate what the concept of democracy implies. The word democracy, when translated literally, means the rule of the people. Over the years however, the various practices of what could be termed as peoples rule in diverse socio-cultural environments have bequeathed the concept "democracy" giving rise to several definitions or meanings of the nomenclature.

The Oxford Advanced Learners Dictionary of Current English, defines democracy as a country with principles of government in which all adult citizens share (power) through their elected representatives.[146] The New International Webster's Comprehensive Dictionary of English Language defines democracy as a theory of government which in its purest form, holds that the state should be controlled by all the people, each sharing equally in privileges, duties, and responsibilities and each participating in person in the government as in the city-states of ancient Greek.[147] And Cambridge International Dictionary of English defines democracy as the belief in freedom and equality between people or a system of government based on this belief, in which power is either held by elected representatives or directly by the people themselves.[148]

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[146] The Oxford Advanced Learners Dictionary of Current English, (Oxford University Press, 2006,) p. 232

[147] *op. cit,* p. 373

[148] *Ibid* p. 373

Democracy is also defined as the "people's government made for the people, made by the people and answerable to the people". Abraham Lincoln[149], one time President of the United States of America, defines democracy as "government of the people, by the people and for the people". Democracy in recent times, is seen as a political system that holds the government responsible to the governed through free and frequent or periodic elections offering a genuine choice of candidates for office and that allows free discussion and a chance for the opposition to replace those in office. In Marxist parlance, democracy means simply "peoples power" or "the sovereignty of the working class"[150] Essentially, what goes for democracy depends on what feature or features of a political arrangement are deemed necessary for choosing a government and holding it responsible to the people for actions.

Academic American Encyclopedia**[151]** (1997), defines democracy as a form of government in which a substantial proportion of the citizenry directly or indirectly participate in ruling the State. It is therefore, distinct from governments controlled by a particular social class or group or by a single person as in despotism. In a direct democracy, citizens vote on laws in Assembly, as they did in ancient Greek city-states and do today in New England towns. In an indirect democracy, citizens elect officials to represent them in government. Representation is typical of most modern democracies. Today the essential features of democracy, as understood in the Western World, are that citizens be sufficiently free in speech and assembly, for instance, to form competing political

[149] The World Almanac & Book of Facts, 1979, p.477
[150] *op. cit.,* p.21
[151] *op. cit.,* p.23

participation and that voters be able to choose among the candidates of these parties in regularly held elections. Democracy is a form of government, a way of life, a goal or ideal and a political philosophy. The term also refers to a country that has a democratic form of government. The word democracy means rule by the people. Throughout history, the most important aspect of the democratic way of life has been the principles of individual equality and freedom. Accordingly, citizens in a democracy should be entitled to equal protection of their persons, possessions and rights, have equal opportunity to pursue their lives and careers and have equal right of political participation. In addition, the people should enjoy freedom from undue interference and dominations by government. They should be free within the frame-work of law to believe, behave and express them as they wish. Democratic societies seek to guarantee their citizens certain freedoms including freedom of religion, freedom of the press and freedom of speech. Ideally, citizens also should be guaranteed freedom of association and assembly, freedom from arbitrary arrest and imprisonment and how they choose their representatives in government. However, despite the variety of definitions of what democracy is, certain common features of democratic practice can be discerned. In a democracy, the welfare of citizens has priority over the interest of the State. Government serves the people, rather than the other way round. Moreover, democratic governments have limited control over persons and institutions. Usually, set of rules and laws define the limits to the exercise of power and rights in a democratic system. Also in a democracy, the right to participate in the political process is not denied any person or group of persons on arbitrary or irrelevant grounds. Citizens also enjoy equal rights under the law and each person's vote is supposed to count as much as any one's else. In a democratic society, the rights of

minorities as well as of individuals are protected. Those who oppose a policy of the incumbent government, as well as those who support it have free access to the press, can speak and assemble freely and can advocate alternative policies by non-violent means. The practice of democracies involves a regular institutionalized means of changing government officials. A democratic society recognizes competing political groups or individuals aspiring for office. Democracy also allow for citizens to influence decision by choosing among competing candidates for public office to speak for them. Democracy according to Robert Maynard Hutchins[152] "is the only form of government that is founded on the dignity of man not the dignity of some men, of rich, of educated men or of white men but of all men". Views on the benefits of rule by law have been expressed since democracy began to develop in ancient Greek as early as 600 BC. In Aristotle's view, the basis of a democratic State is liberty.[153] John Galsworthy[154] is of the view that the measure of democracy is the measure of the freedom of its humblest citizens. Democracy is the only form of government that is founded on the dignity of man not the dignity of some men, of rich men, of educated men or Whiteman but of all men. Most government today claim to be democratic, but much lack some essential features usually associated with democracy. In some countries, for example, the people are not allowed certain freedoms such as those of speech and of the press or competitive elections.

Many modern nations have a long history of democratic government. These countries include Australia, Belgium, Canada, Denmark, Great Britain, Netherlands, New Zealand, Norway, Sweden, Switzerland, France, and United States of America. Other nations

[152] . *op. cit*, p. 43
[153] *op. cit* p. 24
[154] *Ibid*

including, India, Israel, Italy and Japan have been democracies since the mid 1900. Several newly independent nations in Africa and Asia are trying to develop democratic institutions but experience with self rule and other problems had made democratic government difficult to achieve in the 1980's in these countries. Democracy increased in the former Soviet Union and Eastern Europe as communists lost control of the governments of the Soviet Union and many European countries. Tools or ingredients of democracy include; Ballot, Election, Citizenship, Civil Right, Constitution, Due Process of Law, Freedom, Habeas Corpus, Initiative and Referendum, Majority-Rule, Plebiscite, Political Party, Recall, Trial, Voting and Suffrage.

Democracy is the only game in town. There is no other ethically viable way to have a country governed. Democracy is based on the idea that a people should govern themselves, basically, but that doesn't mean that a mob will rule because no decent democracy does without a basic set of rules that cannot be changed by anyone. In the German Constitution, the very first articles contain the rights of man and civil rights are guaranteed[155].

The only working kind of democracy we know is representative democracy, where every adult citizen of a country is regularly allowed to vote for representation in common, equal, free and secret elections. These representatives then make laws, enforce them, and implement standard control by manning or installing courts of law. To prevent democracy from being corrupt somehow, many techniques have been devised by wise men such as Montesquieu[156]. Those techniques include:

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[155] http://everything2.com/index.pl?node=democracy,accessed on 3/22/2008

[156] *Ibid*

(a) Horizontal division of powers. There are an executive power, a legislative power and a judicial power.

(b) Vertical division of powers (Federalism). There are the federation, the federal states, then governmental districts, countries, local governments and townships. Every administrational layer has adequate competencies and say, in the affairs of the layers sitting on top of it.

(c) Checks and balances: An intricate network between the powers to make sure that their competencies remain equally distributed, that they got an equal say.

(d) Immunity and Indemnity; ensure that a representative (say, a Senator) cannot be legally held responsible for decisions he made in his political role. Also ensure that he cannot be jailed for some mushy reason during the term for which he is elected. This ensures absolute independence for government officials.

(e) Expenses: Ideally, the state should pay for any expenses of any elected official and make it a crime for them to accept money from any one else. This prevents corruption.

(f) Codified law: Every administrational procedure should be specified in a sufficiently exact way, to prevent people bending the law and/or constitution out of shape.

A modern democracy is very delicate and complex machinery. Democracy is characterized by the fact that people always complain the loudest when it works best and that there is no police terror ensuring peaceful and quiet streets. Democracy has helped

increase both material and ethical standard of living where it is effectively implemented. A working democracy leads to political, intellectual, scientific and industrial output in a country.[157]

There is no gain saying the fact that democracy remains a form of government with world wide acceptance. This is evidenced by various opinions of leaders across the world ascribed to the word democracy: In the words of Halarambus and Healed[158] "Democracy can be seen as a system in which every individual has an equal say in the government of society". Appadoria[159]described democracy as "a system of government under which the people exercise the governing power directly or indirectly through representatives periodically elected by themselves" Harris Warren**[160]** noted on the concept of democracy that "democracy means that all people have right which must be respected: Robert Marynard Hutchins[161] stated that "democracy is the only form of government that is founded on the dignity of man, not the dignity of some men, of rich, of educated men or of white men, but of all men" Prof. Ben Nwabueze'[162] in his own opinion stated that "democracy as a form of government is one which recognizes the people as the fountain of power and enables them by means of elections at frequent intervals on universal adult suffrage to choose and mandate those to govern"

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[157] Democracy everything 2.com .accessed on 3/22/2008

[158] Onyeizugbo Obianuju B. "*Problems and Prospects of Consolidation of Democracy in Nigeria",* (being aproject submitted to the Dept. of Social Science Nnamdi Azikiwe University, Awka for the Award of Bachelor of Science B.Sc. (Hons) Pol. Sc. 2004), p.21

[159] *Ibid*

[160] *Ibid* p. 21

[161] *Ibid* p. 22

[162] *Ibid* p. 24

According to Chief Obafemi Awolowo[163], "the best form of government is democracy; any form of government other than democracy is evil".

Dr. Nnamdi Azikiwe[164], expressing the same belief in democratic principles, posited that "the government of Nigeria was established upon the belief in democracy, government by discussion based on the consent of the governed whose will is collectively expressed by the majority of the duly accredited representatives of an electorate that is based on universal Adult suffrage".

Features of Democracy

The features of democracy vary from one country to another but certain basic features, are more or less, the same in all democratic nations of the world. These include:

(i) Free elections: This gives the people a chance to choose their leaders and express their opinions on issues. Elections are held periodically to ensure that elected officials truly represent the people. The possibility of being voted out of office helps ensure that these officials pay attention to public opinion.

In most democracies, the only legal requirement for voting or for holding public office has to do with age, residence and citizenship. The democratic process permits the citizens to vote by secret ballot free from force or bribe. It also requires that election results be protected against dishonesty.

(ii) Majority rule and Minority rights: In a democracy a decision often must be approved by a majority of voters before it may take effect. This principle which is called

[163] *.op. cit p.*45
[164] *op. cit* p. 46

majority rule may be used to elect officials or decide a policy. Democracy goes beyond a simple majority to make fundamental or constitutional changes. In the United States, for instance, constitutional amendments must be ratified by the legislature of three-fourth of the States or by special convention called in three-fourth of the States. And in Nigeria to effect a major constitutional change, two-third (2/3) majority of the National Assembly and the States Houses of Assembly are required.

Majority rule is based on the idea that if all citizens are equal, the judgement of the many will be better than the judgement of the few. Democracy values freely given consent as the basis of legitimate and effective political power. But democracies are also concerned with protecting individual liberty and preventing government from infringing on the freedom of individuals. Democratic countries guarantee that certain rights can never be taken from the people, even by extremely large majority. These rights include the basic freedom of Speech, Press, Assembly and Religious Worship. The majority also must recognize the right of the minority to try to become the majority by legal means:-

iii) Political parties: This, as one of the features of democracy, is a necessary part of democratic government. Rival parties make elections meaningful by giving voters a choice among candidates who represent different interests and viewpoints.

The United States and Great Britain have chiefly two party systems. Many democratic countries have multi-party system, which have more than two major parties, e.g. Nigeria. Nigeria is a country with multi-party system of democracy, often in those countries, no single party gain a majority in the legislature. As a result, two or more parties must join to make up such majority. These parties form coalition government. In democratic countries, the party or parties that are out of power serve as opposition “parties”. That is,

they criticize the policies and actions of the party in power. In various dictatorships, criticism of the party in power may be labeled as treason. Often, only the government party is allowed to exist. The people have no real choice among candidates and no opportunity to express dissatisfaction with the government.

(iv) Control on power; Democracies have various arrangements to prevent any person or branch of government from becoming too powerful. For example, the Nigerian Constitution divides political power between the Federal, State and Local Government. Some powers belong to the States only, some only to the Federal Government and some are shared by both and even some belong to local governments.[165]

In all democratic countries, government officials are subject to the law and are accountable to the people. Officials may be removed from office for lawless conduct or for other serious reasons. The communications media help keep elected officials sensitive to public opinion.

v) Constitutional government: Democratic government is based on law and in most cases, a written Constitution eg, Nigerian Constitution.[166] Constitution states the powers and duties of government and limit what the government may do. Constitutions also say how laws shall be made and enforced. Most Constitutions have a detailed bill of rights that describes the basic liberties of the people and forbid the government to violate those rights. Section 36 of the 1999 Constitution is a shining example of this on fair hearing and natural justice.[167]

Constitutions that have been in effect for a long time may include certain unwritten procedures that have become important part of the operation of government. Such

[165] Section 2(2) and 3 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

[166] *Ibid*. Section 1(1)

[167] *Ibid*. Section 36.

procedures are a matter of custom rather than written law. Britain for instance, has no single written document called the constitution. "In that country, however certain custom and conventions as well as certain major documents and many laws, are widely accepted as the "basic rules of the system"

An essential characteristic of democratic government is independent judiciary. It is the duty of the justice system to protect the integrity of the rules and rights of individuals and above all, ensure equality before the law. The importance of the judiciary was expounded by Aniagolu JSC in *Safekun v Akinyemi*[168] wherein he stated thus:

> It is essential in constitutional democracy such as we have in this country, that for the protection of rights of citizens, for the guarantee of the rule of law, which include according to fair trial to the citizen under procedural irregularity, and for checking arbitrary use of power by the executive or its agencies, the power and jurisdiction of courts under the Constitution must not only be kept intact and unfitted but also must not be nibbled at….Indeed so important is this preservation of and non interference with, the jurisdiction of the courts, that our present constitution has specifically provided in section 4(8) that neither the National Assembly or House of Assembly shall enact any law that outs or purports to oust the jurisdiction of a court of law or a judicial tribunal established by law.

Impeachment is one of the tenets of democracy used by the legislature to control and check excesses of public office holders. It is only in a constitutional democracy that

[168] . (1980)5-7 SC, p.25

impeachment process is applicable. Nigeria operates constitutional democracy. Impeachment process is entrenched in the Constitution as a measure to check abuse of power by the executive arm of government and ensure accountability in public service. The power of impeachment of an erring public office holder is exercised by the legislature as provided in section 143 in respect of Federal officials and section 188 with regard to the state officials. The power to impeach the President or his Vice is vested in the National Assembly. While the power to impeach Governor or his Deputy is exercised by the State House of Assembly of the Federation. The Constitution of the Federal Republic of Nigeria, 1999, provides in section 1(1) thus: "the Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria".

(2) 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

(3) If any other law is inconsistent with the provisions this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

The Constitution in this section clearly stated that no change of government is lawful except as provided in the Constitution. Impeachment process is entrenched in our constitution since 1979. The power of impeachment was effectively applied in 1979 with the impeachment of the first civilian Governor of Kaduna State, Alhaji Balarabe Musa and recently the Governors of the Anambra State, Mr. Peter Obi, Bayelsa State, DSP Alamieyesigha, Oyo State, Rasheed Ladoja, Ayo Fayose, Ekiti State and Joshua Dariye

of Plateau State among many others. Though the procedure adopted by the legislature of the respective Houses of Assembly in removing these Governors was unconstitutional and therefore a nullity and without effect whatsoever as rightly held by the Courts; but the exercise of impeachment powers by the legislature of the respective Houses of Assembly was constitutional and democratic.

The impeachment clause is a fundamental check and balance in the 1999 Constitution to check the abuse of enormous executive powers exercisable by elected functionaries of executive arm of government, the President, vice- president, Governors, and Deputy Governors, who are shielded from prosecution from criminal and or civil charges (in their personal capacity) while in office as contained in the provisions of section 308 of the Constitution. As a check and balance against abuse of power in the normal cause of governance, the legislature is empowered under section 188 of the Constitution (in case of Governors/Deputy Governors) and section 143 (in the case of President/vice president) to remove such erring political office holder covered by immunity against prosecution of any kind under section 108 . Thus, in democracy, power resides in the people, government rule by law; both the government and the governed are equal before the law and rule of law is guaranteed. Example is the case of Alhaji Balarabe Musa, then the Governor of Kaduna State which is the first recorded case of impeachment in Nigeria's constitutional history. The majority of the members of the House of Assembly were from a different Political party (National party of Nigeria) from the Governor who was elected on the platform of People's Redemption Party. It was therefore very easy for the House to muster a comfortable two- third majority to commence the impeachment proceedings against the Governor. However, despite section 170 (10) of the 1979 Constitution which

foreclosed recourse to Court, several legal proceedings were constituted to challenge the impeachment process, one of such cases is the case of *Alhaji Abdulkadir Balarabe Musa v Auta Hamza*[169]**.** In that case the Governor had appealed against the refusal of the High Court of Kaduna State to stay proceedings of investigating committee appointed by the Speaker of the Kaduna State House of Assembly.

The issue for determination in the appeal was the effect of section 170 (10) of the 1979 Constitution which ousted the jurisdiction of the Court in the impeachment proceedings. The dicta of Adenekan Ademola, JCA (as he then was) summarized the position of the law. He held that:

> In Nigeria under section 170 of the Constitution, the whole exercise is begun by members of the House. Even the Speaker who appoints the committee of seven persons to investigate the allegation against the Governor or his Deputy must have the approval of members of the House of his nominee .It is only when the committee reports that members of the House of Assembly were not called to finish the work it has begun . The whole exercise cannot be said to guarantee independence or objectivity and impartiality by the norms of section 33 (1) of the Constitution. It is a trial by the legislative organs of the State and the Law it administers is lex parliament as section 170 (11) lays down, such law is hardly the ordinary law the normal courts administer.

Obviously, section 170 (10) of the 1979 Constitution which is impair material with section 188 (10) of the 1999 Constitution inhibits the operation of the concept of rule of law which ought not to be. Therefore that section of the Constitution should be expunged

[169] *op. cit* .p.229

or modified to allow the operation of the rule of law and for justice to thrive in the system and democratic ethos deepened. Impeachment process as entrenched in our constitution good as it appears should not be used by the Legislatures as a snare or trap against public officers in order to score cheap political point.

CHAPTER TWO

THE ROLE OF EXECUTIVE ARM OF GOVERNMENT IN THE IMPEACHMENT PROCESS

2.1 The Executive Arm of Government in the Impeachment

Section 5 of the Constitution of the Federal Republic of Nigeria, 1999, vests power on the Executive arm of government; executive branch of government is charged with responsibility of executing or carrying out the laws and appointing officials formulating and instituting foreign policy, and providing diplomatic representation. The executive is vested with the power to spend money allocated for certain purposes as in the budget and may veto laws and grant pardon to convicted criminals. This arm of government wages war at the direction of the Legislative because the Legislative makes law for the military. The executive is usually empowered to make decrees or declaration such as declaring a state of emergency or promulgating lawful regulations and execute orders. A system of checks and balances keeps the power of the executives more or less equal to that of the judiciary and the legislative.

The executive power is vested in the President to preserve, protect, and defend the constitution and laws of the country. The principal responsibility of the President is to ensure that the laws are faithfully executed. The Constitution does not require the President to personally enforce the law; rather, officers of government perform such duties on his behalf. The Constitution empowers the President to ensure the faithful execution of the laws made by Legislative. Legislative may itself terminate such appointments, by impeachment, and restrict the President. The President's responsibility is to execute the law made by the Legislative. As a check and balance, the President can exercise a check over the Legislative through his power to veto bills, but legislators may

override any veto by a two-third majority in each house. When the two houses of Legislative cannot agree on a date for adjournment, the President may settle the dispute. Either house or both houses may be called into emergency session by the President. The President appoints judges with the Senate's advice and consent. He also has the power to issue pardons and reprieves or amnesties. Such pardons are not subject to confirmation by either the House of Representatives or Senate, or even to acceptance by the recipient. The president is the civilian Commander-in-Chief of the Armed Forces. However, it is the Legislative that has the power to raise, fund and maintain the armed forces, and to prescribe the laws and regulations under which the armed forces operate. Legislative also has the sole power to declare war, and requires that all Generals appointed by the President be confirmed by a majority vote of the Senate before they can assume their office.[102] Other constitutional provisions on the Executive are as contained in chapter VI of the1999 Constitution which provides, for the Executive in details. Chapter VI of the constitution is made up of sections 130 -212, sections 130- 175 provides for President of Nigeria, the said sections provides for the establishment of the office of Public Service of the Federation and so forth. Sections 176 – 212 of the 1999 Constitution, provides for the Governor of a State and deal with the establishment of the office of Governor, establishment of certain State Executive Bodies, the Public Service of a State and so forth. The President and Vice- President of the Federal Republic of Nigeria could be impeached for gross misconduct or violation of any part of the Constitution of the Federal Republic of Nigeria or other impeachable offences by the National Assembly if such charges are proved against him or his vice.

[102] Section 5 of the Constitution of the Federal Republic of Nigeria, 1999(as amended)

Impeachment means “to remove from office, but the actual meaning of impeach is” to accuse Public official before an appropriate tribunal of misconduct in office; to challenge the credibility of; to call into question; to cast an imputation upon; to call into account. Impeachment may therefore end with the removal of the impeached officials from office if found guilty or reaffirmation in office if found not guilty of the offence charged. The 1999 Constitution provides, in section 143, for the impeachment of the President and the Vice-President whereas section 188 provides for the impeachment of State Governors and Deputy Governors of the States of the Federation. The provisions are similar except that in the impeachment of the President, the legislative House involved is the National Assembly, and the Chief Justice of the Federation appoints the seven man penal. In the impeachment of the Governor, the State House of Assembly and the Chief Judge of the State are involved. To remove a President or Vice-President from office, the Constitution provides thus:

1. The president or Vice-President may be removed from office in accordance with the provisions of this section.
2. Whenever a notice of allegation in writing signed by not less than one-third of the members of the National Assembly;

(a) is presented to the President of the Senate.

(b) stating that the holder of the office of President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the President of the Senate shall within seven days of receipt of the notice cause a copy thereof to be served on each member of the National Assembly and shall cause any statement

made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.

3. Within fourteen days of the presentation of the notice to the President of Senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) each House of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.

4. A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by votes of not less than two-third majority of all the members of each House of the National Assembly.

5 Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a penal of seven persons who in his opinion are of unquestionable integrity, not being members of any Public Service, legislative house or political party, to investigate the allegation as provided in this section.

6 The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented by legal Practitioners of his own choice;

7 A panel appointed under this section shall -

(a) Have such powers and exercise its function in accordance with such procedure as may be prescribed by the National Assembly;

(b) Within three months of its appointment report its findings to each House of the National Assembly.

8 Where the panel reports to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.

9 Where the report of the panel is that the allegation against the holder of the office has been proved then within fourteen days of the receipt of the report, each House of the National Assembly shall consider the report, and if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.

10 No proceedings or determination of the panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any Court.

11 In this section "gross misconduct" means a grave violation or breach of the Provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct.[103]

The President however, cannot be prosecuted for a criminal offence committed while in office, but the only method through which he can be censured is through an impeachment process. For example, on 13th August, 2002, the House of Representatives passed a resolution asking the President to resign within 14 days, or be impeached. The motion catalogued presidential offences which to the house, amounted to "grave misconduct".

[103] Section 143 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

However, as soon as this political development became public knowledge, the Presidency swung into action to halt the threat to the impeachment by mobilizing Nigerians against the impeachment move. Solidarity marches to the Presidential Villa were arranged from across the States of the Federation. Traditional rulers were summoned and mobilized to condemn what they saw as an attempt to "heat up the system." Prominent citizens and former Heads of State were approached to plead with the House leaders. "The media, electronic and print, both private and public" were mobilized to denounce the attempt by what was described as "anti-democratic" to truncate our nascent democracy.[104]

The threat and fear of impeachment puts the erring public officer on check from abusing his office or acting in excess of his powers. This ensures good governance and makes democracy to grow. However, whenever the President or any public officer is faced with impeachment threat, Nigerians especially the political gladiators will rise and frustrate the move. This practice does not augur well with the principles of democracy which we profess to practice. Democracy should be given a chance to evolve by adhering to its principles and rules. A public officer who misconducts himself while in office should be removed through proper procedure.

The process of removing a Nigerian President or Vice-President from office through impeachment is a very complex and tedious process. Besides that, the process is both political and legal. This is so because a certain minimum number of members of the National Assembly is required to endorse a charge before the process begins; a higher percentage of endorsement is required to start an investigation. Finally, whatever the findings or verdict of the panel investigating the charges, is only the National Assembly's two-third majority endorsement can push the President or Vice-President out of office in

[104] http://www. Niger Delta congress.Com / I articles impeachment in niger …accessed on 22/3/2008

practical terms, therefore, it is almost impossible to remove a Nigerian President through impeachment. It is easy because of the attitude of Nigerian Politicians, for the President to muster more than one-third of the membership of the National Assembly to overturn whatever a panel may have found, since a no-case verdict by the panel means the end of the process. The Judges may not resist the President's lobbyists for fear of being sanctioned. And it will be a Herculean task for the members of the National Assembly to muster up to two-third majority of its membership to endorse the impeachment to remove a serving President or Vice-President.

In the same vein, to remove a Governor or Deputy Governor from office, the Constitution provides, inter alia, that whenever an allegation of gross misconduct is made against the Governor or Deputy Governor by one-third of the members of the House of Assembly to the Speaker and detailed particulars of the misconduct specified. The Speaker of the House of Assembly will then within seven days of the receipt of the notice of allegation circulate copies to members of the House of Assembly and to the holder of the office. Copies of the response or reply of the office holder should also be circulated to members of the House[105] . However , whether or not any reply was made by the office holder to the allegation, within fourteen days of presentation of the notice of allegation to the Speaker, the House shall resolve by motion whether or not the allegation shall be investigated[106]. A motion of the House that the allegation be investigated shall be passed by a two-third majority of all the members of the House of Assembly[107]. Within seven days of the passing of the motion to investigate the allegation, the Chief Judge of the State on the request of the Speaker shall appoint a seven man panel, who in his opinion are persons of

[105] Section 188 (2) of the 1999 Constitution of the Federal Republic of Nigeria(as amended)
[106] *Ibid,* section 188 (3)
[107] *Ibid,* section 188 (4)

unquestionable integrity, who are also not members of the public service, political party or legislative house to investigate the allegation.[108] The holder of the office has the right to defend himself or be represented by a legal practitioner[109]. The panel appointed shall within three months report whether the allegation has been proved or not. The panel shall exercise this power of investigation subject to the procedure prescribed by the House of Assembly[110]. The House shall within fourteen days of the receipt of the report that the allegation has been proved consider the report and by two-third majority of all the members,[111] the report is adopted, the holder of the office stands removed from that day[112]. However, no proceedings or determination of the panel or House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any Court[113].

The provision of section 188(10) can only be invoked where the provisions in section 188(1-9) are complied with, but where the legislature in the exercise of their legislative function on impeachment failed to comply with those provisions in section 188(1-9) of the Constitution, the Court will assume jurisdiction to inquire into the matter and possibly invalidate the proceedings thereto.

Gross misconduct is defined in this section 188(11) of the Nigerian Constitution to mean:

> A grave violation or breach of the provisions of this Constitution or a misconduct of such nature as it amounts in the opinion of the House of Assembly to gross misconduct.[114]

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[108] *Ibid*, section 188 (5)
[109] *ibid*, section 188 (6)
[110] *Ibid* section 188 (7) and (8)
[111] Emphasis mine
[112] The Constitution *op .cit*. section 188(9)
[113] *Ibid* ,section 188 (10)
[114] Sections 143 (1)–(9) and 188 (1) –(9) of the 1999 Constitution(as amended)

There is no doubt that a critical evaluation of the above process of removing an erring President, Vice-President, Governor or Deputy Governor from office through impeachment is a complex procedure, for there must be a strict adherence to the constitutional provisions relating to impeachment process. More so, the process is not only legislative but also judicial in nature.

However, to remove a Nigerian President from office by impeachment may be practically impossible given the dishonest nature of the politicians. Impeachment notice however, can be used as a means of forcing the President to accept a proper balance of power and redistribution of resources. Nevertheless, as impracticable as removal of Chief Executives in Nigeria may be, some serving State Chief Executives were removed through impeachment process from 2003-2007. President Olusegun Obasanjo was the president of Nigeria who presided over the affairs of the country at the material time. These removals were in absolute disobedience to rule of law and constitutionalism. It is the role of the executive arm of government to ensure strict adherence to the rule of law, maintenance and enforceability of the constitutional provisions, but more often than not, the executive branch of government abdicated this important Executive responsibility and allow constitutional breach to thrive. In the *Military Governor of Lagos State v Ojukwu*[115]**,** Oputa JSC held that, the rule of law presupposes:

i. That the State is subject to the Law.
ii. That the Judiciary is a necessary agency of the Rule of Law.
iii. That Government should respect the rights of individual citizens under the Rule of Law.

[115] *op. cit* . section 5

iv. That to the Judiciary is assigned both by the Rule of Law and by our Constitution the determination of all actions and proceedings relating to matters in dispute between persons or between government or an authority and any person in Nigeria. He stated further "I can safely say that here in Nigeria even under a military government, the law is no respecter of persons, principalities, governments or powers and that the Courts stand between the citizens and the government, alert to see that the State or Government is bound by the law and respects the law".[116]

The executive arm of Government headed by former President Olusegun Obasanjo was seen to have interfered with the functions of the various legislative arm of state governments by using them to impeach some of the Governors perceived as enemies of his government, through the instrumentality of the State in outright violation or abuse of the process. This may be because of the stringent constitutional provision with respect to impeachment process which advocate strict compliance with the same. The interference of the executive branch of government in the process which is the exclusive reserve of the legislature may stifle democratic process if not checked.

2.2 The Abuse of Executive Bodies in the Impeachment Process

Impeachment process is an exclusive legislative function to check arbitrary exercise of power by the executive officers and other arms of government[117]. The executive can only intervene to enforce a successful impeachment process against the impeached officer. However, contrary to the constitutional provision with respect to separation of powers,

[116] [1986]1NWLR (Pt 18) P. 621
[117] *op, cit* p. 755

the executive arm of government often interfere with legislative functions in relation to impeachment process through the instrumentality of State apparatus. For example, the use of executive agencies to intimidate and coerce the members of the legislature to embark on an unwarranted impeachment of some State Chief Executives not in the good book of the presidency .

(i) Economic and Financial Crimes Commission (EFCC)

The role played by the personnel of Economic and Financial Crimes Commission (EFCC) in the impeachment process of the Governors of Bayelsa, Oyo, Anambra, Plateau and Ekiti States, cannot be underplayed and this made it imperative to examine the Act establishing the Commission vis-à-vis its statutory duties and functions to the nation. The Economic and Financial Crimes Commission (EFCC) is a statutory creation by an Act enacted in 2004 and charged with the following functions:

a. the enforcement and the due administration of the provisions of this Act;
b. the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, fraudulent encashment of negotiable instruments, computer credit-card fraud, contract scam etc.
c. the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority.
d. the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which corresponds to such proceeds.
e. the adoption of measures to eradicate the commission of economic and financial crimes.

f. the adoption of measures which include coordinated, preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes.

g. the facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes.

h. the examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved.

i. the determination of extent of financial loss and such other losses by government, private individuals or organizations.

j. collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the commission concerning.

(i) the identification, determination of the where about and activities of persons suspected of being involved in economic and financial crimes

(ii) the movement of proceeds or properties derived from the commission of economic and financial and other related crimes

(iii) the exchange of personal or other experts

(iv) the establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transaction and person involved.

(v) maintaining data, statistics, records and reports on person, organizations, proceeds, properties, documents or other items or assets involved in economic and financial crimes.

(vi) undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes and advising government on appropriate intervention measures for combating same.

k. dealing with matters connected with extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes.

l. the collection of all reports relating to suspicious financial transaction, analyze and disseminate to all relevant government agencies.

m. taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to economic and financial crimes.

n. the co-ordination of all existing economic and financial crimes investigating units in Nigeria.

o. maintaining a liaison with the office of the Attorney-General of the Federation, the Nigeria Customs Service, the Immigration and Prison Service Board, the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation, the National Drug Law Enforcement Agency, all Government Security and Law Enforcement Agencies and such other financial supervisory institutions involved in the eradication of economic and financial crimes;

p. carrying out and sustaining rigorous public enlightenment campaign against economic and financial crimes within and outside Nigeria, and

q. carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions concerned on it under this act.[118]

The role played by the Commission in the impeachment of some State Chief Executives of the Federation, Bayelsa, Oyo, Anambra, Ekiti and Plateau States, leaves much to be desired. The Commission by the Act creating it has the responsibility of investigation and prosecution of all offences relating to economic and financial crimes. It is therefore not surprising that the Federal Government used this Commission to cow the opposition and those perceived to be disloyal to government. This they simply did by falsely accusing such persons of misappropriation of public fund, and then prepare ground for the eventual removal of would be victim. The Commission has powers to:

a. cause investigations to be conducted as to whether any person, corporate body or organization has committed an offence under this Act or other law relating to economic and financial crimes.

b. cause investigation to be conducted into the properties of any person, if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.[119]

Any State Governor or other public officer who misappropriate or embezzle State fund or who commits grievous acts of corruption or abuse of office deserve to be impeached or removed from the public service but the decision whether or not to impeach the offender, if the allegation of gross misconduct is proved against him in the case of a State Governor

[118] Section 6 of Economic and Financial Crimes Commission Act, 2004
[119] *Ibid*, section 7

rests squarely on the State House of Assembly in whose State such occurred and such decision would be taken out of its own free will without any form of interference, dictation, direction or coercion by the Federal Government or any person or group of persons and in the case of the President or Vice-President of the Federal Republic of Nigeria by the National Assembly.

In the process of impeaching Governor Alamieyeseigha of Bayelsa State, for example, EFCC personnel took members of the Bayelsa State House of Assembly to its Lagos office to sign an impeachment notice probably prepared by it. Section 188(2) of the Constitution 1999; require open presentation of an impeachment notice to the Speaker on the floor of the House. How and by whom the notice was presented to the Speaker in the Lagos office of the EFCC is not known, suggesting interference and undue influence in the impeachment of the Governor of Bayelsa State by the Presidency. Moreso, when the motion requesting the State Chief Judge to appoint the seven man panel to investigate allegations of misconduct against the Governor was passed by 15 members of the House who were brought from Abuja where they were quartered to Yenegoa and were taken back after the meeting and because of this reason, they were referred to as "Hostage members".[120] In Bayelsa State members of the House of Assembly merely acted the script written by EFCC and the Federal Government in respect of the impeachment of the Governor and therefore, the State House of Assembly never exercised their constitutional role as a free agent while carrying out that ignoble exercise.

The Economic and Financial Crimes Commission (EFCC) also played prominent role in the removal from office of Governor Joshua Chibi Dariye of Plateau State. Firstly, the

[120] Ben Nwabueze, '*How President Obasanjo Subverted Nigeria's Federal System',* (Gold Press Ltd, Ibadan, 2007), p. 97

EFCC on 13/1/2006, purportedly freezes all the Bank Accounts, 23 of them of the Plateau State Government purportedly acting under section 34(1) of the EFCC Act, 2004.The action of the EFCC in this regard is a nullity, because, section 34(1) of the Act does not authorize or contemplate the freezing of the accounts of a State Government but the account of a "person believed to have made the money in the account through the commission of offence".

Section 34 (1) of the Economic and Financial Crimes Commission Act, 2004 stipulates thus:

> Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act and or any of the enactments specified under section 7(2)(a)-(f) of this Act, apply to the Court ex-parte for power to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution or designated non-financial institution where the account is or believed by him to be or the head office of the bank, other financial institution or designated non-financial institution to freeze the account.

The purpose and effect of freezing the State Government's account is obviously meant to paralyze the operation and activities of the State Government involved and then demobilize the Governor. The EFCC did not stop at that, it instigated the impeachment of

the Governor through a letter signed by its chairman, Mr. Nuhu Ribadu, dated 21st November, 2005, requesting the House of Assembly to investigate Governor Dariye for offences committed by him to wit; Conspiracy and abuse of office, official corruption, diversion of public funds, stealing and money laundering[121]. In the determined effort to get Governor Dariye out of office, EFCC's armed operatives had on 25/8/2006 stormed the Federal High Court premises Abuja to arrest some members of Plateau State House of Assembly including the Speaker who were there for a matter filed by PDP seeking to declare vacant the seats of the 14 members of the House who had decamped to Action Congress (AC) on a trumped up charge of collecting the sum of N5m each for their constituency projects and N4m each, loan for the purchase of cars for use as legislators[122]. They eventually arrested the Speaker and his Deputy in the Court premises and others in a Hotel and took them into custody in Abuja.

In another development, similar to Abuja Federal High Court incident which Chief Solomon Lar described thus:

> In the early hour of that day, the police in Jos surrounded the House of Assembly and blocked all roads leading to it. Later in the day, the EFCC arrived with seven legislatures in its custody at Abuja under heavy police guard. They were marched into the House of Assembly where they were ordered to rehearse some actions which the public was later told was the removal of the Speaker of the State Assembly by the six of the members. The two who disagreed and attempted to move out were ordered back into the hall at gun point. The legislators were later herded into a bus and

[121] *Ibid*, p. 263
[122] *Ibid* , p.267

> driven back to Abuja from where they all came under the supervision of the EFCC accompanied by well armed policemen[123].

This shows the overwhelming influence of the EFCC at the time. The commission was dreaded and the operatives had the field day in dealing with the enemies of the presidency. The seven members House of Assembly of Plateau State at their meeting purportedly adopted and signed a notice of impeachment prepared for them by EFCC and this later resulted in the unconstitutional impeachment of the Governor.

The EFCC also greatly influenced the removal from office of Governors Ladoja of Oyo State and Ayo Fayose of Ekiti State, using the same crude method of intimidation, coercion and harassment of the State Houses of Assembly in their respective States to whip them into line so as to do the commission's biding while they were supposedly carrying into effect the directives of the Federal Government. The EFCC's interference in the State government's affairs under cover of anti-corruption drive amounts to subversion of their autonomy. It's armed operatives from time to time terrorize State after State, many a times resulting to some State functionaries being driven underground for fear of being arrested by men of the EFCC. That was the state of affairs under the regime of former President Obasanjo, as the Federal Government either through omission or commission subvert the autonomy of the States of the Federation in the name of fighting corruption through its dare devil agent, EFCC.

The Autonomy of the State Governments have been affirmed by the Supreme Court as a cardinal principle of the Federal system established for Nigeria by the Constitution and therefore interference with the affairs of the State Government by an agent of the Federal Government is unconstitutional. Uwaifo JSC: also affirmed the Federal system of

[123] *op. cit.,* p.281

government operated by Nigeria in the case of *Attorney General Lagos State v Attorney General Federation,* when he said**:**

> But I do not need to repeat that Nigeria operates a federal system of government. Section 2 (2) of the 1999 Constitution re-enacts the doctrine of federalism. This ensures the autonomy of each government, none of the government is subordinate to the other. This is of particular relevance between the State Governments and the Federal Government, each being, as said by Nwabueze, an autonomous entity in the sense of being able to exercise its own free will in the conduct of its affairs within the constitution, free from direction by another government.[124]

Uwais CJN, acknowledged the autonomy of the State Government as a principles of Nigeria's Federal system when he stated:

> By section 2 (2) of the 1999 Constitution, Nigeria shall be a Federation and by doctrine of federalism which Nigeria has adopted, the autonomy of each government, which presupposes its separate existence and its independence from the control of the other governments including the Federal Government is essential to Federal arrangement. Therefore, each government exists not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own free will in the conduct of its affairs free from direction by another government.[125]

To reiterate what I have earlier stated, It is desirable and that is what is obtainable in all civilized nations of the world, that if any State Chief Executive is found to have either

[124] [1982] 3NCLR p. 915

[125] *op. cit.,* p. 393

embezzled, misappropriated or diverted State fund or misconduct himself in any way that amounts to gross misconduct, he should face the consequences and possibly be impeached if the allegation against him is proved. But the duty to impeach such Chief Executive should be left to the respective Houses of Assembly whose constitutional responsibility is to do so under section 188 of the 1999 Constitution and while exercising that function under the Constitution, they should do that out of their free will and free from any external interference or undue influence.

