

The Prospective Nexus between Constitutionalism, the Rule of Law and Democratic Good Governance: The Nigerian Experience

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Abstract

Nigeria could be described as having a constitutional government just like many other African countries. This paper therefore strives at assessing the impact of constitutionalism and the rule of law on good governance in Nigeria. In order to ensure good governance, it also analyses the elements and dynamics of constitutionalism and the rule of law by carefully asserting that every democratic government derives its legitimacy from its constitution. This paper adopts a doctrinal approach based on traceable variables in Nigeria that tend to militate against constitutionalism, the derivatives of constitutionalism, rule of law and democratic good governance. In spite of challenges militating working against its full entrenchment, this paper asserts that Nigeria's constitutionalism is an ever evolving one and that there is a substantial connection between Nigeria's constitutionalism, the rule of law and good governance. The implementation of true constitutionalism, the rule of law and democratic good governance in Nigeria is suggested in some broad terms.

Keywords

Government, Good Governance, Democracy, The Rule of Law, Constitutionalism

1. Introduction

In order for democracy and good governance to function and for the rule of law to be respected in order to promote sustainable development, constitutionalism then becomes a cornerstone. The rule of law upholds democracy. Economic development influences democracy through stability in governance but effective

governance in contemporary society encourages and strengthens both constitutionalism and the rule of law in order to accomplish economic progress and development (Adeyemo, 2020).

Nigeria has a written constitution that serves as the basis for its governing structure. As Nigeria has had a protracted period of military rule, the concepts of a constitution and constitutionalism are more modern and contemporary. There have been debates and arguments as to whether or not Nigeria's currently written constitution, which was obtained from a military government is actually in reality a constitution and if succeeding civilian governments have been constitutional governments (Ogboye & Yekini, 2014).

A definition of the constitution, like other legal terminologies is really challenging. A country's constitution sets out and specifies governmental authorities as well as the restrictions placed on such authorities. This body of laws, regulations and conventions may be written or unwritten. It therefore makes little difference as to whether or not this collection of laws, regulations and conventions is contained in a single document (as it is in countries like Nigeria, the United States of America, India, etc.) or dispersed throughout several documents, as in the case of the United Kingdom (Young, 2007)¹. According to (Oyebode, 2005), the constitution has evolved in dynamic ways, including as sacred texts in theocratic governments and secular enactments. In fact, he claims that the Ten Commandment, the Law of the Twelve Tables, the Laws of the Medes, the Code of Humurabi, the Laws of Manu, etc., are the forerunners of modern constitutions. In formal terms, it has been asserted that the Greeks are the originators of the concept of a constitution. For instance, it has been claimed that Aristotle used the word *politelu*, which roughly translates to "constitution," to refer to the order of the offices in a *polis* (which is the state) (Muman, 1995). The Charter of Medina, according to an author, is the first text that may legitimately be referred to as a constitution². The Charter served as a formal contract among all the important Yathrib tribes and families, including the Jews and Pagans (later known as Medina) (Dur Al-Kotob Al-Ilmiyab, 2008)³. Today, almost all countries globally currently have constitutions, whether they are codified in a single document or numerous documents. Saudi Arabia may be an exception⁴.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) was enacted and therefore became the fundamental and supreme law of the land. The constitution therefore accordingly serves the following purposes:

- 1) To define a framework, broad concepts and governing principles.

¹Adam Tomkins actually argues that the United Kingdom Constitution is actually written but in different documents. By this, he meant the Magna Carta, the Bill of Rights of 1689, the Parliament Act of 1911 and 1949, the European Communities Act of 1972, the Human Rights Act of 1998, etc.

²Now in the present day Saudi Arabia.

³The document was drawn up with the explicit concern of bringing to an end the bitter inter-tribal war between the clans of the *Aws* and *Khazvaj* within Medina. To this effect, it instituted a number of rights and responsibilities for the Muslim, Jewish and Pagan communities of Medina bringing them within the fold of one system of government: A Comparative Study in Constitutional Law (Lebanon).