The Economic and Financial Crimes Commission (EFCC) was enacted in 2002 and re-enacted in 2004, creating a Commission with the power of coordinating and enforcing varied but related economic and financial crimes laws. The efforts of the EFCC initially appeared to have brought up corruption into open and under check appear to have been compromised by the seeming selective enforcement and partisanship of the EFCC, and its use by the Executive under Obasanjo as a tool of political brinkmanship.[126] Example is the role EFCC played in Bayelsa State in allegedly facilitating the signing of impeachment papers in Lagos, by some legislators of the Bayelsa House of Assembly against Governor DSP Alamieyeseigha. Therefore, EFCC could simply be said to be a tool of intimidation used by President Obasanjo against his real and imagined political enemies.

Thus, the arrogant attitude exhibited by EFCC in this respect is not only in excess of its constitutional duties but fragrant abuse of its powers and above all, a derogation of the principle of "non-interference" in our Federal system of government entrenched in the 1999 Constitution of the Federal Republic of Nigeria.

[126] http://.allafrica.com/stories/2007 02270025.html accessed on 3/27/2007

(ii) The Activities of the Nigeria Police Force (NPF) in the Impeachment Proceedings:

The role of the Nigeria Police Force in the National Security System cannot be overemphasized. Therefore, it becomes necessary to look at the function of the Nigeria Police Force in its handling of the security situation in Nigeria, particularly during elections.

The Nigeria Police Force (NPF) is a creation of the Constitution of the Federal Republic of Nigeria thus: "There shall be a Police Force for Nigeria which shall be known as the Nigeria Police Force and subject to the provisions of this section no other Police Force shall be established for the Federation or any part thereof".[127] The Nigeria Police is charged with a number of responsibilities listed below: "The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order; the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within or outside Nigeria as may be required of them by or under the authority of this or any other Act.[128]

In Nigeria, every successive government, both military and civilian presume that the Nigeria Police Force is an agency of the Federal Government and thus subject to the control and directions of the Federal Government alone. During the Military administration, the Police was treated with disdain by the Military Administration and employed to do "shoddy jobs" in the performance of its constitutional duties, such as using the Police to brutally quell civil protest against the bad policies of the government

[127] Section 214(1) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
[128] Section 4 of the Police Act, Law s of the Federation of Nigeria 2004.

in power and where such protest is violent, the police is ordered to "shoot at sight", many a times, resulting in the death of many innocent citizens and many causalities. It is also used to quell religious riots like Maitasine religious riot in Kano of 1981, the Jos Mayhem of 2008 which started as a protest against Local Government Council election rigging and later metamorphosed into religious riot in which many lives were lost and the recent religious uprising in some parts of the Northern States of Nigeria, known as Boko Haram which claimed many lives. This religious sect called Boko Haram were said to be protesting against Western Education and in the process many lives were lost. The Police are often given marching orders to "shoot at sight" in such instances, the end result of which was always detrimental to the general Public. An example was the Brutal killing of the leader of "Boko Haram", Mohammed Yusuf by the Police, which today has caused the death of thousands of Nigerians by his members. In *Obeya v Attorney General Federation*[129]the court in condemning the action of the police in that case held that, the seizure of the hospital building by heavily armed Army and Air Force personnel from an unarmed law abiding citizens should not be encouraged or applauded in a democratic society such as ours, where the rule of law reigns. It is more honourable to follow the due process of law. It is also more respectful and more rewarding to follow such a course. This was also the situation in the case of late Chief Gani Fawhimin, a Legal Practitioner and Human Rights Activities who had suffered many detention by successive governments in Nigeria because of his critical stand against government bad policies especially on human right abuses which later contributed to his untimely death and the cause of the unfortunate death was linked to the Federal Government because of various detentions he suffered on the orders of the Federal Government.

[129] *op. cit.*, p.173

The use of the Nigeria Police Force to perform dirty jobs by the Government of Nigeria is even more pronounced during the civilian rule, as government view the police as its appendage to perform such duties as rigging of elections usually in favour of the ruling party. The use of police to torture, intimidate, harass, maim or even kill perceived political enemies of the power that be. It is also used to intimidate, harass, coerce and aid the impeachment of some Pubic office holders who is not in his good book such as was done in Oyo, Bayelsa, Anambra, Plateau and Ekiti States who's Governors were unconstitutionally removed. Police is also used to arrest, torture and detain those critical of government policies. Late Chief Gani Fawahinmi suffered several detentions in the hand of government especially during military regime for being critical of its policies.

The illegal attempt to remove Governor Chris Nwabueze Ngige from office in 2003, by the Federal Government using the police is a shining example of the extent to which government can use the police, to dictate and coerce the people to bend to its will as witnessed during the regime of President Obasanjo. On 10th July, 2003, for instance, a team of armed Mobile policemen numbering about 250 led by an Assistant Inspector General of Police, late Raphael Ige, acting on the orders from the Presidency, attempted to abduct Governor Chris Nwabueze Ngige from his office following an alleged letter of his resignation on 9/5/2003.The story of Govenor Chris Ngige's abduction was narrated by himself, thus:

> According to Governor Chris Ngige in an interview by the press on the incident, "AIG Ige told me he wanted to see me and got me to sit in my office. He said I should not leave my seat. And in the process, a letter meant for the clerk accidentally made it to my office. It was from there

> that I learnt that I had resigned. And then, he said I was under arrest. I sat there in my office and treated files. At some point I came out and made a scene in front of the Governor's office. Some courageous people supported me and came around. He was arguing with my ADC, because they didn't know him, because, he was in mufti. He promised to take me to my village. On our way I decided I would go to my hotel room, because I was staying at the Choice Hotel in Awka. It was from there I made contact with Abuja and told my story because people had been making phones calls on my behalf. When I tried calling President Obasanjo, I was told he was out of the country, so someone put me in touch with the Vice-President. He said: "Dr. Ngige, we heard you have resigned. And when I narrated my story to him, he agreed that I had not resigned. So, he called the I.G to call his boys to order.[130]

Furthermore, in the build up to remove Governor Chris Nwabueze Ngige of Anambra State and Joshua Chibi Dariye of Plateau State, their security details were withdrawn on the orders of the Federal Government. The police even at times go out of their way to involve itself in an extra-judicial killing with the full support of the Federal Government all in the name of Politics to cow opposition. Example is the assassination of the Federal Attorney General, Chief Bola Ige (SAN). Chief Ige was a chieftain of Alliance for Democracy (AD), a dominant party in the Western Nigeria in 1999. He was later appointed the Federal Attorney General by President Olusegun Obasanjo. While serving as the Federal Attorney General, he became uncomfortable with the happenings in his

[130] Ben Nwabueze, *'How President Obasanjo Subverted Nigeria's Federal System', (*Gold Press Ltd, Ibadan, 2007) p. 149

party which he feared might go into oblivion and resigned to enable him reposition his party. President Obasanjo who is from that zone became skeptical of what Ige might do with his party that might work against his re-election bid in 2003. Consequent upon this, Ige was assassinated with connivance of the police guard who claimed they went to eat when the assassins struck. This is unbelievable because it couldn't have happened without the prior knowledge of the police on guard; the source is suspected came from the presidency. Other political killings took place during the period under review, all in the name of politics to silence the opposition. Till date Ige's killers have not been found by the police nor the police men on guard duty at Ige's residence when the incident took place reprimanded. A similar case was the abduction of Governor Ngige of Anambra State from office by the police led by the Assistant Inspector General of Police (AIG), Zone 9 Umuahia, ostensibly orchestrated by the presidency under Obasanjo.

These happened because of the Federal Government's belief that Nigeria Police Force is under its exclusive control. This is not correct. The Nigeria Police Force is a national institution that serves both the Federal and State Governments and the entire Nigerian citizens. The Nigeria Police as a National Institution is drawn from section 214 (1) of the 1999 Constitution establishing "a police force for Nigeria and prohibiting the establishment of any other force…for the Federation or any other part thereof". Section 214(2) (b) empowers both the Federal Government and State Governments to confer powers and impose duties on the police.

Section 215(3) and (4) of the 1999 Nigerian Constitution gives power to both the President and the State Governors to give lawful directions with respect to the operational

use of the police force for maintaining and securing public safety and public order subject as therein provided.

There is also a constitutional provision creating a Nigeria Police Council composed of the President as Chairman, the Governor of each State in the Federation, the Chairman of the Police Service Commission and the Inspector General of Police, and vesting in them responsibility with respect to "(a) the organization and administration of the Nigeria police and all other matters relating thereto not being matters relating to the use and operational control of the force or the appointment, disciplinary, control and dismissal of members of the force; (b) the general supervision of the Nigeria Police Force" and (c) advising the President on the appointment of the Inspector General of Police (IGP)[131] The State Governors as members of the Police Council and the functions of the Council show clearly that the Nigeria Police Force is not solely an agent of the Federal Government whose activities it command to suit its purpose. For the Federal Government to regard the Police Force as an agent of the Federal Government alone, and a coercive force for maintaining and securing its existence and authority is a misconception. The police is for all Nigerians whose tax is used to pay the force.

To wrest the Federal Government's monopoly of the Nigeria police, there is absolute need to allow for creation of State police. This will free the Federal Government's grip on the police force and prevent it from being used to intimidate the State Governors and the entire citizens of Nigeria and this will also enhance true Federation in Nigeria. Under the 1999 Constitution, the appointment and removal of the Inspector General of Police is by the President. This power given to the President by the Constitution, made the Inspector

[131] Paragraph 27 and 28 of the third schedule to the Constitution of the Federal Republic of Nigeria, 1999(as amended)

General of Police completely subordinate or subservient to the Presidency, thus he cannot assert his independence as the head of a national security outfit. Section 215(1) of the 1999 Constitution of the Federal Republic of Nigeria provides that the Inspector General of Police (IGP) "shall be appointed by the President on the advice of the Nigeria Police Council" but sometimes the Inspector General of Police (IGP) is appointed by the President without advice by or consultation with the Police Council. The power to appoint implies also power to remove hence; the police is in firm control of the presidency who could manipulate that institution willy-nilly for its benefit and advantage and any IGP. Who is not submissive run the risk of being removed by him.

As a safeguard against the subordinating influence of the appointment and removal powers of the President, the Constitution should be reviewed to place the appointment and removal of the Inspector General of Police on an independent body subject to ratification by the Senate of the Federal Republic of Nigeria. The present arrangement does not meet the purpose, because the Chairman of the Council of State and Nigeria Police Council is the President and he appoints the Chairman and members of the Police Service Commission. These bodies are creation of the Constitution. By section 153(1) of the 1999 Constitution; this is possible where a single police force for the Federation is to be retained. Otherwise to reflect a true Federalism which guarantees State autonomy, there should be different State police and Constitution and this if implemented will go along way to reshape Nigeria. This arrangement will reduce the overbearing influence of the Presidency on the police and make it independent to function effectively as a truly national institution devoid of any control by any of the three divisions of government and

their activities channeled for the common use of the three arms of government for peace, security and stability to reign in the polity.

(iii) The Functions of State Security Services (SSS) *Vis-a-Vis* their Role in Impeachment Proceedings in Nigeria.

One of the functions of State Security Services (SSS), is the protection and preservation of internal security of the country.[132] But this was not to be as they turned against the people they were to secure and protect, owing to the manipulation of that force by the Federal Government to its bidding as attested to in their role in the 2007 general election which was massively rigged in favour of the ruling party (PDP) aided by the Federal Government through the use of the force. For instance, the Director of State Security Services (SSS) in Delta State Mr. Peter Adebayo Babalola during the preparation for 2007 general election, stated thus:

> We are not going to allow militants and their sponsors including their relations and close friends to participate in the electoral process by running for offices. How can we allow it? They (militants) will capture white men in the creeks and their brothers are here running for elections. We will make sure you (Political Parties) don't recommend those that are dangerous in the society…..even if they enter into the race; we are going to disturb them.[133]

This is the unfortunate utterance of the Director of State Security Services (SSS), Delta State, a security outfit expected to maintain peace, order and foster stability in Nigeria.

[132] Cap 174 Laws of the Federation of Nigeria, 1990 (as amended)
[133] *op.cit.* p. 87

The actions or inactions and utterances of the security personnel while in the performance of their duties are often reflective of the influence of government on them. They should be made to know that their function is not for the Federal Government alone but extend to State and Local Government and to the generality of the people of Nigeria. They also should be reminded of their neutrality in the conduct of their affairs and not to engage in politics by their conduct or in any manner whatsoever detrimental to the citizenry. This can be done through organization of seminars, internal lectures, conferences and workshops to which technocrats from democratic institutions should be involved to achieve the desired goal.

(iv) Independent Corrupt Practices Commission (ICPC)

In June 2000, the Federal Government of Nigeria enacted a law to be known as Independent Corrupt Practices and other related offences Commissions (ICPC), an anti-corruption agent constituted to stamp out corruption or at least reduce corruption rate in Nigeria to the barest minimum. The offences of corruption, fraud and other related offences under the Act and the punishments prescribed for them are applicable to:

> A person employed in any capacity in the public service of the Federation, State or Local Government, Public Corporation or Private Company wholly or jointly floated by any government or its agency including the subsidiary of any such Company whether located within or outside Nigeria and includes judicial officers serving in Magistrates, Area Customary Courts or Tribunals. They equally apply to corruption, fraud or other related offences committed by such persons in the discharge of their official duties in relation to money, property or affairs of the government,

> Federal, State or Local Government, arising from the award of contracts, issuance of licenses or permits, employment of staff or any other business or transaction.[134]

The Commission (ICPC) is by the Act to investigate and prosecute persons both private persons and public servants, including public servants employed in the service of the State or Local Governments, alleged to have committed fraud or related offences under the Act or under any other law, eg the Criminal Code or Panel Code irrespective of whether such other law is a Federal or State law. Complaints against the Governor of a State for corruption, fraud or related offences involving money, property or affairs of the State Government may be made to ICPC but the investigation of the complaint is to be conducted by an independent counsel authorized in that behalf by a national functionary, the Chief Justice of Nigeria[135]

The Act equally vests certain functions on other Federal government Authorities: Section 5(2) provides that, if in the course of any investigation or proceedings in court in respect of the commission of an offence under the Act by any person, there is disclosed an offence under any other written law not being an offence under the Act irrespective of whether the offence was committed by the same person or any other person, the officer of the commission responsible for the investigation or proceedings as the case may be, shall notify the Director of Public Prosecution or any other officer charged with the responsibility for the prosecution of criminal cases, who may issue such directive as shall meet the justice of the case. By that section of the Act, the powers and functions of officers of the commission and of the Federal Director of Public Prosecution are not

[134] Sections 8,9,10,11 and 12 of the Independent Corrupt Practices and Related Offences Commission (ICPC) Act, 2000

[135] *Ibid* ,section 51(1) of the Act

limited to the investigation and prosecution of the offences of corruption, fraud or related offences under the Act but also to all offences under any written law committed by any person. Thus, the investigation and prosecution of all criminal offences under any written law committed by any person is brought under the power of the ICPC thereby making meaningless the division of powers with regard to criminal offences under the Constitution. By virtue of section 61(1) of the Act, "Every prosecution for an offence under this Act or any other law prohibiting bribery, corruption and other related offences shall be deemed to be done with the consent of the Attorney-General". By virtue of section 61(1), the Attorney-General of the Federation is vested with power to prosecute cases of bribery, corruption and related offences under any law, Federal or State in total disregard of the authority of the Attorney General of States of the Federation under the Constitution with respect to prosecutions of such offences under State law, as provided by section 211 of the Constitution of the Federal Republic of Nigeria, 1999. Section 211 of the Constitution provides:

> 211(1) The Attorney-General of a State shall have power,
>
> (a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a cour**t-**marshal in respect of any offence created by or under any law of the Hous**e** of Assembly.,
>
> (b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and
>
> (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

(2) The powers conferred upon the Attorney-General of a state under subsection (1) of this section may be exercised by him in person or through officers of his department.

(3) In exercising his powers under this section, the Attorney-General of a state shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.[136]

The power conferred by section 61 (1) of ICPC Act on Attorney-General of the Federation to prosecute cases of bribery, corruption and related offences, Federal or State, clearly undermined and eroded the power of Attorney-General of a State under section 211 (1) of the Constitution to control criminal prosecutions "in respect of an offence created by or under a state law of the House of Assembly" and is, therefore inconsistent with, and is a subversion of the provision of the Constitution. The prosecution of such cases in so far as it includes offences created by State Law not only usurped the function of the Attorney-General of a State under section 211(1) of the Constitution, is inconsistent with the division of powers under the Constitution, Nigeria being a federating state.

The ICPC Act equally imposes a duty on the State Government functionaries in section 61(3) which is against the decision of the Supreme Court in *Attorney General Ogun State v Attorney General of the Federation,*[137]that the Federal Government cannot by its law, confer functions or impose duties on State government functionaries. Under section 61(3) of the Act, the Chief Judge of a State: "shall designate by order under his hand, a Court or Judge or such number of Courts or Judges as he shall deem appropriate to hear and

[136] Section 211 of the Constitution of Federal Republic of Nigeria, 1999 (as amended)
[137] **[**1982]3 NCLR, p 553

determine all cases of bribery, corruption, fraud or related offences arising under the Act or under any other law", A Court or Judge so designated shall not, while being so designated hear or determine any other case.

From the above analysis, the question is whether the creation and punishment of criminal offences, including corruption, fraud and related offences falls within the sphere of the Federal or State Government under the separation of powers in the Constitution and if the government, Federal or State having the power can make law with respect to corruption, fraud or related offences committed by employees of the other government in the discharge of their official duties in relation to the money, property or affairs of that government. The above is governed by the two principles of Federalism to wit: *ultra-vires* doctrine and the principle of non-interference by one government in the management of the affairs of another government. If the power to make law with regard to corruption, fraud and related offences is that of the State Government under the separation of powers in the Constitution, then those provisions of the Act are beyond the powers of the Federal Government and therefore *ultra vires* and unconstitutional.

On the other hand, if the power to make such laws belong to the Federal Government, the question again is whether the provision, criminalizing and punishing corruption, fraud or related offences committed by persons employed in the service of a State Government in the performance of their duties in relation to money, property or affairs of the State Government and arising, for instance, from award of contracts, issuance of licenses or permits, employment of staff or any other business or transaction does not amount to interference in the management of affairs of the State Government. The principles of non-interference forbids one Government while keeping within the limits of its jurisdiction

under the *ultra-vires* doctrine, to exercise its power in a manner that impedes, frustrates, stultifies or unduly interferes with another Government's management of its affairs e.g. the management of its finances, the appointment and control of its staff, the award of contracts for the provision of services and other projects, the exercise of other essential governmental functions, like that of law making or its execution. Any Federal law contrary to this principle is unconstitutional, null and void.[138] The inevitable effect of the provisions of the Act is that the management of almost all the financial affairs of a State is subject to the control of the ICPC, its officials and other authorities of the Federal Government. The essence was to cow and coerce the State Governors and make them subservient to the whims and caprices of the Federal Government under President Olusegun Obansanjo and any one of them who disobeys his orders or perceived to be disloyal to him would be sent to the commission for investigation on a trumped up charge of corruption under section 502 of the Act. The act is simply designed to checkmate the activities of the State Governors perceived to be in opposition of the government policies and make them submissive to the presidency, who until he left the scene, never appreciated the difference between military and civilian rule as he totally disregarded the immunity granted to the State Governors under section 308 (1)(a) of the 1999 Nigerian Constitution which absolved them from both civil and criminal prosecution while in the office.[139] Section 308(1) a–3 stipulates that:

> **(a)** no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office.

[138] Ben Nwabueze, *'Federalism in Nigeria under the Presidential Constitution',* (London Sweet and Maxwell, 1983), p.317

[139] Section 308(1) (a–3)of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

(b) a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and

(c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:

(1) Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office.

(2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.

(3) This section applies to a person holding the office of President or Vice –President, Governor or Deputy Governor, and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office.

The public policy principle protected by the immunity is stated by the Supreme Court in *Fawehinmi v IGP*[140] thus:

> The main purpose of section 308 of the 1999 Constitution is to allow an incumbent President, Vice-President, Governor and Deputy Governor mentioned in that section a completely free hand and mind in the

[140] *op. cit.*, pp.699-700

performance of the duties and responsibilities assigned to the office which he/she hold under the Constitution.

The essence of EFCC Act is meant to get the State Governors into doing the Federal Government's biding and perpetually command their loyalty. The EFCC Act is not necessary if not to coerce and subjugate the Governors, as it is merely a duplication of the function of the Nigeria Police Force. The Act should either be repealed or reviewed to expunge the sections of the Act that tend to interfere or conflict with the State laws and management of its affairs, and above all make the personnel of the Commission independent, far removed from the control of the presidency to make the body effective to fight corruption in public life without fear or favour in order to sustain our fledging democracy. EFCC was established as an agency to combat corrupt practices in Nigeria by Obasanjo administration, he was hailed in several quarters especially in foreign countries, as anti-corruption crusader. Though EFCC is a welcome institution, its close relationship with President Obasanjo raised serious doubts about its objectivity. The fact that EFCC reports to the President, and not to the National Assembly, further, lends credence to this doubt. Thus, it would not be overstatement to argue that EFCC is a tool of intimidation employed by President Obasanjo against his real and imagined political enemies. Example, none of his close associates and family members, including the top echelon of the party (PDP) with questionable wealth were investigated by the EFCC during his tenure in office. The role of EFCC in the removal of DSP Alamieyeseigha of Bayelsa State from office exposed the dubious function of the agency. To cure this anomaly, the Commission should either be disbanded and merged with the Nigeria Police or make it effective, workable by ensuring its dependence in the discharge of its functions. It should

also be made subject and accountable to the National Assembly and not to the presidency.

(v) The Code of Conduct Bureau

Section 153 of the Constitution of the Federal Republic of Nigeria established the Code of Conduct Bureau. By virtue of paragraph 3 of part I of the fifth schedule to the Constitution, the Code of Conduct Bureau is charged with the following functions.

a. receive declaration by public officers made under paragraph 12 of part I of the fifth schedule to this Constitution
b. examine the declarations in accordance with the requirements of the Code of Conduct or any law.
c. retain custody of such declaration and make them available for inspection by any citizen of Nigeria on such terms and condition as the National Assembly may prescribe;
d. ensure compliance with and where appropriate enforce the provisions of the Code of Conduct or any law relating thereto.
e. receive complaints about non-compliance with or breach of the provisions of the Code of Conduct or any law in relation thereto, investigate the complaint and where appropriate refer such matters to the Code of Conduct Tribunal
f. appoint, promote, dismiss and exercise disciplinary control over the staff of the Code of Conduct Bureau in accordance with the provisions of an Act of the National Assembly enacted in that behalf, and
g. carry out such other functions as may be conferred upon it by the National Assembly

Paragraph 15(1) of Part I of the Fifth Schedule to the Constitution established the Conduct of Conduct Tribunal and empowered under paragraph 18 (1) to try and determine any public officer that contravenes any provisions of this Code.

Paragraph 18(2) prescribed the punishment that the tribunal may impose on any public officer found guilty of having contravened any of the provisions of this Code thus:

a. vacation of office or seat in any legislative house, as the case may be
b. disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years and
c. seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

Under paragraph 3(e) of the third schedule to the 1999 Constitution the Tribunal's power can only be invoked by the Code of Conduct Bureau referring to it a compliant about non-compliance with, or breach of, the provisions of the Code of Conduct.

The Tribunal is not empowered to try and determine criminal matters against a public officer. By paragraph 18 of the fifth schedule to the Constitution, the tribunal is empowered to impose as sanctions the vacation of an office or a seat in a legislative house, disqualification from holding office or such seat and the seizure or forfeiture to the State of any property acquired in abuse or corruption of office, and there are disciplinary penalties not punishment for a criminal offence.

In *Federal Republic of Nigeria v Dr. Orij Uzo Kalu*[141], the Code of Conduct Tribunal held that it is not a court and has no power to try criminal offences. Also in Governor

[141] Charge N0 CCT/NC/ABJ/KW/03/3/05 MI, Delivered on 26/4/2006 (unreported)

Dariye's case, Justice Jonah Adah[142] of the Federal High Court, Abuja, took the same position thus:

> The Code of Conduct Tribunal is never conceived of as a court by the Constitution and no legislation of the National Assembly can empower it to act as a court or dress it to act as a court or dress it with judicial powers which are only meant to be exercised by the Courts created by section 6 of the 1999 Constitution. The conclusion in above cases has solved most of the nagging questions yet to be answered in this case. Since the Code of Conduct Tribunal is not a court and has no power of criminal trial, it cannot issue any warrant for the arrest or imprisonment of any person under any guise. In fact, the power given to the Tribunal under paragraph 18 of the fifth schedule of the Constitution does not extend to ordering the arrest or detention of any person who contravenes the Code of Conduct. Any law which confers those powers on the Tribunal will definitely be inconsistent with the provisions of the Constitution and therefore null and void.

In an agreement with the fact that Code of Conduct Tribunal is purely a disciplinary body, the Federal High Court Abuja, Justice Jonah Adah in Dariye's case held that,[143] the Code of Conduct Tribunal is conceived by the Constitution as a disciplinary body and that the power given to it by paragraph 18 of the fifth schedule are intended, not really to punish, but to discipline and, in the words of the Privy Council, to keep public life clean for the public good. I am entirely in agreement with this position of Professor Nwabueze

[142] Charge No FHC/KD/143^{c}/04 (unreported)
[143] *op. cit.*, p.443

(SAN) as the exact intendment of the Constitution relating to the Code of Conduct Tribunal. This is manifestly clear from the provision of paragraph 18(6). In the case of Waterside Worker Federation of *Australia v J W Alexander Ltd,*[144] Chief Justice Griffith held that:

It is not disputed that convictions for offences and the imposition of penalties and punishments are matters appertaining exclusively to judicial power. The learned Chief Justice of the High Court of Australia had earlier in the same judgment observed:

> It is impossible under the Constitution to confer such functions upon anybody other than a Court, nor can the difficulty be avoided by designating a body, which is not in its essential character a court, by that name, or by calling the function by another name, in short, any attempt to vest any part of the Judicial Power….in any body other than a court is entirely ineffective.[145]

Judicial powers are vested in Courts mentioned in section 6 of the 1999 Constitution and these are the only Court that can try and convict a person for a criminal offence. The principle enunciated above on the inability of the Code of Conduct Tribunal to try criminal matters has been affirmed in the case of *Sofekun v Akinyemi*[146] where a public officer in the public service of the then Western Region of Nigeria was dismissed upon a finding of guilty for indecent assault and attempted rape by a disciplinary tribunal constituted and empowered in that behalf under the Public Service Commission Regulations, his dismissal was held null and void by the Supreme Court as usurpation of judicial power. Fatayi-Williams CJN, in the same case stated:

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[144] (1981) 25 C L R p.434 at 444
[145] *Ibid*, p.442
[146] (1981) 1NCLR p. 135

> It seems to me that once a person is accused of a criminal offence, he must be tried in a court of law where the complaints of his accused can be ventilated in public and where he would be sure of getting a fair hearing…..No other tribunal, Investigating panel or committee will do…. If regulations such as those under attack in this appeal were valid, the judicial power could be wholly absorbed by the Commission one of the organs of the executive branch of the State Government and taken out of the hands of the Magistrates and Judges……if the Constitution is allowed to get away with it, judicial power will certainly be eroded …..the jurisdiction and authority of the Courts of this Country cannot be usurped by either the Executive or the Legislative branch of the Federal or State Government under any guise or pretext whatsoever[147].

The same decision was reached in the case of *Garba v University of Maiduguri*[148] where some students involved in acts of rioting and arson were expelled from the university, the Supreme Court of Nigeria declared the expulsion null and void on the following grounds: (1) That since expulsion was based on criminal offences alleged to have been committed by the students only the Court by virtue of sections 6 and 33 (1), (4) and (13) of the 1979 Constitution is competent to adjudicate upon the quilt or innocence of the students for the alleged criminal offences (2) That whilst the university authorities may expel a student for misconduct not amounting to a criminal offence, yet as a disciplinary body they are bound to act judicially, comply with the constitutional requirement of fair hearing and as a Deputy Vice-Chancellor, being a victim of the Students rampage (his

[147] *Ibid*, p.146
[148] [1986] I NWLR (pt. 18) p. 550

house was burnt down) his Chairmanship of the Investigating panel created a real likelihood of bias in that he was thereby put in a position of being both a witness and a Judge all at the same time.

However, in *Esiaga v. University of Calabar*[149] , the Court of Appeal held that, once a student has taken an examination, it does not lie in the mouth of the court to decide whether the student has passed or failed. On appeal to the Supreme Court, the apex court affirming the Court of Appeal decision, did not consider the relief to release the result of a student as within the contemplation of the constitutional provision for fair hearing, it is for the University to be satisfied that it is in a position to release the results of one who is considered worthy and fit in learning, moreover, the courts are loath to interfere with the system of university administration.

The same decision was reached in the case of *Magit v. University of Agriculture Markurdi & ors*[150], wherein, the University's advice to an M SC student to withdraw because he used dishonest and unacademic methods at arriving at the results in the thesis, resulted in a judicial review case for breach of fundamental human rights, it was stated that a court should not dabble or flirt into the arena of university examinations because it is the most important and sensitive aspect of university function. The apex court demerited the use of fundamental human rights outside facts relating thereto.

The lesson from the above cases, is that a court cannot interfere by way of judicial review with the decision of a statutory body or tribunal acting in a quasi judicial capacity, so far as the matter it was called upon to adjudicate on is not criminal in nature: As doing so would amount to judicial invasion of the autonomy of such body. And in the case of a

[149] [1997]4 NWLR (pt. 502) p.719
[150] (2006) All FWLR (pt. 298) p. 1313 at 1336

university offering academic programmes, such interference would open flood gate of litigation by both students and other interested parties that may see institutions of higher learning lose control of students in the area of discipline and above all make degree certificates worthless, as court may order issuance of degree certificates to undeserving students. Once a disciplinary body such as a university panel set up to try a student's misconduct comply with the constitutional provision of fair hearing, court will not interfere, as it is internal affairs of the university. However, if the body while acting in quasi judicial capacity does not comply with the constitutional requirement and the matter not being criminal matter, the court will interfere and declare decision reached by it a nullity paragraph 15(4) of the fifth schedule to the Constitution vests on the National Assembly the power "by law to confer on the Code of Conduct Tribunal such additional powers as may appear to it to be necessary to enable it more effectively discharge the functions conferred on it in this schedule". Even the National Assembly cannot by virtue of this provision confer on the tribunal additional powers that are inconsistent with the provisions of the Constitution. The National Assembly also cannot in exercise of its power under paragraph 15(4) confer additional powers on the tribunal that change its statutes from a disciplinary body as entrenched in paragraph 18 of the fifth schedule to the Constitution to a body exercising criminal jurisdiction. Therefore, the Code of Conduct Tribunal is purely a disciplinary body without power to conduct criminal proceedings against a public officer alleged to have breached the Code of Conduct Bureau. Thus, section 24 of the Code of Conduct Tribunal Act and its third schedule which appear to have vested the Tribunal the power to try criminal offences brought against a public officer is inconsistent with the provisions of paragraph 18 of the fifth

schedule to the 1999 Constitution with respect to the character or status of Code of Conduct Tribunal; and being inconsistent with the provisions of the Constitution, it is unconstitutional, null and void for purporting to make violations or breach of Code of Conduct, criminal offences and empower the Code of Conduct Tribunal (CCT) to try them and should be expunged from the Act.

Needless, to say that, it is the abnormality created by section 24 of the Act, and its third schedule, that Federal Government latched on to sometime in 2005, and brought complaints before the Code of Conduct Tribunal against four State Governors alleging that they maintained or operated Foreign Bank Accounts contrary to paragraph 3 of the Code of Conduct for public officers contained in the fifth schedule to the 1999 Constitution, ostensibly in the Federal Government's quest to remove them from office as a political vendetta.

What is curious is the fact that the Federal Government had in 2004 charged Governor Dariye of Plateau State, to the Code of Conduct Tribunal on allegations of embezzlement of public fund and Money Laundering and despite the decision in that case, the Federal Government subsequently in 2005 took the four Governors before the Tribunal. The Vice-President, Alhaji Abubakar Atiku suffered the same fate having been charged to the Tribunal on allegation involving criminal proceedings. The later matters brought against the four Governors; such as the case of the *Federal Republic of Nigeria v Dr. Orji Uzor Kalu,*[151] is a clear breach of the rule of law having regard to the subsisting orders and judgement of the Federal High Court in Dariye's case in 2004.

[151] Charge No CCT/NC/ABJ/KW/03/3/05/MI (unreported)

In a democratic system of government like ours, no one, the President inclusive should be allowed to disobey the decision or order of a court of competent jurisdiction no matter how bad, until reversed by superior court.

This is the decision in the case of *Attorney General of Anambra State v Attorney General of the Federation,*[152] wherein, Kastina-Alu JSC stated:

> The law in this regard is clear, it is now settled that the plain and unqualified obligation of every person against whom, in respect of whom an order is made by a court of competent jurisdiction is to obey it unless and until that order is discharged. It is so even in cases where those affected by the order believes it to be irregular or even void. So long as the order exists, it must be obeyed to the latter.

Also in *Attorney General of Ekiti State v Daramola*,[153] the Court held:

> The Court frown at disobedience of its order….the court has in appropriate cases, not hesitated to exercise the coercive power to set aside such acts done in disobedience of its order and restore the parties to the position they were before such disobedience…..The court has also power of sequestration and committal against person disobeying its orders.

And also in *Onagoruwa v Adeniji*[154], the court of Appeal held, that a court of law has jurisdiction to protect its own judgement being ridiculed or disparaged. Niki Tobi JCA (as he then was) held:

> I wish to add that the most cherished "property" of the court is its judgment and this includes its orders and therefore where there is a move

[152] [2005] 9 NWLR (pt 929-931) p. 574 at 606
[153] [2003] 10 NWLR (pt. 827) p.104 at 113-114
[154] [1993] 5 NWLR (pt. 293) p..317 at 339

> to deprive the court of that most cherished "property" the court will definitely resist that move with all its judicial power conferred by section 6(6) of the Constitution as well as those which inhere in it. This is because once a court is denied or deprived of judgement it is not only reduced to the level of a toothless dog, it is no more a court.[155]

An order or judgement of court no matter the fundamental vice that afflicts it, remains legally binding and valid until set aside by due process of law. and neither the President nor any one else has the power or the right to substitute and apply their own view of the law in preference to that of the Court in a matter affecting the lives, affairs and actions of other people. To admit any such power or right in anyone including the President, would only lead to anarchy, and the substitution of the rule of law for the rule of the Jungle.[156]

The Federal Government's attempt to circumvent the rule of law using the Code of Conduct Tribunal and thereby portraying the state of Nigeria as a lawless State stem from the Code of Conduct Tribunal (CCT) Act[157], which purport to give the Tribunal jurisdiction to try criminal cases. The fact that the President is empowered under section 1 (3) of the Act to appoint the Chairman and other members of the Tribunal hence subjected to overriding influence of the President who dictates the tone for the Tribunal to act upon. To checkmate the situation, the Commission ie Code of Conduct Bureau should be made independent and empowered to appoint the Chairman of the Tribunal subject to the confirmation by the National Assembly. In doing so, the appointing power and removal power vested on the President would have been removed and Tribunal

[155] *Ibid*, p.337 para. D-E
[156] *Ibid*, p. 364-365
[157] Cap 56 Laws of the Federation of Nigeria, 1990 (as amended).

allowed acting without influence from any quarter or else the quest for rule of law to prevail in the polity will remain a day dream in the present dispensation.

(vi) The Role of the Attorney General of the Federation in the Impeachment Proceedings.

The failure of the Attorney General of the Federation to appropriately advise the Federal Government on the need to respect the rule of law in a democratic setting and the consequential effect of the disregard of the rule of law might cost us our nascent democracy. This makes it imperative to examine the position, powers and functions of the Attorney General of the Federation *vis-a-vis* the enforcement of the rule of law in Nigeria. Section 150(1) of the 1999 Constitution of the Federal Republic of Nigeria provides that there shall be an Attorney General of the Federation who shall be the chief law officer of the Federation and a Minister of the Government of the Federation. Sub-section (2) of section 150 of the Constitution further provides that; a person shall not be qualified to hold or perform the functions of the office of the Attorney General of the Federation unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than ten years. The same provision was made for the appointment of Attorney General for each State of the Federation who shall be the Chief Law officer of the State and Commissioner for Justice of the government of that State[158].

The above provisions of the Constitution pre-supposes that the person to be appointed as either the Attorney General of the Federation or Attorney General of a State shall be a person with vast experience in law so as to be in a vintage position to advise Government in power on legal issues. Section 174 (1) and 211(1) of the 1999

[158] Section 195 of the Constitution of the Federal Republic of Nigeria, 1999(as amended)

Constitution respectively vests on the Attorney General of the Federation and its State counter-part, with the power to:

a) institute and undertake criminal proceedings against any person before any Court of law in Nigeria other than a Court Martial, in respect of any offence created by or under any Act of the National Assembly;

b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and

c) to discontinue at any stage before judgement is delivered on any such criminal proceedings instituted or undertaken by him or any other authority or person.

Subsection (3) of section 174 of the Constitution imposes on the Attorney-General, the duty to have regard to the public interest, the interest of justice and the need to prevent abuse of legal process in the exercise of his powers. It is doubtful whether the Attorney-general of the Federation in the last administration took cognizance of this proviso in view of the monumental breaches of rule of law witnessed in that administration under President Obasanjo despite his sworn declaration to uphold the rule of law and the Constitution of the Federal Republic of Nigeria. Examples of how the Federal Government under the watch of President Olusegun Obasanjo disregarded the concept of the rule of law and its implication abound. The role played by the Federal-Attorney General in furtherance of the Federal Government's interest in the arrest and prosecution of Governor Joshua Dariye of Plateau State and Alamiyeseigha of Bayelsa State on allegation of money laundering by the London Metropolitan Police, leaves much to be desired. The Attorney-General failed to advise government appropriately on the issue,

especially as it borders on the immunity vested on the Governors involved by virtue of section 308 (1) of the Constitution which provides:

a) no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;

b) a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any Court or otherwise and

c) no process of any court requiring or compelling the appearance of a person to who this section applies, shall be applied for or issued:

(3) This section applied to a person holding the office of President or Vice-President, Governor or Deputy Governor, and the reference in this section to "period of office" is a reference to the period during which the person holding such office is required to perform the functions of the office[159].

The importance of the issue of immunity of public office holders was stressed in the case of *Fawehinmi v Inspector General of Police*.**[160]** The Federal Attorney General whose responsibility is to advise the government on legal matters, instead of drawing the attention of government to this constitutional provision with regard to the Governors immunity and ensuring its compliance, rather collaborated with that government to contravene the provisions of the Constitution. The involvement of the Attorney-General of the Federation in those constitutional breaches could be seen from his action and inactions with regard to the arrest and subsequent prosecution of the above mentioned

[159] Section 308(1) of the Constitution of the Federal Republic of Nigeria,1999.(as amended)
[160] *op. cit.,* p.442

Governors. An example was a letter addressed to the London Metropolitan Police on 8th November, 2004 by the then Attorney-General of the Federation, Chief Akinbolu Olujimi SAN which read thus:

> On assumption that Governor Joshua Dariye enjoys or is entitled to immunity from arrest and prosecution, such immunity, if any, is waived without reservations, as we are entitled to do in the circumstances, you are at liberty to proceed with the prosecution of Joshua Dariye.[161]

His further letter addressed to the London Metropolitan Police on 10th November, 2004, read:

> Further to my letter of 8 November, 2004 waiving the immunity from arrest and prosecution claimed by Joshua Dariye, I should inform you that the state of emergency imposed on Plateau State of Nigeria, where Joshua Dariye is Governor will expire on 18th November, 2004. In effect this means the restoration of the democratic structure of Plateau State with effect from 18th November, 2004. In other words, Governor Joshua Dariye and members of the state House of Assembly will be entitled to return to their positions.
>
> 1. Under the 1999 Nigerian Constitution, Governors enjoy immunity from arrest and prosecution during the continuance of the term of office, which in the case of Joshua Dariye will run till May 2007. The effect of this is that if Joshua Dariye chooses not to return to UK to answer the charges you may have against him, the Government of Nigeria will, as from 18th

[161] Ben Nwabueze, 'How President Obasanjo subverted Nigeria's Federal System', (Gold Press Ltd, Ibadan, 2007), p.368

November, 2004, be legally incapacitated from being able to help to bring him to justice in the UK.

2. It appears very likely that Joshua Dariye will not voluntarily return to UK to face his trial, having regard to his consistent claim to immunity from arrest and prosecution from the date of his arrest. This is put beyond doubt in his letter of 4th October, 2004 to the Nigeria High Commissioner to the UK. If he is now aware that such immunity, if any, is that he will hang on to domestic constitutional immunity in Nigeria to avoid being arrested and sent to the UK to face his trial.

3. I thought we should make this position very clear to you to enable you to take appropriate action in regard to the pending prosecution against Joshua Dariye.[162]

Two issues arose from the letter to the London Metropolitan Police by the Hon. Attorney General of the Federation. (1) Whether the Federal Government of Nigeria can also waive the immunity vested on the State executive by the 1999 Constitution of the Federal Republic of Nigeria. And (2) whether, the state of emergency imposed in Plateau State by the Federal Government could be said to have removed the immunity vested on the Governor by the Constitution, when the tenure of his office was yet to expire. If the answers to these issues are in the negative, then the failure of the Hon. Attorney General to advise the Federal Government appropriately in this regard is a derogation of the office of the Attorney General and smacks of his responsibility as the Attorney General of the Federation as stipulated in sub-section 3 of section 174 of the 1999 Constitution of the Federal Republic of Nigeria.

[162] *Ibid*.

The Federal Government also instigated the arrest of Governor Alamieyeseigha by London Metropolitan Police. This fact is reinforced by the fact that, the then Attorney General of the Federation, Chief Bayo Ojo (SAN) has filed a sworn affidavit in the court in London and vehemently opposed the bail of Alamieyeseigha on the ground that, if granted bail and allowed to go back to Nigeria, he would invoke his immunity under the Nigerian Constitution and refuse to return to London to stand his trial[163]. He was himself physically present in London court for that purpose. This is the Attorney General who should advise the Federal Government on the position of the law, now collaborating with that government to breach the constitutional provisions as it affects individual rights and obligation. The action of the Attorney General of the Federation in this respect was a violation of the Constitution which granted immunity to the Governors under section 308 of the 1999 Constitution and the manipulative influence of the Federal Government on Federal Attorney General in order to give its illegal actions a taint of legality, leaves much to be desired on both the government and Attorney General who failed woefully to advise government appropriately on legal matters. Section 308 of 1999 Constitution gives absolute immunity during the tenure of the relevant office holder. In *Tinubu v IMB*[164] the plaintiff in this case sued the appellant and 3 others in 1992. During the pendency of the case, the appellant became the Governor of Lagos State. The case had been adjourned to 1st December, 1999 and when it came up for hearing, the respondent applied for the case to be adjourned sine die on the ground of the appellant's immunity and the Court of Appeal concurred with the argument and affirmed by the Supreme Court which held that the holder of the office cannot waive the immunity conferred by section 308 of the 1999

[163] *Ibid* p. 369
[164] [2001] 8NWLR (pt. 740) p.670

Constitution. Igu JSC held that the immunity granted to the incumbent of the relevant office under section 308 (1) (a) of the Constitution prescribes an absolute prohibition.[165] The absoluteness in this regard is the fact that it prohibits civil or criminal proceedings against a person to whom it applies. In *Attorney General of the Federation v Atiku Abubakar*[166] wherein the Vice-President challenged the suit filed against him by the Code of Conduct Bureau before the Code of Conduct Tribunal. The Trial Court held that proceedings before the Code of Conduct Tribunal were prohibited against the Vice-President by virtue of section 308 of the Constitution which was affirmed by the Court of Appeal.

The immunity under section 308 of the Constitution prohibits every civil and criminal proceedings against the President, Vice-President, Governor and Deputy Governor notwithstanding and/or regardless of the court where the prosecution takes place, whether it is before a court of law established by section 6(5) of the Constitution or a Tribunal established by paragraph 15(1) of the fifth schedule to the Constitution with the features of a Court and performing the duties of a court.[167] The essence of immunity of the public office holders was aptly captured in the case of *Fawehinmi v Inspector General of Police.*[168] The Attorney General of the Federation would have saved the nation from this embarrassing situation had he advised Federal government appropriately on these issues. These apart, the administration of former President Obasanjo was notorious in flouting the rule of law and disobedience to Court Orders, prominent among them was his refusal to release the fund of the Lagos State Local Government Areas and many others with the

[165] *Ibid*, p.670
[166] [2007] 8NWLR (pt. 1035) p.117
[167] *Ibid*, p.147
[168] [2002] 7 NWLR (pt767) p. 606 at 683

Attorney General of the Federation watching helplessly and allowing himself to be manipulated to toe the line of a seemingly lawless government such as the immediate past regime that has no respect for the rule of law. Worthy of mention is the unconstitutional impeachment of the Governor of Bayelsa State, Chief Alamieyeseigha, Governor Dariye Joshua, of Plateau State, Ayo Fayose, Rasheed Ladoja and Governor Peter Obi of Anambra State (supra) with the approval of the then Attorney General of the Federation who supposedly is the Chief law officer of the Federation and as a matter of his duties to advise the government appropriately as to the position of the law of the land as regards the impeachment. The State's Attorney Generals' did nothing either to advise their respective State Houses of Assembly on when and how to impeach or not to impeach a State Governor or his Deputy. To safeguard a situation where the Attorney General of the Federation would seat helplessly and watch government under which he serve to flout the rule of law with impunity. To prevent this, only patriotic legal practitioners with proven integrity should be appointed as Attorney-General either of the Federation or State who is seen by members of the legal profession as selfless. Such a legal officer will be in a position to advice the president/Governors appropriately on legal issues involving Government without fear of contradiction. The independence of the office of the Attorney General of the Federation or the states will be more secured if the office is attached and controlled by the National Judicial Council (NJC) whose duty would be to appoint, discipline, dismiss and punish an erring Attorney General of the Federation and the same criteria should apply to the States in respect of the State's Attorney Generals' who is found to be afraid of the Government that he serves in such a way as to prevent him from facing squarely the realities of his office. This will spur the Attorney General's

whether of the Federation or of a State into action; make them responsive to their duties in order to be able to advice the government in power appropriately to uphold the rule of law and the Constitution. It will also be appropriate if the office of the Attorney is separated from the ministry of justice, so that the same person does not occupy the position to make the appointees more responsible and responsive to their duties and pave way for compliance with the rule of law principle by both individuals, cooperate organizations and Government in power and thus foster democracy in Nigeria.

Furthermore, any Attorney General found to be a stooge of government should face disciplinary action and if found wanting in the performance of his duties should be sanctioned to serve as a deterrent to others. The suspension of Aondoakaa's SANship, the former Attorney General of the Federation for two years over allegations of gross misconduct while in office by the Legal Practitioners Privileges Committee (LPPC), is a step in the right direction.[169]

In democracy obedience to the rule of law is the *sine-qua-non* to peace, order and good government and any government that is people oriented should strive to attain this standard. Attorney Generals' whether of the Federation or State is an officer trained in law and as a government functionary, he/she should ensure that government has respect for the rule of law which is the bedrock of a democratic process in any given society and where government is seen not to respect the opinion of the Attorney General on legal issues, he/she should resign such appointment in protest and for government to learn its lesson and to preserve the sanctity of the office of the Attorney General.

2.3 An Appraisal of Constitutional Provision on Impeachment of the Executive

[169] Godwin TSA, '*Aondoakaa gets 2years Ban',* Daily Sun Newspaper, Tuesday 7th December, 2010, p.6

under the 1999 Constitution

The impeachment provisions in the 1999 Constitution of the Federal Republic of Nigeria are stipulated in sections 143 and 188 of the Nigerian Constitution. Impeachment of the President, Vice-President is covered by section 143 of the Constitution, whereas the impeachment of Governor and Deputy Governor is provided in section 188 of the Constitution. Section 143 provides:

1 The President or Vice – President may be removed from office in accordance with the provisions of this section.

2 Wherever a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly.

a is presented to the President of the Senate;

b stating that the holder of the office President or Vice-President is guilty of gross misconduct in the performance of the function of his office, detailed particulars of which shall be specified, the President of the Senate shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in reply to the allegation by the holder of the Office to be served on each member of the National Assembly .

3 Within fourteen days of the presentation of the notice to the President of the Senate (whether or not any statement was made by the holder of the Office in reply to the allegation contained in the notice)each House of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.

4 A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-thirds majority of all the members of each House of the National Assembly.

5 Within seven days of passing of a motion under the Foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or Political party, to investigate the allegation as provided in this section.

6 The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the panel by legal practitioners of his own choice.

7 A panel appointed under this section shall -

a have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly ; and

b within three months of its appointment report its findings to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter .

9 Where the report of the panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, each House of the National Assembly, shall consider the report and if by a resolution of each House of the National Assembly supported by not less than two-third majority of all its members, the report of the panel is adopted, then the holder of the office shall stand removed as from the date of the adoption of the report.

(10) No proceedings or determination of the panel or the National Assembly or any matter relating thereto shall be entertained or questioned in any Court.

(11) In this section -

" gross misconduct " means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amount in the opinion of the National Assembly to gross misconduct[170] .The process of removing a State Governor or his duty is in tandem with that of the removal of the President or Vice-President[171] .

The only difference is that the States of the Federation of Nigeria operate a unicameral legislative house (only one house is involved) and this makes easier for the legislature to remove an erring Governor in their respective States as shown in the removal of the first Executive Governor of Kaduna State.[172] Therefore, the notice of allegation of gross misconduct against an erring office holder is submitted to the Speaker of the State House of Assembly who serves same on all the House of Assembly members and the Governor or his Deputy sought to be impeached. Again in the case of the States, where the resolution to investigate the allegations is passed by the two- thirds majority of all the members of the House Assembly, it is the Chief Judge that will constitute a panel of seven to investigate the allegations on the request of the Speaker of the House of Assembly . Similarly, both sections 143 (10) and 188 (10) seem to oust the jurisdiction of the courts from inquiring into whether or not an impeachment process was properly carried out.

[170] *Ibid*, section 188
[171] *Ibid*
[172] *Ibid* section 188 (2)

The President, Vice-President, Governor or Deputy Governor cannot be prosecuted for a criminal offence while in office, thus, the only means by which they can be censured would be under the impeachment process. The power of impeachment however, is not meant to give to the National Assembly or State House of Assembly a control over the President or Governor's tenure or administration of the government. Thus, impeachment as a constitutional process is not designed as a weapon of political intimidation, oppression, suppression, harassment and/or witch hunting of a President or Governor whose face the legislature does not want to behold any longer in the government house. Impeachment is not a political process for turning out a President or Governor whom a majority of the House simply cannot abide. Therefore, whenever the powers are invoked there should be a degree of certainty that the allegations against the Chief Executive is not spurious nor master minded by a cabal or a select few who feel aggrieved by the government of the day's actions. The provisions of sections 143 and 188 of the 1999 Constitution is nebulous, particularly sub-section 11 of the sections which fall short of defining what gross misconduct means. It only says that "gross misconduct" amounts to what in the opinion of the National Assembly or the State Houses of Assembly to gross misconduct[173]. The term is problematic, confusing and could lend itself to any meaning attached to it by the legislature. Nigeria practices presidential system of government which is modeled after American system of government. The American Constitution specified "bribery", "treason" and other high crimes and misdemeanor as grounds for impeachment.[174] However, the Judicial Committee in America who voted to impeach President Nixon was of the view that impeachable offences need not be criminal in

[173] *Ibid,* section 143 (11) and 188 (11)
[174] Article 11, section 4.7 US Constitution

character but must reflect a serious dereliction of duty and a substantial violation of constitutional and legal responsibilities. It is possible to give such an interpretation to the American "clear" provision on impeachment; it is more acceptable that Nigerian provision is more amendable to such moderate construction. The impeachment trial of President Bill Clinton of United States of America clearly and succinctly illustrates the dilemma of the determination of what offences are to be regarded as "impeachable offences". In that case, the congress tried to impeach President Bill Clinton not only on the bases that he had an "immoral" sexual relation with Monica Lewinsky in an intern in the White House but also that he denied such association but which he later admitted and for which he publicly apologized . The crux of the debate and the public discussion was whether that conduct constituted an impeachable offence. Senate however, eventually voted against his impeachment. The interpretation of the impeachment provisions in the 1999 Constitution is the primary responsibility of the National Assembly or the States House of Assembly as the case may be. The Governor and his deputy can be removed by the same impeachment procedure as that of the President or his vice. However, because the legislature in the States is unicameral, this makes the process for the impeachment faster. In fact, the speed at which a House determined to remove either the Governor or his deputy can achieve its aim is well demonstrated by the speedy removal of the Governor of Kaduna State. In that case, the notice of allegation was allegedly signed on 11th May, 1981, and presented to the Speaker on the same day. The Speaker apparently served the notice on the Governor-there were allegations that the Governor refused to accept service-within two days, during which time all the members of the House were also served with their copies. On 26th May, 1981, a day after the 14 day limit, the House

resolved that the allegation be investigated, and a committee of seven persons was quickly nominated. Only six members of the committee were available at the inauguration on 3rd June, 1981 and indeed the seventh member did not sit with the panel until a couple of days before it finished its investigations. The incumbent, Balarabe Musa, challenged the process on 3rd June, 1981 in the case of *Balarabe Musa v Speaker of Kaduna State House of Assembly &Ors,*[175] on the ground that, (a) the signatories to the notice of the allegation of gross misconduct were forged because signatories were illiterates and could not write. (b) that, some of the members were members of the public service . (c) that, the Constitution required a seven man panel, and since only six were sworn in, the investigation was null and void. The Acting Chief Judge before whom the action for an injunction restraining both the House and the Committee from the process in violation of the Constitution, held that it had no such jurisdiction because according to section 170 (10) ousted his jurisdiction to entertain the matter .It states:

"No proceedings or determination of the Committee or House of Assembly on any matter thereto (in connection with impeachment) shall be entertained or questioned in any Court". The Committee thereafter submitted its report which found most of the allegations of gross misconduct proved. In fact two of the allegations were dropped. The report was accepted by the resolution of the House and the Speaker on 23rd June, 1981, announced the removal of the Governor. The Governor filed another suit in the Kaduna State High Court asking the Court to nullify the whole process of his impeachment as being unconstitutional.

[175] Suit No KDH / 1981 (unreported)

The Acting Chief Judge held that the courts had no jurisdiction to entertain the Suit because of the ouster clause in the Constitution[176]. The deputy Speaker, Abba Rimi also brought an action against the Speaker, the government and ex-Governor asking for a declaration that the office of the Governor was not vacant. On 3rd July, 1981, the Kaduna State High Court ruled that the removal of the Governor was legal and valid and ordered the Deputy Governor to take the oath of office, in *Abba Rimi Musa v Speaker of the House of Assembly & Ors*[177]

The Constitution has given absolute discretion to the House of Assembly to determine what amount to gross misconduct hence, one of the charges leveled against the removed Governor of Kaduna State was that he refused to submit other names of Commissioners after the House of Assembly had twice rejected his list of nominees . This is evidence that gross misconduct needs not necessarily involve fraud. Impeachment of these officers does not necessarily mean removal from office. One can be impeached but still remain in office if not convicted. According to Oluwadare Aguda:

> The constitution also makes provision for (what is popularly known as the " impeachment") of the President, the vice- President, the State Governor or the Deputy Governor for what the Constitution calls " gross misconduct " it is popularly thought that impeachment of any of these office holders means his removal from office. This is not so. At least it is not necessarily so. What impeachment really means, is no more than an accusation of wrong-doing .If the President or a State Governor , for example, is impeached , it will not necessarily lead to the end of his tenure of office.

[176] Suit No KDH / 1981 (unreported)
[177] Suit No KDH 2/1981 (unreported)

> He may, at the conclusion of the removal (on impeachment) procedure laid down in the Constitution, be found not guilty of the allegations made against him. In that case, he will be entitled to remain in office till his tenure comes to an end in accordance with some other provisions of the Constitution. It then follows, logically, that a person who has been impeached (accused of gross misconduct) is entitled to remain in office until the conclusion of the impeachment process. Another word for impeachment is "indictment". In other words, impeachment simply means an indictment, an accusation of wrong-doing. The Constitution itself does not use the word "impeachment" or "indictment" as part of the removal proceedings. It only speaks of "removal"[178]

The removal of first Executive Governor of Kaduna State, Alhaji Balarabe Musa under section 170 of the 1979 Constitution which was identical with those in the current Constitution, generated a number of Court cases and decisions. The Court's consensus was that the Court has no jurisdiction in these matters. The Supreme Court concluded that the proceedings are legislative in nature. It is however, that the Courts are most unlikely to decline jurisdiction where the issue is as to whether or not the legislative has failed to follow the procedure laid down in the Constitution for the impeachment process. For instance, the two-third majority stipulated for passing the resolutions in the House cannot be violated by the House, nor can an allegation signed by less than one-third of the members of the National Assembly, as the case may be, lead to the commencement of the impeachment proceedings. *In Adeleke v Oyo State House of Assembly*, the Court of Appeal on what constitutes two-third of the members, held that**:**

[178] Suit No KDH 2/ 81 (unreported)

> The House of Assembly of a State is comprised of all the elected members of the House sitting in an official capacity in its designated chambers as the House of Assembly of a State with the Speaker or Deputy Speaker presiding. Its legislative functions including the impeachment of a Governor or even a Speaker must be carried out in its plenary session open to all members in an atmosphere that is free from fear, intimidation and violence[179]

It means that two-third of the members of the House of Assembly including those on suspension must vote to successfully impeach an erring public officer. It follows therefore that suspending some members in order to muster two-third majority of the members for the impeachment purposes will not succeed and where such move succeeds, the Court will intervene to nullify the impeachment process, as unconstitutional.[180] In the exercise of impeachment process, members of the House of Assembly must meet in the House of Assembly Chambers and not outside, as decided in *Akintola v Aderemi.*[181] Impeachment conducted outside the House of Assembly Chambers is unconstitutional and a nullity. Impeachment conducted by a faction of members of the House of Assembly without the Speaker or the Deputy Speaker presiding is also unconstitutional and void. Impeachment notice by the legislature must be served personally on the person sought to be impeached, the Governor or Deputy Governor or any other public officer, and not through substituted service. Service of impeachment notice by substituted service is unconstitutional and void. In the case of *Peter Obi v Anambra State House of Assembly*, the Court of Appeal, Enugu Division held that impeachment notice must be served

[179] [2006] 16 NWLR (PT. 1006) P. 608 at 673
[180] *op. cit*, section 188 (9)
[181] (1962) All NLR N. p. 440 at 443

personally on the Governor or his deputy sought to be impeached and that any form of substituted service is not acceptable.[182] The ouster clause in section 188 (10) of the Constitution is only applicable where the legislature complies with all the constitutional requirements in the section. In *Dapianlong & ors v Dariye &Anor*[183] ,it was held per *Onnoghen JSC* thus:

> It is true that section 188 (10) of the 1999 Constitution ousts the jurisdiction of the courts in respect of the impeachment of a Governor or Deputy Governor but that must be subject to the rule that legislature or the House of Assembly complied with all the constitutional requirements in section 188 needed for the impeachment as the courts have jurisdiction to determine whether the said constitutional requirements have been strictly complied with or not.

Also in *Adeleke v Oyo State House of Assembly*,[184] it was held that where section 188 of the Constitution has not been complied with, the Court can intervene and declare any purported legislative act of the legislature null and void. The Chief Judge of the State has a constitutional role to play in the impeachment process because it is to the Chief Judge and no other that the Speaker can make the request for the constitution of the panel. Thus, the Chief Judge cannot perform this function without the request of the Speaker to do so, and in the exercise of this onerous task, he must be selective in the appointment of the members of the panel. He must also ensure that there has been compliance with the constitutional provision on impeachment before acceding to the request to set up the investigation panel.

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[182] [2007] 11 NWLR (pt 1046) p.656
[183] **(**2007) 7 SCM p. 21
[184] **[**2006] 16 NWLR (PT.1006) P. 608 AT 673

Musdapher, JSC held:

> It is also my considered view that a Chief Judge who has the responsibility of appointing the seven man panel to try the articles of impeachment will have to make a decision whether all the proper step have been taken by the legislature before embarking on the appointment of the seven man panel . For example, the allegation of "gross misconduct" must be in writing and signed by not less than 1/3 of the members of the House of Assembly and is presented to the Speaker of the House of Assembly and it shall be the Speaker who shall request the Chief Judge to appoint the panel. The Chief Judge in all of the mentioned matters has the duty to ensure that the constitutional provisions relating to the action of removal or impeachment are strictly complied with. The failure to comply with any of the provisions entitles the Chief Judge to refuse to appoint the panel. So under the undoubted facts of this case, when it was not the Speaker who requested the Chief Judge to set up the seven man panel, the Chief Judge ought to have refused to appoint the seven man panel The seven persons he appoints must not be members of any public service, legislative House or political party and must be persons of unquestionable integrity.[185]

Per Niki Tobi, JSC:

> The seven persons must be in the opinion of the Chief Judge, persons of unquestionable integrity. Integrity is a matter of character of the human being and the character must be unblemished, consistent in doing correct things and not doing wrong or bad things. The character must be

[185] *Ibid*, p.743.

> transparent, honest and trustworthy. He must be a person of great strength and strong principle and conviction. He must be clean, in and out like the white ostrich. The Constitution provides for the epithet "unquestionable". This means that the person must not be one of questionable integrity. He should be person without taint. A person who believes in vengeance or vendetta is not one of unquestionable character. An overzealous human being with superlatives, or extremities or idealism, will not be a person of unquestionable integrity because some of his superlatives or extremities or idealisms may turn out to be utopian and will be a bad way of judging a Governor in a realistic way in the running of a State. So too a person with pompous and arrogant bones in his Chemistry with so much egotic flare. The Chief Judge should avoid them in his Panel as if they are plaques. Pompous and arrogant people are not the best Judges.[186]

Impeachment trial, however, is a serious issue to be left in the control of an individual. For example, allowing the Chief Judge or Chief Justice to appoint the seven man panel to investigate the erring public officer. They may likely abuse the power by appointing stooges. This may be reason why the American Constitution provides for the trial of impeachment proceedings by the whole Senate sitting as a panel. In the same vein, the untested trial of impeachment proceedings in the United Kingdom is to be conducted by the House of Lords sitting as a panel.[187] Impeachment proceedings could be more difficult to abuse, if the process is entrusted in the hands of a larger body. For example, where the Chief Judge decided to abuse his office by taking side with the pro-

[186] *Ibid*

[187] http://www.nytimes.com/1989/03/30/us/impeacment-in-west-virginia.html, accessed on 2009/10/17

impeachment faction of a State House of Assembly, he may set up a stooge panel of seven persons. In a situation like this, fair hearing and justice for the elected office holder facing impeachment is not guaranteed. Analogy could be drawn from the illegal impeachment of Mr. Peter Obi of Anambra State[188], wherein the Chief Judge, Justice Okoli set up a panel of seven men with majority of them coming from his hometown and who eventually played to the dictate of the Chief Judge having recommended the impeachment of the Governor.

2.4 Case Study of Executive Impeachment in Nigeria

The concept of impeachment has always been part of the Nigerian Constitutions since independence. Under the Republican Constitution, the President could be removed for misconduct or inability to perform his functions. When Nigeria adopted the Federal Constitution, the procedure for removal of the Chief Executive of the Federation/States was entrenched.

As a Federation, Nigeria had four bicameral legislatures at independence in 1st October, 1960. By section 28 of the Dominion Constitution, the Executive authority of the Federation was vested in her majesty, the Queen of Great Britain, although, it was exercised for and on her behalf by the Governor-General. When Nigeria became a Republic in October 1963, the Queen ceased to be Queen of Nigeria and was replaced by a President with ceremonial functions. A special relationship existed between the Legislature and the Executive in the sense that both arms of Government were co-extensive at Federal and regional level. In the same vein, Ministers at every level of Government constituted the Council of Ministers with the Prime Minster as the Head of

[188] *Ibid*

the Federal Government, and the Premier as the Head of a Regional Government. Because the system of government was parliamentary, the Ministers were responsible to their legislatures. In this functional relationship, ministers were bound by the principles of cabinet collective responsibility as they were also members of the legislatures. By this political arrangement, the political party which has a majority in the elected House formed the Government and would resign if defeated on a vote of no confidence. The party in opposition would be invited to form the next Government if the party was in majority, or a new election would be held. On the other hand, the Governor of a region could appoint and remove the Ministers of Government because they held office at the pleasure of the Governor. Also, the Governor could remove the Premier from office if he was satisfied that the Premier no longer had the support of a majority of the members of the House of Assembly. The same practice was obtained at the Federal level at that time. Public accountability was thus weakened by the system itself which allowed "carpet crossing" from one party to another in the legislature.

The constitutional test of the power of the Governor to remove a premier arose from the case in the Western Region when the Governor**,** Adegbenro removed Akintola as the Premier.[189] The Nigerian Supreme Court decided the case in favour of the Governor by a majority of three to one[190.] This decision evoked strong criticism and sentiments. On appeal to the Privy Council[191] the Privy Council upheld the minority judgment of Justice Lionel Brett. The reason for the reversion of the judgment of the Supreme Court was:

[189] **(**1962) All NLR P. 442 , see also section 33(10) of the Western Region Constitution
[190] Mr. Justice Lionel Brett gave a dissenting Opinion in the judgment of the Supreme Court
[191] The right to appeal to the Privy Council ended with the enactment of the Republican Constitution, 1963

1. That it was not disputed that the Governor could not remove a Premier, but the Governor could only remove a Premier on the grounds of a vote of no confidence in him which must be moved on the floor of the House.
2. That a majority of members must support the motion of no confidence.
3. That the method of ascertaining loss of confidence in a Premier should be by means of a resolution on the floor of the House.

Thus, the Governor by necessary implication and by the combined effects of the foregoing could not satisfy himself in any other way that the Premier has appeared to him to have lost the confidence of the majority in the House.

When Nigeria became a Republic, the structure of the Parliament remained the same, except that the Queen ceased to be the Queen of Nigeria. Thus an external factor which hitherto represented the symbol of the nation and sanctioned public accountability was eliminated in the Republican Constitution of Nigeria. The Constitution provided for the office of the president of the Federation instead of the Governor-General. The President was like a "paper tiger" because he was a ceremonial Head of State and not an executive President. The President and the Governors could withhold assent to bills except in the Eastern Region, where section 25(4) of the 1963 Eastern Region Constitution removed the right of a Governor of the Region to withhold assent to bill. The Republican Constitution of 1963 vested final sovereignty in the Constitution which is a contrast to the present Presidential Constitution which vests sovereignty in the people.

Nigeria adopted presidential system of Government in 1979. The Constitution in parts 1 and 11 of the schedule stipulated who are public office holders. It also clearly stated how the Federal and State erring public office holders shall be removed from office. One of

such measures is impeachment and it is applicable to some specific officers like the President and his vice, and the Governor and his deputy. Section 132 of the 1979 Constitution vested the power to impeach Federal officers in the National Assembly comprising the Senate and House of representatives, while section 170 of the Constitution vests the power to remove State officers in the various State Houses of Assembly. The National Assembly and State Houses of Assembly in the exercise of its impeachment powers are obliged to strictly comply with the constitutional laid down procedure on impeachment proceedings,[192] including the observance of the principles of natural justice.

The procedure for the removal of the President or his vice is *in pari- material* with the removal of a State Governor or his deputy[193]. The impeachment proceeding was tested in the case of Alhaji Balarabe Musa, the first executive Governor of Kaduna State culminating in his removal from office in 1981. His impeachment was conducted under section 170 of the Constitution of the Federal Republic of Nigeria, 1979. In *Balarabe Musa v Auta Hamza Speaker of Kaduna State House of Assembly & Ors*[194], the notice of allegation was allegedly signed on 11th May, 1981, and presented to the Speaker of the State House of Assembly the same day. The Speaker then served notice on the Governor and copied to all the members of the House. On 26th May a day after the 14 day limit, the House resolved that the allegation be investigated and a Committee of seven persons was nominated. Only six members of Committee were available at the inauguration and the seventh member did not sit with the panel until a couple of days before it finished investigation. The Governor, Balarabe Musa then challenged the proceeding, stating that

[192] Sections 132 (1-11) & section 170 (1- 11) of the 1979 Nigerian Constitution
[193] *op.cit*, sections 132 & 170.
[194] (1982) 3 NLCL p. 228 – 229

the signatures on the notice of allegation of "gross misconduct" were forged, that some of panel members were public servants and that only six persons were sworn in. He asked the Court to declare the investigation null and void, and to restrain the House and Committee from continuing the impeachment process against him. The Acting chief Judge before whom action was brought said he had no jurisdiction to entertain the matter by virtue of Section 170(10) of the 1979 Constitution. Section 170(10) of the constitution States:

> No proceedings or determination of the Committee or of the House of Assembly, on any matter thereto (in connection with impeachment) shall be entertained or questioned in any Court.

The Committee continued its investigation and submitted its report which found most allegation of gross misconduct proved. The report was accepted by the resolution of the House and the Governor was subsequently removed.

He challenged his impeachment in the High Court of Kaduna State praying the Court to nullify the whole process of his impeachment as being unconstitutional. The trial Court held that the provision of 170 (10) of the 1979 Constitution ousted the jurisdiction of the Court to adjudicate on the matter. In the instant case, the House of Assembly clearly abused its constitutional power of determining what amounts to gross misconduct as provided in section 170 (11) of the 1979 Constitution, because one of the allegations leveled against the impeached Governor of Kaduna State was that he refused to submit other names of Commissioners after the House of Assembly has twice rejected his list of his nominees .This is the danger in the constitutional provision vesting on the legislators

the discretion to determine what in their opinion is "gross misconduct"[195], otherwise how would one explain the fact that the offence of the Governor in refusing to submit other names of the Commissioners to the House amount to "gross misconduct". One could easily conclude that the impeachment of Balarabe Musa was not only politically motivated but also vindictive.

The second elected Public officer to suffer impeachment under the Presidential system of government in Nigeria, adopted in 1979 was the Deputy Governor of Kano, Alhaji Ibrahim Bibi Farouk. In the 1979 Governorship election in Kano State, Alhaji Ibrahim Bibi Farouk was the running mate of Alhaji Mohammed Remi under the platform of the Peoples Redemption Party (PRP) which won the Governorship election with landslide victory . The party was later engulfed with crisis which divided the party into two factions, the Aminu Kano and Imoudu factions. The Deputy Governor, Alhaji Ibrahim Farouk was in Aminu Kano Camp while the Governor, Abubakar Remi pitched tent with Imoudu faction. With Governor Remi and his Deputy on opposing political camp within the PRP, more than two- thirds of the elected PRP members took side with the Governor in his political camp Paving way for the eventual impeachment of the Deputy Governor. The impeachment proceeding began by serving the Deputy Governor on 31st August, 1981, a notice of impeachment signed by 104 out of 133 members of the Kano State House of Assembly alleging sundry offences against him, including his persistent refusal to assume and discharge the functions assigned to him by the State Governor contrary to the oath of the office subscribed to by the Deputy Governor, which he vehemently denied. A seven man committee was empanelled to investigate the allegations of misconduct against the Deputy Governor in accordance with section 170 (7) of the 1979

[195] *Ibid*, section 170 (11) of the Constitution of the Federal Republic of Nigeria, 1979.

Constitution .The Committee sat for only three days, 10th–12th September, 1981 and took evidence from 7 witnesses including the principal private secretary to the Governor, Alhaji Abdullahi Samaila . The Committee found the Deputy Governor guilty and submitted its report to the Kano State House of Assembly on Tuesday 10th, November 1981. As a result, he was impeached and removed from office. The Deputy Governor, Alhaji Ibrahim Bibi Farouk sought the order of a Court to declare the seven men committee illegal but failed. In rejecting the Deputy Governor's application the Court relied on section 170 (10) of the Constitution which purportedly ousted its jurisdiction to entertain the matter[196] . The provisions of sections 132 (10) and 170 (10) of the Constitution which relegated to the background, the Provisions of section 6 (6) of the Constitution, 1979 have made justice unattainable by an impeached public officer. Section 6 (6) (a) of the said Constitution states:

> The judicial powers vested in accordance with the foregoing provisions of this Section shall extend, notwithstanding to the contrary in this Constitution, to all inherent power and sanctions of the Court of "Law".

iii. The Constitution of the Federal Republic of Nigeria, 1979 is *in pari material* with the 1999 Constitution which also provides for impeachment procedure in sections 143 (1) – (11), in the case of the removal of Federal public officers, the President and his vice and 188 (1)–(11), in respect of State officers, the Governor and Deputy Governor .

The impeachment process is a tool of last resort by legislature to check Executive excesses and prevent unnecessary and undesirable abuse of office. The Constitution

[196] Igbinewedo A Igbenedion, "*Impeachment under the Nigerian Constitution 1999 (as amended)*", (Benfrace Printers, 1983), P.42 – 49

however, recognizes that, it is not every misconduct that falls under this provision of the law; else the legislators may become the executive as they could use the threat of impeachment to "blackmail" the Executive. Hence, the further qualification of misconduct by the word "gross", "grave" to violation or breach of the Constitution.

As earlier observed, no Nigerian President or his vice has fallen victim of impeachment process since her Independence in 1960. Nevertheless, the States Chief Executives of the Federation were not too lucky as many of them had fallen victim of impeachment process, especially in the present political dispensation in Nigeria, accomplished in accordance with section 188 of the Constitution of the Federal Republic of Nigeria, 1999. The first case in this category was the impeachment of Abia State Deputy Governor, Chief Enyinnaya Abaribe, in 2002. In *Chief Enyinnaya Abaribe v Abia State House of Assembly*,[197] the appellant in that case was the Deputy Governor of Albia State, prior to 8th January, 2000; sixteen members of the State House of Assembly presented an impeachment notice to the Speaker of the House of Assembly for the removal of the appellant from office. The Speaker forwarded a copy of the impeachment notice to the appellant under the cover of a letter requesting the appellant to react to the issue raised in the impeachment notice before 11th February, 2000. The letter together with the impeachment notice, were served on the appellant on 31st January, 2000. On 8th, February, 2000, which was three days before the date on which the Speaker requested the appellant to submit his reaction to the issues raised in the impeachment notice, the House took a vote resolving to refer the allegations in the notice for investigation. The appellant considered that by passing the resolution at the time they did, the members of the House had infringed on his fundamental right to fair hearing enshrined in section 36 of the 1999

[197] [2002] 14 NWLR (PT. 788) P. 466

Constitution and Article 7 of the African Charter on Human and people's Rights . He therefore, applied Ex parte to the High Court of Abia State for a declaratory order setting aside the resolution and injunction. When the matter came before the Court, the learned trial Judge, SOE Nwanosike *suo motu* raised the question whether, in view of the provision of section 188 (10) of the 1999 Constitution, he had jurisdiction to entertain the matter, the appellant was seeking to bring before him, should leave be granted to him. He put the respondents on notice and invited the State Attorney General and Chief UN Udechukwu, (SAN) as *amici curiae*. After hearing arguments by both counsel for the appellant and *amici curiae,* the Court held that it lacked jurisdiction to entertain the relief the appellant was seeking leave to pursue and so struck out the Ex-parte application. The appellant was dissatisfied and he appealed against the ruling, contending that the Court was wrong in declining jurisdiction in the matter. The Court of Appeal dismissed the matter. In dismissing the appeal, the Court of Appeal through Pats-Acholonu JCA (as he then was) who read the lead judgment referred with approval to the decision of Adenekan Ademola JCA in *Alhaji Abdulkadir Balarabe Musa v Auta Hamsa*[198] and said of the Abaribe's case itself, that the issue bothered on the powers of the Court to intervene in the domestic affair of the House of Assembly and that in interpreting the words of the Constitution, it should be understood that a Constitution was not common legal document but essentially a document relating to the relationship between the citizen and the State with provisions for the right of the citizen within the compass of the State . And that in so far as it concerned the issue of impeachment, it was a political matter which is not justiable.[199]

[198] (1982) 3 NCLR p 229
[199] *Ibid,* p486

The Court of Appeal in the Abaribe's case did not hide the fact that judicial review of impeachment is generally barred by the "political question doctrine", and that explains why the Courts are excluded from delving into the nuances of such matters. Thus, Pat-Acholonu JCA (as he then was) quoted Professor Lawrence Tribe's American constitutional laws at page 215 as saying:

> Although the impeachment process has been used periodically since 1789, there has been no judicial attempt to define its limits. This is contributable in part to the constitutional language ostensibly consigning the issue of impeachment to the legislative branch of government and thus arguably barring judicial review of impeachment under the political question doctrine.

Also defending the position of non-interference by the courts in impeachment cases and arguing that it is indeed inappropriate to term the provision of section 188 (10) of the 1999 Constitution an "ouster clause" Ikongheh JCA supported the lead judgment of Pats-Acholonu JCA (as he then was) in the Abaribe case to say as follows:

> For this reason, I do not feel comfortable with the view that decisions based on the interpretation of ouster clauses in these decrees can provide a good guide for the interpretation of provisions in a Constitution limiting the power of the Court. All governmental powers derive from the Constitution in civilian regime. There cannot be any legitimate complaint if the Constitution withdraws particular power from one organ of government in favour of another in the same way that the one can complain about the way military brazenly emasculated, especially the

> judiciary just to pave way for themselves to do as they please with the lives and property of people. This point can be better appreciated if it is realized that a Constitution is at least in theory, the product of planned and collective agreement of the people on how to govern themselves. When, therefore they agree at the onset that a particular matter shall be within the competence of one organ and not the other, one cannot properly link such situation to the situation created by ouster clauses in the military decree[200].

It is clear from the *ratio decidendi* in Balarabe Musa's case and the more important pronouncement in the Abaribe's case that the Court of Appeal took the view that impeachment is a political matter and held that, "the Court should not attempt to assume for itself power, it is never given by the Constitution to brazenly enter into the miasma of the political cauldron and have itself bloodied thereby losing respect in its quest to play the legendry"…[201].

However, in Abaribe's case, the Court gave indication of circumstances when the Court would interfere with the conduct of impeachment. Acholonu JCA (as he then was), held:

> However, the Court at the same time may not close its eyes to serious injustice relating to the manner, the impeachment procedure is being carried on. That is to say it is within the province of the Court to ensure strict adherence to the spirit of the Constitution for endurance of a democratic regime[202] …

Similarly, Ikogbeh JCA, in the same matter stated:

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[200] *Ibid* ,p. 501- 502
[201] Pats-Acholonu JCA at p. 486
[202] *Ibid* p. 486

> The only circumstance in which there can be said to have non-conformity is where the investigating Panel disallowed the affected officer from presenting his case in defense of himself. It is when that happens that it becomes necessary to consider whether or not such non-conformity can or does rob the alleged ouster Clause in Section 188 (10) of its potency. As that stage had not reached in this case before the appellant rushed to Court, the necessity for such consideration has no arisen. The appellant jumped the gun, crying foul when no foul has infact been committed, the resolution passed by the 2nd respondent and of which he complained in these proceeding has the full backing and support of section 188 (3)[203]

However, the Court made a surprised reversal of itself and correctly too in its later decisions in the impeachment of the following Chief Executives who fell under the impeachment hammers by their respective State Houses of Assembly, having nullified their impeachment for failure of the legislative houses to adhere to the constitutional provision with respect to impeachment process. These include Governor Rasheed Ladoja of Oyo State, Mr Peter Obi of Anambra State, DSP Alamieyesigha of Bayelsa State, Governor Joshua Dariye of Plateau State, Governor Ayo Fayose of Ekiti State. In *Adeleke & Ors v Oyo State House of Assembly,*[204] the trial Court held that its jurisdiction was ousted by the Constitution[205]. Dissatisfied, the Speaker and Deputy Speaker appealed to the Court of Appeal. The Court unanimously allowing the appeal held, *interalia*, per Mikailu, JCA:

[203] [2006] 16 NWLR (Pt 1006) p. 608-720
[204] *Ibid*
[205] *Ibid* p. 719

> The Court has jurisdiction to determine whether proper constitutional procedure for impeachment has been followed by a House of Assembly, though it cannot inquire into the merit of the impeachment[206].