⁴Ogboye L.A. and Yekini A. O. *supra* note 2, pp. 119-120.

2) To adapt to the various circumstances that Nigeria's diverse population must face in order to develop into a plural dynamic society.

The various levels and arms of government, as well as their respective powers, are established in roughly about 320 sections of the constitution. It includes clauses relating to fundamental human rights, separation of power, judicial review, the amendment processes, representative democracy, and judicial independence. In this sense, it can be said that the constitution is built on the principles and ideals of constitutionalism.

This article will therefore analyze the relationship between constitutionalism, the rule of law and democratic good governance using the Nigerian experience. In doing so, the document is split into six sections after the introduction.

The first section explores factors that militate against constitutionalism in Nigeria to include corruption, weak legislature, disobedience of court orders by the executive arm of government, poverty/hungry populace, lack of due regard for fundamental human rights, weak judiciary, weak press, the absence of credible electioneering process, rigging of elections, weak democratic culture, lack of accountability, transparency and good governance, fearful populace and illiteracy of the populace. This asserts that Nigeria's constitutional provisions and its implementation will determine whether or not, Nigeria is practicing true constitutionalism in its true sense or not. However, this constitution has a basic flaw to which, according to some persons, tends to deprive it of constitutionalism as it was not created by the people's will. In other words, it fell short of one of the constitutional core principles.

The second section focuses on offshoots of constitutionalism. According to this argument, constitutionalism should enable states to meet societal expectations through good governance, accountability and transparency.

The rule of law is the subject of the third section. It contends that effective checks and balances must be in place to reduce the likelihood of abuse of state power.

The fourth section outlines democratic good governance. This asserts that good governance is when the state's capacity and capabilities are strengthened, the civil societies are mobilized and the private sector is further reenergized. Furthermore, it asserts that good governance possesses a number of characteristics. It adheres to the rule of law and it is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient. A fair legal system must at the very least be enforced impartially by an independent judiciary and its orders, rulings and judgements must be enforced with transparency or carried out in accordance with clearly pre-established rules and regulations.

The fifth section discusses how constitutionalism, the rule of law and democratic good governance are interconnected. It asserts that in Nigeria, there is a significant connection between constitutionalism, the rule of law and democratic good governance. It also proffers a road map for achieving effective democratic good governance in Nigeria and asserts that constitutionalism is the cornerstone

of both democracy and good governance, which serve as a general impetus for a functioning legal system and respect for the rule of law in order to promote sustainable development. While good governance supports both constitutionalism and rule of law in contemporary societies in order to achieve economic development, the rule of law upholds democracy.

The sixth section offers recommendations as to how true constitutionalism can be implemented in Nigeria.

2. Factors That Militate Against Constitutionalism in Nigeria

According to Li (n.d.), the term “constitutionalism” is ambiguous, just like the foundational word “constitution.” The word is a fusion of two words “constitution” and “ism.” Consequently, we then have “constitutionalism”. Literally, it could refer to the notion of a constitutionally-based government. Although, constitutionalism has not been defined authoritatively as only a descriptive form of the term has been used by scholars and learned jurists. Thus, according to Bo Li, constitutionalism is defined as follows:

as a system of political arrangements in which there is a supreme law (generally called “constitution”), in which all (particularly the entire system of government) is governed by the supreme law, in which only the peoples’ will (as defined through some pre-specified institutional procedure, usually through a super-majority voting mechanism) can supersede and change the supreme law, in which changes can only be made infrequently due to the difficulty of garnering the requisite popular support, and in which there is separation of powers, checks and balances and an independent judiciary dedicated to legal reasoning to safeguard the supremacy of the constitution.

According to (Henkin, 1998), the term “constitution” typically refers to the following:

- 1) It affirms the people’s sovereignty and derives its power from the people’s expressed will;
- 2) It lays out a blueprint for representative government that is responsible and accountable to the people through periodic elections with universal suffrage intact;
- 3) Governmental authority can only be exercised in ways that are consistent with laid down established constitutional processes, constitutional requirements and constitutional limitations.