Chukwuma Eneh JCA, on his part stated:

> It is settled that the power of the Court to hear and determine this matter is not ousted by section 188 (10) of the Constitution and that 188 (10) cannot be read in isolation of section 188 (1)-(9) which has prescribed the procedures to be strictly followed in the legislative proceedings for removal of Governor or Deputy Governor if they are to be protected under section 188 (10). To hold otherwise will add a totally strange colouration to the entire section. He further held that two-thirds majority of Oyo State House of Assembly of 32 members is 22 members and not 18 members who passed the resolution to investigate the allegations of gross misconduct as per the purported notice of impeachment served on Governor Ladoja, so that, the said resolution is not legally and validly passed. Also I hold that it is specifically the function of the Speaker and not any other member of the House …to request the Chief Judge of Oyo State judiciary to set up panel … As can be seen therefore the trial Court rather too hastily declined jurisdiction to entertain this matter. And in so doing has acted in error[207].

Again, dissatisfied with the decision of the Court of Appeal the 18 members of the House of Assembly appealed to the Supreme Court .The Supreme Court unanimously

[206] *Ibid* p. 704
[207] *Ibid* ,704

dismissing the appeal held, *inter alia*, and rightly too that in the removal of the Governor the procedure clearly specified must be followed and strictly complied with before such removal becomes valid and constitutional. Any breach of the said provisions, surely and certainly, renders such removal ineffective, null and void and of no effect. The ouster clause in section 188 (10) can only be properly resorted to and invoked after due compliance with subsections (1)–(9) that precede it. The trial Court erred in law by stating that its jurisdiction was ousted. The decisions of the Court of Appeal and Supreme Court were *ad rem*. In the case of *Mike Balonwu & Ors v Peter Obi & Anors*[208] *and Dapialong v Dariye*[209], the Court of Appeal expectedly held following Adeleke's case that the Court has jurisdiction to entertain a suit challenging the process of removal of a Governor of a State or his Deputy from office in order to confirm whether or not the process was in compliance with section 188 (1)-(9) of the 1999 Constitution and if it is satisfied that the process was not in substantial compliance with the constitutional provisions stipulated in section 188 (1)–(9) of the 1999 Constitution, it has the jurisdiction to intervene. In other words, the jurisdiction of Court to inquire into the removal of a Governor of a State or his Deputy is ousted only where there was strict compliance with the procedure laid down in section 188 (1)-(9) of the 1999 Constitution. In all these cases, the Court of Appeal insisted that section 188 (1)-(9) of the 1999 Constitution constitute conditions precedent to the application of the ouster clause in subsection (10) of that section. Ogbuagu JSC held:

> It can be seen that the draftsmen were alert in respect of the seriousness or magnitude of the removal of a Governor or his Deputy. They chose their

[208] [2007] 5 NWLR (pt. 1028) p. 488
[209] [2007]8 NWLR (pt. 1036) p. 239

> words or every word in this section or provisions is weighty and material. Therefore, in the removal of such officers, the procedure clearly specified, must be followed and strictly complied with before such removal becomes valid and constitutional. Any breach of any of the said provisions surely and certainly renders such removal ineffective, null and void and of no effect …, In summary, in my respectful and firm view, it is only when the provisions of section 188(1)-(9) which I hold are conditions precedent, are complied with that sub- section (10) thereof will be relevant and can be invoked and relied on. A sub-section of a section is only part of that section and cannot be read in isolation[210]…

In the cases under review, the Legislature has abused the due process of the law by not strictly complying with the mandatory provisions of the Constitution[211]in carrying out impeachment procedure. Hence, the impeachment of the Chief Executives of the States could not stand the test of the legal battle that ensued. The impeached Governors were removed by less than the required majority and on spurious allegations while also being denied an opportunity to state their cases before impartial panelists.

[210] *op, cit* p. 557
[211] Section 188 (1)–(9) of the Constitution of the Federal Republic of Nigeria,1999 (as amended)

CHAPTER THREE

IMPEACHMENT PROCEEDINGS IN THE LEGISLATIVE ARM OF GOVERNMENT

3.1 Appraisal of Constitutional Provisions on Impeachment as it affects the Legislature.

Sections 143 and 188 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) empowered the National Assembly and State Houses of Assembly to impeach the President, Vice President, Governor and the Deputy Governor who may have been in breach of the Constitution or committed an offence which in the opinion of the legislature amounts to "gross misconduct". "Gross misconduct" as defined in sections 143(11) & 188(11) of the Constitution, is what the National Assembly or a State House of Assembly in their opinion considered as gross misconduct.

The legislature is not only empowered to remove or impeach elected public officers. The legislature is also vested with the power to remove a judicial officer or judicial officers, on the proposal made by the President of the Federal Republic of Nigeria acting on an address supported by two-third majority of the Senate, with respect to Federal judicial officers. They include, Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Capital territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja. The Governor of a State acting on an address supported by two-third majority of the House of Assembly of a State may remove Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State[212].

[212] Section 292(1)(a)(ii) of the Constitution of the Federal of Nigeria,1999(as amended)

Impeachment is a powerful instrument of the legislature to check the excesses of elected officials, though the exercise of this power by the legislature is meant to be rarely used, as it is a very serious and weighty business. For example, throughout the history of United States of America, there were only about fourteen impeachments, and attempted impeachments most of them concerned judicial office holders, a senator in 1798, and the impeachment of President Andrew Johnson. Recently, there was the unsuccessful impeachment of President Bill Clinton.

The role of the legislature in impeachment proceedings under the 1999 Constitution will be examined under the following heading;

i) Allegation of gross misconduct

ii) Publication of such allegation to the alleged or accused public office(s) concerned and House members;

iii) Reception of reply from the accused or erring public officer(s)

iv) Debate on whether or not to proceed with the proceeding

v) Appointment of seven man panel at the House's request

vi) Reception of the panel's fact-finding report

vii) Adoption or refusal of such findings.

The President or his vice may be removed from office, whenever a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly,

a) Is presented to the President of the Senate

b) Stating that the holder of the office of the President or Vice President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified[213].

By section 143(b) of the 1999 Nigerian Constitution, the President of the Senate shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly. It is after the reception of the accuser's response to the allegation of gross misconduct, that a motion to investigate same must be supported by the votes of not less than two-third majority of the House Members else such an allegation shall not be investigated.

The legislature has also the responsibility of empowering the appointment of a seven man panel by the Chief Justice of Nigeria or it's State counterpart as contained in section 143(5), 188 (5) of the Constitution. Such seven-man panel must be made up of persons of unquestionable integrity and must not be partisan. The duty to receive report from the constituted seven man panel rests equally with the legislature. Where the allegation is proved, they are required to impeach; else impeachment ought not to be executed. Therefore, for the legislature to go ahead and execute impeachment of such a public officer where the allegation against him is false, amounts to a violation of the Constitution and the court will intervene and nullify the proceedings.

It is the intendment of the Constitution that for any justifiable impeachment of a public officer to hold, the procedure of impeachment proceedings must be complied with by the Legislature. Any contrary action will be questioning the relevance of the proviso in

[213] Section 143 (2) (a)(b) of the Constitution of the Federal Republic of Nigeria 1999(as amended)

subsections 143 (10) and 188 (10) of the Constitution *vis-à-vis* the exercise of power of impeachment proceedings by the legislators. Sections 143 (10) and 188 (10) states:

> No proceedings or determination of the Panel or of the House of Assembly or any member relating to such proceedings or determination shall be entertained or questioned in any Court[214].

Sub-section (10) of sections 143 and 188 of the Constitution seem to have ousted by implication the jurisdiction of the Court from entertaining any question arising there from. The legislature in the exercise of this power is likely to latch on this proviso and act wittingly or unwittingly in excess of its power of impeachment. Therefore, if the legislators depart from the provisions in sections 143(1-9) and 188 (1-9) of the 1999 Constitution and impeach the President or his Vice, or the Governor of a State or his Deputy, the Judiciary will intervene despite the proviso in sections 143(10) and 188(10). The proviso cannot apply to oust the jurisdiction of the courts in a situation where the Assembly acted in breach of the procedure for impeachment, as entrenched in sections 143 (1-9) or 188(1-9). Sections 143(10) and 188(10) does not empower the Assembly to do what it likes regardless of other provisions in the Constitution. The courts have the jurisdiction and the competence to ensure that the legislature in the exercise of its legislative functions, acts in complete harmony with the constitutional provision. However, the Courts will have no jurisdiction to interfere with the impeachment proceedings where the legislators complied with the constitutional requirement with respect thereof as sections 143(10) and 188(10) will apply.

Impeachment according to Black's Law Dictionary is defined as:

[214] Section 143 (10) and 188 (10) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)

> A criminal proceedings against a public officer, before a quasi political tribunal instituted by a written accusation called articles of impeachment; for example a written accusation of the House of Representatives of United State to the Senate of the United States against the President, Vice President, or an officer of the United States, including Federal Judges.[215]

The wordings of sections 143 and 188 of the Nigerian Constitution is different from the above definition, the allegation under these sections is that the officer is alleged to have conducted himself in a perverse and delinquent manner amounting to gross misconduct "in the performance of the functions of his office". Gross misconduct has been defined under sub-sections 11 of section 143 and 188 thus:

> Gross misconduct means a grave violation or breach of the provisions of this constitution or a misconduct of such nature as amounts in the opinion of the National Assembly or House of Assembly to gross misconduct.

For articles of impeachment to stand or be relevant, the misconduct must be gross i.e glaringly noticeable or a conduct in breach of the Constitution. It is therefore, not all misconduct will attract impeachment. Though it seems that the legislature has the discretionary power to determine what amounts to "gross misconduct", it is supposed to be apparent and clearly manifest to all and sundry.

The doctrine of separation of powers under the Constitution is meant to guarantee good governance and development and to prevent abuse of power. Impeachment therefore has come to be recognized as one of the legitimate means by which a President or Vice President, Governor or Deputy Governor can be removed from office on commission of an impeachable offence. The meaning of "gross misconduct" as entrenched in the

[215] Bryan A. Garner, '*Black's Law Dictionary'*, (8th edn. Thompson West, 2004), p. 768

Constitution in relation to impeachment proceedings is whatever the legislature deems "gross misconduct". This proviso is manifestly nebulous, fluid and subject to gross abuse and inimical to the development and survival of our nascent democracy. It is therefore important that the legislators in the performance of this function should strictly comply with all the other provisions as contained under sections 143 or 188 of the Constitution. Failure to comply with any of the provisions will render the whole exercise a nullity and any purported impeachment or removal will be declared as null and void by the courts. The legislature must act in a responsible and civilized manner, whenever it considers whether a conduct amounts to "gross misconduct". It is not every conduct that the legislature deems impeachable that is impeachable, the courts have the jurisdiction to examine whether a conduct amounts to gross misconduct or there is indeed a breach of the Constitution. It was canvassed and upheld by Pats Acholonu JCA (as he then was), in the case of *Chief Enyinnaya Abaribe v Speaker Abia State House of Assembly*[216] that, the issue of removal of a Governor and whether "gross misconduct" is sufficient to warrant the removal of a governor is a political question and what tantamount to it, is within the discretion of the legislature because the Constitution bestowed on the legislature the prerogative of determining that question. This however does not justify complete denial of judicial review in respect of the entire impeachment or removal process. As one writer puts it:

> The doctrine of political question does not justify the total and absolute preclusion of judicial review and it would be more rejectable as a basis for lack of judicial review when, as it seems to be the case more in Nigeria than elsewhere, where impeachment is utilized as a political weapon to

[216] [2002] 14 NWLR (pt. 788) p. 466

> intimidate and subjugate the executive branch to the dictates of a legislature hostile to it. Save for certain aspects of impeachment… court review of impeachment determination is a potential national conflict detonator[217].

Where there has been no breach of the constitutional provision by the legislature. For example, where there is no allegation of any misconduct against the provisions of the Constitution or where the requirement under section 143(2) or 188(2) which provides that the notice of allegation of misconduct against the office holder must be endorsed by not less than one-third of all the members of the House of Assembly, the Chief Judge of a state cannot under this circumstances set up the seven-man investigation panel pursuant to the requirement of section 188(5), when the requirement of section 188(2) has not been met. If the Chief Judge proceeds in the face of the breach of section 188(2) to set up the panel in accordance with the provisions of section 188(5) the court will have the jurisdiction and competence whenever the House of Assembly adopting the report of the seven member panel is less than two-third of the members of the House of Assembly. When the rule of law is bastardized and there is flagrant abuse and disregard of the Constitution the Court is duty bound as the guardian of the Constitution to intervene and pronounce on the legality or otherwise of the legislative function, be it impeachment or otherwise.

In this respect, Ogebe JCA held; in the case of *Adeleke v Oyo State House of Assembly*:

> It is my view that the trial court had serious questions to consider before hastily throwing out the suit. For example, it was alleged that 18 Defendants/Respondents met outside the Chambers of the House of

[217] LTR /IMP/2007/VOL 1 p. 139

> Assembly in a hotel to commence impeachment proceedings, the court had a duty to determine whether proceedings before such a group amounted to proceedings of the Oyo State House of Assembly. It was also alleged that the House of Assembly of Oyo State had 32 members and for the removal of a governor which requires the resolution of two-third majority of all the members of the House, the court had a duty to inquire whether a factional meeting of 18 members constituted the required two-third majority of all the members. The Court also had to consider whether impeachment proceeding in which the Speaker of the House of Assembly is excluded from his leading role as provided for in section 188 of the Constitution can amount to a proper proceedings of impeachment. For all I have said in this judgement I have no hesitation in holding that the learned trial judge was wrong in declining jurisdiction to examine the claim in the light of section 188 subsection 1-9 of the 1999 Constitution and if he was not satisfied that the impeachment proceedings were instituted in compliance thereof, he has jurisdiction to intervene to ensure compliance. If on the other hand there was compliance with the pre-impeachment process then what happened thereafter were internal affairs of the House of Assembly and he would have no jurisdiction to intervene.[218]

It is therefore wrong to assert that the decision of a House of Assembly or even the National Assembly in matters of impeachment is final. The power of the House of Assembly or National Assembly in relation to impeachment or the removal of an elected

[218] [2007] 4 NWLR (pt. 1025) p. 486

public officer such as a governor is clearly limited. The courts have the jurisdiction to ensure strict compliance with the constitutional provisions. Impeachment process is both political and legal as it is regulated not only by the rule governing the internal affairs of the Legislative House but also by the supreme law of the land embodied in the Constitution which is binding on all authorities and persons in Nigeria, the courts inclusive[219].

The Nigerian Constitution in section 1(3) makes void any law, executive/administrative acts or any act of State authority or State functionary including the appointment and inauguration of the Investigating panel by the State Chief Judge that is inconsistent with its provision. The Court therefore, is duty bound to declare as nullity any question brought before it involving such inconsistent act. The Court will be failing in its duty to the Constitution to decline the jurisdiction vested on it by the provision in section 1(3), as that duty is not removed by section 143(10) or 188 (10) of the Constitution. The Chief Justice of the United States, John Marshal in the case of *Cohen v Virginia*, [220]stated:

> We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.

It then means that if the law relating to impeachment in sections 143 or 188 is complied with by the legislature even if the rules regulating the internal workings or proceedings of the Legislative House is not complied with, the court cannot interfere. But if the provisions in sections 143 or 188 are not strictly complied with, the court has the jurisdiction and duty also to interfere to ensure compliance. Sections 143 subsections 1-

[219] Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
[220] (1821) 19 USP 264 at 404

11 and 188 subsections 1-11 respectively must be read together in impeachment proceedings. And a proper reading of the whole section will reveal that the ouster clause in subsection 10 can only be properly resorted to and invoked after due compliance with subsection 1-9 that precede it. Failure to comply with any provisions of subsections 1-9 will mean that the ouster clause of subsection (10) cannot be invoked in favour of the House of Assembly. In *Attorney General Abia State v Attorney General of the Federation*,[221] it was held that the Constitution of the Federal Republic of Nigeria 1999 is supreme. And by virtue of that any law that is in conflict with its provisions is void to the extent of that inconsistency.

As a colliery to that case, section 26 (10) of the Local Government Law of the Kwara State, 1999, which seeks to oust the jurisdiction of the Courts in matters relating to the removal from office of a Local Government Council Chairman is inconsistent with the provisions of section 4(8) of the 1999 Constitution which provides that the National Assembly shall not enact any law that ousts or purport to oust the jurisdiction of court established by law; and section 272(1) of the 1999 Constitution which vests the High Court of a State with jurisdiction to hear and determine civil proceedings involving the existence or extent of the rights and duty of any person. Consequently, section 26(10) of the Local Government Law of Kwara State, 1999 which is a creation of a statute is inconsistent with the constitutional provision, is void hence, the intervention of the court to nullify it. Onnoghen, JCA[222] held:

> Looking closely at the constitutional provisions, particularly sections 4(8) and 272 (1) of the 1999 Constitution, it is clear that section 26(10) of Law

[221] [2002] 6NWLR (pt763) p.264
[222] *Ibid* p.341 Para F-H

> No. 6 of 1999 seeks to oust the jurisdiction of the law Courts in relation to the removal or impeachment of a Chairman of a Local Government and is to that extent unconstitutional. The provisions of section 26(10) of that law may be desirable or necessary to insulate the courts from the muddy waters of the politics of the removal of the Chairman of a Local Government but the issue is whether the State House of Assembly has the competence to pass it having regard to the combined effects of sections 4 (8) and 272(1) of the 1999 Constitution.

The decision in the above case is in tandem with the decision in *Adeleke v Oyo State House of Assembly*,[223] wherein it was held that section 188(10) does not oust the jurisdiction of the Court to inquire into whether the limitations on the power of impeachment contained in subsections (1)–(9) of section 188 have been complied with and if any has not, to declare the impeachment null and void. The Court in reaching this decision relied on the cases of *Ekpo v Calabar Local Government Council*[224] and *Jimoh v Olawoye*[225] which held that the jurisdiction of the court is not ousted where other provisions of the law creating it is not complied with.

Furthermore, the Court cannot interfere with reference to section 143 (10) or 188 (10) with the proceedings or determination of a panel legally and validly constituted in accordance with the provisions of section 143 (5) or 188(5). However, a panel is illegally constituted either because the Chief Judge by a court process is encumbered from appointing one or the number of persons are short of the number prescribed or that its members belong to public service, legislative house or a member of a political party or

[223] [2006] 16 NWLR (pt. 1006)p.302
[224] *op. cit.*, p.324
[225] *op. cit.*, P.324

are not men of unquestionable character or integrity or a panel empanelled *suo motu* by the Chief Judge and not base on what the House by its resolution as contemplated by section 143 (10) or 188 (10) of the Constitution. In *Ekpo v Calabar Local Government Council*[226]**,** Akintan JCA held:

> If the above subsection 10 of sections 143 and 188 of the 1999 Constitution is given literal effect, it means that the proceedings or determination of the Panel or the Local Government Council or any matter relating thereto cannot be reviewed by the Courts of law no matter how wrong in law or otherwise. In other words, they were not to be removed by certiorari. This, of course, is not the position in law.

The stand of the Courts in such cases is stated by Lord Denning M R in *Taylor v National Association Board*.[227] that:

> The remedy of Ouster Clause, is not excluded by the fact that the determination of the Board is by Statute made "final", Parliament only gives the impression of finality to the decisions of the Board on the condition that they are reached in accordance with the law, and the Queen's Courts can issue a declaration to see that the condition is fulfilled. The justification for this stand is that the legislature only conferred jurisdiction on a Tribunal or Board on condition that it made its determination in accordance with the law. If it went wrong in law, it went outside the jurisdiction conferred on it, its decision was therefore void. It

[226] *op. cit* p.347
[227] (1957)All ER p.183

has jurisdiction to decide "rightly but not jurisdiction to decide wrongly.

And therefore, its proceedings can be enquired by the Court.

The same applies to a panel appointed by the Chief Judge without a resolution of the House passed in accordance with section 188 (3) or (4) or without the request of the Speaker under subsection (5) of that section. it was held by the court of Appeal, Per Mikailu, JCA, in *Adeleke and ors v Oyo State House of Assembly*, that the Court has jurisdiction to determine whether proper constitutional procedure for impeachment has been followed by a House of Assembly, though it cannot inquire into the merit of the impeachment.[228] Earlier in the case of *Abaribe v Abia House of Assembly*[229], the Court indicated that it can have a say where the criteria in impeachment proceedings was not met.

Again, if the House of Assembly in the exercise of its legislative functions relating to impeachment does not form a quorum as contained in section 96(1) of the Constitution, it is obvious that that is not what the House of Assembly contemplated or referred to in section 143 (10) or 188 (10)**,** this is to avoid the possibility of a small number of the members sitting to make laws or exercise other powers of the House. Any determination or proceedings made by less the number of members required by section 188, that is less than the two-third majority of all the members of the House as prescribed in section 143 (4) or 188(4) and (9). Any proceeding less than one-third of the members present and voting (not all members) prescribed in section 143 (2) or 188 (2). And the proceeding less than a simple majority of members present and voting where no special majority, two thirds or one-third is prescribed, is not a determination or proceedings of the House

[228] *op. cit.*, p325
[229] *op.cit*, p. 466

contemplated by section 143(10) or 188(10). In *National Assembly v Independent National Electoral Commission and Ors,*[230] the Court of Appeal held that:

> The National Assembly was not "properly constituted" when it purported to override the President's veto by the votes of two-third majority of members present in each House, instead of two-third majority of the entire membership. The members present were 55 in the Senate and 204 in the House of Representatives as against their total prescribed membership of 109 and 360, respectively.

Similarly, in *Adeleke v Oyo State House of Assembly*[231], it was held that the proceedings at a meeting of a faction of the Oyo State House of Assembly held at a Hotel in Ibadan outside its official Chambers are not proceedings of the Oyo State House of Assembly within the meaning of section 188 (10). That the House was not properly constituted when it sat with only 18 of its total membership of 32 and passed the resolution that the allegation of gross misconduct against the Governor should be investigated which under section 188(4) requires to be passed by two-third majority of all of its members. That impeachment proceeding in which the Speaker is excluded do not amount to proper proceedings of the House within the meaning of section 188 (10) in view of the leading role given to the Speaker under section 188. The proceeding or determination of the Chief Judge of a State is not mentioned in subsection (10); therefore any wrongful exercise of that function in breach of section 188 by the Chief Judge will automatically be enquired into by the Court of competent jurisdiction. Again section 188 (8) provides that a finding by the investigating panel that the allegation has not been proved terminates

[230] (2003) 41WRN. p. 94
[231] *op. cit.,* p.325

the impeachment and "no further proceedings shall be taken in respect of the matter". If the allegation is not proved and the House of Assembly went on to pronounce that a Governor is guilty of gross misconduct and remove him from office, the Court will intervene to stop the abuse despite the ouster provision in section 188 (10). Such proceeding cannot be regarded validly as the proceedings of the House within the contemplation of section 188(10). If a Governor is removed without adherence to section 188(8), section 1(2) of the Constitution would have been breached. Section 1(2) of the Constitution 1999 provides:

> 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.

A breach of this section of the Constitution will warrant the intervention of the court. In *Anya v Attorney General, Borno State*,[232] it was held that judicial intervention is not altogether excluded by the provision in section 170(11) of the 1979 Constitution which defined "gross misconduct" as "a grave violation or breach of the provisions of this Constitution or a misconduct of such a nature as amounts in the opinion of the House of Assembly to gross misconduct". Misconduct was defined in the same case to mean an unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Supposing that he flogged his maid as a corrective measure, does that amount to misconduct? The House of Assembly cannot legally treat it as misconduct under

[232] (1985) 6 NCLR p.373

section 170(11) of the 1979 Constitution as flogging his maid is not misconduct as defined in Anya's case[233].

The power to investigate an alleged act of misconduct and whether in fact it amounts to misconduct is vested not in the House of Assembly but in the Investigating panel made up of seven persons. The seven persons should be persons of integrity who are not members of any public service, legislative house or political party. If the act or omission is a breach of the Code of Conduct, it cannot be tried by the panel but by the Code of Conduct Tribunal as decided in the case of *Anya and Ors v Attorney General Borno State*[234]

In view of the foregoing, the decisions reached in the cases of *Alhaji Balerabe Musa v Kaduna State House of Assembly*[235] *and Abaribe v Abia State House of Assembly,*[236] is wrong. This is because the decision was based on the fact that the court lacks jurisdiction to hear and determine the cases in accordance with sections 170 (10) and 188(10) of the 1979 and 1999 Constitution respectively. These sections had ousted the jurisdiction of the court on the ground that impeachment and other related proceedings the court held are purely political matters over which the court cannot interfere with or intervene, is wrong. However, the superior court has held in a number of cases that the jurisdiction of the court is not in fact ousted by the provision of sections 143 (10) or 188 (10).The impeachment of some State Chief Executives during Obasanjo's administration were a nullity by the operation of the declaration of nullity contained in section 1(3) of the Constitution. In fact with or without the pronouncement of the court on the illegality,

[233] *Ibid*, p.340
[234] *Ibid*, p.331
[235] (1982) 5 NCLR p. 450
[236] *op cit*, p.406

their impeachment not being consistent with that constitutional provision is a nullity by reason of section 1(3) of the Constitution. In *Macfoy v. United Africa Co, Ltd*[237], Lord Denning said:

> If an act is void, then it is in law a nullity… 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.

Jibowu Ag. FCJ was of the same view in *Sanusi v Daniel*[238] when he said that; an action to set aside an act is null and void is "misconceived as there is nothing for the court to set aside". Thus the charade called the impeachment of some State Governors under the administration of Obasanjo is by the combined effect of sections 1(3) and 4(8) of the 1999 Constitution of the Federal Republic of Nigeria void and need not even be declared so by Court on the authority of the above decided cases, for such exercise is a nullity *ab initio***.** It is the constitutional duty of the legislative arm of government with regard to sections 143 and 188 of the Constitution relating to impeachment process to remove an elected public officer(s) in the exercise of their function but the exercise of such power must be done in accordance with the constitutional provision, else the jurisdiction of the court will be invoked to declare it a nullity, despite the ouster provision in section 143 (10) and 188 (10) of the 1999 Nigerian Constitution.

The essence of the principle of separation of powers as guaranteed by the Nigerian Constitution is meant to guarantee good governance and development in a given society or political setting to prevent abuse of power. A writer, Montesquieu once said, political liberty is to be found only when there is no abuse of power. But constant experience

[237] (1961) 3WLR p. 1405 at 1409
[238] *op. cit.*, p.145

shows everyman invested with powers is liable to abuse it, and carry his authority as far as it will go. Constitutionalism requires for its efficiency a differentiation of governmental functions and a separation of the agencies which exercise governmental powers.[239] The 1999 Nigerian Constitution guaranteed the principle of separation of powers as a cardinal feature for the operation of constitutional democracy in the country[240]. In *Keyamo v House of Assembly, Lagos State,* it was held that the doctrine of separation of powers is to promote efficiency in governance by precluding the exercise of arbitrary power by all arms and thus prevent friction[241].

Impeachment is a legitimate means by which an erring Governor or Deputy Governor, President or Vice President can be removed from office. The legislature is enjoined to exercise utmost caution in carrying out this legislative function by adhering strictly to the constitutionally laid down procedure on impeachment process, anything less would amount to an abuse of its powers and the Court will surely intervene and ensure that there is no violation of the Constitution.

In consideration of the consequences of an impeachment on the public office holder, the legislators cannot in good conscience invoke section 143 or 188 of the Constitution against such a public officer without strict adherence to the spirit and letters of sections 34, 35, 36, 46, 91 or 128 and 129 and especially sections 36 and 26 of the Constitution. The Chief Executive i.e. the Head of Government came into power on the platform of his party's programme and other desirable government policies designed to fulfill his promises to the electorate and the generality of the people. Therefore, it is the people and the electorate whose interests are affected by the alleged gross misconduct that ought

[239] Ben Nwabueze, '*Constitutional Democracy in Africa'*, (vol. 1 spectrum books ltd 2004), chap. 9 p. 243
[240] Sections 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
[241] [2000]12 NWLR (pt 680) p. 196 at 218.

necessarily to be involved in the impeachment of the erring public officer. In fact, it is the people that has the right to impeach the public officer with regard to gross misconduct which are supposedly criminal acts committed in the course of the exercise of executive functions.

The duty to impeach and the procedure for the impeachment, there are need for considerable legal interpretations and administrative compliance so as to act within the intention of the draftsmen of the Constitution. In the exercise of the power of impeachment, the legislators and the Committee appointed to conduct impeachment proceedings are mandated to strictly comply with the tenets of natural justice and to adopt recognized principles of proper interpretation of the law, so that the law will take its proper cause without bias of the legislators who the two-third of them put themselves out as the accusers while another two-third are interested in trying the affected public officer. However, it may be argued that the draftsmen assume that the legislators are representatives of the people and possess advance knowledge, morally sound and able to act impartially to understand the intricacies involved not only in their own laws, but in giving an unbiased interpretation to the provisions of the Constitution. It is the intendment of the makers of the Constitution that the legislators in the exercise of its legislative functions with respect to impeachment ought to exercise restraint and apply decorum to be able to ascertain the real intention of the draftsmen and apply the law appropriately.

It is important that the legislators understand the Constitution inside out to be able to answer such question as what really constitutes the ordinary and natural meaning of the words used in the enactment with respect to Impeachment. Another thing is to take wider

view of the Constitution to be able to evaluate the actual meaning attached to every aspect of the Constitution relevant to proper appreciation of the dispute. This entailed the interpretation of the Constitution in terms of its aims and objectives. This obviously necessitates asking some questions such as what is the purpose of electing government. What quality of government do we want? What does the electorate stand to gain by electing a government? etc, what is the place of conscience or our scale of values in the conduct of government business? The answers to these questions will certainly assist in ascertaining the programmes and policies of government being pursued in the interest of the governed.

Beside these, another thing is to consider the institutional settings and whether the political environment is conducive for its growth and development. The essence is to appreciate all the prevailing circumstances involved, real or imaginary. This will help to a reasonable extent for an interpretation of the Constitution *vis-a-vis* the performance and conduct of a public officer.

In respect of impeachment therefore, the legislature should not for whatever reason interfere with the functions of the judiciary. The involvement of the legislature in adjudication in a serious matter like impeachment amounts to a breach of separation of powers inherent in the Constitution. It is therefore obvious that the legislature is eroding the functional powers of the third arm of government, the judiciary. In whatever the role of the legislature is considered, the inevitable conclusion is that the essence for the separation and independence of the judiciary are guaranteed under the Constitution is also used to negate the provisions of the Constitution. To ensure due process of law, it is necessary to invoke the Constitution in order to determine the origin and source of the

opinions held against the public officer by the legislators who have removed him for misconduct. For instance, it is necessary to establish beyond any shadow of doubt that the law makers acted reasonably in forming their view of the fact of the matter. Apart from the provisions of sections 88 and 128 of the 1999 Constitution respectively, the legislators by virtue of sections 128 and 129 of the Constitution is duty bound to act legally and administratively before setting in motion the impeachment process. This is because, the legislators are not the supervising officers of any public officer and therefore, it will be wrong to evaluate their performance subjectively, particularly the Chief Executives who are strong competitors of the Law Makers for political powers. Again, the functions and powers of the legislators under the Constitution are regulated by specified procedures and are confined only within the legislative Assembly. Furthermore, there are no defined or express procedures or regulations for the performance of the functions and exercises of powers, except as provided for in the office of public officer, particularly the President and his Vice or the Governor and his Deputy. If that is the intendment of the Constitution, it should clearly be provided for any members of the public to be able to exercise their civil rights to petition against public officers like the President and his Vice or the Governor and his Deputy for purpose of impeachment. It is a fact that the two political divisions of government, the Legislature and Executive, both of them representative, share little co-operation almost in every issue. But the executive arm is a constitutional office and must be giving a chance to operate within the contemplated freedom arising from the separation of powers under the Constitution of the Federal Republic of Nigeria, 1999(as amended), to pave way for the operation of rule of law and to ensure stability in the polity for our democracy to flourish.

3.2 Legislative Organs used in the Impeachment Process

Impeachment provisions of the 1999 Constitution are contained in sections 143 and 188. Impeachment of the Federal Executive is covered by section 143 and that of the State officers is stipulated in section 188. Impeachment of Federal Executive officers such as the President or Vice President is carried out by the National Assembly,[242] which consists of the House of Representatives and the Senate under section 143 of the Constitution whilst impeachment of State Chief Executives, the Governor or Deputy Governor is conducted by the State House of Assembly under section 188 of the 1999 Constitution.

The procedure for the impeachment of Nigerian President or Vice President and Governor or Deputy Governor[243] are the same except that in the impeachment of the President, the legislative House involved is the National Assembly, and Chief Justice of the Federation who appoints the seven man panel to investigate the alleged allegation of misconduct against the Federal Executives. While in the impeachment of the Governor or his Deputy, the State House of Assembly and the Chief Judge of the State are involved. So far, no Nigerian President or his Vice has passed through the test of impeachment since the adoption of presidential system of government in Nigeria in 1979. The reason is obvious, the Constitution bestows on the President enormous powers and he wield the intimidating influence on the ruled. This became an asset or shield for him to readily ward off any opposition against him.

The Governor or Deputy Governor can be removed by the same impeachment procedure as that of the President and his vice but the procedure in the removal of the Governor or his Deputy is easier and faster because the legislature in the State is unicameral, only one

[242] AG Federation v Atiku Abubakar (2002) 4KLK p.14
[243] *Ibid,* section143 & section 188 of the Constitution

House is involved as against the bi-cameral nature of the National Assembly which involves the Senate and the House of Representatives. In this regard the removal of the President or his Vice is a little bit cumbersome *vis-à-vis* removal of a state Governor or his Deputy.

Impeachment in a democratic dispensation is meant principally to check the powers of the Chief Executives to prevent unnecessary abuse of public office such as corruption, lawlessness and conduct generally incompatible with the office of a Chief Executive. The incidence of impeachment process is not common because it is only meant to serve as a check on the Executive. This is probably the reason, the provision is difficult to apply in order to ensure that whenever such power is invoked there would be some measure of certainty that the allegation against the Chief Executive is concrete and not spurious or stage managed by a few political gladiators who feel aggrieved by the actions or inactions of the government in power. However, this legislative check on Executive power is liable to abuse paving way for the Judiciary to be involved in the process as the interpreter of the law to ensure that everything is done in accordance with the laid down procedure as provided in the Constitution.

There were several abuses of legislative powers between 2003 to date, to the extent that the Nigerian polity witnessed in a matter of months, several impeachment of some State Chief Executives, all carried out in outright contravention of the constitutional provision which ought to be sacrosanct as the organic law of the land. The Governors who suffered the charade called impeachment were victims of political circumstances accomplished by less than the required majority and allegations against them is premised on a flimsy and frivolous allegations and also denial of their fundamental rights of being heard before

clearly partial panelists who are men of proving integrity, be non partisan, not a party member, public service or legislative house .Worst still, sometimes, the legislative business is conducted outside the legislative house[244]. At this period, the Nigerian Constitution was mangled and bastardized, and the rule of law became a mirage and thus pushed Nigeria to a near precipice. The situation expectantly prompted the intervention of the Supreme Court of Nigeria that provided a way out of the political quagmire with its landmark decision in the celebrated case of *Inakoju v Adeleke*[245] that set down the correct procedure by which any Chief Executive could be removed from office. In *Akintola v Aderemi*,[246] it was held that anything done outside the House of Assembly to remove the Governor of the old Western Region was illegal and a nullity.

The legislature whether of the National or State Houses of Assembly involved in the removal of the President and his Vice, a State Chief Executive, and the Chief Justice, of the Federation or State Chief Judge constitutionally empowered to appoint a seven member panel to investigate allegation of misconduct against an erring public officer, ought to exercise their constitutional powers of impeachment with great caution and ensure that the weight of evidence on the affected Public officer is overwhelming to warrant his removal from office. The misapplication of the exercise of this power by these organs will ultimately create crisis in the polity and cheapen the office of Chief Executives and collaterally affect the performance of their functions.

3.3 **The Criteria for Impeachment by the** L**egislature**

[244] (1962) All NLR. P.442 at 443
[245] (2001) 1 SCM p.I
[246] (1962) All NLR P. 443

Legislature is the arm of government that is solely responsible for making laws. The powers of the legislature includes writing and passing laws, enacting taxes, authorizing borrowing, declaring a war, establishing the government's budget, confirming executive appointment, ratifying treaties, investigating the executive branch in exercise of its oversight function, impeaching and removing from office members of the executive and judicial officers, and redressing constituent's grievances. Members of the legislature are elected directly from constituencies representing an entire population. In presidential system, the executive and legislative branches are clearly separated; in parliamentary systems, members of the executive branch are chosen from the legislative membership. The power to remove from office, members of the executive are vested on the legislature. The provision of section 188 subsections (2)–(9) of the 1999 Constitution of the Federal Republic of Nigeria, spells out the circumstances for the removal or non-removal of the Governor or his Deputy. In the exercise of this function, the legislature is duty bound to observe strictly and comply with the provisions of the Constitution with respect to impeachment proceedings. When there is a glaring breach or violation of the constitutional provisions on impeachment as provided in section 188(1-9), the court's jurisdiction will be invoked to ensure compliance, despite, the proviso in subsection (10) of section 188 of the Nigerian Constitution. The Chief Judge whose responsibility is to appoint a seven man panel to try articles of impeachment against an erring Governor will have to make a decision whether all the proper steps have been taken by the legislature before embarking on the appointment of the seven man panel. The Chief Judge in this case has the duty to ensure that all the constitutional provisions relating to the action of

removal or impeachment are strictly complied with. The failure to comply with any of the provisions entitled the Chief Judge to refuse to appoint the panel.

The learned Justice of the Supreme Court, Justice Niki Tobi in *Inakoju v Oyo state House of Assembly*[247], clearly spelt out the proper way to conduct impeachment proceedings, the responsibility of the legislature and the investigating panel *inter alia;*

1. Section 188 (1)- (6) : The Procedure

a. The initiating action is a Notice of allegation

b. The Notice must be signed by one-third of the members of the house- i.e. the total members inclusive of (any) suspended members.

c. The Notice must be presented to the Speaker of the House (to the Speaker and no one else)

d. The notice should state that the Governor or Deputy is guilty of gross misconduct in the performance of the functions of his office

e. The Notice must specify detailed particulars of the gross misconduct

f. On receipt of the Notice, the Speaker shall within 7days serve same on the Governor or Deputy Governor concerned and on each member of the House.

g. Within 14days of the presentation of the Notice to the Speaker of the House must resolve by motion without any debate whether to investigate the allegation or not . The vote must be passed by two- thirds of all members.

h. The Governor or Deputy Governor shall send a written reply to the house.

i. The resolution in (g) above by the house must take place whether or not the Governor or Deputy Governor sends in a reply.