(Oyewo, 2007), in his descriptive conception of constitutionalism posited that:

Thus for our purpose one will proffer a descriptive conceptualization and definition of constitutionalism, to mean: a system of political arrangement that is founded and governed by a supreme law, that can only be amended by the will of the people or through their constituent representatives, in which the practice of the rule of law, separation of powers, checks and bal-

ances and good governance are observed, and the rights and development of the citizens are paramount⁵.

Thus, (Nwabueze, 1973) also added that, “constitutionalism recognises the need for government but insists upon a limitation being placed upon its powers. It connotes in essence therefore a limitation on government, it is the antithesis of arbitrary rule; its opposite is despotic government.” Thus, constitutionalism could mean a constitutional government. This type of government operates in accordance with the guidelines as outlined in a given constitution. It should however be noted that just because a country has a constitution, it does not automatically as such make it a constitutional government or a true practitioner of constitutionalism. If a county practices constitutionalism, it will be evident from the constitutional provisions and how such is carried out⁶. In addition, the term “constitutionalism” has been used to refer to either a limited or a democratic (constitution and democracy) government⁷.

The following are some recommended indices of constitutionalism from various works:

2.1. Government According to Constitution

The practice of conducting a government in conformity with the spirit and letters of a constitution, which is the supreme law of the land, is one of the fundamental principles of constitutionalism as described above. This implies that the constitution alone must serve as the source of all powers for all individuals and authorities. Thus, any individual elected into any position under the constitution is not permitted to hold it for an extended period of time beyond the constitutionally permitted time as allowed by the constitution⁸.

2.2. A Representative/Democratic Government

Constitutionalism implies that sovereignty belongs to the people and that the people have the right to choose from among themselves persons who will constitute their own government at regular intervals through periodic elections. A democratic government thus differs from an autocratic one in this way. Also, an autocratic government can never be said to be “constitutional” or to have ele-

⁵“Constitutionalism and the Oversight Functions of the Legislature In Nigeria”, Draft paper presented at The African Network of Constitutional Law Conference on Fostering Constitutionalism in Africa held in Nairobi, Kenya.

⁶“This caveat is necessary as it is usually misunderstood that constitutionalism refers to following the law of a particular constitution. If this literal meaning is to be reckoned with, then it means autocratic governments like Libya, Egypt under Hosni Mubarak may claim that they are constitutional governments simply because they have a constitution that they are working with. Even states that are democratic may not necessarily be practicing constitutionalism.

⁷Nwabueze, B. O., *supra* note 12, p. 2.

⁸This is a usual concept in most written constitutions as the constitution will always carry a supremacy clause. For instance, s. 1(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 1(2) of the Constitution of Ghana and Article 2(3) and (4) of the Mozambique Constitution which provides respectively thus: “The State is subordinate to the Constitution and is founded on legality” and “Constitutional rules shall prevail over all other rules of the legal order”.

ments of constitutionalism in place, even if it has a constitution⁹.

2.3. Separation of Power

Baron De Montesquieu, a French Philosopher, propounded the separation of power theory. He posited as follows that:

Political liberty is to be found only when there is no abuse of power. But constant experience shows us that every man invested with power is liable to abuse it and to carry his authority as far as it will go... To prevent this abuse, it is necessary from the nature of things that one power should be a check to another... There will be an end of everything if the same person or body, whether of the nobles or of the people, were to exercise all their powers.

According to (Nwabueze, 1982), the purport of the postulation of Montesquieu which is the main point is that “absolute power is by its very nature arbitrary, capricious and despotic” and that the “concentration of governmental powers in the hands of one individual is the very definition of dictatorship.” The Nigerian Court of Appeal, per Salami JCA (as he then was), described the idea of the concept of separation of power as follows:

- 1) that the same person should not be part of more than one of these three arms or divisions of government;
- 2) that one branch should not dominate or control another arm. This is particularly important in the relationship between executive and the courts;
- 3) that one branch should not attempt to exercise the function of the other, for example, a President however powerful ought not to make laws, indeed act except in execution of laws made by legislature. Nor should a legislature make interpretative legislation, if it is in doubt it should head for the court to seek interpretation¹⁰.