[247] *op. cit* p. 588

j. If the motion referred to in (g) is not passed, that is the end of the impeachment notice.

k. If the motion is passed by the two-thirds majority, then the Chief Judge of the State will appoint a seven man panel to investigate the allegations. (This means that after the Notice has been presented, the House must first resolve by two-third majority whether to investigate (by way of a panel the allegation or not).

l. The request to the Chief Judge to set up the panel can only be made by the Speaker and nobody else.

m. The Chief Judge can set up the panel under section 188(2)-(4) (i.e. that if the Notice was signed by two-third members; that the house by two-third majority resolve to investigate the allegation, that the office sought to be impeached and all members of the house have been served) have not been complied with . He may wish to ask for a certificate of compliance from the Speaker.

n. The Governor or Deputy Governor has a right to defend himself before the panel by himself or by a legal practitioner of his own choice.

ii Section 188 (7)-(9): the procedure of the panel

a. The powers and functions to be exercised by the panel will be determined by the procedure described by the House (the House should have a standing procedure that will be applicable to all investigations)

b. The procedure of the panel should not be altered during an on going investigation as this will breed injustice

c. The panel should submit a report of its findings to the House within three months (no extension of time). The three months period is to allow for a thorough investigation.

d. The report of the panel must be precise, concise and exact. It must be unequivocal in its recommendation.

e. The panel can only make one recommendation out of two i.e. either that the allegation is proved or not proved.

f. If the panel reports that the allegation is not proved, that is the end of the impeachment –the House becomes *functus officio*. It cannot ask for another panel to be set up to receive a more favorable report.

g. If the panel reports that the allegation is proved, the House shall consider the report within 14days of their receipt of same.

h. The house can take only one out of two actions – it can adopt or reject the report. If it rejects the reports, the Governor or Deputy Governor is free.

i. If the house adopts the report, the Governor or Deputy Governor stands removed from office as from that date of adoption of the report[248]

Where there are glaring breaches of constitutional provisions on impeachment as laid down in section 188 (1-9), the court has jurisdiction to ensure compliance inspite of the proviso in subsection (10). For example, a Chief Judge who has the responsibility of appointing the seven man panel to try the articles of the impeachment will have to make a decision whether all the proper steps have been taken by the legislature before embarking on the appointment of the seven man panel. For instance, all allegations of "gross misconduct" must be in writing and signed by not less than one-third of the members of

[248] *op, cit,* p. 588

the House of Assembly and is presented to the Speaker of the House of Assembly and it shall be the Speaker who shall request the Chief Judge to appoint the panel. The Chief Judge in this case has the duty to ensure that all the constitutional provisions relating to the action of removal or impeachment are strictly complied with. The failure to comply with any of the provisions entitled the Chief Judge to refuse to appoint the panel. In the process of removing Governor Ladoja of Oyo State it was not the Speaker who requested the Chief Judge to set up the seven man panel. The Chief Judge ought to have refused to appoint the seven man panel as it is a breach of the Constitution under section 188 (5).

In Ekiti State, the panel appointed by the Chief Judge, Justice Barmishile, to investigate the allegation against Governor Ayo Fayose of Ekiti State absolved him of any wrongdoing which could have brought to an end any further proceedings taken in respect of the matter as provided in section 188(8). But in reaction, the State House of Assembly suspended the Chief Judge and appointed another Judge, Justice Aladejana in his stead as Acting Chief Judge,[249] a duty the House of Assembly members have no constitutional duty to carry out and thereby rendered such exercise of function null and void as it is in contradiction with section 188(7) of the 1999 Nigerian Constitution. The action of the Ekiti State House of Assembly was clearly unconstitutional. It has no constitutional power to suspend the Chief Judge of the State without the input of the National Judicial Council (NJC). The National Judicial Council is by law a necessary party that must be involved in determining the fate of judicial officer. By the combined effect of sections 153 (1) (i), paragraph 21 (d) of the third schedule and section 271 of the Constitution, and sections 4, 292 and paragraph 20, 21 of third schedule, part 1 of the Constitution of the Federal Republic of Nigeria, 1999; it is only the National Judicial Council (NJC) that has

[249] www.NewYorkAppellateLawyer.com, accessed on 31/10/2009

the exclusive power and authority to query, command, or order or inquire into any complaint against a Judicial officer arising from or connected with the performance of his function or recommend to the Governor for removal of such officer. The land mark judgement by a Federal High Court Ilorin presided over by Justice Bilikusu Bello which reversed the sack of the Chief Judge of Kwara State, Justice Elelu-Habeeb by the State Government points to the fact that it is only NJC that has the removal power. The learned Chief Judge declared that all actions taken by the Governor Bukola Saraki –led executive arm, acting in consonance with the State House of Assembly on Justice Elelu-Habeeb's removal, were a nullity.[250] Elelu-Habeeb was removed on 5th May, 2009, following deliberations by the State lawmakers based on a letter sent to them by the State Governor, Dr. Bukola Saraki, in which he made allegations against the Chief Judge including acts in contravention of her constitutional roles as well as high handedness in handling the affairs of the Judiciary in his letter to the law makers seeking there approval for the removal. The lawmakers subsequently gave unanimous approval to the Governor's request.[251] The actions taken in the above cases were clear breaches of the Constitution having usurped the function of NJC who has disciplinary powers against judicial officers and therefore, a nullity. The State Chief Executives should always in the performance of their duty respect rule of law and constitutionalism which is the bulwark of democracy.

3.4 Legislative Impeachment of Executive Officers

Impeachment is the legislative process used as a weapon, by the legislature, that is, members of the National or State Houses of Assembly to remove any public office holder

[250] www.New York Appellate Lawyer.com, accessed on 16/2/2009
[251] *Ibid* p.2

found to have abused his office. Impeachment thrives in a democratic government which is globally recognized in the hands of the legislature as a tool to prevent abuse of power by public office holders. In the exercise of this legislative function, members of the legislative houses are duty bound to act in good faith. The legislators exercise their powers by virtue of the Constitution which vest the power of impeachment on them. In the exercise of this power, good faith is *sine qua non* in the exercise of their powers and such powers must be exercised cautiously and sparingly, and must not be used as vendetta or witch-hunt against the affected public officer in order to score cheap political point. Virtually, the impeachment of some Chief Executives of the States of Federation and sometimes, the leadership of various legislative houses between 2003 to 2007 political dispensation under the watch of President Obasanjo, were carried out in bad faith and in total violation of the constitutional provision on impeachment process. For example, in *Inakoju v Adeleke*[252]The 3rd respondent (Rasheed Ladoja) was elected Governor of Oyo State in May 2003. The 1st and 2nd respondents were respectively the Speaker and Deputy Speaker of the Oyo State House of Assembly, while the 18 appellants were the members of the Oyo State House of Assembly. Towards the end of 2005, the membership of the Oyo State House of Assembly became polarized as a result of some political disagreement among them. The 32 member House was divided into two factions. The 18 appellants belonged to a faction while the two respondents and remaining 12 members of the House were in the second faction. The 18 legislators were opposed to the 3rd respondent while the remaining 14 were in support. On 13th December, 2005, the 18 legislators opposed to the 3rd respondent met and sat at D' Rovans Hotel, Ring Road, Ibadan . They raised a notice of allegation of gross misconduct against the 3rd

[252] [2007]4 NWLR (pt. 1025) p. 616

respondent. They did this without the involvement of the 1st and 2nd respondents, Speaker and Deputy Speaker, respectively. The service of the notice on the 3rd respondent was done by the group through a Newspaper advertisement. They requested the Acting Chief Judge of Oyo State to set up and inaugurate a seven member panel to investigate the allegations of gross misconduct they had drawn up against the 3rd respondent. The Acting Chief Judge inaugurated the panel on 4th January, 2006 to investigate the alleged acts of gross misconduct against the 3rd respondent. The panel sat for two days and without taking oral evidence from anybody, eventually submitted its report to the 18 member faction on 12th January, 2006. The factional group of 18 members passed a resolution by which they impeached the 3rd respondent. Prior to the 12th January, 2006, when the group held its meeting to impeach the 3rd respondent, there was an action filed by the 3rd respondent challenging his impending impeachment and there was also a motion for injunction to restrain the 18 member faction from proceeding with the impeachment plan. The 1st and 2nd respondents reacted to the action taken by the 18 member faction by commencing an action by originating summons against the appellants. The reaction of the appellants was that upon service of the processes on them, they filed a notice of preliminary objection, on the grounds that the court had no jurisdiction to entertain the claim relating to exercise of legislative power. The learned trial judge upheld the preliminary objection of the defendants. The plaintiffs aggrieved, appealed to the Court of Appeal, Ibadan Division, which held that the trial Court had jurisdiction to entertain the suit. The court further invoked section 16 of the Court of Appeal Act and took the merits of the matter. It gave judgment to the respondents holding that as the conditions precedent to the exercise of the legislative power to impeach the executive had not been

fulfilled, the impeachment of Governor Ladoja was null and void. Dissatisfied with the judgment of the Court of Appeal, the appellants further appealed to the Supreme Court. Dismissing the appeal, the Supreme Court held that the invocation of section 16 of the court of Appeal Act was rightly done and that the section indeed confers powers on the court of Appeal to hear matters on merit brought to it on appeal, where the High Court had jurisdiction over the matter. It also confirmed that the impeachment of the Governor was illegal. In *Dapianlong & Ors v Dariye & Anor*[253], the Supreme Court of Nigeria followed the decision in *Inakoju v Adeleke* and held that the removal of the respondent was unconstitutional and therefore null and void. In *Mike Balonwu & Ors v Mr. Peter Obi & Anor,*[254] the Governor of Anambra State was impeached in flagrant disregard of the constitutional provisions on impeachment. Dissatisfied with the impeachment, the Governor filled an action in Anambra State High Court. The Court held that his removal from office by the appellants was null and void and of no effect whatsoever.

For an impeachment process to be valid under the Nigerian Law it must have been conducted in strict compliance with the constitutional provision on impeachment. On the validity or invalidity of impeachment proceeding in breach of the constitution, Ogbuagu JSC stated:

> Where the Constitution has made a specific provision as to any particular procedure or mode of exercising any legislative function, if there is breach of such provisions, the Courts will assume jurisdiction as the guardians of the Constitution to intervene and to ensure compliance with the provisions of the Nigerian Constitution. Therefore, in the removal of such officers,

[253] *Ibid* p. 518
[254] [2007]5 NWLR (pt. 1028) p. 621, 501-515

> the procedure clearly specified, must be followed and strictly complied with before such removal becomes valid and constitutional. Any breach of any of the said provisions, surely and certainly, renders such removal ineffective, null and void and of no effect. It is now settled law firstly, that where a statute or Constitution prescribes a procedure for seeking a remedy or the doing of anything or act and the language used is clear and unambiguous, (as in the section), that is the only procedure open to the parties concerned and any departure therefore , will be an exercise in futility[255].

The House of Assembly in carrying out impeachment proceedings ought to sit in the legislative building provided for that purpose. Any parliamentary proceeding conducted outside the parliamentary building in the impeachment of Governor Ladoja of Oyo state, is null and void. Niki Tobi , JSC held:

> It appears to me from the intention of the Constitution that the House of Assembly will sit in the building provided for it and for that purpose. By the provision of section 104 of the Constitution the House shall sit for a period of not less than hundred and eighty- one days in a year. Section 103 (1) the Governor of a State may attend a meeting of the House of Assembly either to deliver an address on State affairs or to make such statement on the policy of government as he may consider to be of importance to the State . In my humble view, a community reading of the two sections show the intention of the Constitution is to make the House of Assembly sit physically in the building provided for the purpose, if I am

[255] *op. cit,* P.597

> wrong and appellants are right, it will then mean that the Governor has to move to a Hotel to address the members anytime the House sits there and he wants to take advantage of section 108. Can that be the intention of the makers of the Constitution? Will that not be ridiculous?[256] .

The decision of the learned Justice of the Court of Appeal was in tandem with the decision in *Akintola v Aderemi,*[257] wherein it was held that anything done to remove the Governor of the old Western Region was a nullity. Impeachment proceeding for the removal of an erring public officer should be carried out in public, so that members of the public would not suspect any misgiving whatsoever in the conduct of the impeachment process.

In the same vein Niki Tobi JSC, citing *Akintola v Aderemi,* held:

> The Governor is elected by the people the electorate. The procedure and the proceedings leading to his removal should be available to any willing eyes. And this public will see watching from the gallery. It should not be hidden affair in a Hotel room. A legislature is not a secret organization or secret cult or fraternity where things are done in utmost secrecy in the recess of a Hotel. On the contrary a legislature is a public institution, built mostly on public property to the glare and visibility of the public as a democratic institution operating in a democracy, the actions and inactions of a House of Assembly are subject to public judgment and public opinion. The public nature and content of the legislature is emphasized by the gallery where members of the public sit to watch the proceedings. I

[256] (2007) 2, SCNLR P.139.
[257] (1962) All NLR p. 442

> concede the point that a legislature has the right to clear the gallery in a certain deliberations for security reasons. I do not think proceedings for the removal of Governor should be hidden from the public[258].

Impeachment proceedings should be carried out during parliamentary hours and never to sit in an awkward hours outside the time provided for by the law. Where parliamentary functions are not held during parliamentary hours, it will give room for suspicion. It is even worse when they sit at early hours of the day as was the case with Peter Obi, Governor of Anambra State whose impeachment was conducted between 4.30 and 5.am, quite outside parliamentary hours. Proceedings of a House of Assembly should be held in parliamentary hours. This is the period the Rules have provided that the House should sit. Proceedings of the House should not be held in an unparliamentarily hours, that is during the period not provided for in the Rules governing the sitting of the House. For example, a House of Assembly has no business to perform in the odd hours of mid-night or in the early hours of the morning before the parliamentary hours prescribed by the Rules. They should sit and exercise their function in the House of Assembly Chambers within official hours. A legislature is not a secret organisation or a secret cult or fraternity where things are done in secrecy. On the contrary, a Legislature is a public institution build mostly on public property to the glare and visibility of the public. In condemning the conduct of the law makers in conducting business of the house unparliamentarily, Niki Tobi JSC held:

> But I should say here that proceedings of a house of Assembly should be held in parliamentary hours. This is the period the rules have provided that the House should sit. On no account should proceedings of a House be

[258] *0p. cit,* p. 588

> held in unparliamentarily hours, that is, during the period not provided for in the rules. For instance, a House of Assembly has no business to perform in those odd hours of mid-night or in the early hours of the morning before the parliamentary hours prescribed by the laws.[259]

The law requires two-third majority to achieve impeachment process and two–third majority ought to be the total membership of the House. Any vacancy in the House caused either by suspension or otherwise of any member will not vitiate this requirement of the law. 18 members out of 32 members of Oyo State House of Assembly purportedly impeached Governor Ladoja. In an action challenging the impeachment, the Supreme Court minced no word in invalidating the impeachment, not being conducted within the purview of the constitutional provision. Niki Tobi JSC held that:

> Sections 101 vest in the House of Assembly the power to regulate its own procedure. By Section 102, the proceedings of the House cannot be invalidated by the fact that there is a vacancy in its membership. This seems to be an answer in the appellants' way to the 18 persons who purportedly removed the 3rd respondent. The law is elementary that where the Constitution or a Statute contains a general provision, as well as a specific provision, the specific provision will prevail, over the general provision in this wise, it is my view that the specific provision of section 188 (9) will prevail over the general provision of section 102.Accordingly, the removal of the 3rd Respondent is governed by section 188 (9) and not section 102 of the Constitution[260].

[259] Inakoju v Adeleke [2007]4 NWLR (pt.1225), p. 673.
[260] *Ibid*

In the impeachment proceedings, the constitutional duty of the legislative members in considering the report of the panel should be conducted in good faith and not *malafide*, if such impeachment is to be sustained. Legislative business conducted in good faith and with good intention will vindicate the legislators' action. But that done in bad faith will collapse. On this, Niki Tobi JSC stated that:

> While a legislature is competent to suspend particular rule or rules to enable it deal with a situation in the overall interest of the common good of the body and the persons it represents, this must be done bonafide and not *malafide*. A bonafide action will vindicate the totality of good parliamentary action, practice and conduct. A *malafide* action will violate parliamentary action, practice and conduct, whether an action is bonafide or *malafide* is a question of fact to be deduced from the factual millien giving rise to the decision. I have no difficulty, in coming to the conclusion that the suspension of the Rules of the House of Assembly and the Speaker of the House in a Hotel apartment were clearly *malafide* as the act was designed to carry out illegal and unconstitutional acts which were ultra vires section 188 of the Constitution.[261]

Also in the conduct of impeachment proceedings of a Chief Executive, the loyalty of members of the legislature should be for the good of the State and not bear political connotation as rightly pointed out by Niki Tobi JSC, in his judgement in Governor Ladoja's case:

[261] *Ibid*, p. 588

> This is the most crucial area and members should be most loyal to the oath they took on that eventful day of their swearing in ceremony. On that day, they swore or affirm inter alia, to perform my functions honestly to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law, and the Rules of the House of Assembly and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal… It is at times the experience that some Nigerians regard the oath as another kindergarten recitation to the extent that they do not attach any importance to it. Some forget the words of the oath as they finish, it should not be so. Members are at the bar of history and would not like history to judge them badly. They must therefore be at their parliamentary best .In debating the report; there should be no consideration of the political party and political learning. The exercise is much more than the party, the Governor or Deputy Governor and the party member belongs. It is an exercise for the good of the State and members must remove their political hats or togas.[262]

The Constitution of the Federal Republic of Nigeria, 1999 (as amended)provides under section 36 for fair hearing which is predicated on the principles of equity and natural justice and must be respected by the legislature in the conduct of impeachment proceedings. Fair hearing is also provided in section 188(2), that the affected public holder is to be served with the notice of allegation submitted against him and he is giving

[262] *Ibid*

the opportunity to reply in defense of such allegation. It is equally provided under these sections that where the notice of allegation is accepted by the required number of the members of the house, he is entitled to representation by legal practitioners of his own choice before the seven man panel under sub section 6 of 188(5). Niki Tobi, JSC observed:

> By subsection (2)(b) the speaker is expected to procure a written statement from the Governor or the Deputy Governor in reply to the notice of allegation provided for in subsection(2).The reply must also be served on each member of the House. In sum, the members of the House will be in possession of the notice of allegation and the reply to the allegation. If the Governor or the Deputy Governor fails or refuses to reply to the allegation, he should be presumed as having no reply[263]

In most of these cases of impeachment, none of persons involved was given fair hearing nor served notice of allegation of misconduct as provided by the law. In *Dapianlong & Ors v Dariye & Anor,*[264] the notice of allegation of gross misconduct was not served by Dapianlong, the Speaker *pro tempore* of Plateau State House of Assembly on the Governor as required by law. Also in *Adeleke & Ors v Oyo State House of Assembly,*[265] the 18 members of the Oyo State House of Assembly who conducted the impeachment proceedings did not serve the notice of allegation of gross misconduct on the other 14 members of the House of Assembly, contrary to the requirement of the Constitution[266] that they should be served. The issue of service of process in any proceeding affecting the

[263] *op cit* p. 245
[264] (2007) 7 SCM p. 25
[265] *op. cit*, P.617
[266] *Ibid*

rights of the parties is fundamental and goes to the root of the matter. It goes to the issue of fair hearing, which the Constitution[267] guarantees every Nigeria in the determination of his civil rights and obligation. Thus, proper service of court process is essential and *sine qua non* for adjudicatory purposes and failure to affect service of court process properly where required may affect the jurisdiction of the court. The same procedure was applied in the case of *Peter Obi v Mike Balonwu &ors,* as notice of allegation was not served on Obi the aggrieved, Peter Obi took action against the Anambra State House of Assembly. The High Court of Anambra State presided by Nri-Ezedi, J. held *inter alia*, that the mode of service adopted by the House of Assembly is called substituted service that it was not shown in this case on whose authority they embarked on substituted service instead of personal service and that they did not even show the reason for their action.[268] In Dariye's case,[269] the Plateau Legislators did not allow Dariye to testify, neither was he given the opportunity to call witnesses nor cross examine them before the panel. This tantamount to violation of fair hearing which in law is fundamental. The Court has at different fora highlighted the importance of fair hearing as a fundamental right. For example, in *Ika Local Government Area v Mr. Augustine Mba*[270], Omokiri JCA held; that

> Fair hearing within the meaning of section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 means a trial or investigation conducted according to all the legal rules formulated to ensure that justice is done to the parties to a cause or matter . In other words, it is an indispensable

[267] The Nigerian Constitution, *op cit* , Section 36 (1)
[268] Suit No. 0/559/2006 , Anambra State High Court, Onitsha (unreported)
[269] (2007)7 SCM. P. 21
[270] [2007] 12 NWLR(pt 1049) p. 681

> requirement of justice, that for an adjudicatory authority to be fair and just must hear both sides by giving them ample opportunity to present cases.

In Anambra State, the legislators in their usual arrogant manner brazenly disobeyed the order of the Court made by Amaechi**,** J. of the High Court of Anambra State restraining the Speaker of the House and members of the House from going ahead to impeach the Governor pending the determination of the motion on notice and went on to instruct the State Chief Judge to appoint a seven man panel to investigate the allegation of gross misconduct against the Governor. This is the height of irresponsibility on the part of the legislators who swore to depend and uphold the Constitution. No person or authority has the right to disobey order of the Court until such order is set aside by a superior Court of law. This is what the Court held in *Peter Obi v Mike Balonwu & Ors,* wherein Nri- Ezedi, J held; that:

> An order of Court whether valid or not must be obeyed until it is set aside.
>
> An order of Court as long as it is subsisting must be obeyed by all no matter how lowly or highly placed in the society .The alternative is chaos.
>
> This is what Rule of Law we often trumpet about, is all about[271].

These are some of the unconstitutional elements that characterize the legislative impeachment of the State Chief Executives involved in the impeachment saga, under the regime of president Obasanjo. The reckless attitude of the legislators in achieving their goal could only be described as self serving and not in the interest of the State and far from deepening the ethos of constitutional democracy in the country. Thus, to sustain any impeachment proceedings, the procedure for impeachment as laid down in the Constitution must be complied with strictly or else the proceedings will be declared null

[271] Peter Obi v Balonwu , *op cit*

and void and to no effect whatsoever by the court .The essence of the impeachment provision in the Constitution by the Legislature is principally to prevent abuse of office. But in carrying out this function they ought to be cautious and avoid a breach of the Constitution and rules governing the business of the House to avoid giving their action different interpretation or accusing them of being sentimental on the issue.

3.5 Impeachment within the Legislative Arm- Senate President, Deputy Senate President, Speaker and Deputy Speaker of the House of Representatives, Speaker and Deputy Speaker of the State Houses of Assembly.

The Speaker or Deputy Speaker is public officers classified by the 1999 Constitution (as amended). The Constitution of the Federal Republic of Nigeria, 1999 defined public officer as a person holding any of the offices specified in part II of fifth schedule and it includes the President and Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representatives and Speaker and Deputy Speaker of the State Houses of Assembly. In the Constitution is entrenched certain provisions aimed at preventing the abuse of power by the legislature and check-mate their conduct in public service, especially the leadership of the legislative houses. To check officers of the National Assembly and officers of their State counterpart is as specified in sections 50 (2) (c) and 92 (2) (c) of the 1999, Nigerian Constitution.[272] Section 50 (2) (c) provides that:

> The President or Deputy President of the Senate or the Speaker or Deputy Speaker of the House of Representatives shall vacate his office: If he is removed from office by a resolution of the Senate or of the House of Representatives, as the case may be, by votes of not less than two-third

[272] Section 50 (2) (c) of the Constitution of the Federal of Nigeria, 1999(as amended)

> majority of the members of that House. The Speaker or Deputy Speaker of the House of Assembly shall vacate his office: If he is removed from office by a resolution of the House of Assembly by the votes of not less than two-third majority of members of the House[273].

This measure was adopted by the House of Representatives when it removed former officers of legislative houses, Salisu Buhari, former Speaker of the House of Representatives for certificate forgery. Similarly, former Senate President, Evans Enwerem was forced to resign on allegation of previous conviction, callousness and dishonesty. Late Dr. Chuba Okadigbo was also impeached on the ground of misconduct in handling the finances of the National Assembly, amounting to the sum of one hundred and forty-five million Naira (N145m). Adolphus Wabara too was removed over financial scam involving the sum of forty-five million Naira (45m). The former Speaker of the House of Representative, Mrs. Patricia Ette Olunbumi was forced to resign in the cloud of the scandal over contracts to refurbish her official residence and purchase of luxury cars for the House leadership[274].

In the same vein, the different State Houses of Assembly have also checked their leaders who misconducted themselves in office by impeaching them. Example is the recent impeachment of Ondo State House of Assembly Speaker, Hon. Toafik Olawale Abdusalam and his Deputy-Hon. Mayowa Akin Folarin by 18 of the 26 members of the House of Assembly on allegation of ineptitude against the Speaker and his Deputy[275] Similarly, Akwa Ibom State House of Assembly impeached the Speaker, Hon. Obong

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[273] Section 92 (2) (c) of the Constitution of the Federal of Nigeria,1999(as amended)

[274] Dayo, Benson *'et al'*, '*Outrage Greets Reps' Behaviour',* Vanguard Newspaper, Friday, 25th June, 2010 , p.1 & 5

[275] Raheem, Tunde, '*Ondo State House of Assembly Speaker Impeached'*, Daily Sun Newspaper, Friday, April 9, 2010 P.6

Ignatius Edet and his deputy, Hon. Obong Okon Uwah, by a resolution signed by the 21 out of the 26 members of House of Assembly on serious allegation of gross of misconduct against the leadership of the House which led to total loss of confidence by the members of the House on the House leadership, hence their removal from office[276] . This they did outside the legislative house of the State[277]. Though their impeachment may seem to be constitutional having fulfilled the requirement of the Constitution of two-third majority of the House members that impeached them, the House of Assembly members having conducted the impeachment proceedings outside the legislative house acted contrary to the Constitution. Impeachment proceedings should be conducted in public to avoid suspicion of the public of any foul play as observed by Niki Tobi JSC in Adeleke's case earlier cited.[278] Relating this to the instant case, the purported impeachment of the leadership of the Akwa-Ibom State House of Assembly was unconstitutional as the impeachment was carried out outside the State Assembly building, not being the parliamentary building of Akwa-Ibom House of Assembly. Though the impeachment proceedings was conducted in accordance with the provision of Section 92 (2) (c) of the Constitution of the Federal Republic of Nigeria, 1999, it became suspect when the proceedings were carried out outside the parliamentary building which ought not to be. There was also an unsuccessful move to impeach the Speaker of the House of Representatives-Hon. Bankole Dimeji by eleven (11) member law makers on allegation of embezzlement of 9 billion Naira which eventually led to the suspension of the concerned law makers after a free for all fight on the flour of the House on the subject

[276] Effiong, Joe, '*Speaker, Deputy Speaker Akwa-Ibom State House of Assembly Impeached',* Daily Sun Newspaper, Friday, May 21, 2010, P.9
[277] *Ibid*
[278] *op. cit*, p. 617

matter[279]. The suspension of the 11 member law makers by the House of Representatives presided by the Speaker, Bankole Dimeji is not in consonance with the requirement of law. The Speaker in that case assumed the position of complainant, prosecutor and a judge in his own case by sitting and presiding over his own case and suspended his accusers. His action is against natural justice and offends section 36 of the 1999 Constitution by infringing on the members' right to fair hearing. The proper thing could have been for the Speaker to step aside and allow investigation of allegation made against him if he is sure he never committed the illegal offence.

The same scenario played out in Edo State House of Assembly on 23rd February, 2010 when the Speaker Hon. Zakawanu Garuba and his Deputy, Hon. Levis Aigbogun were impeached in a controversial circumstances on allegations of fraud and financial impropriety among others.[280] The move for their impeachment began when the embattled Speaker adjourned plenary despite the impending point of observation raised by a member of the House, Hon. Bright Omokhodion. The failure of the Speaker to recognize Omokhodion resulted in hot argument and the seizure of the House Mace by the Action Congress of Nigeria (ACN) members. This led to a free-for-all and tear gas and axes were used freely by the law makers with many members injured in the brawl. The House after the melee reconvened and impeached the Speaker by 13 out of 24 members of the House. The procedure for the impeachment is unconstitutional. The Constitution provides that only two-third of the members can validly impeach the Speaker or his deputy. Therefore, the members not having constituted two-third of 24 members which is 16,

[279] Dayo, Benson *'et al'*, '*Outrage Greets Reps' Behaviour',* Vanguard Newspaper, Friday, 25th June, 2010 , p.1 & 5

[280] http://www.nairaland.com/402808/blood.bath-edo-state-house, accessed on 4/4/2010

both the impeachment and suspension of the other two members are void as they are unconstitutional.

The frequent conflict in the House during parliamentary proceedings constitute national embarrassment as such does not portray Nigeria as a civilized nation before the comity of nations. In Edo State House of Assembly, for example, the whole world watched on television where the Speaker of the House was seen breaking his colleagues head with gravel. The majority leader, Hon. Frank Okiye was seen use tear gas on faces of his colleagues, while another member was seen live using a battle axe to hack three House members.[281] The attitude of the House is a national shame. If this happened in an advanced democracy like United States of America, the member involved will never complete or dream of holding a public office in future. Most impeachment proceedings by the Lawmakers against their officers were carried out in violation of the constitutionally laid down procedure on impeachment, but it goes to show that the leadership of the legislature in both Federal and its States counterpart are not immune from the hammer of impeachment if they are found wanting in the conduct of affairs of their respective legislative houses. Politicians must play politics by the rules of the game and not one tainted with hatred, rancour and acrimony which breed anarchy. It is only when politics is played in accordance with the rules of the game, that there will be sanity in the polity and good governance.

To prevent unparliamentarily conduct by the Lawmakers that often snowballed into a free-for-all during parliamentary proceedings in the House. The leadership of the Houses should accommodate the views of other members in the spirit of fairness. Members of legislative Houses are elected representatives of the people in their constituencies;

[281] *Ibid.*

therefore no member should be short out from expressing his or her view on any issue during parliamentary proceedings. There must also be probity and accountability to curb corruption not only in the house but in public places. Corruption is the bane of Nigeria and this cankerworm is responsible for all the vices prevalent in the society. It is also responsible for slow pace of development and total lack of infrastructure. Any public officer found to be corrupt should be prosecuted and if convicted sentenced to prison and after serving his jail term barred from contesting any elective position or holding any public office. This will guarantee peace, stability and good governance in the polity.

3.6 **Appraisal of the Process of Removal of Members of the Legislature and that of the Chief Executives**

The Constitution of the Federal Republic of Nigeria, 1999 vests on the electorate the power to discipline the erring elected representatives in the National Assembly and the State Houses of Assembly through recall process by virtue of sections 69 and 110[282]. Section 69 provides:

A member of the Senate or of the House of Representatives may be recalled as such member if –

> a. there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member;
>
> *b.* the petition is thereafter in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of

[282] *Op. cit*, sections 69 & 110.

the Petition approved by simple majority of the votes of the persons registered to vote in that members constituency .

Similarly, section 110 stipulates*:*

A member of the House of Assembly may be recalled as such a member if –

a. there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that members constituency alleging their loss of confidence in that member; and
b. the petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of the receipt of the petition approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

This process of recall has not been applied against any elected representatives of the people in Nigeria since independent in 1960 either under the parliamentary system or the presidential system of government in Nigeria. The failure of the people to employ this measure effectively to check the conduct of some members of the legislature whose conduct have fallen below expectation and who have not lived above board in the performance of their functions and thereby lost the confidence of their constituencies, was the cause of corruption and misconduct among the legislators. Not applying this sanction made many of them reckless and irresponsible to public duties as corruption took the centre stage in the conduct of public affairs. The inability of members of the public to use their constitutional power of recall when the occasion calls for it, might have been responsible for frequent conflict in the National and State Houses of Assembly

brought about by unparliamentarily conduct of some unscrupulous members of the House of Representatives. The conflict in the House of Representatives occasioned by the accusation of the former Speaker of the House, Hon. Bankole Dimeji of having embezzled Nine Billion Naira by eleven members of the House. And also the crisis in Edo State House of Assembly that eventually led to the removal of the Speaker, Hon. Zakawanu Garuba and his Deputy, Hon. Levis Aigbogun. These are examples of the extent to which the legislators could go in the exercise of their functions as the peoples Representatives, in showcasing Nigerian brand of politics to the world in a bad light. The attitude of the law makers in their conduct of legislative affairs leaves much to be desired as their actions or inactions are ridiculous as it tends to bring Nigeria and Nigerians to disrepute before the comity of Nations. The game of politics ought to be played according to its rules and principles. There is nothing democratic in the crisis that often rocks the legislative Houses. In order to stem the tide and make the legislators more responsive to their duties, the people (electorates) have a role to play by putting effective use of recall process bestowed on them by sections 69 and 110 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Section 69 of the 1999 Constitution provides that, A member of the Senate or of the House of Representative may be recalled as much a member if:

a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member;

and which signature are duly verified by the Independent National Electoral Commission.

b) the petition is thereafter; in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

Whereas section 110 of the Constitution provides that, A member of the House of Assembly may be recalled as such a member if:

a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and which signature are duly verified by the Independent National Electoral Commission.

b) the petition is thereafter; in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

Recall process is however different from impeachment process. Recall process is usually initiated by voters and can be based on political charges, for example mismanagement,

whereas impeachment is initiated by a constitutional body (usually a legislative body), and is based on an indictable offence. The process of removing the official is also different.[283] The process of recalling an erring legislative officer is provided in sections 69 and 110 of the Nigerian Constitution. Whereas the process of removal of executive officers is provided in sections 143 and 188 of the Constitution of Federal Republic of Nigeria, 1999(as amended)

The inability of the people to exploit the power of recall process may however, be as a result of the process under which we operate. It is a Herculean task for either the National Assembly or State Houses of Assembly members to muster a two-third majority of its members required to impeach an affected Federal or State public office holders. So it is for the electorate in a political constituency to garner the support of more than one-half of the persons registered in that constituency alleging the loss of confidence in that member. These electorates will sign a petition in that respect to be presented to the Chairman of Independent National Electoral Commission who will thereafter conduct a referendum within ninety days of the date of the petition approved by a simple majority of the votes of the persons registered. This provision of the law is difficult to accomplish as it seem to be. In the present democratic dispensation, about five local government Areas constitute a political constituency for a member of the Senate and three local governments for a House of Representatives member. In the case of the States of the Federation, a local government constitutes a constituency for one or two members of the State House of Assembly.

In a country where corruption has eaten deep into the fabric of the system, to muster the required number of registered voters in a constituency to start the process of recall of a

[283] http://www.chron.com/disp/stroy/mpl/front/6488310.html. accessed on 19/6/2009

member is a feat difficult to achieve. So it is for members of the National Assembly or State Houses of Assembly to get the support of two-third majority of its members in order to remove a Federal or State officers. Therefore, it is very easy for a member whose constituency may want to recall to infiltrate the rank and file of the electorate in his constituency, through bribery and corruption which in Nigeria seem to be the order of the day and a welcome phenomenon, and then foil the process.

The involvement of the public in the removal of Chief Executive is conspicuously absent in the 1999 Constitution. If it is possible for the public to get involved in the recall process of a legislative member who has lost the confidence of his constituency, the same process should apply in the case of the removal of the President, Vice-President and the Governor and his Deputy from office by involving the public in the process. The whole country is the constituency of the President and his vice. The States of the Federation are the Governors and their deputy's constituency. The people elected them and they hold their respective public offices on trust for the people. Therefore, under the concept of social contract, the people should be involved in the process of their removal and it is only their involvement in this process that will make the elected public officers responsible to the electorate (people) and probity and sanity guaranteed in the polity. Under the doctrine of rule of law in a democratic dispensation of any given society, nobody no matter his status is above the laws of the society. This could be done through revolution to unseat the erring public officer.

In Nigeria, as in other countries operating a constitutional democracy, sovereign power resides in the people. Section 14 (2) (a) of the 1999 Constitution provides that: sovereignty belongs to the people of Nigeria from whom government through this

Constitution derives all its powers and authority. In Nigeria, the people are the sovereign and the people exercise sovereignty and sovereign power through Constitution making, their electoral vote and by way of constitutional and democratic government, in accordance with the Constitution of the Federal Republic of Nigeria, 1999, which is the express, will of the people, for the regulation of government and national life. The provisions of the Constitution are supreme and binding on all authorities and persons throughout Nigeria[284].

Every Society evolves its own peculiar arrangement for dealing with and ensuring control of the conduct of Public officers including the procedure for removing Public functionaries who are corrupt or tend to abuse their Powers.

In the process of removal of public officers, whether elected or not, it is necessary to vest in the same people or authority that elected them with the power to remove them when they are seen to have abused their powers and/or are found to be corrupt.

The Chief Executive of the Federation or a State Chief Executive by their constitutional responsibilities have larger constituency and wider responsibilities and are even clothed with immunity, yet their removal from office is very simply than that of the Legislators.

There are three arms of government, the Legislature, Executive and the Judiciary. In the removal of a legislator through recall process, the public via electorates are involved. Curiously in the removal of a Chief Executive either of the Federation or States of the Federation, the public is not involved. Only the legislators are empowered by the Constitution in the removal of a public officer, one elected arm of government removing another elected arm of government. This is a misnomer and ought not to be. For transparency in governance, probity, good governance, accountability, peace and order in

[284] *op cit*. section 1

the polity, the Constitution should be further reviewed to accommodate the public (the electorate), in the removal process of erring office holder. The people may however, exercise their sovereign authority and remove a public officer through revolution when pushed to the wall, as witnessed in Tunisia and Libya. Revolution is an unconstitutional means of removing a public officer. Resort to revolution by the public might lead to a colossal loss of lives and property, culminating to setting a given country backwards. One may argue that the legislators are representatives of the people that elected them and should be responsible for the removal of an erring Chief Executives. But what these legislators could do in this regard was clearly witnessed in the removal of some State Chief Executives during the regime of President Obasanjo. They abdicated their function, lend themselves to manipulation by the presidency under the watch of Obasanjo and became self serving, instead of serving the interest of the public, the people that elected them as their representatives. They allowed themselves to be used by the presidency under Obasanjo to remove a State Chief Executive perceived as the enemy of that regime, without alluding to the Constitution as a guide. The polity was over heated during that administration that Nigeria was brought to a near precipice, but for providence. Our nascent democracy would have crashed by the action of some State legislators in the removal of serving Governor without recourse to the constitutional procedure.

The Constitution should be amended to vest more authority on the people, (the electorate), for the purpose of impeaching a public officer found wanting in the performance of his duties. If the responsibility for electing the public officers is vested in a particular body or bodies, they should of necessity have the right also to remove them when they shirk in their responsibilities or failed to measure up with the expectations and

aspirations of the people. If the people (electorates) are involved in the impeachment process or recall process, the affected officer will find it difficult to influence the entire people of the constituency by way of bribe or other unethical means to get them drop from withdrawing the mandate of such a member. This measure if effectively implemented will instill fear on public office holders to behave themselves and make them accountable to the public. The Constitution can give more power to the people in this respect by involving non- members of the legislature in the impeachment process. In the United State of America where we copied our presidential system of government, impeachment process may be triggered by non-members of the legislators. For example, the Judicial Conference of the United State of America suggested that a Federal judge be impeached.[285] The non-member initiating impeachment process against an erring official will draft a charge of what actions of the officer constitute grounds for impeachment and send same to the President of the Senate or Speaker of a State House Assembly. It may also be initiated by petition. If these measures is applied our public office holders will not only be put on their toes but reduce corruption to the barest minimum and ensure good governance.

3.7 **Impeachments - Judicial intervention in Executive/Legislative Face-off**

The judiciary is a branch of government whose task is the authoritative adjudication of controversies over the application of laws in specific situation.[286] This power to decide cases and controversies is vested in the Supreme Court and lower Courts established by the laws made by the legislature. In the exercise of this function, the judiciary has

[285] http://www.chron.com/disp/stroy/mpl/front/6488310.html. accessed on 19/6/2009
[286] The 1999 Nigerian Constitution, *op cit*; section 6

immensely contributed in upholding the Constitution which is the supreme law of the land. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for impeachment proceedings as a check on the Executive to prevent its abuse of power, and these provisions of the Constitution ought to be complied with *stricto sensu* in order for the impeachment process to be effective and valid. If the above constitutional provisions are violated, then the Court as the custodian of the Constitution shall have no option but to intervene to declare same invalid and of no effect whatsoever. The legislatures in the exercise of their power of impeachment breached the constitutional provision on impeachment by impeaching some State Chief Executives without following the proper procedure. Following the defect in the procedure, the Judiciary rose to the defense of the Constitution and nullified those wrongful impeachments as seen in Peter Obi's case and others, despite the argument that the Court lacks jurisdiction to entertain impeachment matters as provided in section 188(10) of the Constitution of the Federal Republic of Nigeria,1999(as amended). In condemning the spate of impeachment that almost took Nigeria to the brink, the admonition of Denton- West JCA is worthy of note. He said:

> We lack good leadership in our body politic. A good leader is someone who is able to lead and has the ability to influence his people positively to attain and achieve greater heights for the good of humanity. A good leader is selfless and has only the interest of the people he is leading at heart. A leader's action always has a ripping effect on the society. The leadership's wrong action can destroy the society and bring it to naught, whilst the acts of a good and seasoned

> leader could catapult our country Nigeria to the country we all dream about. It is great men and great leaders like Indira Ghandi, Roosevelt, Mrs. Thatcher, the Kennedy's , the Nkrummah's, Nelson Mandela that have made their country the pride with which we all adorn their country. These men were all people of great standing who acquired the moral right to lead their people as much as possible they kept to this moral right and immediately a leader loses this moral right, he ceases to be a leader. A good leader should adhere to law and observe same. Leaders cannot exist without followership and so everyone must observe the Constitution and obey State authorities, because no authority exists without God's permission and the existing authority have been put in place by God who had allowed them to swear to an Oath to uphold the Constitution. Therefore the followership should endeavour not to oppose the existing authority for whoever opposes them unduly has himself to face the wrath of the law. Therefore, I enjoin the followership to love their leaders and pray for them to do good and they the followership should refrain from acts that is calculated to stop the smooth running of the affairs of government, so that together and in love with their leaders, a very strong and indivisible State shall hence forth emerge where the 1999 Constitution of the Federal Republic of Nigeria shall be adhered to.[287]

The respected jurist has said it all. Whether or not one supports the ouster clause in sections 143(10) and 188(10) to be or not depends on which side of the coin one looks at

[287] *op.cit* p.561 – 562

it. Where a Governor uses his position of the power of incumbency and immunity to perpetrate atrocities, his removal by any means possible is welcomed, such a government will be unable to use the judicial process to arm- twist the legislature. Whatever reason the inclusion of section 143 (10) or 188 (10) in the Constitution might be, it has been subjected to various abuses. But removing the proviso would enable the erring Governor to use judicial process to frustrate the House of Assembly even where his removal is justified. Again when the House is exercising their power of impeachment, it is invariably performing the same role with the judiciary. It means therefore, that the intervention of the judiciary in the impeachment process amounts to encroachment on the constitutional functions of the legislature. If the process of impeachment is used the way advanced countries of the world use it and adhere strictly on the constitutional provisions on impeachment, judicial intervention in the process may not be necessary, especially where it is made to suit our own environment. If however, this controversial provisions is to be amended, the first thing to be done is to review the system of justice in Nigeria where the system guarantees quick dispensation of justice even where what may be seen to constitute the ouster of jurisdiction in the impeachment process is removed, both parties in the impeachment saga will be assured that justice will come their way within the shortest possible time, for justice delayed is justice denied. For instance, Governor Peter Obi of Anambra State was restored to power after three years of the usurper of his office, Governor Chris Ngige held on to power he was never given for three years[288] . Similarly, Dr. Kayode Fayemi's stolen mandate as an elected Governor of Ekiti State by the ousted Governor Segun Oni who illegally occupied the office was restored by the

[288] Dr. Chris Nwabueze Ngige v Obi(2007) 9K.L.R. Pg. 3727

Court of Appeal after three years and five months of fierce legal battle.[289] This in essence is justice delayed but not however denied. But the situation underscores the lapses in the Nigerian judicial system and calls for its total over haul to position it for efficiency and quick dispensation of justice. This will restore confidence, hope and credibility in the system. And this can be done through taken disciplinary action against erring judicial officers, such as suspension, demotion, withholding of salary and compulsory retirement of such judicial officer(s) without benefit.

289 Layi, Olanrewaju,' *Appeal Court sacks Oni, Declares Fayemi duly elected Governor*', Daily Sun, Newspaper, Saturday, October 16, 2010, p. 11.

CHAPTER FOUR

IMPEACHMENT PROCESS AND THE JUDICIAL ARM OF GOVERNMENT IN NIGERIA

The Constitution of the Federal Republic of Nigeria, 1999(as amended) in section 6, vests power to the judiciary. For effective administration of justice in a democracy, courts have a definite and decisive role to play. Courts are government's institution that settle legal disputes and administer justice. Courts resolve conflicts involving individuals, organizations and governments. The judiciary also has the power to review the actions of both the executive and legislature.[290]

4.1 An Appraisal of Constitutional Provisions on Impeachment Relating to the Judiciary.

Impeachment process as provided in the 1999 Constitution of the Federal Republic of Nigeria is partly legislative and judicial in nature. In other words, the process involves both legislative and judicial arms of government. Under the doctrine of checks and balances arising from the concept of separation of powers as entrenched in the Constitution, both the Legislature and Judiciary are expected to check one another in order to prevent abuse of its powers and or violation of any part of the constitutional provisions. This, however, does not imply judicial involvement in the "impeachment offences" as such is not provided for by the Nigerian Constitution, 1999. In *Attorney General of the Federation v Atiku Abubakar, Onnogben JSC,* held:

> We must be reminded that there is nothing known to our Constitution as judicial impeachment or impeachment by the judiciary either of the

[290] Section 6(1)(2) of the constitution of the Federal Republic of Nigeria, 1999(as amended)

> President, Vice President, the Governor or Deputy Governor. The fact that Section 239 of 1999 Constitution confers original and exclusive jurisdiction on the Court of Appeal to determine any question as to whether the term of office of the President or Vice-President has ceased or the office of the President or Vice President has become vacant does not thereby empower the judiciary to get involved in judicial impeachment of the President or Vice-President under the guise of declaring their offices vacant or removing them in any way than as constitutionally provided under the rule of law. Finally, I need to comment on the submission that the Court in interpreting a constitutional provision should be guided by the historical antecedent such as the report of the Constitution drafting Committee. That submission is sound in law. However, I hold the view that the historical antecedent sought to be relied upon in aid of the interpretation or construction must be relevant to the issue or subject matter of the interpretation.[291]

The Chief Justice of the Federation or the Chief Judge of a State of the Federation may have been empowered by the Constitution to participate in the impeachment exercise[292] but this should not be interpreted to mean judicial involvement in impeachment trial. In the exercise of this function by Chief Justice of Nigeria or the State Chief Judge, he is required to have a critical look into the procedure adopted in impeachment proceedings by the legislature and ensure that it complies with the constitutional provisions before he acts on the mandate of the Speaker to appoint a seven man panel. The exercise of this

[291] (2007)6 SCM p.1
[292] Section 143 (5) and 188 (5) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)

function is onerous and the Chief Judge in carrying out this task must be cautious of this at all times. The Chief Judge of the State also must bear in mind the fact that it is only the Speaker of the House of Assembly and no other member of the House can make the request for the Constitution of the panel. The learned justice of the Supreme Court, Niki Tobi JSC**,** held that**:**

> The Chief Judge can only set up the panel at the request of the Speaker .It therefore means that where the Speaker does not request for the setting up of the panel, the Chief Judge cannot do so by the request of any other member or *suo motu*[293]

The Chief Judges in the States where Governors were impeached were in breach of the Constitution by appointing a seven member panel on the request of a non-Speaker of the State Houses of Assembly and thereby allowed themselves to be used by politicians. Following this, some judicial officers who compromised their judicial function in the spate of the saga of impeachment of these Governors were sanctioned by the National Judicial Council (NJC) by suspending them. In particular, the Council suspended Justice Chuks Okoli, Chief Judge of Anambra State for his role in the removal of Governor Peter Obi of Anambra State. Justice Bamishile of Ekiti State suffered the same fate. He was suspended for his official misconduct during impeachment proceedings against Mr. Ayo Fayose of Ekiti State. Justice Dakwang was also suspended for the way he handled the impeachment of Chief Joshua Dariye[294] of Plateau State.

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[293] *op .cit*, 588
[294] www.NewYorkAppellateLayer.com, accessed on 9/10/2008

In *Adeleke v Oyo State House of Assembly*[295] Wherein, the 18 members of Oyo State House of Assembly met at D Rovan hotel in Ibadan and raised a notice of allegation of gross misconduct against the Governor without the consent or knowledge of the Speaker and or his deputy. They proceeded to serve the Governor through a Newspaper advertisement and requested the Acting Chief Judge of Oyo State to set up and inaugurate a seven man panel and the Acting Chief Judge acceded to that request and appointed the seven man panel overlooking the constitutional provision that only the Speaker of the House can request the Chief Judge to set up that panel in section 188 (5) of the Constitution.

The same scenario played out in *Dapainlong v Dariye*,[296] wherein, the 1st Respondent was the Governor of Plateau State while the 1st–6th Respondents were members of the House of Assembly, a twenty-four (24) member House of Assembly. The appellants who constituted only 6 members out of the 24 members sat at that House and impeached the Governor. The 1st Appellant was the Speaker "Pro-Tempore" which is not recognized by the 1999 Constitution and yet the Acting Chief judge of Plateau State in total breach of the Constitution acceded to the request of the said Speaker and empanelled a seven man panel to investigate the allegation of misconduct against the Governor upon which he was removed from office. These Chief Judges are constitutionally bound to ensure that there has been substantial compliance with the constitutional provision before acceding to the request to set up the investigating panel as required by the Constitution[297]. To ensure

[295] *op .cit*, 619
[296] *op. cit*, p 309 – 310.
[297] Section 188(5) of the Constitution of Federal Republic of Nigeria, 1999(as amended)

transparency in the process might have motivated the draft's men to involve judicial officer in impeachment process.

Musdapher , JSC held**:**

> It is also my considered view that a Chief Judge who has the responsibility of appointing the seven man panel to try the articles of impeachment will have to make a decision whether all the proper steps have been taken by the Legislature before embarking on the appointment of the seven man panel. For example, the allegation of "gross misconduct" must be in writing and signed by not less than one-third of the members of the House of Assembly and it shall be the Speaker who shall request the Chief Judge to appoint the panel. The Chief Judge in all of the above mentioned matters has the duty to ensure that all the constitutional provisions relating to the action of removal or impeachment are strictly complied with. The failure to comply with any of the provisions entitles the Chief Judge to refuse to appoint the panel. So under the undoubted facts of this, when it was not the Speaker who requested the Chief judge to set up the seven man panel, the Chief Judge ought to have refused to appoint the seven man panel.[298]

Governor Peter Obi of Anambra State was impeached in similar circumstances. The Constitution provides that not less than two- third of all the members of the House, will pass the motion to impeach the Governor[299]. The required number would have been a minimum of 20 legislators (2/3 of 30). The Chief Judge acted in contravention of the

[298] *Ibid*, p. 309-310.
[299] *op. cit* section 188(9)

constitution being aware as mandated by the Constitution that due process must be followed before he could exercise his judicial responsibility to set up such a panel.

In Ekiti State however, the Chief Judge refused to be part of the move by the State House of Assembly to unconstitutionally remove the State Governor and was suspended by the legislators when they have no such powers. They appointed justice Aladejana of Ekiti State High Court as Acting Chief Judge. He accepted the appointment knowing that the legislators have no constitutional power to make such appointment and that the power of such appointment is vested in the State Governor and the National Judicial Commission (NJC). The acceptance of the appointment by justice Aladejana as Acting Chief Judge of Ekiti State suggests that he was bought over and made part of the unconstitutional suspension of the Chief Judge. The action of the purported Acting Chief Judge, Aladejana was a disgrace to the judiciary. Notwithstanding his unconstitutional appointment, he requested the then Chief Justice of the Federation, Alfa Belgore CJN to confirm his name as the Acting Chief Judge of Ekiti State. Expectantly, the Honourable Chief Judge refused and replied that both the removal of the Chief Judge "Bamishile" and his purported appointment was unconstitutional. The Acting Judge ignored the Chief Justice of Nigeria and assumed office as the Acting Chief Judge of Ekiti State. The Acting Chief Judge in so doing put himself out not only as being overzealous and ambitious but as power hungry who wanted to ascend to the throne of the exalted office of a Chief Judge of a State, an act which could be described as the height of irresponsibility by a judicial officer . Interestingly, the National Judicial Council intervened and suspended Aladejana from the bench and sanity was restored in the

judicial system. The fear of losing their office might be their reasons of their conduct in joining the legislature in the shoddy business of impeaching a Governor in outright contravention of the Constitution. It is more honourable to stick to the law and be butted out of office than put the judiciary in ridicule.

The Chief Judge also has the constitutional duty not to appoint members of any public service, legislative house or political party as members of the seven man panel to investigate allegations of "gross misconduct" against a State Chief Executive[300], before he could be impeached. In *Inakoju v Adeleke,* Niki Tobi, JSC stated that:

> The seven persons he appoints must not be members of any public service, legislative house or political party .The subsection disqualifies members of the public service, legislative House or political party[301].

In the process of impeaching DSP Alamieyesiegha of Bayelsa State, the Chief Judge of the State, Justice Emmanuel Ignonwari was in contravention of the provisions of section 188(5) of the Constitution when he allegedly included party members in the seven man panel constituted by him. Two of the members, the panel chairman, Serena Dokubo Spiff and Benson Agadaga were members of the Peoples Democratic Party (PDP). They are by reason of being card carrying members of a political party disqualified from being appointed into the panel. However, the Chief Judge in appointing members of the panel did not act as a free agent but acted under fear and pressure from the presidency under Obasanjo. Lamenting on the issue, the Chief Judge said:

[300] Section 188(5) of the Constitution of the Federal Republic of Nigeria,1999(as amended).
[301] [2007] 4 NWLR (pt.1025) p. 524

> I was under unbelievable pressure from all corners. It was like a Tsunami. Request turned to threat and this was compounded by wicked or evil rumours, some of the rumours and requests were even to the effect that a list of panel members would be drawn up for me to sign and the list would be taken away from me. Further that I might be whisked away and forced to resign if I say no to offers or requests[302].

The comment of the Judge shows that he might have not acted as a free agent in the appointment of the seven man panel, but induced to do what he did. Be this as it may, the Chief Judge having displayed some courage in his hesitation to appoint the panel members ought to have stood his ground and insist on strict compliance with the constitutional provision in that regard . The Chief Judge has a duty to ensure that the panel members must be persons of unquestionable integrity. Niki Tobi JSC in *Adeleke v Oyo State House of Assembly* stated:

> The persons must, in the opinion of the Chief Judge be persons of unquestionable integrity. Integrity is a matter of character of the human being and the character must be unblemished, consistent in doing correct things and not doing wrong or bad things .The character must be transparent, honesty and trustworthy . He must be a person of great strength and strong principle and conviction. He must be clean, in and out, like the white ostrich. The Constitution provides for the epithet "unquestionable". This means that the person must not be one of

[302] Ben Nwabueze, "*How President Obasanjo Subverted Nigeria's Federal System"*, (Gold Press Ltd, Ibadan, 2007), p.106.

> questionable integrity. He should be a person without taint. A person who believes in vengeance or vendetta is not one of unquestionable character. An overzealous human being with superlatives, or extremities or idealisms, will be a person of unquestionable integrity because some of his superlatives or extremities or idealisms may turn out to be Utopian and will be bad way of judging a Governor in a realistic way in the running of a State. So too a person with pompous and arrogant bones in his Chemistry with so much egotic flare. The Chief Judge should avoid them in his panel as if they are plagues. Pompous and arrogant people are not the best judges. This criterion is what the judge in carrying this duty ought to observe.[303]

The Chief Judge in appointing members of the seven man panel never put into consideration section 188(5) of the Constitution which provides, that the Chief Judge of the State shall at the request of the Speaker of the House of Assembly appoint a panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party to investigate the allegation made against the Governor.[304] In the instant case, the Chief Judge in the exercise of this power was in flagrant breach of the Constitution when he was not acting on the mandate of the Speaker of the House of Assembly. Section 6(a) of the Nigerian 1999 Constitution confers on the Judiciary the position of a watchdog on the executive and legislature. It is the conscience of the society and the last hope of the common man. It is the duty of Court

[303] [2007]4 NWLR (pt.1025) p. 798
[304] Section 188(5) of the Constitution of the Federal Republic of Nigeria,1999 (as amended)

to ensure compliance with the rule of law. The Court may not interfere in the law making process of the National Assembly or a State House of Assembly, but it could and indeed should intervene where proper procedures are not followed. Where the legislature in the exercise of their power of impeachment violates the Constitution the court will intervene to ensure compliance and not to look the other way, as that would amount to exhibition of corrupt tendencies, conscienceless and greed on the part of the judge. It does not augur well to the pride of the judiciary and legal profession. They should rather be men of honour and integrity for the protection of judiciary and legal profession. Conversely, the appellate Courts have done creditably well as it strove to uphold the rule of law and constitutionalism in their decisions on impeachment cases. These Courts have proved their mettle in their contributions to the protection and survival of our nascent democracy through their sound judgments on impeachment matters and should uphold their integrity as the last resort and hope of the hopeless, by ensuring that rule of law, justice and fair play prevails in the polity.

Furthermore, section 188(8) of the 1999 Constitution as amended, provides that where the panel appointed by the Chief Judge under section 188(5) reports to the House of Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter. This proviso is curious, by implication, the authority or power vested on the panel appointed by the judge, by the Constitution in the removal process is overwhelming and its decision in that regard, appears to be more potent, weighty and more powerful than, the legislators powers in the impeachment process. The Chief Judge is a human being, not a saint and therefore not infallible. His infallibility may push him

into doing something untoward with regard to the removal of a Chief Executive when exercising the power to appoint the seven man panel that would look into the allegation against the public officer. Since where the panel's report to the House of Assembly is not proved, if the Chief Judge is a friend of the Governor or has sympathy for the Governor to be removed and appoints his stooges as the panel members with instruction to make favourable report to the Governor, the matter is rested. In the Nigeria situation, where corruption is not a crime, suppose the panel members took bribe from the Governor and compromise their duty in favour of the Governor, that invariably ends the matter and the Governor or President as the case may be, will be allowed to continue with his misconduct while in the office. It is preferable and safer if the involvement of a Chief Judge is removed in the removal process and the responsibility placed on the Legislature which will constitute a panel of its members to investigate the allegation against the public officer. The judiciary is another arm of Government, its involvement in the removal process may be seen as meddling in the internal affairs of the legislature and a clear breach of the concept of separation of powers which itself should guard against. However, it may be argued that the involvement of a judicial officer in the removal process is to make the process transparent and devoid of any manipulation. But such involvement might create problem in the system such as never contemplated by the Constitution, such as the situation painted above. The judicial role should be restricted to interpreting the law which must be done without fear or favour as the bastion of hope for the common people.

4.2 Impeachment and the Judicial Attitude to it under the 1960/1963 Constitution, 1979 Constitution and the 1999 Constitution.

Judiciary as the bastion of the society has always risen to the defence of the rule of law, democratic norms and values each time they have come under threat or likelihood of attack. When Nigeria was under Colonial rule, the Privy Council in *Eshugbayi Eleko v Officer Administrating the Government of Nigeria*,[305] invalidated and set aside the deportation of the Oba of Lagos by colonial Governor of Nigeria, despite the fact that the colonial Governor was then, acting as the sole executive/legislative for Nigeria. It held that notwithstanding the awesome powers vested in the colonial Governor, he could not depose the Oba without the issuance of an Ordinance. Till date, our Courts have consistently invalidated and set aside acts and actions of government which are unconstitutional, illegal, *ultra-vires* and even arbitrary.

Before independence and from 1960–1966, Nigeria operated a parliamentary system of government. When Nigeria became independence in 1960, the Executive authority of the Federation was vested in the Queen of Britain but was exercised for and on her behalf by the Governor-General in the person of Dr. Nnamdi Azikwe. Nigeria later became a Republic in 1963 and the Queen was replaced by a President who exercises only ceremonial functions. In this system of government the Executive and the Legislature are completely fused and there is overlapping of powers because the same people constitute both arms and the same is applicable at the regional level. In the same vein, the Ministers constituted the Council of Ministers with the Prime Minister as the Head of Government and the Premier as the Head of a Regional Government. The Ministers were responsible

[305] **(**1931) AC p. 662

to their legislature and bound by the doctrine of collective responsibility because they were also members of the legislature.

However, the Prime Minister apart from the collective responsibility has the power as the Head of Government to dismiss any Minister and he is also responsible for the discipline of his cabinet. However, when a "vote of no confidence" is passed on him and his cabinet by Parliament, the Prime Minster and his entire Cabinet is expected to resign en masse. Similarly, the Governor of a region could appoint and remove the Ministers of Government at will because they held office at the pressure of the Governor. The Governor could also remove the Premier from office if he is satisfied that the premier could no longer enjoy the confidence of a majority of the members of the House of Assembly. This practice was also obtainable at the Federal level at the period under consideration. In this political arrangement, the power of the Governor to remove a Premier from office was put to test in the then Western Region when the Premier, Akintola was removed from office as shown in the case of *Akintola v Aderemi*,[306]

Nigeria adopted Presidential system of Government in 1979, modeled after the Presidential system of Government of the United States of America. Under the 1979 Constitution of the Federal Republic of Nigeria, the procedure for the removal of the Chief Executive of the Federation/States of the Federation was provided in sections 132 and 170 of the Constitution, 1979. The constitutional test with regards to impeachment proceedings under these constitutional provisions arose in Kaduna State with the impeachment of the first Executive Governor of that State, Alhaji Balarabe Musa. The removal of the said Governor elicited public criticism and generated a number of Court

[306] (1962) All NLR. P 442

cases and decisions .The court's view in this matter is that it has no jurisdiction to entertain and determine the matters, its jurisdiction having been ousted by sections 170 (10) of the Constitution, 1979.[307] Another call for judicial intervention under the present political dispensation took place in the case of *Abaribe v The Speaker, Abia State House Of Assembly*, wherein the court following the decision in Balarabe Musa's case declined jurisdiction to entertain the matter relying in the proviso in section 188(10)of the 1999 Constitution. On appeal, the court of appeal held that impeachment was a political question for which the court has no jurisdiction to entertain. However, Pat Acholonu JCA (as he then was) held that, the court at the same time may not close its eyes to serious injustice relating to the manner, the impeachment procedure is being carried on. That is to say that it is within the province of the court to ensure strict adherence to the spirit of the Constitution for the endurance of a democratic regime …[308]

The above cases represent the position of the law courts with respect to impeachment process and perhaps this might have spurred legislative Houses of Assembly to embark on an orgy of unwarranted and unjustifiable impeachment of some State Chief Executives. However, the court in its recent decisions on impeachment matters crushed the ghost of the decisions of the court in Alhaji Balarabe Musa's case which was wrongly decided. For example, in the case of *Inakoju v Adeleke, Speaker Oyo State House of Assembly& 3 Ors,* the court held that it has jurisdiction to determine the Suit**.** Ogbuagu JCA in that case stated:

[307] Sections 132 &170 of the Constitution of the Federal Republic of Nigeria, 1979.
[308] Pats – Acholonu JCA (as he was) at p. 486

> It can be seen that the draftsmen were alert in respect of the seriousness or magnitude of the removal of a Governor or his Deputy. They chose their words and every word in this section or provision is weighty and material. Therefore, in the removal of such officers, the procedure clearly specified, must be followed and strictly complied with before such removal becomes valid and constitutional. Any breach of the said provisions surely and certainly renders such removal ineffective, null and void and of no effect… In summary, in my respectful and firm view, it is only when the provisions of sections 188 (1)–(9) which I hold are conditions precedent are complied with that sub- section (10) thereof will be relevant and can be invoked and relied on . A subsection of a section is only part of the section and cannot be read in isolation[309].

The same decision was reached in the case of *Peter Obi v Mike Balonwu & 5 ors*[310]*and Dapialong v Dariye.*[311]. In the foregoing cases, the court of Appeal expectedly held following Inakoju's case that the court has jurisdiction to entertain a suit challenging the process of removal of a Governor of a State or his Deputy from office in order to confirm whether or not the process was in substantial compliance with section 188(1)–(9) of the 1999 Constitution and if it is not satisfied that the process was not in substantial compliance with the constitutional provisions stipulated in section 188 (1)–(9) of the 1999 Constitution, it has the jurisdiction to intervene. In other words, the jurisdiction of court to inquire into the removal of a Governor of a State or his Deputy is ousted only

[309] *Ibid,* p.608
[310] *op. cit* P. 681
[311] *op. cit p*. 239

where there was strict compliance with the procedure provided in section 188 (1)–(9) of the 1999 Constitution. It is therefore the general or consensus decision of the Court that the provisions of section 188 (1)-(9) of the 1999 Constitution constitute conditions precedent to the application of the ouster clause in subsection (10) of the section 188. The Courts are most unlikely to decline jurisdiction where the issue is as to whether or not the legislature has failed to follow the procedure laid down in the Constitution for the impeachment process. For example, the two third majority stipulated for passing the resolutions in the House cannot be violated by the House, nor can an allegation signed by less than one-third of the members of the National Assembly or State House of Assembly or that the public officer sought to be impeached was denied his right to fair hearing lead to the commencement of the impeachment proceedings. The importance of fair hearing which is the cardinal principle of natural justice was emphasized in the case of *Ika Local Government Area v Augustine Mba,*[312] Per Omokiri JCA:

> Fair hearing within the meaning of section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 means trial or investigation conducted according to all the legal rules formulated to ensure that justice is done to the parties to a cause or matter . In other words, it is an indispensable requirement of justice, that an adjudicatory authority to be fair and just must hear both sides by giving them ample opportunity to present cases.

The legislators in the cases under reference have so much abused their constitutional powers of impeachment and ridiculed themselves so much so that they violated with impurity the constitutional provisions with regard to impeachment of State Chief

[312] *op. cit* p.681

Executives. If the courts are to turn a blind eye on this issue because of the seemingly ouster clause in sections 143(10) or 188(10) and decline jurisdiction, much harm would be done on the polity which might bring the survival of Nigeria to the precipice. This is the essence of the concept of the rule of law which simply implies that everything must be done according to law. In other words every act of government must be carried out according to laid down procedure. These in fact are the basis for judicial intervention to restore sanity in the polity and return the country to the part of constitutionalism. The court must guide against the manipulation of the process and hold the Constitution sacrosanct and do justice to all, no matter whose ox is gored. Holding tenaciously to the constitutional provision will not only restore confidence of the people to the judicial process but also put the country to the right part of justice. The only way for court to exercise its function judiciously is to ensure its independence by making it responsive to the legislature.

4.3 The impeachment process and the Current Approach/Attitudes of the Supreme Court.

By virtue of section 6(6) (b) of the Constitution of the Federal Republic of Nigeria 1999, the Judiciary is vested with the power, authority and jurisdiction to adjudicate on all matters between persons or government or authority and to any person in Nigeria, and all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligation of that person. The duties or functions vested on the Judiciary

is challenging as justice is central to man as well as for fostering democratic norms and good governance.

The Judiciary lived up to its expectation in enthroning democratic culture in our body polity as shown in the landmark judgements delivered in respect of cases arising from the spate of the so-called impeachment of some Governors in some States of the Federation in the last regime, mostly instigated and sponsored by the Presidency under President Obasanjo. But for the intervention of the judiciary, the dust generated by the ridiculous and ignoble impeachment of these Governors, would have thrown the country into an unprecedented turmoil that might have truncated our nascent democracy. This is because impeachment process was abused and senselessly used to settle political scores or sometimes for sheer or mere greed of power and vendetta orchestrated by the Presidency under Obasanjo. The political gladiators engaged in these impeachment melee might have been emboldened by the impeachment of Alhaji Balarabe Musa in the 1st Republic. They placed reliance on section 188(10) of the 1999 Nigerian Constitution which seem to have ousted the jurisdiction of the court to entertain impeachment matters. The court declined jurisdiction in Balarabe Musa's case relying on section 170(10) of the 1979 Constitution which is *inpari material* with section 188(10) of the 1999 Nigerian Constitution (as amended). The Court of Appeal had the opportunity of examining the impeachment provisions that emanated from the impeachment of some Governors during President Olusegun Obasanjo's second tenure in office. The Appeal Court however, fell short of expectation having relied on the previous case of *Alhaji Balarabe Musa v Kaduna State*

House of Assembly[313] and Abaribe's case. In the case of *Chief Enyinnaya Abaribe v The Speaker Abia State House of Assembly*[314]The Appellant in that case was the Deputy Governor of Abia State, sometimes prior to 8th January, 2000, sixteen members of the State House of Assembly presented an impeachment notice to the Speaker of the House of Assembly for the removal of the Appellant from office. The Speaker forwarded a copy of the impeachment notice to the appellant under the cover of a letter requesting the Appellant to react to the issues raised in the impeachment notice before 11th February, 2000. The letter together with the impeachment notice, were served on the Appellant on 31st January, 2000. On 8th February, 2000, which was three days before the date on which the Speaker requested the Appellant to submit his reaction to the issues raised in the impeachment notice, the House took a vote resolving to refer the allegations in the notice for investigation. The appellant considered that by passing the resolution at the time they did, the members of the House had infringed on his fundamental right to fair hearing enshrined in section 36 of the 1999 Constitution and Article 7 of the African Charter on Human and Peoples Rights. He therefore, applied Exparte to the High Court of Abia State for leave to enforce his fundamental right and prayed for a declaratory order setting aside the resolution and injunction. When the matter came up before the Court, the learned Judge, SOE Nwanosike J *suo motu* raised the question whether, in view of the provisions of section 188 (10) of the 1999 Constitution, he had jurisdiction to entertain the matter, the Appellant was seeking to bring before him, should leave be granted to him. He put the Respondents on notice and invited the State Attorney General and Chief UN Udechukwu,

[313] *Ibid, p*. 470
[314] **[**2002] 14 NWLR (pt. 788) p.466

(SAN) as *"amici curiae"(*friends of court*)*. After hearing arguments by both counsel for the Appellant and the "*amici curiae*"**,** the Court held that it lacked jurisdiction to entertain the relief the Appellant was seeking leave to pursue and so struck out the Ex-parte application. The Appellant was dissatisfied and he appealed against the ruling, contending that the court was wrong in declining jurisdiction in the matter. The Court of Appeal dismissed the matter. In dismissing the appeal the Court of Appeal through Pats-Acholonu JCA (as he then was) who read the lead judgement referred with approval to the decision of Adenekan Ademola JCA in *Alhaji Abdulkadir Balarabe Musa v Auta Hamsa*[315] and said of the Abaribe's case itself, that the issue bothered on the powers of the court to intervene in the domestic affairs of the House of Assembly and that in interpreting the words of the Constitution, it should be understood that a Constitution was not a common legal document but essentially a document relating to the relationship between the citizen and the State with provisions for the rights of the citizen within the compass of the State, and that in so far as it concerned the issue of impeachment, it was a political matter.[316] The Court of Appeal in the Abaribe case did not hide the fact that judicial review of impeachment is generally barred by the political question doctrine and that explains why the courts are touched about delving into the nuances of such matters. Thus, Pat-Acholonu JCA (as he then was) quoted Professor Lawrence Tribe's American Constitutional Law, thus:

> Although the impeachment process has been used periodically since 1789, there has been no judicial attempt to define its limits. This is contributable

[315] *Ibid* p. 229
[316] *Ibid,* p486

> in part to the constitutional language ostensibly consigning the issue of impeachment to the legislative branch of government and thus arguably barring judicial review of impeachment under the political question doctrine.

Also defending the position of non-interference by the courts in impeachment cases and arguing that it is indeed inappropriate to term the provision of section 188(10) of the 1999 Constitution an "ouster clause," Ikongbeh JCA supported the lead judgement of Pats-Acholonu JCA (as he then was) in the Abaribe's case and held:

> For this reason, I do not feel comfortable with the view that decisions based on the interpretation of ouster clauses in these decrees can provide a good guide for the interpretation of provisions in a constitution limiting the power of the Courts. All governmental powers derive from the Constitution in a civilian regime. There cannot be any legitimate complaint if the Constitution withdraws a particular power from one organ of government in favour of another in the same way that one can complain about the way the Military brazenly emasculated, especially the Judiciary just to pave way for themselves to do as they please with the lives and property of people. This point can be better appreciated if it is realized that a constitution is at least in theory, the product of planned and collective agreement of the people on how to govern themselves. When, therefore they agree at the outset that a particular matter shall be within the

> competence of one organ and not the other, one cannot properly liken such situation to the situation created by ouster clauses in the Military decree.[317]

It is clear from the *ratio decidendi* in Balarabe Musa's case and the more important pronouncement in the Abaribe's case that the Court of Appeal took the view that impeachment is a political matter and that "the court should not however attempt to assume for itself power it is never given by the Constitution to brazenly enter into the miasma of the political cauldron and have itself bloodied and thereby losing respect in its quest to play the legendary"...[318] However, in Abaribe's case, the Court gave indication of circumstances when the Court would interfere with the conduct of impeachment when it held that, the Court at the same time may not close its eyes to serious injustice relating to the manner, the impeachment procedure is being carried on. That is to say it is within the province of the court to ensure strict adherence to the spirit of the Constitution for the endurance of a democratic regime…….[319] Ikongbeh JCA also stated that:

> The only circumstance in which there can be said to have been non-conformity is where the investigating panel disallowed the affected officer from presenting his case in defence of himself. It is when that happens that it becomes necessary to consider whether or not such non-conformity can or does rob the alleged ouster clause in section 188(10) of its potency. As that stage had not been reached in this case before the Appellant rushed to court, the necessity for such consideration has not arisen. The Appellant jumped the gun, crying foul when no foul has in fact been committed, the

[317] *op. cit* 501-502
[318] Pats –Acholonu J.C.A at p.486
[319] *Ibid*

> resolution passed by the 2nd Respondent and of which the Appellant complained in these proceeding has the full backing and support of section 188(3)…[320]

The above cases represent the position of the law relating to impeachment before the cases that came for consideration and determination in the second leg of President Olusegun Obasanjo's democratic dispensation; wherein the Court in its recent decisions on impeachment saga voided the decision in Alhaji Balarabe Musa's case. The first case is the case of Hon. *Muyiwa Inakoju and 17 Ors v Hon Ibraham Adeolu Adeleke (Speaker) and 3Ors*[321]. In this case, the 1st and 2nd Respondents, who were respectively, the Speaker and Deputy Speaker of the Oyo State House of Assembly, commenced an action by way of originating summons before Ige J,[322] they sought from the Court the determination of eight questions, nine declarations and two mandatory orders all on the purported passing of a motion for the investigation of the allegations of misconduct against His Excellency, Senator Rasheed Adewolu Ladoja, the Governor of Oyo State and the purported request by a non-existing Speaker of Oyo State House of Assembly asking the Chief Judge of Oyo State to appoint a panel of seven persons to investigate the allegation against the Governor. The appellants, as well as the Defendants, were duly served with the processes of the court and instead of entering an appearance as required of them, they immediately filled a notice of preliminary objection on the grounds that the court lacked jurisdiction, the plaintiff lacked the necessary *locus standi* and that the claims disclosed no reasonable cause of action. Ige J. entertained the preliminary objection and upheld same on that

[320] *op. cit p*. 506-507
[321] [2006] 16 NWLR (pt. 1006) p 608
[322] suit No1/1050/05, Oyo State high Court (unreported)

ground, relying on section 188 (10) of the Constitution that, virtually all the 8 questions set out for determination on the originating summons as well as the 9 declaratory reliefs and orders sought, touch on the issue of impeachment. By the combined effect of the above provisions, therefore, and having regard to the nature of the reliefs claimed by the plaintiff, it is clear beyond argument that the jurisdiction of this court is clearly ousted. Impeachment and related proceedings are purely political matters over which this Court cannot intervene. The action is not justifiable. It is not the duty of the court to forage into areas that ought to rest either directly or impliedly in the legislature such as the issue of impeachment which is a matter that comes within the purely internal affairs of the House of Assembly. The court will therefore decline jurisdiction in the matter, and upheld the objection of learned counsel for the defendants/respondents and dismissed the plaintiff's case. The Plaintiffs were dissatisfied with the ruling of Ige J. and appealed to the Court of Appeal.

While the appeal was pending at the Court of Appeal, Senator Rasheed Adewolu Ladoja who was elected as Governor of Oyo State sought and was granted leave to be joined as an interested party. The Court of Appeal allowed the appeal and exercising its powers under section 16 of the Court of Appeal Act, proceeded to decide the plaintiff's case on the merit and thereby granted all the relief's claimed by the plaintiffs.

The Defendants/Respondents appealed to the Supreme Court. The Supreme Court upheld by unanimous decision, the Court of Appeal's judgement holding that the High Court has jurisdiction to determine the suit. The Supreme Court also upheld the decision on the Court of Appeal Act, and the granting of the respondents claims.

The facts leading to this appeal are that on 13th December, 2005, the Oyo State House of Assembly sat at the Assembly Complex/Secretariat Ibadan. The appellants sat at D' Rovans Hotel, King Road Ibadan, where they purportedly, suspended the Draft Rules of the Oyo State House of Assembly. The Appellants purportedly issued a notice of misconduct against Senator Ladoja, the Governor with the purpose of commencing impeachment proceedings against him. On 22nd December, 2005, without following the laid down rules, regulations and the Constitution of the Federal Republic of Nigeria, the Appellants purportedly passed a motion calling for the investigation of the allegations of misconduct against Senator Ladoja without the concurrent consent and approval of the two-third majority of the 32 members of House of Assembly. The purported notice of allegations of misconduct against the Governor was not served on each member of the House of Assembly. Aggrieved by the procedure of removing Senator Ladoja, the Respondents as Plaintiffs, filed an action at the Oyo State High Court. The appeal before the Court of Appeal and later the Supreme Court was based on the ruling of Ige J. declining jurisdiction consequent upon the preliminary objection by the Appellants. The Supreme Court agreed with the Court of Appeal that the factional meeting of the members of the State House of Assembly cannot amount to a constitutional meeting of the whole House of Assembly as envisaged and provided for in the Constitution, and that the learned Trial Judge has jurisdiction to examine the claim in the light of section 188 of the 1999 Constitution.

In fact, the Supreme Court readily agreed with the court of Appeal that the entire section 188 subsections (1)-(11) must be read together. And a proper reading of the whole

section will reveal that the ouster clause in subsection (10) can only be properly resorted to and invoked after due compliance with sub-section (1)–(9) that preceded it. Subsection (11) makes it absolutely clear that it is the House of Assembly that decides whether or not a conduct is "gross misconduct" to warrant the removal of a Governor. Failure to comply with any of the provisions of sub-sections (1)-(9) will mean that the ouster clause of sub-section (10) cannot be invoked in favour of the House of Assembly. Commenting on the issue of "ouster clauses" Honourable Justice Niki Tobi JSC, stated: that "ouster clauses" are generally regarded as antithesis to democracy as judicial system regards them as unusual and unfriendly".[323] Ogbuagu JSC concurred and held that section 188 (1)-(9) must be followed for impeachment to be valid.

The view expressed in this case and I subscribe to it, is that the ouster provision in sub-section 188(10) of the 1999 Constitution can only have effect if subsection (1)-(9) of section 188 in relation to impeachment process are strictly complied with, a breach of any part of that provision is a breach of the constitution and the jurisdiction of the court will be invoked to stop the said breach. The Court of Appeal in *Mike Balonwu & 5 Ors v Peter Obi & Anors*[324]*and Dapialong v Dariye,*[325] expectedly held following Adeleke's case that a court has jurisdiction to entertain a suit challenging the process of removal of a Governor of a State or his Deputy from office in order to confirm whether or not the process was in compliance with section 188 (1)-(9) of the 1999 Constitution and if it is satisfied that the process was not in substantial compliance with the constitutional provisions stipulated in section 188 (1)-(9) of the 1999 Constitution it has the jurisdiction

[323] *Ibid*, p. 597
[324] **[**2007] 5 NWLR (pt.1028)p.488
[325] [2007] 8 NWLR (pt.1036)p.239

to intervene. In other words, the jurisdiction of court to inquire into the removal of a Governor of a State or his Deputy is ousted only where there was strict compliance with the procedure provided in section 188(1)-(9) of the 1999 Constitution. In all these cases, the Court of Appeal insisted following the Adeleke's case that the provisions of section 188 (1) –(9) of the 1999 Constitution constitute conditions precedent to the application of the ouster clause in subsection (10) of that section.