To assert it in another way, for a state to be constitutional, the constitution must clearly define the authority of each arm of government (Nwabueze, 2004). According to the French Declaration of the Rights of Man (1789), which provides that “any society in which the rights are not guaranteed, or in which the separation of powers is not defined, has no constitution.”¹¹

2.4. Respect for Human Rights

The idea of human rights is one of the restraints on governmental powers that highlights the fundamental principles of constitutionalism. One would see the value of protecting human rights from the perspective of the social contract

⁹For instance, see Chapter 7 of the Constitution of Ghana on representation and elections; Chapter VI of the Constitution of the Federal Republic of Nigeria 1999 (as amended) on similar provisions and then, Article II of the Constitution of the United States of America (USA).

¹⁰*Ahmad vs. Sokoto State House of Assembly* (2002) 44 WRN 52.

¹¹Henkin L., *supra* note 10 p. 13. Although, all the constitutions under reference have provisions for separation of power, however, the practice is that each state is different. In the United States of America (USA), for instance, the Vice President is the President of the Senate (s. 3 Article I) and in a democracy like the United Kingdom (UK), the executive and the legislature are interwoven in nature.

theory and fundamental human rights has not changed since democracy was taken. It is therefore for this main reason that people initially agreed to come together to form a state in the very first place and to which purpose is the protection of the individual rights of people which has now become an essential component part of any constitution globally. Although, today's rights are primarily the civil liberties of the first generation, the 1948 United Nations Declaration of Human Rights (UNDHR) still serves as a model provision for today's use in various constitutions globally¹².

2.5. Independent Judiciary/Judicial Review

The third arm of government is the judiciary. It is the arm of government in charge of interpreting the law, more especially constitutional provisions. According to the idea of separation of power, the judiciary is the only arm of government empowered by law to carry out this statutory responsibility. Thus, this crucial arm of government must be independent in order for constitutionalism to exist in its actual reality. The constitution must have statutory provisions for it to function well in actual reality¹³. The idea of judicial review is an extension of the aforementioned. Through this procedure, any decision taken by the other arms of government can be brought before the court for review. It is crucial to preserving the rights and liberties of citizens and as such, it must be provided for in a constitution.

2.6. Control of the Police/Military

As the custodian of peace in a constitutional government, the police plays a crucial role in implementing executive orders. The police is an authority that is permitted to possess and bear arms in enforcing law and order in the society. Since actions of the police will directly or indirectly affect the rights of citizens and their liberties, there must then be a check on their authority and operations in every constitutional government. Also, same constitutional rules must also apply to the military. Infact, they ought to remain in the barracks unless their attention is needed outside the barracks and they ought to play little or no role in governmental affairs whatsoever and howsoever¹⁴.

3. A Well Defined Constitutional Amendment Procedure

Each constitution must have a clear process of amendment and it must be a process that enables the people's will to prevail. Although, a constitution can be

¹²See for instance, Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Chapter V of the Ghanaian Constitution. The Mozambique Constitution apart from spelling out the individual rights has a very cogent Article which is Article 43 and it provides that "The constitutional principles in respect of fundamental rights shall be interpreted and integrated in harmony with the Universal Declaration of Human Rights and with the African Charter of Human and Peoples Rights".

¹³See for instance Article III of the American Constitution and s. 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹⁴In a state of emergency and when the country is at war.

changed whenever the will of the people so demands, (Katz, 2000)¹⁵, it has however be asserted that since it is the supreme law of the land, such changes should not be frequently made.

The aforementioned requirements for constitutionalism are undoubtedly widely accepted. Some state constitutions may be missing one or two of these requirements. Thus, such states would consider what they have as their own brand of constitutionalism and this is more prevalent in countries found in Asia, Africa and the far Eastern states. Nevertheless, the requirements listed above aptly represent the dominant viewpoint¹⁶.