The political gladiators and their cronies are enjoined not to dissipate their energy on frivolities, like the impeachment of their leaders, especially where it is done without due process of the law. The unwarranted spate of impeachment of some Chief Executives of the State, had the effect of distraction and disruption of the leadership and may result in slowing down development in that State or even prevent the flow of what is today referred to as the dividend of democracy. Conversely, love, peace and stability in the polity and cooperation with the leadership by the followership will engender good government which is the essential ingredient of democracy required in any civilized society. In *Balonwu v Obi, Per Denton West JCA,* on the attributes of good leadership, admonished the leaders to be courteous in governance and the followership to respect their leaders, and be restraint in their action or inaction to avoid unnecessary distraction of the leadership. This should be the aspiration and desire of any Nigerian interested in who may aspire for any elective position, in order to ensure that his or her intention in politics should be service driven so as to move the country forward, and thus build a strong and virile country that will count among the comity of nations, and also the

followership should strive to be law abiding and respect the constituted authority, for orderliness, peace and good governance to flourish.

4.4 The National Judicial Council and the Impeachment, Discipline And Removal of Judges in Nigeria

A public officer is defined as a person holding office of trust, command to authority in a corporation, government armed services or other institution or organization.[326] The Constitution of the Federal Republic of Nigeria, 1999, in part 1, paragraph 19 of the Fifth Schedule, defines public officers as persons holding any of the offices specified in part II of this schedule and include, Chief Justice of Nigeria, Justices of the Supreme and Court of Appeal, all other judicial officers and all staff of courts of law. The Constitution strengthened judicial dependence in important aspects. It increased the Judiciary's control of judicial appointments and disciplinary procedures and restricted the ease with which political office holders interfered with the recruitment and discipline of Judges. Section 153 of the Constitution established the National Judicial Council (NJC), composed of 23 members and headed by the Chief Justice of Nigeria. In relation to States, the National Judicial Council (NJC) acts in consultation with the Judicial Service Commission (JSC) of each State, (composed of 7 or 8 persons depending on whether there is both a Shari'a and/or Customary Court of Appeal in a State) is established for each State, headed by a State's Chief Judge. The majority of its members are appointed by the State government. By the combined sections 153 (1) (i), paragraph 21 (b) & (d) of the third schedule of the 1999 Constitution, 271 of the Constitution and sections 4, 153, 292 and paragraphs 20, 21

[326] Garner, B A "Black 1aw Dictionary" ('7th edn' U.S.A West group,1999), p 755

of the third schedule, part 1 of the Constitution, the National judicial Council (NJC) has the powers and authority to recommend the appointment, discipline and removal of Judges of the State High Court, the Court of Appeal and the Supreme Court. The JSC recommends candidates for appointment to judicial office and makes recommendations to the NJC regarding the discipline of State Judges. The NJC, after consideration of JSC's recommendations, makes a further recommendation to the relevant Chief Executive (ie. State Governor, for a State, and President, for the Federal Government) concerning the appointment or discipline of Judges. In the exercise of its constitutional power, the National Judiciary Council (NJC), had intervened in a number of matters to curb the widespread abuse of discretionary powers, which had resulted in many "vexatious" Ex parte orders made by courts over time. However, Court rules permit using Ex- parte procedures in exceptional and deserving cases, particularly in urgent and compelling circumstances; many judges used these exceptional powers routinely and frivolously. The National Judicial Council then resolved to recommend disciplinary action against judges who made these orders indiscreetly. For example, in January and September, 2005, an Abuja Federal High Court Judge, Justice Wilson Egbo-Egbo, and an Enugu State High Court Judge, Justice S. Nnaji, were removed for abuse of office, following Ex- parte Orders they made. Justice Egbo-Egbo had ordered that the former Anambra State Governor, Dr. Chris Ngige, be removed from office on grounds that the Governor had duly resigned from office, and restrained him from parading himself as Governor and to hand over to his erstwhile Deputy, Dr. Okey Ude. Justice S Nnaji gave a similar order in another case against Dr. Chris Ngige. In recommending Justice Nnaji's removal, the

National Judicial Council (NJC) said: The judge's order was contrary to the code of conduct for judicial officers and contravenes his jurisdictional powers.[327] Late Justice Kusherki (Rtd), of the High Court of the Federal Capital Territory (FCT), Abuja, was sanctioned for granting an Ex-parte injunction against ANPP from holding its convention. He was summoned by the National Judicial Council (NJC) to explain why he gave the Ex- parte injunction baring the All Nigeria Peoples Party (ANPP) from holding its convention, his excuse was that he was sick when he signed the order and did not realize what he did. He was reprimanded and subsequently removed[328]. For fear of being sanctioned by the National Judicial Council (NJC)**,** Judges are now cautious when asked to use their Ex- parte jurisdictions in appropriate and deserving cases and have often declined their use. However, the overall effect of the measures taken to curtail the arbitrary use of Ex- parte orders helped to achieve that purpose, those measures also over reached the purpose and became counter-productive, because they denied to many deserving cases the urgent and expedient judicial interventions (orders) they required and that could have been met mostly by Ex-parte orders. Many wrongfully detained people and those facing serious risks of physical danger from security forces, for instance, would not receive urgent judicial relief concerning, for example, torture or dehumanizing treatment until they served Notice of proceedings to the affected parties. Serving this Notice can take many days, and involve cumbersome bureaucratic procedures culminating to delay of justice, and justice delayed is justice denied.

[327] http//: www.Hrw.Org/reports/2004/Nigeria 0904,accessed on 28/5/2009
[328] *Ibid*

In the area of corruption, a number of Judges have been found or accused of corrupt practices. The National Judicial Council had in many instances moved against corrupt judges in a bid to restore dignity and confidence of the people in the judiciary. Akwa-Ibom State Chief Judge, Justice David Idiong was accused of bribery and corruption in May 2004. He was asked to make statement concerning the allegation that he bribed at the instance of Akwa-Ibom State Governor, members of an election tribunal adjudicating a petition questioning the Governor's election in 2010 by the Independent Corrupt Practices and Other Offences Commission (ICPC). The ICPC was preparing a formal indictment against Justice Idiong. He filed a suit to stop his impending prosecution on the grounds that the NJC had investigated and cleared him of the allegations. The Federal Capital Territory High Court dismissed his suit saying it could not prevent a crime agency from carrying on its duty[329]. Before Justice Idiong's case, the National Judicial Council (NJC) had recommended the dismissal of all the judges who sat on the Akwa Ibom Election Tribunal and they were accordingly dismissed. Those affected were Justice M.M Adamu, Tribunal Chairman, Justice T. Ahura, Mr. James Isede (Chief Magistrate, but a member of the Tribunal) and A.M Elelegwu and Justice C. Senlong, a Federal High Court Judge. Justice C. Senlong was not a member of the Tribunal, but was found by the NJC to have also tempted bribing the tribunal members, on behalf of the Petitioner. In May 2005, two Appeal Court Justices, Justice O. Opene and A. Adeniji, were dismissed. The NJC found they had collected bribes to award victory to a party in an appeal over a decision concerning an election dispute in Anambra State.[330] In Abia State, five Court

[329] *Ibid* p. 8
[330] *Ibid*

staff, which brought corruption allegation against incumbent Chief Judge, Justice K.O Amah, in 2002, was in May 2005, compulsorily retired, after remaining on indefinite suspension since November, 2002. The suspension by the States Judicial Service Commission, chaired by Justice Amah, principally for filing complaints against the Chief Judge to the NJC alleging that the Chief Judge was corrupt and fraudulent, acting on those complaints, the NJC reprimanded Justice Amah, in a letter, for financial misdemeanor.[331]

The State Judicial Service Commission (JSC) and National Judicial Council (NJC) have oversight powers over judges' conduct, although complaints against judges are more frequently sent to the NJC. The NJC investigates the complaint and where it sustains it, makes recommendations to the President or State Governor (depending on whether the judges belong to the State or Federal Judiciary). The President or Governor as the case may be, thereafter implements the recommended disciplinary action. Complaints against lower Court Judicial officers ie below the rank or position of High Court are sent to State JSC's or in the case of the Federal Capital Territory, to the Federal Judicial Service Commission. In furtherance of this, an Abuja High Court Judge, Justice Mosheed Olugbani was sacked by the National Judicial Council on the recommendation of Justice Kayode Eso's panel report.[332] Also in May 2005, two Appeal Court Justices, Justices O Opene and A. Adeniji, were dismissed by NJC. The NJC found they had collected bribes

[331] *Ibid*
[332] www.NewYork.AppellateLawyer.com, accessed on 9/10/2008

to award victory to a party in an appeal over a decision concerning an election dispute in Anambra State.[333]

There is however, conflicting constitutional provisions on the appointment, discipline and removal of the Judicial Officers. While one provides that the NJC must recommend the removal of all Judges,[334] another stipulates that the State Governor can remove a Chief Judge after a resolution to that effect passed by two-third majority of the State Legislature.[335] It is in pursuance of these conflicting constitutional provisions that precipitated fragrant Executive interference in the Judiciary. In October, 2004, the Oyo State Government purportedly removed Oyo State Chief judge, Justice Isaiah Olakanmi, following a resolution passed by the State Legislature to that effect. The legislative house based its action on a petition signed by Judges of the Oyo State Judiciary, accusing the Chief Judge of maladministration. While the Oyo State Legislature was considering the petition, the NJC sent a letter to the State Government saying that the power to recommend the removal of any judge including the Chief Judge properly belongs to the NJC, and urged the Government to wait for its consideration of the petition against Justice Olakanmi. The Government replied that the Constitution gave it the right to act independently, apparently referring to section 292 (1) (ii) of the 1999 Constitution. The Government afterwards purported to remove the Chief Judge, following the legislative's resolution to that effect. The Chief Judge's removal was later nullified by the court, and the sack reversed. A similar attempt in Oyo State during the administration of former

[333] *Ibid*
[334] Section 2 (d) of part 1 of third schedule of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
[335] Section 292 (1) (ii) of the Constitution of the Federal Republic of Nigeria,1999(as amended)

Governor Rashidi Ladoja when the then State Chief Judge, Justice Olagoke Ige, was sacked until the court ordered his reinstatement through the instrumentality of the NJC. The same scenario also happened in Sokoto State when the Sokoto State House of Assembly sacked the State Chief Judge, Justice Aisha Sani Dahiru, before a Federal High Court in Abuja halted the move.[336]

Similarly, in December, 2004, when Justice JCN Ugwu was retiring as Enugu State Chief Judge, Governor Chimaroke Nnamani, favoured the appointment of Justice I Umezulike, as a successor to the Chief Judge, but justice Umezulike was not next in line of succession and by respected tradition he could not yet be appointed to that office. The NJC initially insisted on following the tradition and recommended Justice R Agbo, the next most senior judge, to fill the position. Vowing that justice Agbo would not succeed the outgoing Chief judge over what is generally believed to be justice Agbo's stoutness, Governor Nnamani worked through the political party machinery to ensure that the Legislature did not confirm justice Agbo for the office . The House of Assembly subsequently declined to confirm Justice Agbo's selection and requested the NJC to present another candidate. The NJC capitulated and recommended the Governor's candidate for the office ie. Justice Umezuluike.[337] In the same vein, in 5th May, 2009, the Kwara State Chief Judge, Justice Raliat Elelu- Habeeb was removed following deliberations by the State lawmakers based on a letter sent to them by the Governor, Dr. Bukola Saraki, in which he made allegations against the Chief Judge including acts in contravention of her constitutional roles as well as high handedness in handling the

[336] AppellateLawyer.com, accessed on 31/10/2008
[337] http://www.hrw.org/reports/2004/nigeria0904/ accessed on 28/5/2008

affairs of the lawmakers seeking their approval for the removal. The lawmakers subsequently gave a unanimous approval to the Governor's request but the Court Presided over by Justice Bilikusu Bello, declared that all the actions taken by the Governor Bukola Saraki- led Executive arm, acting in consonance with State House of Assembly on Justice Elelu-Habeeb's removal were a nullity. In the judgment, Bello held that both the Saraki led Executive arm and the State lawmakers lacked the constitutional Powers to remove the Chief Judge without the input of the NJC. The Judge argued that the NJC was by law a necessary party that must be involved in determining the fate of a judicial officer. According to her, going by the combined interpretations of sections 153 (1) (i), paragraph 21 (d) of the third schedule and section 27, of the 1999 Nigerian Constitution and section 4,153,292 and paragraph 20, 21 of the Third Schedule, Part 1 of the Constitution, " it is only the NJC that has the exclusive power and authority to query, command, order or inquire into any complaint against the Plaintiff arising from or connected with or recommend to the Government, her removal as Chief Judge of the State.[338]

The seeming conflict created in sections 292 and 153(1)(i), paragraph 21 (d) of the Third Schedule of the 1999 Constitution (as amended) which placed the power of removal of Judicial officers on both the President in the case of Federal Judicial officers or Chief Executive of a State and the National Judicial Council is a serious threat to the independence of the Judiciary. Section 292 of the Constitution provides that, a judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances:

[338] Www.NewYork AppellateLawyer.com, accessed on 31/10/2008

(a) In the case of-

(i) Chief of Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-third majority of the Senate,

(ii) Chief Judge of a State, Grand Kadi of Sharia Court of Appeal or President of a Customary Court of Appeal of a State by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State., praying that he be so removed for his inability to discharge the function of his office or appointment(whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of conduct;

(b) in any case, other than those to which paragraph,

(a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the Judicial officer be so removed for his inability to discharge the functions of his office or

appointment (whether arising from infirmity of mind or of body)

or for misconduct or contravention of the Code of Conduct[339].

By virtue of this provision, it implies that both the Chief Executives and the National Judicial Council can remove an erring judicial officer. This is the reason attempts were made in the past by some Chief Executives of some States to remove the Chief Judges of those State, but for the intervention of the court. The conflict in the Constitutional texts has continued to generate controversy on whether the 1999 Constitution undermined protection of Chief Judges of States' Judiciary. This is because of the conflicting overlap of two separate constitutional provisions, while one provides that the NJC must recommend the removal of all Judges section 21(d) of Part 1 of Third Schedule, another stipulates that the State Governor can remove a Chief Judge after a resolution to that effect passed by two-third majority of the state legislature (section 292 (1) (ii)). Judges seem to enjoy constitutional independence, but, in practice encounter social and political pleasures in decision-making. For the judiciary as the mirror of the society and bastion of hope for the common men, it has to be truly independent to discharge its functions without fear or favour. This can be done by the Judges being accountable to the legislature instead of to the Presidency for the Federal Judicial officers, and States Judicial officers made accountable to State Legislatures. Their salaries and subventions should be sourced from the Federation Account. In so doing all clogs in the wheel of justice deliverance would have been removed. Therefore, the conflict in the above constitutional provision should be amended and areas of conflict removed to allow the Judiciary free hand to perform. This will ensure the independent of the Judiciary and enable the National Judicial Council to weed out the bad eggs in the Judiciary and bring

[339] *op cit*, section 292 of the Constitution of the Federal Republic of Nigeria,1999(as amended)

sanity to the institution, which will coalesce into restoring confidence of the people in the system .

CHAPTER FIVE

5.1 PROCESSES OF REMOVAL OUTSIDE THE CONTEXT OF 1999 NIGERIAN CONSTITUTION.

This topic is not contemplated in this work but it is necessary to discuss it because, it has occurred in the world history and may be repeated in future.

i. Coup De'tat as specie of impeachment

Change of government through *coup de'tat* or revolution is unconstitutional. In Nigeria section 1(2) of the Constitution of the Federal Republic of Nigeria, 1999 provides:

> The Federal Republic of Nigeria shall not be governed, nor shall 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.[1]

Coup de'tat is a change of constituted authority (government) by force of arm often planned and executed by the military. Change of government through coup in Africa was a common phenomenon, particularly Nigeria. The military has ruled Nigeria for 25 years out of 41 years of her existence. The military rule by Decrees and Edicts. When military junta seizes power, the junta abrogates the section of the Constitution that criminalizes coup de'tat in order to legitimize the government in power.

There were series of coups in different countries of Africa, between 1963 -1974. For instance, Military coups took place in Congo-Brazzaville, on the 15th August, 1966, Sierra Leone 24th March, 1967, Sudan 25th May, 1969, Uganda 24th February, 1966 and 25th January, 1971, Nigeria January 15, 1966, July 9, 1966, July 29, 1975, February 13th, 1976, December 31, 1983, August 27, 1985 and August 25, 1993.

[1] Section 1(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

In a Military regime there is no opposition and separation of powers. In that system of government both the executive and legislature are fused together with the Head of Executive dictating the tone. The reasons given by the coups plotters as justification for their action are numerous. In Nigeria, coups plotters seize power, according to them, because of fraud, lack of accountability, financial impropriety, corruption and high handedness and generally bad governance by civil government.

Another turning point in the political history of Nigeria, which could safely be described as a "civil coup", was the attempted removal of Governor Chris Ngige from office as Governor of Anambra State. There was an attempt to remove Dr. Chris Ngige of Anambra State in 2003, having being abducted in a bizarre circumstance. This attempt was made through the instrumentality of the State via the Nigeria Police Force. On 10th July, 2003, a team of armed mobile policemen numbering about 250 led by an Assistant Inspector General of Police, late Raphael Ige, attempted to abduct Dr. Chris Nwabueze Ngige from his office following an alleged letter of his resignation on 9/5/2003. According to Governor Chris Ngige in an interview by the press on the incident, the Assistant Inspector General of Police, Raphael Ige told me he wanted to see me and got me to seat in my office. He said I should not leave my seat. And in the process, a letter meant for the clerk accidentally made it to my office, it was from there that I learnt that I had resigned and then he said I was under arrest. I sat there in my office and treated files. At some point, I came out and made a scene in front of the Governor's office. Some courageous people supported me and came around. He was arguing with my ADC, because they don't know him because he was in mufti. He promised to take me to the village. On our way I decided I would go to my hotel room, because I was staying at the

Choice Hotel in Awka. It was from there I made contract with Abuja and told my story because people had been making phone calls on my behalf. When I tried calling President Obasanjo, I was told he was out of the country. So, someone put me in touch with the Vice-President. He said: Dr. Ngige, we heard you have resigned". And when I narrated my story to him, he agreed that I had not resigned. So he called the Inspector General of Police (I.G) to call his boys to order.[2] The attempt to abduct Governor Ngige and remove him from office using the police was alleged to have emanated from the presidency under Obasanjo. The tragedy of Ngige's case again calls for a review of the Constitution to cure the defect in Nigeria's federal system of government. There should be true federalism in Nigeria which will give the federating States autonomy that will enable them to control their own affairs. Under the federal system the States shall have State Police that will be in charge of security of the State. If there is State police, what happened to Dr. Ngige won't happen. State Governors are said to be the Chief Security Officers of their State but they don't have the command or authority over police. The Nigeria Police Force (NPF) as presently constituted is a federal police directly under the control of Federal Government. As the saying goes "he who has the piper dictates the tone". Federal Government controls Nigeria Police Force and dictates their direction, hence Ngige's attempted adoption sponsored by the Federal Government under President Obasanjo. The absence of true federalism in Nigeria is the cause of the spate of violence in the polity which could only be prevented if Nigeria returns to true federalism. In a true federal system of government, the federating states will be autonomous which will warrant them to have police formation under the control of States Chief Executives. Had this been the case, the

[2] *op. cit.* p.149

abduction of Dr, Chris Ngige as Governor of Anambra could not have happened. It is therefore recommended that the Constitution should be reviewed to allow creation of State Police as an antidote to security challenges in Nigeria.

ii. Revolution as a Removal Process

Revolution on the other hand is another means through which a public office holder can be removed from office. It is said to occur when there is a disruption of the Constitution and the National Legal Order by an abrupt political change not contemplated by the Constitution.[3] Oxford Advanced Learner's Dictionary defines revolution as an attempt, by a large number of people, to change the government of a country, especially by violent action.[4]

There were instances in which change of governments were brought about by revolution. For example, in 1958, President Iskander Mirza of Pakistan, supported by the army, declared martial law in that country, dissolved the cabinet and the National Assembly and appointed General Ayub Khan, the Chief martial law administrator. The actions of the President were done completely outside the provisions of the 1956 Constitution of Pakistan. The Supreme Court of Pakistan held[5] that the events were a revolution being act not within the contemplation of the Constitution. Delivering his judgment, Sir Muhammad Munir, the Chief Justice of Pakistan, stated the position clearly thus:

> It sometimes happened however, that a Constitution and the national legal order under it, is disrupted by an abrupt political change not within the contemplation of the Constitution. Any such change is called a Revolution

[3] Achike, Okay, "*Ground Work of Military Law and Military Rule in Nigeria"* (Fourth Dimension Publishers, Enugu, 1978), p. 107.
[4] Oxford Advanced Learner's Dictionary, (Oxford University Press. 7th 'edn'), p. 1254.
[5] State v Dosso 1958 Supreme Court (Pak) p.533

and its legal effect is not only the destruction of the existing Constitution but also the validity of the national legal order. A revolution is generally associated with public tumult, mutiny, violence and bloodshed but from a juristic point of view the method by which and the persons by whom a revolution is brought about is wholly immaterial. The change may be attended by violence or it may be perfectly peaceful. It may take the form of a coup de'tat by a political adventurer or it may be affected by persons already in public positions. Equally irrelevant in law is the motive for a revolution in as much as a disruption of the constitutional structure may be prompted by highly patriotic impulse or by the most sordid of ends. For the purposes of the doctrine here explained, a change is, in law, a revolution if it annuls the Constitution and the annulment is effective. If the attempt to break the Constitution fails, those who sponsor or organize it are judged by the existing Constitution as guilty of the crime of treason. But if the revolution is victorious in the sense that the persons assuming power under the change can successfully require the inhabitants of the country to conform to the new regime, then the revolution itself becomes a law-creating fact. This is because thereafter, its own legality is judged not by reference to the annulled Constitution but by reference to its own success. On the same principle the validity of the laws to be made is judged by reference to the new and not the annulled Constitution. The essential condition to determine whether a Constitution has been annulled is the efficacy of the change.[6]

[6] *Ibid* , p.538-539

There was a change of government in 1966, in Uganda by revolution as expressed in the case of *Uganda v Controller of Prisons, Exp. Matovu.*[7] In that case, the then Minister of Uganda issued a statement on 22nd February, 1966 in which he declared that in the interest of national stability, public security and tranquility he had taken over all powers of the government of Uganda, abolished the Constitution and had become the Executive President of the country. It was glaringly clear that he was completely successful. It fell on the High Court of Uganda to consider the legal effect of this abrupt change in government. In an elaborate and considered judgement which is intended to be quoted in some detail because of the principles of revolution considered therein, Sir Udo Udoma, CJ said:

> we hold that the series of events, which took place in Uganda from 22nd February to April, 1966, when the 1962 Constitution was abolished in the National Assembly and the 1966 Constitution adopted in its place, as a result of which the then Prime Minister was installed Executive President with power to appoint a Vice-President could only appropriately be described in law as a revolution. These changes had occurred not in accordance with the principle of legitimacy but deliberately contrary to it. There were no preventions on the part of the Prime Minister to follow the procedure prescribed by the 1962 Constitution in particular for the removal of the President and the Vice-President on the grounds mentioned in the early part of this judgement.[8]

[7] (1966) EAP p. 514

[8] *1bid*, p.535

The nature of a revolution and its validity featured with respect to the events leading to Ian Smith's unilateral declaration of independence in 1965. Mr. Ian Smith, the Prime Minister of Southern Rhodesia had on 11th November, 1965 in collaboration with his Ministers unilaterally declared that territory independent of Great Britain. Her Majesty's Government dismissed the Prime Minister and his Ministers, suspended the legislature and assumed legislative and executive powers. The duly appointed Colonial Government remained Her Majesty's representative in Southern Rhodesia. But in actual fact, Smith's rebel regime performed all the executive and legislative functions of government with this background, the courts in Southern Rhodesia and the Privy Council was confronted with the difficult but interesting issues that arose in the famous case of *Madzimbamuto v Lardner-Barke.*[9] In that case, the officer administering the Southern Rhodesia rebel regime had extended the detention order of Madzimbamuto and his wife began proceedings in the High Court of Southern Rhodesia challenging the right of the continued detention of her husband. The Rhodesian High Court took the view that the rebel Constitution and Government were unlawful, nevertheless it upheld as valid the rebel regime's emergency powers and regulations and therefore the prolonged detention of Madzimbamuto**.** The High Court rested its finding on the doctrine of necessity which it stated was so imperative in order to avoid chaos and calamity that would ensue in the absence of law. The majority of the Southern appellate court affirmed the decision of the court of first instance and also accorded *defacto* status to the rebel regime and again the ground for the decision was necessity. Justice Fieldsend in the appellate court expatiate it further when he said:

[9] (1969) 1 A C p.645

> If such acts were to be without validity there would be no effective means of providing money for the Hospitals, the Police or the Courts of making essential by-laws for new townships or of safe-guarding the country and its people in any emergency which might occur, to mention but a few of the numerous matters which require attention in the complex and modern state. Without constant attention to such matters the machinery of the administration would break down to be replaced by chaos and the welfare of the inhabitants of all races would be grievously affected.[10]

On further appeal to the Privy Council, the Board affirmed the unlawful character of the rebel regime but made it clear that no *defacto* status could be accorded the regime on the ground that the revolution was not successful. After reviewing the events that occurred in Uganda and Pakistan, the Privy Council stated pointedly; that there Lordship's would not accept all the reasoning in the above judgements but they see no reason to disagree with the results. The then Chief Justice of Uganda, Sir Udo Udoma held that, the Government of Uganda is well established and has no rival. The court accepted the new Constitution and regarded itself as sitting under it. Again, the Chief Justice of Pakistan, Sir Muhammed Munir stated, that the essential condition to determine whether a Constitution has been annulled is the efficacy of the change. It would be very difficult if there had been still two rivals contending for power. If the legitimate Government had been driven out but was trying to regain control it would be impossible to hold that the usurper who is in control is the lawful ruler, because that would mean that by striving to assert its lawful rights the ousted legitimate government was opposing the lawful ruler. On whether it

[10] (1 968) 2 S A. 204, p. 435

meant that all the acts of the rebel regime were of no legal validity or consequence, their Lordships were divided. The majority of the Board was emphatic that no validity would be accorded to the emergency powers regulations of the rebel regime even on ground of necessity. In their Lordships view, if it became necessary that the purported law of the rebel regime should be recognized as valid for the purpose of preserving law and order then it was for the British Crown in council to determine having regard to all the circumstances.[11] In the circumstances, the following factors characterize a revolution:

(a) A revolution may be tumultuous or peaceful

(b) The revolution may be executed from within the government in power itself or entirely from outside,

(c) The revolutions annul the existing Constitutions and

(d) The legitimacy of a revolution depends on its own success or effectiveness.

Revolution or coup de'tat as processes of removing a leader from office is radically different from the constitutional order of removing public office holder in a democratic government through impeachment. In a constitutional democracy, change of government is through periodic election wherein the electorates elect their leaders. When one is elected as President or Governor he or she administers that country guarded by the Constitution or laws of such country. If the leader in the exercise of his power, he contravenes any part of the Constitution or misconducts himself while in office which is considered to be an impeachable offence, he or she maybe impeached in accordance with the constitutional provision.

[11] *Ibid* ,p.729

Removal from office by constitutional means or revolution or through coup de'tat, is usually occasioned by bad leadership and governance, corruption and sit tight syndrome of some leaders, especially African leaders. It is only good governance which will guarantee peace, security and welfare of the people that can prevent removal from office of public officers through revolution or any other unconstitutional means of removal from office.

iii. The Middle-East Revolution

Revolution is sweeping across countries in the Middle-East and the entire Arab world. The revolution from across these countries is so tense and spontaneous that it is threatening to consume as many Heads of Government as possible in that region. The revolution in these countries is akin to a tsunami and the causes are attributable to a number of factors. They include; leaders sit-tight syndrome, large-scale corruption, poverty and uncontrollable sleaze going on in those countries. It all began in Tunisia, in January 2011, when a young man in response to a revelation by Wikileaks about the large-scale corruption going on in his country, set himself ablaze. He acted out of frustration thrust upon his delicate shoulders by unemployment, poverty and uncontrollable sleaze going on in the government of his country. This incident consequently, triggered off a chain reaction from equally, aggrieved and largely-demoralized populace.[12] The people who had suffered years of deprivations and misrule under the tyrannical regime of Ben Ali, the President of Tunisia, took to the streets in spontaneous protest, and before the government could do anything to suppress it, hell had

[12] Orji Uzor Kalu, '*The Kalu Leadership Series, Lessons from Middle East and North Africa*', Daily Sun Newspaper, Saturday, 5th March , 2011, p.71

been let loose. The Government and its security forces were overwhelmed by the rage and rampage that followed. The whole of Tunis – the State-capital was in total turmoil for days with business activities paralyzed. Lives and properties worth billions of dollars were wantonly destroyed in the upheavals. The President Ben Ali, who had ruled the North African country for several decades, was routed and sent into exile by the unrelenting anger and protestation that turned the country upside down.[13]

The uprising in Tunisia had hardly settled down, when Egyptian protesters took to the streets. The aim was to push out President Mubarak, who had been in power since 1981, when he took over the reigns of power from President Anwar Sadat, who was assassinated at a parade in Cairo by his mutinous soldiers. The protest raged on despite all the antics by Mubarak to dislodge the protesters, they refused to be intimidated and swore instead to die for the cause they believe in. They fought doggedly, though without guns and matches, until Mubarak finally gave in to pressure and stepped down.[14]

As the Egyptians crisis was raging, it spread like wild fire to other Arab countries with sit-tight leaders: Libya, Yemen, Bahrain, Syria, Saudi Arabia, Jordan etc. Thousands of protesters in these Countries took to the streets demanding instant and widespread reforms. The crisis is still raging on in those areas as the people insisted on genuine reform because of misrule of their leaders.

Revolution is gradually gaining prominence as a means of removing unpopular public office holders from office by the civil populace. This practice is by no means in the Constitution of the countries where revolution took place. Therefore, resort to revolution to remove an unpopular leader may be unconstitutional but it is inevitable, it is spurred by

[13] *Ibid*
[14] *Ibid*

bad leadership and the political set up of a given country, which made it impossible for their leader's removal through constitutional means thereby justifying revolution as a removal process. Application of revolution as a means of removal from office public officers may be possible and successfully prosecuted in foreign jurisdictions as in the Middle-East, but may not be possible in Nigeria. This is because of corruption which has eaten deep into the fabric of Nigerian society and therefore weakened institutions of governance in the country. There has been clarion call in the recent past by well meaning Nigerians for revolution in Nigeria as a panacea for correcting misrule and bad governance. Unfortunately, that call has not yielded any fruit, because to organize even a simple strike to protest government bad policy is always met break wall from the presidency. Government does this by breaking through the ranks of the organizers and other pressure groups through bribe. The institutions of governance that ought to check each others functions and curb misrule are weak as a result of corruption. Therefore, the only solution for solving these intractable problems such as corruption, misrule, insecurity, electoral malpractices etc., is through revolution. Removal of corrupt Nigerian leaders through revolution will put Nigerian leaders on their toes and restore good governance and stability in the polity, advance the rule of law and fundamental rights of Nigerians which democracy is usually expected to guarantee.

iv. Removal through Foreign Intervention

Many countries of the world especially African countries, such as Tunisia, Egypt, Libya, Afghanistan etc, are beset by genocide crimes against humanity, killings, torture, and other civil and political rights' violations. According to United Nations High Commission for Refuges (UNHCR), there are about thirty-seven million displaced people around the

world as a result of conflict. Many of them are in Africa, the largest numbers coming from the Democratic Republic of Congo (DRC), Sudan and Somalia. Twenty-five million of the thirty five million are internally displaced people[15].

To deal with the conflict, a number of steps have been taken including placing of peacekeepers in troubled areas across the world. For example, in 2002, there were thirty one thousand (31,000) peacemakers on the ground in Africa, from the United Nations (UN) and African Union (AU), by 2007 the number was more than sixty thousand (60,000)[16]. Under international law States are sovereign and autonomous. This means that no State shall violate the sovereignty of another State by interfering in each others internal affairs. However, the concept of non-intervention and sovereignty which preclude the action of one State within another are limited by the two doctrines of Humanitarian Intervention (HI) and the Responsibility to Protect, otherwise known as (R2P). This doctrine has its connection to human rights instrument such as the convention on the prevention and punishment of the crime of genocidal (genocide convention),[17] and the African charter on Human and Peoples' Rights[19]. Under this doctrine States have right to intervene in another State's affairs to protect individuals against human rights abuses. Humanitarian intervention concept is described as the protection by a State or a group of States of fundamental human rights, in particular the right to life, of national of, and residing in, the territory of other States, involving the use of threat of force, such protection taking place neither upon authorization by the relevant organs of the United

[15] http://www.unhr.org/statistics.html, accessed on 15/10/2007
[16] http://www.un.org/Depts/dpko/bnote.html, accessed on14/4/2008
[17] http://www.unchr.ch/htm/menuiz/6/p-genocide/html on, accessed 14/4/2008.
[19] http://www/umn.edu/humanrts/instree/z/afchari.html, accessed on 14/4/2008

Nations (UN) nor upon invitation by the legitimate government of the target State.[20] The right to exercise Humanitarianism Intervention (HI) can be found in treaty law, including the Genocide Convention, International Customary law and the United Nations Charter (UN Charter). It is also found in other instruments, including the Charter of African Union (AU Charter)[21]. It imposes States a duty to "prevent and punish.[22] The power to exercise this right can only be invoked in the face of severe human rights abuses such as genocide, war crimes, ethnic cleansing and crimes against humanity.

There are a number of cases where countries or a single country had intervened in the internal affairs of another country to restore peace and order, where there appears to be a threat to international peace, breach of peace or act of aggression. For example, the US led invasion of Iraq which resulted in the removal of their President, Saddam Hussein and his eventual death. Tanzania intervened in Uganda and overthrew Idi Amin in the late 70s as a result of human rights abuses in that country during the regime of Idi Amin. Also, France in 2003 intervened in the Democratic Republic of Congo (DRC) and restored peace in that country. However, that intervention had United Nation's (UN) and European Union Authorization. A more recent example is the intervention of Libya by France and the US, where there were gross human right abuses and act of aggression against the people of Libya under the regime of Gadafi. Their intervention also had the authorization of NATO and UN and it eventually consumed president Gadafi. Though, these interventions might appear to be violation of the autonomy of these sovereignty

[20] D. Kritsiotis "*Reappraising policy objections to humanitarianism intervention"* (1998) 19 Michgann Journal of international law) p. 1005 at 1021.

[21] J. Sarkin and M. Pietchman "*Legitimate humanitarian intervention under international law in the context of the current human rights and humanitarian crisis in Burma/Myanmar"* (2003) 33/1 Hong Kong Law Journal 371).

[22] http://www.unhchr.ch/htm/menu3/b/p-genoci html, accessed on 14/4/2008

States[23], but their intervention is necessary in order to bring peace in those countries where there were conflicts that threat international peace and security, breach of the peace or act of aggression. It is also necessary for the purpose of installing democracy, human rights promotion and protection, good governance, the rule of law and anti-corruption strategies, as well as other kindred issues. Justifying the need for Humanitarian intervention (HI) and the Responsibility to Protect (R2P); the then Secretary General of Organization of African Unity (OAU) now (AU), Salim Ahmal Salinu stated:

> We should talk about the need for accountability of governments and of their national and international responsibilities. In the process, we shall be redefining sovereignty.[24]

At the OAU summit in 1998 in Ouagadougou, Burkina Faso, President Nelson Mandela of South Africa stated:

> Africa has a right and a duty to intervene to root out tyranny… we must all accept that we cannot abuse the concept of national sovereignty to deny the rest of the continent the right and duty to intervene when behind those sovereignty boundaries, people are being slaughtered to protect tyranny.[25]

[23] United Nations Charter, Article 2(4)
[24] C. Lansberg "*The fifth wave of Pan Africanism" in A Adebajo and IOD Rashid West Africa's Security challenges: Building peace in a Troubled Region* (2004, Lynne Reiner) p. 117 at 124.
[25] Africa's Responsibility to protect (2007, Resolution) at p. 15.

In 2004, a high level UN panel published a report which promoted the notion of Responsibility to Protect (R2P) by discussing notions such as that of "collective security" and "collectively endorsed military action"[26]. The panel noted:

> There is a growing recognition that the issue is not the "right to intervene" of any state, but the responsibility to protect" suffering from avoidable catastrophe- mass murder and rape, ethnic cleansing by forcible expulsion and terror and deliberate starvation and exposure to disease. And there is a growing acceptance that while sovereign governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or willing to do so that responsibility should be taken up by the wider international community with it spanning a continuum involving prevention response to violence, if necessary and rebuilding shattered societies.[27]

The above clearly show the necessity for Humanitarian intervention and Responsibility to protect. Therefore, Humanitarian intervention and Responsibility to protect cannot be sacrificed on the altar of State's sovereignty, as doing so might be inadvertently promoting tyranny in the States where there are conflicts. The gross abuse of human rights in Iraq, Libya and the entire Arab world is a shining example of what non intervention in their internal affairs might cause humanity and thus calls for greater support for the notion of Humanitarian Intervention and Responsibility to Protect.

[26] A more secure world: our shared responsibility; report of the High-Land panel on threat challenges and change (2005, United Nations).
[27] *Ibid* at para. 201.

CHAPTER SIX

IMPEACHMENT IN SOME FOREIGN JURISDICTIONS

6.1 America and the Impeachment Process

The impeachment processes in the western societies vary according to each country's law. The American system of government which is presidential differs from the British system which is parliamentary. In the United States that practice presidential system of government, impeachment process can occur both at the Federal and State level. The Constitution defines impeachment at the Federal level and limits impeachment to "the President, Vice- President, and all civil officers of the "United States" who may only be impeached and removed for "treason, bribery or other high crimes and misdemeanors[340]. Some people have suggested that Congress alone may decide for itself what constitutes an impeachable offence. House Minority Leader Gerald R. Ford once said that an "impeachable offence is whatever a majority of the House of Representatives considers it to be at a given moment in history[341]. Ford later became President when President Richard Nixon resigned under the threat of impeachment. Article III of the United States Constitution states that judges remain in office "during good behaviour", implying that Congress may remove a judge for bad behaviour through impeachment. The House had impeached 14 Federal judges and the Senate had convicted six of them[3].

Impeachment process in the United States is a two-step procedure. The House of Representatives must first pass by simple majority articles of impeachment, which constitute the formal allegation or allegations. Upon their passage, the defendant has been

[340] U S Constitution Article II, section 4

[341].Gerald Fords remark on the impeachment of Supreme Court of Justice William Douglas, 15th April, 1970

[3] *Ibid*

"impeached". Next, the Senate tries the accused. In the case of the impeachment of a President, the Chief Justice of the United States presides over the proceedings. For the impeachment of any official, the Constitution is silent on who shall preside, suggesting that this role falls to the Senate's usual presiding officer. This may include the impeachment of the Vice- President, although legal theories suggest that allowing a defendant to be the judge in his own case would be a blatant conflict of interest. If the Vice-President did not preside over an impeachment of any one besides the President, the duties would fall to the President pro-tempore of the Senate. To convict the accused, a two-third majority Senators present is required. Conviction automatically removes the defendant from Office. Following conviction, the Senate may vote to further punish the individual by barring him from holding future Federal office, elective or appointive. Conviction by the Senate does not bar criminal prosecution. Even after an accused has left office, it is possible to impeach and disqualify the person from future office or from certain emoluments of their prior office (such as a pension). If there is no charge for which a two-third majority of the Senators present vote "guilty", the defendant is acquitted and no punishment is imposed.[4] Congress regards impeachment as a power to be used in extreme cases. The House had initiated impeachment proceedings only 64 times since 1789 but only 19 officials were impeached. Andrew Johnson was impeached in 1868 after violating Tenure of Office Act, but was acquitted by the Senate, falling one short of the necessary two-third majority needed to remove him from office. The Tenure of Office Act was later declared unconstitutional by the Supreme Court of the United States.