However, the constitution has a fundamental flaw which according to the opinion of some critics, deprives the constitution of constitutionalism because it is not the will of the people. In other words, it failed to meet one of the fundamental values of a constitution. The preamble to the constitution is nothing but false, and the Constitution of the Federal Republic of Nigeria 1999 (as amended) is a military decree. Whatever the case maybe, we have traditionally recognized the document as the country's constitution.

Despite the fact that the constitution explicitly declares constitutionalism, the government's policies, actions and inactions more often than not frequently violates the provisions of the constitution.

It should be noted that numerous factors militate against constitutionalism and democratic good governance in Nigeria. These factors will be succinctly considered hereunder.

3.1. Corruption

Nigeria has struggled with corruption since as far back as 1983. An author posits that keeping an average Nigerian from being corrupt is like keeping a goat from eating yam (Achebe, 1998). This aptly demonstrates the crippling effects of corruption on Nigeria's political system.

3.2. Weak Legislature

Currently, it appears that the legislature is nothing but just a rubber stamp. This is due to the fact that principal officers are under constant attacks on all fronts ranging from criminal actions against them such as forgery and incomplete asset declarations as prescribed by the Code of Conduct Bureau (CCB). The legislature has thus being weakened by such criminal accusations.

3.3. Disobedience of Court Orders by the Executive

Respect for the rule of law, which is how orders issued in accordance with the laws are made, is essential to maintaining the sanctity of the law (Ijalaiye, 2008). This was evident in (*Governor of Lagos State v. Ojukwu, 1986*), where the Supreme Court asserted that the effect of disobeying court orders would lead to the

¹⁵As Thomas Jefferson has opined that a generation ought not to bind another generation with a constitution. The constitution must reflect the resolve of any particular people at any given time.

¹⁶See *Ibid*, for a discussion of the polar views on constitutionalism.

replacement of the rule of law with anarchy. This was quite common during military dictatorship. Even though, there is now a formal constitution in place, this trend is still prevalent under this current democratic administration, See (*AG Lagos v AG Federation, 2004*).

A major challenge to this constitutional rule is that section 14 of the Constitution, which is a component part of Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended), is not justiciable¹⁷. A learned author rejects the non-justiciability of Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended), who (*Nwabueze, 1977*) further stated that “when the court interprets a particular command of the constitution to be of the non-justiciable kind, it often express its conclusion in terms of the separation of powers” (*Nwabueze, 1977*)¹⁸. Section 14(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is just still a mere declaration as it still cannot be enforced by way of legal adjudication but it would be considered a failure of duty and responsibility on the part of state organs if they act in blatant disregard of same and whether or not, those in authority will act politically to address the current issue at hand would determine what type of far reaching implications that this failure will have on the teeming populace, see (*The Attorney General of Ondo State v. The Attorney General of the Federation, 1981*).

3.4. Poverty/Hungry Populace

There is no doubt that poverty and impoverishment are at a high level in Nigeria. The government is not helping matters as it keeps on indulging in blame game accusations of a certain political party for being responsible for Nigeria’s extreme poverty rate, whereas Nigeria is experiencing a recession, which is bad for its economy.

3.5. Lack of Due Regard for Fundamental Human Right

Another significant challenge to Nigeria’s constitutionalism is the lack of due regard for fundamental human right of citizens in Nigeria. This is due to the government’s display of a complete and total lack of due regard for fundamental human rights of citizens at all levels. Military actions against civilians over peaceful protests against the removal of fuel subsidy, unlawful extra-judicial killing of citizens, indefinite detention of suspects etc are all instances and pointers to the aforementioned fact (*Yekini, 2012*).

3.6. Weak Judiciary

The judiciary appears to be in total disarray as the courts appears to be engaged

¹⁷This is by virtue of the Constitution of the Federal Republic of Nigeria 1999 (as amended), where s. 6(6)(c) which provides that: “that judicial powers vested in accordance with the foregoing provision of this section shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution”.