[4] Gerald Fords remark on the impeachment of Supreme Court of Justice William Douglas, 15th April, 1970

Bill Clinton was impeached on 19th December, 1998 by the House of Representatives on articles charging perjury (specifically, lying to a Federal grand jury and obstruction of justice). He was acquitted by the Senate on February 12, 1999. The Senate vote fell far short of the necessary

two-third needed to remove him from office.[5] One Senator, William Blount, in 1797 was expelled by the senate, which declined to try the impeachment. Justice of the Supreme Court of the United States, Samuel Chase in 1804, was acquitted by the Senate. Fourteen other Federal judges including, Alcee Hastings, who was impeached and convicted for taking over $ 150,000 in bribe money in exchange for sentencing Leniency. Richard Nixon was never impeached. While the House Judiciary Committee did approve articles of impeachment against him and did report those articles to the House of Representatives, Nixon resigned before the House could consider the impeachment resolutions and was subsequently pardoned by President Ford.[6] The United States legislative houses following above analysis thread cautiously in the exercise of their legislative powers on impeachment by their strict observance of constitutional provisions on impeachment process hence, such powers is used in extreme cases. This is in sharp contrast in the Nigeria situation in which law makers see impeachment process as a weapon for settlement of political scores. In 2003-2007 political dispensation, caution was thrown to the wind with respect to impeachment of public office holders in Nigeria. In one fell swoop, not less than five serving governors and a number of leadership of legislative Houses of both the National Assembly and State Assemblies were impeached, within five years of Nigeria's return to democratic rule. Whereas United States of America had only

[5] http://en.wikipedia org /wiki/ impeachment in the United States accessed on 22/3/2008
[6] http//en.wikipedia.org/wiki/impeachment accessed on 22/3/2008

impeached 19 officials since 1789. This is the difference between the practice of democracy in Nigeria and that of America system of democracy. And this is because of the attitude of Nigerian politicians who are corrupt as either the presidency or the power that be and political gladiators who are money bags could easily buy the conscience of legislators and get them to do their bidding at a particular giving period. Nigerian legislators should emulate American example for the survival of our nascent democracy, anything to the contrary is an invitation to anarchy.

6.2 The Impeachment of Judicial Officers: An American Practice

The power of impeachment in the United States of America is expressly vested on the legislature. The procedure allows for formal charges against a civil officer of government for crimes committed in office. The actual trial on those Charges and subsequent removal of an official on conviction on those charges is separate from the acts of impeachment itself. Impeachment is analogous to indictment in regular court proceedings, while trial by the other house is analogous to the trial before Judge or jury in regular courts. The lower house of the Legislature (House of Representatives) will impeach the official and the upper House (Senate) will conduct the trial. At the Federal level, the President, Vice President and all other civil officers of the United States of America shall be removed from office on impeachment for, and conviction of, Treason, Bribery or other High Crimes and misdemeanor[7]. The House of Representatives has the sole power of impeaching, while the United States Senate has the sole power to try all impeachments[8]. The removal of impeached officials is automatic upon conviction in the Senate.

[7] Article 2 of the United States Constitution, section 4.
[8] The Constitution of the United State, Article 1, section 3.

Impeachment can also occur at the State levels, State officials, including Governors, according to their respective State Constitutions.

In the New York, for example , the Assembly (lower House) impeaches and the State Senate tries the case, but the members of the seven– Judges of the New York State Court of Appeals (the State's highest constitutional Court) sit with the Senators as jurors as well.[9] Impeachment and removal of Governors has happened occasionally throughout the history of the United States, usually for corruption charges. A total of at least eleven U.S State Governors have faced an impeachment trial; a twelfth, Governor Lee Cruce of Oklahoma, escaped impeachment conviction by a single vote in 1912. Several others, most recently Connecticut's John G. Roland, resigned. The most recent impeachment of a Governor occurred on 14th January, 2009, when the Illinois House of Representatives voted 117–1 to impeach Rod Blagojevich on corruption charges. He was subsequently removed from office and barred from holding future office by the Illinois Senate on January 29. He was the eighth State Governor in America to be removed from office[10]. Benjamin Franklin at the "Philadelphia Convention" noted that historically, the removal of "Obnoxious" Chief Executive had been accompanied by assassination, and suggested that a proceduralized mechanism for removal (impeachment) would be preferable[11]. This may be the reason the US legislature exercise caution before initiating impeachment proceedings against a Federal or State officials. Impeachment proceedings may be commenced by a member of the House of Representatives on their own initiative, either by presenting a listing of the charges under oath, or by asking for referral to the appropriate Committee. The impeachment process may also be triggered by non-

[9] http:www.ny times. Com/2004/ 06/ 21/ny region/21CND- Row .html. accessed on 10/8/2007
[10] House votes to impeach Blagojevich again". Chicago Tribune, accessed on 14/1/2009.
[11] http: // papers, ssrn.Com/50/3/papers. Cfm? Abstract id = 1568950. Accessed on 10/8/2007

members. For instance, when the Judicial Conference of the United States suggests that a Federal judge be impeached, a charge of what actions constitute grounds for impeachment may come from "a special prosecutor, the President, a State or territorial legislature, grand jury or by petition. The type of impeachment resolution determines which Committee it will be referred to. A resolution impeaching a particular individual is usually referred to the House Committee on the Judiciary. A resolution to authorize an investigation regarding impeachable conduct is referred to the House Committee on Rules, and then referred to the Judicial Committee. The House Committee on the judiciary by majority vote will determine whether grounds for impeachment exist. If the Committee finds grounds for impeachment, they will set forth specific allegations of misconduct in one or more articles of impeachment. The impeachment resolution or Article (s) of impeachment are then reported to the full House with the Committee's recommendations. The House debates the resolution and may at the conclusion consider the resolution as a whole or vote on each article of impeachment individually. A "simple majority" of those present and voting is required for each article or the resolution as a whole to pass. If the House votes to impeach, managers (referred to as "House managers" with a "Lead House manager") are selected to present the case to the Senate. Recently, managers have been selected by resolution, before the House would elect the managers or pass a resolution allowing the appointment of managers at the discretion of the Speaker of the House of Representatives. Also the House will adopt a resolution in order to notify the Senate of its action. After receiving notice, the Senate will adopt an order notifying the House that it is ready to receive the managers. The House Managers then appear before the bar of the Senate and exhibit the articles of impeachment. After the reading of

the charges, the managers return and make a verbal report to the House[12]. The proceedings in the Senate are conducted in form of a trial, with each side having the right to call witnesses and perform "cross- examination". The House members, who are given the collective title of managers during the course of the trial, present the prosecution case and the impeached official have the right to defend himself or by his own attorneys as well. Senators must also take an oath or affirmation that they will perform their duties honestly and with due diligence (as opposed to the House of Lords in the parliament of the United Kingdom, who vote upon their honour). After hearing the charges, the Senate usually deliberates private. Conviction requires a two–third majority[13]. The Senate enters judgment on its decision, whether to convict or acquit, and a copy of the judgment is filed with the Secretary of the State[14]. Upon conviction, the official is automatically removed from office and may also be barred from holding future office. The removed official is also liable to criminal prosecution. The President may grant a pardon in the impeachment case, but may not in any resulting criminal case. The US Senate later began to use "Impeachment Trial Committees" by virtue of Senate Rule X11 The Committees hear the evidence and supervise the examination and cross – examination of witnesses. The Committees would then compile the record and present it to Senate, all Senators would then review the evidence before the chamber voted to convict or acquit. The purpose of the Committees was to streamline impeachment trials. Defendants challenged the use of these Committees, claiming them to be a violation of their fair trial rights as well as Senate's constitutional mandate, as a body, to have "sole power to try all impeachments". Several impeached judges sought Court intervention in their impeachment proceedings

[12] http://www.Chron.Com/disp/story.mp//front/64//88310. html, accessed on 10/8/2007
[13] Article 1 section 3 *op . cit*
[14] Rules of procedure and practice in the Senate when sitting on Impeachment Trials

on these grounds but the Courts refused to become involved due to the Constitution's granting of impeachment and removal power solely to the legislative branch, making it a political question[15]. The Congress regards impeachment process as a power to use only in extreme cases. The House of Representatives has actually initiated impeachment proceedings only 62 times since 1789. Two of these cases did not come to trial because they had left office. Impeachment of about 19 Federal officers has taken place. 15 of them were Federal judges, twelve District Courts, two Court of Appeal and one Supreme Court Associate Justice[16].

6.3 **The Canadian and Australian Impeachment Process**

Canada practices parliamentary system of government similar to British system of government. Unlike the United States, the Head of State and Head of Government are not one in the same. The Queen of England is the Canadian Head of State. Canada is a monarchy while the United States is a Republic. The Governor-General represents the Queen of England. The Prime Minister of Canada is the Head of Government.

No Prime Minister has been removed in Canada. Infact, there is no provision in the Canadian Constitutional Act of 1982 which dictates how a Prime Minister can be removed.[17] The Act also does not quite define the duties of the Prime Minister of Canada or that the Prime Minister must leave the House of Commons if the governing party has lost confidence. However, if there is a petition by the Canadian people against the Prime Minister stating that the Canadian people want the Prime Minister removed from office, there would be enough pressure on the Governor-General to do so, since he/she is there to

[15] *Ibid* .Article 1 section 3
[16] Article 2 section 4 of the United States Constitution
[17] Demeter's Manual of parliamentary Law and Procedure, (1969'edn'). p. 265

protect Parliament and the Canadian people[18]. Australia's impeachment process emulates the Canadian process. In Australia, no Prime minister has ever been defeated in the House of Representatives by an explicit motion of no confidence. However, about six prime Ministers were unable to enact important policy during their tenure and therefore resigned from office.[19] The Canadian and Australia impeachment practice is a shining example of the fact that power actually belongs to the people and the people decide who will govern them and also decides when he will leave office if his administration becomes unsatisfactory to the governed.

In Nigeria, even though section 14 (2)(a) of the Constitution of the Federal Republic of Nigeria, 1999(as amended) provides that, sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority, it is not in practice. The people of Nigeria have no say in governance and their vote does not count in electing their leaders into public offices. Because people's vote does not count in election, those who manipulate themselves into power do what they like as they have no control either by the people or the Constitution. The earlier Nigeria embrace civilized democracy the better for us as it will promote good governance and stability in the polity.

6.4 Impeachment in Latin America

The constitutional crisis in Latin America in the 1960[s] and 1970[s,] typically involved the participation of the Military, either to replace the democratic regime with a Military

[18] *op.cit p*. 265
[19] http//www.aph.au/senate/pub/odgers/chap. 2004 html, accessed on 27/9/2010

dictatorship or to suspend the Constitution until a new government was elected.[20] There was a sharp decline of Military interventions in politics since 1978, in Latin America and most constitutional crises have been resolved within the limits of the established legal order. A different form of political instability emerged. Although democratic regime remained stable, several elected Presidents ended their terms prematurely. Some of them were impeached; others were forced to resign, most of the time in the midst of corruption scandals and social mobilizations against the government. In a political environment where the military is not likely to intervene in politics, Presidents who face massive popular protests (due to corruption scandals, poor economic performance or both) are unable to finish their terms. The premature termination occurs by impeachment or by a declaration of incapacity of congress, where Presidents fails to build a "Legislative shield", either because they lack majority support in Congress or because they do not negotiate with legislators on a regular basis. The early termination occurs by resignation when Presidents anticipate an impeachment or when an unexpected popular uprising forces the President to leave office[21]. Although Congress emerged as the dominant institution in most crises, this does not indicate a reinvigorated system of checks and balances. Legislators have used impeachment as a last resort to control Presidents who had become too unpopular. But institutional checks were unable to prevent presidential abuses in the first place. Popular uprisings have contributed to limit the power of Presidents who transgress the Constitution or make arbitrary decisions that affect the economic welfare of the population.

[20] .An ibal perezilation : presidential impeachment an d the New Political in stability in Latin America (NewYork : Cambride University Press, 2007. PP: XVI, 241.580. 00

[21] *Ibid*

Impeachment refers to a political trial against the President that is authorized by a legislative body and is typically performed by a separate institution (a second chamber, the judiciary etc). In the American Constitution, the term impeachment refers to a trial initiated by the House of Representatives and performed by the Senate.[22] Other Presidential Constitutions have introduced variations to this model, depending on whether the legislature is unicameral or bicameral and whether the Supreme Court is expected to play a key role in the process.

Colombia practices presidential system of government similar to that of the United States of America. In 1996, Colombian President, Ernesto Samper was accused of receiving campaign contribution from the Cali drug Cartel in 1994. In the mid-1996, the Colombian Chamber of Representatives decided that there was not enough evidence against Samper and, in a highly controversial vote, dropped the charges, before they got to the Senate.[23] The crisis that enveloped the Presidency of Ernesto Samper centered on allegations that his 1994 presidential campaign had received some six million dollars in funds from the Cali drug Cartel. In the day before a final run-off election with Andres Pastrana, the Pastrana campaign received tape recorded conversations allegedly involving the Samper campaign and representatives of the Cartel arranging the illicit financing. The Pastrana campaign, fearful of being seen as trying to unfairly influence the outcome of the elections, delivered the tapes first to President Cesar Gaviria, whose administration authenticated the tapes but refused to release them to the public, and U.S Ambassador Morris Bus who likewise feared that the U.S would be seen as meddling in Colombian politics and refused to release the cassettes before the election. Within days of his

[22] *op, cit* Article 1, section 4
[23] *op.cit*, p 5

electoral defeat, Andres Pastrana leaked the tapes to the Colombian media and the scandal erupted. President Samper's initial defense was to deny the allegations and to portray them as the product of sour grapes by the losing candidate. Samper claimed that the tapes had been altered (President Gaviria's Attorney General agreed that they had been edited) and that what they were missing was that the campaign had infact refused the offers of the cartel for financing. Indeed, Samper claimed that the cartel had come to them and that the campaign had valiantly refused their overtures. While Samper was able to weather the initial storm, the scandal gradually worsened with more revelations from campaign officials. In 1995, campaign treasurer Santiago Medina and campaign manager Fernando Botero, who by then was Minister of Defense, were arrested and charged with accepting illicit funds. The most difficult moment of the crisis came in early 1996, when Botero, in a televised interview from prison, declared that Samper had knowledge of the illicit funds. Samper denied the charges and still maintains his innocence. The charges against President Samper made their way into the Colombian Congress, but in December of 1995 and in May of 1996 Congressional Oversight Committees voted against charging Samper. In June, the full Colombian House of Representatives voted to clear the President.[24]

6.5 Impeachment and the Westminster Model of Executive Removal

In the United Kingdom, all persons whether Peers (a person who has a high social position) or Commoners (a person who is not born into a position of high social rank),

[24] Victor Hinojosa, Department of Government University of Notre Dame Notre Dame, IN 46556-368 vhinojos at nd . edu. P.3

may be prosecuted and tried by the two Houses for any crime whatever.[25] It is the House of Commons that hold the power of initiating an impeachment. Any member may make accusations of any crime and such member must support the charges with evidence and move for impeachment. If the Commons carries the motion, the mover receives orders to go to the bar at the House of Lords and to impeach the accused "in the name of the House of Commons, and all the Commons of the United Kingdom". The mover must tell the Lords that the House of Commons will, in due time, exhibit particular articles against the accused, and make good the same. The Commons will then select a committee to draw up the charges and create an "Article of Impeachment" for each. Once the committee has delivered the articles to the Lords, replies go between the accused and the Commons via the Lords. If the Commons have impeached a peer, the Lords take custody of the accused. The accused remains in custody unless the Lords allow bail. The Lords set a date for the trial while the Commons appoints managers, who act as prosecutors in the trial. The accused may defend himself by counsel. The House of Lords hears the case. Usually the Lord Chancellor presided (or the Lord High Steward if the defendant was a peer), it is however not certain who today preside over an impeachment trial since the Lord Chancellor is no longer a judge. If the Parliament is not in session, the trial is conducted by a "Court of the Lord High Steward", instead of the House of Lords (even if the defendant is not a peer). The hearing is like an ordinary trial: both sides may call witnesses and present evidence. At the end of the hearing the Lords vote on the verdict, which is decided by a simple majority, one charge at a time. Upon being called, a Lord must rise and declare "guilty, upon my honour" or "not guilty, upon my honour". After

[25] http//www.Parliament.Uk documents/Commonslib/research briefings/snpc-02666 pdf, accessed on 11/1/2009, P.1

voting on all of the articles has taken place, and if the Lords find the defendant guilty, the Commons may move for judgment; the Lords may not declare the punishment until the Commons have so moved. The Lords may decide whatever they find fit, within the law. A royal pardon cannot excuse the defendant from trial, but a pardon may reprieve a convicted defendant. However, a pardon cannot override a decision to remove the defendant from the public office they hold. The first recoded impeachment is that of William Latimer in 1376, the last was that of Henry Dundas in 1806s.

In modern politics, the principle of "responsible government" requires that Prime Minister and other executive officers answer to Parliament, rather than to the sovereignty. Thus, Commons can remove such an officer through a motion of no Confidence without a long, drawn-out impeachment. However, some have argued that the remedy of impeachment remains as part of British constitutional law, and that legislation would be required to abolish it. Impeachment as a means of punishment for wrongdoing, as distinct from being a means of removing a Minister remains a valid reason for accepting that it continues to be available at least in theory. For example, in April 1977, the Young Liberals Annual Conference unanimously passed a motion to call on the Liberal leader (David Steel) to move for the impeachment of Ronald King Murray DC, the Lord advocate. Mr. Steel did not call the motion but Lord Murray (a former Senate of the college of justice of Scotland) agrees that the Commons still have the right to initiate an impeachment motion. Again on 25th August, 2004, Adam Price MP announced his intention to move for the impeachment of Mr. Tony Blair for his role in involving Britain in the 2003 invasion in Iraq[26]. In response, Peter Hein, the Commons leader, insisted that

[26] http//www.Parliament U k documents/ Commons lib/research briefings/snpc-02666 pdf, accessed 11/1/2009.

impeachment was absolute, giving modern government responsibility to Parliament. In 2006, General Sir Michael Rose revived the call for impeachment of Tony Blair, then prime Minister of the United Kingdom, for leading the Country into the invasion of Iraq in 2003, under the allegedly false justification.[27] Thus, impeachment process is still feasible in Great Britain giving modern government responsibility to Parliament.

6.6 The European Union and Impeachment

The above subject matter will be discussed using Romanian, a member of European Union as an example. Romania formerly a Communist country became a member of European Union on 1st January, 2007 and embraced its established democratic norms. Thus, democratization process began, resulting to a deeply divided political class and mistrust of political structures. Romanian's unusual path to democracy saw a popular revolution that ousted the Communist President, Nicolae Ceausescu in December 1989 only for a government of former Communist party to emerge which retained power through to 1996. Popular support for politicians, democratic structures and the market economy remained relatively weak throughout the post Communist era. The economic traumas of transition were prolonged and an impoverished populace was suspicious of a newly emerged rich and powerful elite. Nationalist tensions bolstered support for anti-democratic demagogues. The divide formed by the Political transition from Communism remained resonant for a period of about 17 years. The National salvation front transformed itself from a provisional revolutionary governing body into a political party

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[27] *Ibid*

in January 1990-a party that was dominated by former Communists. The front subsequently split between conservatives around President Ion Iliescu (who formed the Social Democratic party) and "modernizers" grouped around former Prime Minister Petre Roman. The modernizers eventually evolved into the Democratic party and later in 2007 Roman was replaced as party leader by Traian Basescu . Basescu was later elected mayor of Bucharest. After replacing Roman as leader of the Democrats, he set about repositioning the party. Basescu pursued and procured an electoral alliance with the National Liberal Party, a party in Power but has shown them consistently to be pragmatic in their approach to coalition building throughout the Post –Communist period. Basescu won the presidential election and formed government with a coalition of: the National Liberals, the democrats, the Hungarian minority alliance (Democratic Alliance of Hungarians in Romania) and the Humanist Party.[28]

The President (and the Democrats) and other coalition parties clashed. The conflict led to the resignation of the Prime Minister – Tariceanu who called for early parliamentary election. As the relationship between Basescu and Tariceanu collapsed, the President accused the National Libral leader of being in the hands of oil barons and oligarchs. The failure to investigate the Country's Communist past was a major source of disillusion on the past government. The President's attempt to promote this issue intensified the power struggle and united his opponents who pushed for his impeachment. The reason the opposition called for Basescu impeachment process were the accusation that Trariceanu had sought Basescu's intervention in the Patriciu trial and his refusal to ratify ministerial appointment proposed by the Minister. The accusation of corruption of both political divide led Social Democrat leader Micrea Geoana to announce that his party would seek

[28] .http//:www.susses.ac.uk/sei/1-4/2.html, accessed on 7/6/2010

judicial investigation of the President. At the same period, the party initiated parliamentary procedures towards impeachment. In response, Parliament invoked the presidential impeachment process under Article 95 of the Constitution which stipulates the impeachable offences of an erring public officer to include; misconduct, high treason, perjury etc.[29] On 19th May, 2007, Romanian voters backed president Traian Basescu in an impeachment referendum by a margin of three-to-one. This result came despite most of Romanian's political parties urging a "yes" vote in the referendum to impeach, including Basescu's erstwhile partners in the truth and justice electoral alliance, the National Librals.

Impeachment in foreign jurisdictions as shown above, follow common trend as the power of impeachment is exercised with great caution. This is the reason impeachment is not common in advanced democracies. In Nigeria, the situation is the opposite. Impeachment is carried out with reckless abandon. Sometimes when the legislature want something from the Executive especially money, they embark on threat of impeachment of the Executive, Federal or State. Democracy in Nigeria is at the developmental stage and will advance if the legislature could emulate the procedure practiced in foreign countries.

6.7 Impeachment in Some African Countries: Guinea, Niger Republic, Togo As Case Study

African countries are yet to practice true democracy. The practice of democratic governance in Africa is difficult because of sit-tight-syndrome of some African leaders. Some of these leaders when they are in power find it difficult to leave office and when they do, they install a surrogate who will protect their ill gotten wealth acquired while

[29] *Ibid*

they were in power and also enable them to still control government when they are out of office. To succeed, those in position of authority recycle themselves and prevent good leaders from getting into power and therefore forestall development and progress of their countries. For example, former President of Cote D'vour now Burkina-Faso, late Felix Houphouet-Boigny 'of Cote D'vour and late President Etienne Gnasingbe Eyadema of Togo died in office after having led their countries for over three decades, despite very stiff oppositions of their countries clamouring for change of leadership. Late President Gaddafi of Libya ruled his country for forty-two years and could only be removed through revolution which consumed him and many other Libyans. Due to these leaders' dictatorship tendencies while in power, and their ability to crush possible opposition and any uprising against their governments, they could not be removed through democratic means. They never allow democracy to thrive in these countries as they usually and often amend their countries Constitution to suit their whims and caprices and this made their removal impossible democratically via impeachment.

However, the policies of these sit tight leaders more often than not elicit criticism from the opposition that trigger off protests by the people which sometimes brought about military intervention. Thus Military coup d'etat inevitably became the only means through which these leaders could be removed from office.

Nigeria returned to democratic rule in 1999 after many years of military rule. On 23rd December, 2008, there was military coup d'etat in Guinea led by Captain Moussa Dadis Camara. The coup occurred shortly after the death of late President Lansana Conte who died of chronic diabetes and Leukemia. According to the Constitution of Guinea, the President of the National Assembly is to assume the presidency in the event of a vacancy,

and new presidential election to be held within 60 days.[30] The Junta took over power in fragrant violation of the Country's Constitution. The coup plotters dissolved the government and institutions of the Republic, suspended the Constitution "as well as political and union activity". The leader of the coup, Captain Camara in justifying the coup said that the coup is necessary due to Guinea's "deep despair" amidst rampant power and corruption, and that the existed institutions were incapable of resolving the crises which had confronted the country. He also announced that someone from the military would become President, while a civilian would be appointed the Prime Minister as the head of the new government that would be ethnically balanced; and that the National Council for Democracy and Development which he formed would include both officers and Civilians. The President of the National Assembly, Aboubacar Sompare in condemning the coup, described it as "a setback for the country". African countries and international community also roundly condemned the act. Nevertheless, this condemnation did not deter the junta as they held on to power and refused to return the country to democratic governance. The junta also failed to transform the system which he said was characterized by bad economy, corruption, nepotism, insecurity and gross human rights abuses. The lure of power no doubt prompted the junta's action. The military by their training are to protect their respective territories from external aggression and therefore they should commit themselves to their constitutional role of protecting their territory. They should toe the part of honour and return the country quickly to democratic rule which guarantees rule of law, fundamental rights of the citizens and good governance.

[30] http://en wikipedia.Org./wiki/2008 Guinea Coup d'etat p. 3 accessed on 27/9/2010.

Similarly, in Niger Republic, the President Mamoundu Tandja was toppled in a bloody military coup de'tat that left about ten soldiers dead. The Coup was as a result of the ousted President's insistence in remaining in power after he had served out his constitutional two terms in office thinking that the presidency is his hereditary right. To achieve his selfish desire, the ousted President egged on by political boot lickers, amended the country's Constitution and removed all term limits as his second term in office was about to end. The opposition cried wolf and went to Court to challenge the bizarre action. The Court ruled in favour of the opposition but the President in fragrant disobedience to the order of the Court, placed himself above the Law and promptly sacked the Constitutional Courts and dissolved the Nation's Parliament. After the dissolution of the Parliament at the end of his tenure, he then ruled the people of the Republic with iron fist hand and inevitably incurred the wrath of the military that eased him out of power[31]. The ousted President failed to draw a lesson from Nigeria where her two former leaders, General Sani Abacha and President Olusegun Obasanjo attempted to perpetuate themselves in power without the mandate of the people and both ended in shame without achieving their ultimate goal. General Sani Abacha died before the five political parties he permitted to register and contest election in Nigeria would have all adopted him as their sole candidate, been the man his supporters said would save Nigeria. General Obasanjo met his waterloo in the Senate floor despite pulling all the steps to secure a third term in office.

Military government is often said to be the worse form of government. A robber may seize a bank, a terrorist may hijack a plane but a military Junta seizes a whole country, its people, their freedom and treasury. Military coup d'etat is an unconstitutional change of

[31] http://sahara reports.Com/blog-entry/coup-d'etat-Niger-Republic- clea… p. 2, 9/27/201

government and must never be justified irrespective of the circumstances that served as prelude to their emergence. In any political set up, power belongs to the people whether under military or civil regime. Though military wield gun and can use it to suppress any uprising against their regime, but in a situation like this where the military seizes power, people should be bold enough to confront such military rule through civil protest, strike and through revolution as witnessed in Libya, Egypt and some Arab countries. It is a common experience that whenever the military seizes power from a democratic elected government, they appoints civilians as Ministers and Heads of some government institutions to legitimize their government. People that are offered these positions as enticement should not accept such appointments. If the junta failed to get the support of the people, they will surrender and be forced to return power to civil government, and this is the only way through which government of the junta or civilian dictatorship could be removed from power and wriggle out from the grip of autocratic regime of the military.

An unconstitutional takeover of government through violence or coup d'etat should be discouraged particularly in Africa. Democracy with all its warts and dirt's is no match for a rule of a junta if played according to the rule of the game. The current political logjam in Ivory Coast left much to be desire. In that country the incumbent President Gbagbo declared himself President as against his opponent Ouattara, who won an election considered to be free and fair by both the local and international observers. The President manipulated himself into power through court processes, swore himself in and held on to power refusing to hand over to the winner of the election, Ouattara[32]. This is civilian

[32] Taiwo, Juliana, '*Cote D' Ivoire: Military Option Still on Card- ECOWAS',* Daily Sun Newspaper, Wednesday, 5th January, 2011.

dictatorship and it is prevalent in African countries where leaders' never wants to leave power even when the people do not want them in power. These leaders, the likes of President Gbagbo would do anything within their power including shedding blood in order to remain in power. These sorts of leaders should not be allowed to have their way in governance as doing so will amount to inviting the military into power whose regime is the worst. This could be done through strike, protest by civil populace and refusal of appointments by such a leader as earlier suggested. When such a leader is removed he should not be allowed to go unpunished but to be sanctioned by putting him to trial and when convicted should be sent to prison custody. This should discourage dictatorship and autocratic governance. Democratic rule is the best form of governance; Africa should embrace it as it guarantees development, peace and security.

CHAPTER SEVEN

CONCLUSION AND RECOMMENDATION

7.1 Conclusion

Nigeria operates constitutional democracy. The Constitution of the Federal Republic of Nigeria is the organic law of the land. The Constitution is Supreme and it is the foundation of all laws**.** It is the bedrock of the rule of law and the three organs of government in Nigeria derived its powers from the Constitution[342]. The Supreme Court of Nigeria re-affirmed the superior status of the Constitution in *Attorney General of Abia State v Attorney General of the Federation* thus:

> The Constitution is the grundnorm and the fundamental law of the land. All other legislations take their hierarchy from the provision of the Constitution. The provisions of the Constitution take precedence over any law enacted by the National Assembly even though the National Assembly has the power to amend the Constitution itself. By the provision of the Constitution, the law made by the National Assembly comes next the Constitution, followed by those made by the House of Assembly[343]

The concept of supremacy of the Constitution connotes that any law, policy, initiative and procedure that is contrary to the provisions of the Constitution shall be declared null and void (section 1(3) of the 1999 Constitution). The powers to remove the President, Vic President, Governor or his deputy for gross misconduct through impeachment process, are vested on the National Assembly and State Houses of Assembly by sections 143 and 188 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[342] Section 1 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[343] [2002] 6NWLR {pt.763} p.264

Conversely, the executive arm of government also checks the law making powers of the legislature as envisaged by the principles of separation of powers. During the tenure of former President Olusegun Obasanjo, the power of impeachment was used with reckless abandon to remove some State Governors who were alleged to be corrupt. This power of impeachment was used with impunity as the procedure for such removal was not properly followed. To successfully remove some of these Governors, the Federal Government under the watch of President Obasanjo used the instrumentality of the State apparatus to influence their impeachment.

Besides, the shoddy and bizarre manner the impeachment proceedings were conducted are worrisome and leaves much to be desired. The impeachment was not used with the intention of check mating corruption, abuse of power and violations of the Constitution as it ought to be, but one employed for addressing political grievances and scoring cheap political points. Expectedly, -the judiciary rose to the occasion and invalidated all the impeachment exercised by self serving and surrogate legislators who threw decorum to the wings for their selfish gains. The legislators in their exercise of impeachment powers ought to be cautious. They should sparingly use it only as a last resort after other avenues of calling the erring Chief Executive to order have failed. The actions of some State legislators with regard to impeachment, with the tacit connivance of some government officials and powerful civilians, are a rape on, and an attempt to strangle democracy and the rule of law or render it ineffective. Nigerian politicians and the officials should demonstrate to all that they are capable of delivering to the people and upholding the laws as they expect of the ordinary citizens. There is the need for the legislators to reassure the people that they are fully aware of, and are ready to uphold, the rules of

democratic engagement. No matter how repugnant the actions of the Governors and their Deputies, including other elected officials may be, we must, as civilized people allow the law to take its due course. Therefore, impeachment power must be exercised with great caution and should not constitute an instrument of vendetta.

The electorate on the other hand, must rise up to the occasion and take back their country. They must hold their elected officials accountable for their activities while in office and ensure that credible persons, and not those bereft of constructive ideas, are elected into office. Conversely, those who fail to perform must be promptly voted out. The people deserve the leaders they choose; therefore, the electorates must reevaluate their criteria for electing people into office. One of the consequences that flow from the peoples inaction is their continued endurance of various social maladies, political malaise, inequities and injustices, economic deprivation amidst plenty, and most of all, international scorn. As "impeachment" is a tool for change in the hands of the legislators, so is the ballot the only effective weapon available to the people, unlike the former, they must use it wisely for the future is in their hands.

7.2 Recommendations.

The process of impeachment of elected public office holders under the Nigerian Constitution has many lapses which are subject to abuse and manipulation by the legislature. The process if not checked will breed anarchy and eventual collapse of our nascent democracy. To curb the trend of reckless impeachment of officers of government, it is recommended that money politics should be discouraged. Display of money, and political money bags should be banned in Nigeria politics. A law should be enacted to

make sharing of money an offence during campaigns to discourage money bags venturing into politics and pave way for honest individuals to come into politics and redress the already polluted political atmosphere in order to move Nigeria forward, as money will not be a factor for those seeking elective positions.

The Constitution should clearly define misconduct stating clearly, the acts that amount to gross misconduct so as not to leave the definition at the mercy of the legislators, who may define it to suit their purpose and their relationship with the elected office holders. The absence of clear definition of the word "gross misconduct" in section 188(11) of the 1999 Constitution renders the officers helpless and leaves them at the mercy of the legislative houses who might embark on impeachment mission for their selfish goals. Section 143 (11) and 188 (11) of the 1999 Constitution of the Federal Republic of Nigeria should be amended to incorporate a comprehensive definition of gross misconduct to avoid possible manipulation of the word by the legislature.

The Oyo State House of Assembly in the impeachment saga of Governor Ladoja, misconstrued the requirement of a two-third majority of all the members of the legislative house for the approval of investigation of offences to mean a two-third majority of those present in any purported proceedings where the issue of impeachment is discussed. It is two-third majority of all the members of the House of Assembly as interpreted by the Court in that case and not two-third majority of those present during impeachment proceedings.

The Speaker of a State House of Assembly is assigned a special role in the Constitution when conducting impeachment proceedings. For any valid impeachment, the Speaker must satisfy the roles assigned to him by sections 188 (2)(3). Sections 188 (2) provides

that, whenever a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly-

(a) Is presented to the Speaker of the House of Assembly of the State

(b) stating that the holder of such office is guilty of gross misconduct in the performance of functions of his office detailed particulars of which shall be specified, the Speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office, to be served on each member of the House of Assembly.

(3) Within fourteen days of the presentation of the notice to the Speaker of the House of Assembly (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice), the House of Assembly shall resolve by motion; without any debate whether or not the allegation shall be investigated.

The courts have decided that the operation of section 188 (10) of the Constitution is subject to compliance with all the provision in section 188(1)-(9). The Speaker must satisfy this roll entrusted on him by the Constitution for such impeachment to be valid.

The powers conferred on the Chief Judge of a State by section 188(5) of the Constitution in setting up a seven man panel to investigate allegations of impeachable offence against a public office holder may be abused. The Chief Justice who is in good working relationship with the leadership of a State House of Assembly will simply endorse the names suggested to him by the speaker. Again the caliber of persons to be appointed to serve in the panel is not clearly defined or stated hence, any person could be appointed to

serve in the panel. It may be easier to know members of a public service or legislative house, but it is difficult to discover whether or not a person is a member of a political party and no assurance that such a person may not be sympathetic to a particular political party. That proviso should be revisited, reviewed and given the proper definition it deserves, as it is rather illusory. Preferably, the panel to try an impeachment should be constituted from the judiciary. Judges of high integrity should constitute such panel for trying and investigating impeachable offence against a public office holder in a State. The Judges however, should act in quasi-judicial capacity to avoid subjecting its decision to legal technicalities. The rules that will regulate impeachment proceedings should be made by the Chief Justice of Nigeria by virtue of powers to be conferred on him by the Constitution. The rule should be tailored towards doing substantial justice to the process. This should also be applicable to the Federal level by appointing Supreme Court Justices to serve in the panel, appointed by Chief Justice of Nigeria.

Furthermore, the Constitution should state clearly a conduct by elected public office holders that shall constitute impeachable offences. This will guard the legislature from embarking on fruitless impeachment of a public officer and also put the public officer on its toes. Again, section 188(10) of the 1999 Constitution should be redrafted to show clearly that the only condition under which the Court would not intervene is where the legislators are in substantial compliance with all the conditions necessary for a valid impeachment.

Again, the word impeachment is not mentioned in 1999 Constitution. In other words the word impeachment is conspicuously missing in section 143 &188 of the Constitution. The word used thereon is removal. Impeachment does not amount to removal. A public

officer may be impeached but not removed. He stand removed if found guilty of the impeachable offence. In America for example, impeachment does not amount to removal from office until found guilty of the offence by the Senate. The situation creates false impression in the process of impeachment and the Constitution should really clarify and reconcile these words.

One of the principles of natural justice is that "no man shall be a judge in his cause". The Constitution in sections 143(2) &188(2) vests on the legislators the right to initiate impeachment through a notice of allegation to the Speaker of the House of Representatives or the Senate President in case of the National Assembly or the Speaker of a State House of Assembly signed by not less than one-third of the members of the legislature concerned. The Constitution should be amended to exclude the signatories to the impeachment notice from participating in the deliberations of the legislature on the allegation against a Chief Executive. This will enable the House to subject the findings of the Committee to an impartial evaluation. It is against the rules of natural justice for some legislators to constitute themselves as accusers and judges in a serious matter like impeachment without due process of law. The amendment of the Constitution in this respect will ensure a fair hearing and guarantee the fundamental human rights of public officers, as envisaged in section 36 of the 1999 Constitution. The appointment of the Committee that will investigate the allegation of gross misconduct should be done by the National Judicial Council (NJC) in consultation with the Chief Justice of the Federation in the case of Federal officers and Judicial Service Commission in consultation with the Chief Judge of a State as regards State officers, leaving the legislature to decide without

removing the power of the judiciary to review the proceedings and the findings of the Committee.

The meaning(s) assigned to section 143 (11)and 188(11) should be clearly defined by clarifying the offences that constitute gross misconduct, and not to leave it for those making the accusation of gross misconduct and or those adjudicating on the impeachment process, to allow the whims and caprices of politicians to influence impeachment process. This will bring sanity in the process. This is because our political culture is not ripe enough for the politicians to be able to exercise their constitutional power to impeach in good faith. The legislators on revenge mission may rope in a victim of impeachment on minor offence and then interpret it as constituting a gross misconduct in order to impeach him and remove him from office.

Impeachment is a great weapon aimed at ensuring high standard of public accountability, probity and stability of the nation, its usage and enforcement ought to be subjected to a most thorough legal interpretation and judicial process. This can be attained by allowing the Legislative to remain within the ambit of law-making body. The impeachable offence of a public officer should be drafted by the Chief Justice in respect of Federal public officers or Chief Judge of a State in respect of a State officer and submit same to the legislature concerned to act upon it. Our legislators are not qualified and matured enough to intervene in respect of impeachment of public officers. This is seen in the manner some State Chief Executives were impeached by the legislators in the period under review.

Impeachment should be divorced from political bickering and ethnic acrimony which tend to frustrate the practice of politics and a stable government in accordance with

accepted practices and norms. The political history of the United States of America (USA), the United Kingdom and France has shown that impeachment has been sparingly used, whereas Nigeria in less than four years of our return to civil rule made history with the impeachment of about five state governors under the regime of President Obasanjo. It will therefore be in the interest of the society and public officers for the impeachment offences to be clearly defined in the Constitution or in the Act of the National Assembly to remove any ambiguity in the process.

The impeachment of public officers should not be published to avoid the influence of public opinion on the issue until the findings are finally considered. In this regard neither the Legislature nor the Investigating Committee will sway to the side of public opinion. The Constitution does not provide for the impeachment of legislators. They could only be recalled by the electorates of their constituencies and the process of recall is cumbersome coupled with the attitude of the Nigerian politicians who are only after what they can gain. This accounts for the reason no erring legislator has been recalled. This is the difference between the practice of democracy in Nigeria and that of the Untied States of America where polities is played according to the rules of the game and ethos of democracy. The legislators should be subject to some disciplinary action similar to impeachment for dishonourable behaviour. They should be subject to public accountability by including them among public officers that can be impeached. Where a *prima facie* case is established against any legislator, a special tribunal headed by a Chief Judge of a High Court should be appointed to impeach the legislator. The findings of the tribunal should be subject to judicial review to test the impartiality of the tribunal.

Finally, in Adeleke's case, the Court of Appeal Ibadan Division held that for impeachment procedures to be carried out all members of the house must be present. This pronouncement may not be possible in any legislature in Nigeria whether at national or state level. This is because bribery and corruption has eaten deep into our society, and it does not require much effort and money to persuade the required number of legislators to disappear from the scene during such crucial sittings, thus rendering the whole process a sham. The danger inherent in this pronunciation is that at any given time legislators can stay away from any scheduled house sitting in order to make it inappropriate in legal parlance. For this to be possible there must be a minimum attendance requirement for legislators and ensure they comply with it or the defaulter be reprimanded. This should be the yardstick that should be used in determining the quorum for any given meeting.

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