¹⁸*Ibid*, p. 38.

in a rivalry of supremacy as a result of conflicting court orders emanating from the courts. The courts appears to now be pawns in the hands of desperate politicians. It has being asserted that “The recent conflicting and contradictory judgments and Court orders delivered by the Federal High courts in Abuja, Lagos, Port Harcourt on the Peoples Democratic Party (PDP) National Convention and the Abia state governorship logjam question the role of the judiciary in Nigeria’s nascent democracy. It raises concern over the consistent and persistent somersaults of judicial officers in the temple of justice” (Oluwasanmi, 2016). Anarchy is inevitable in any society, where there is the misapplication of law which automatically results in a miscarriage of justice like in the instance of Nigeria.

3.7. Weak Press

Currently, the press is quite unreliable and weak. Investigative journalism is no longer practiced by journalists and currently what is being practiced is “garbage-in-garbage-out” journalism. Citizens now pay for news to be aired on broadcast radio stations and the print media, which ought not to be so. This has the attendant consequences of weakening the press, thereby preventing the press from serving as the watchdog of the society. When a government gains control by deceit, it hardly ever respects constitutional restrictions on its authority.

3.8. Absence of Credible Electioneering Process

There is no gainsaying the fact that our electioneering process is already riddled with fraudulent malpractices, irregularities and anomalies, which ought not to be so. Consequently as a result of this, the constitutional provisions that guarantees a representative democracy has being rendered meaningless. Manipulation of voters, voters apathy and disenfranchisement is now the order of the day (Oyewo, 2007)¹⁹.

3.9. Rigging of Elections

In Nigeria, election rigging or vote buying is the illegal manipulation of election processes through ballot-fixing fraud and collusion between electoral officials and party agents to influence the outcome of an election. It has evolved into a malignantly progressive phenomenon over the years in Nigeria’s democratic process and a means to ensure electoral successes, while subverting the noble and contemporary notions of credible, free and fair electioneering processes in Nigeria (Nigerian Wiki, 2023).

3.10. Weak Democratic Culture

Nigeria’s democracy is still very much nascent. Most people are still accustomed to what is obtainable under a military-styled system of government. The rule of law appears to seemingly be relegated to the background. Most bail-related court orders issued to political detainees such as Col. Sambo Dasuki and Mr. Nnamdi Kanu are still not obeyed and this is antithetical to true democracy.

¹⁹Oyewo (2007), *supra* note 5, p. 19.

3.11. Lack of Accountability, Transparency and Good Governance

Majority of academic writers believe that the government has not met its obligations in the aforementioned areas of accountability, transparency and good governance. The major challenge preventing Nigeria from achieving that exalted level of excellent good governance has been and is still corruption (Ijalaiye, 2010)²⁰.

3.12. Fearful Populace

The fact that there is fear in the political system is real. To repress and intimidate the opposition, the government employs the services of the Economic and Financial Crimes Commission (EFCC). The arrest and arraignment of the former PDP Publicity Secretary, Mr. Olisa Metu by the EFCC, who was made to promise to pay N400,000,000.00 (four hundred million naira) is a stark illustration of this assertion²¹.

3.13. Illiteracy of the Populace

The lack of literacy of the populace is another challenge in enjoying good democratic rule. A writer posits that “I follow public events in Nigeria with a certain sense that some grand master of fiction, versed in absurd tragedy, stands just out of sight to shape and orchestrate these events. For me, to read the pages of Nigerian newspapers is often akin to reading the most wrought fabulist fiction. Except that the events one encounters in news reports, bizarre as they may, are deeply rooted in and describe the shattering realities of Nigerian lives”. These are often events that trigger the declaration, “only in Nigeria” (Ndibe, 2016).

4. The Derivatives of Constitutionalism

The modern trend is that constitutionalism is not an end in itself but rather a means to an end. Constitutionalism from descriptive analysis presented by various scholars all point to the fact that constitutionalism is all about the responsibility of the government to the masses. While commenting on constitutionalism in Africa, a writer posits that “in a new democratic constitutional order, energies which would otherwise be spent on fighting repression can now be spent on economic and social development of the people. Good governance will foster accountability of the governors to the governed and will lead to economic and social development in which human rights and the worth of the individual can fully be realized by all” (Sinjela, 1998).

Thus, a learned author in justifying his approach to describing constitutionalism posits that “this is a deliberate attempt to transcend the liberal constitutio-

²⁰Ijalaiye (2010) “Democratic Governance in Nigeria: A Critical Appraisal” in *Law, Politics and Development: The Challenges of an Emerging Mega City. Essays in Honour of Babatunde Raji Fashola, SAN*, Ijalaiye D.A. *supra*; Belgore (2008) “Rule of Law and Democratic Governance in Nigeria: Challenges and Prospects”, University of Abuja Pre-convocation Lecture; Oyewo (2007), “Constitutions, Good Governance and Corruption: Challenges and Prospects for Nigeria”, *supra* note 5.

²¹It is not certain whether or not this money was actually paid as at the time of this research.

nalism and capture the salient feature of constitutionalism not merely as an imposition of limitation on exercise of powers, but also as a mechanism for accountable and developmental exercise of powers” (Oyewo, 2007)²² and so therefore, if constitutionalism is properly practiced, it will lead to every state making provision for societal expectations through transparency, accountability and good governance.

Good governance, accountability, transparency and democracy are all interrelated concepts. The essence of having democracy is to ensure accountability and transparency which will eventually lead to good governance. Thus, Abraham Lincoln defined democracy as the “government of the people, by the people, for the people” (Azeez, 2009). It thus envisages that the people are in charge of the government usually through their elected representatives and the sole aim and welfare of the government is the people. Azeez, commenting on the responsibility of the government in a democratic system asserts that “the ethical responsibility of leadership and the moral code embedded in the constitution they swore to uphold should imply that their mandate responsibility is the mandate they have to deliver on development, welfare and the provision of basic needs”²³. The question of how can the leadership provide the basic needs of society in a democratic or constitutional government then arises for consideration and it lies definitely by governance through proper accountability and transparency. Transparency has been defined as the ability of all public and government institutions to make a total and complete commitment to being open and transparent in their policies and actions (Owasanoye, 2000).

On the other hand, accountability can be interpreted from two significant and distinct perspectives. First of all, accountability may mean that the government must answer to another different arm of governmental entity entirely. For instance, government’s actions can be challenged in court or through the work of an oversight institution such as the Ombudsman or the Auditor General with a mandate to assess the effectiveness, efficiency or fairness of government’s policies and actions.

Secondly, accountability may simply mean transparency which is the ability to make governmental actions and activities subject to public scrutiny (Sossin, 2011).

Governance can therefore be defined as the process employed to achieve the noble end of a state and governance simply implies the act of governing a people within a given territory or a state (Ogundiya, 2010). Participatory, transparent, accountable, effective and equitable are just a few characteristics of good governance, and same promotes the rule of law. It ensures that the political, social and economic policies are based on a broad consensus in the society and that the voices of the poor and most vulnerable are heard and considered during decision-making over the allocation of resources for development (Oyewo, 2007). A good or bad government is actually an ethical one. In other words, whether or

²²Oyewo (2007), *supra*, note 5. p. 11.

²³*Ibid.*

not, a government is good or bad depends on how well the aforementioned goals are clearly realized through governance.

Thus, the following characteristics have been identified as criterias for good governance²⁴: 1) Participation; 2) Rule of Law; 3) Transparency; 4) Responsiveness; 5) Consensus Orientation; 6) Equity; 7) Effectiveness and Efficiency; 8) Accountability; 9) Strategic Vision. To summarize it all, participation is a mandatory requirement for good governance. The people are an integral part of governance. In addition to upholding the law, the government must be transparent and answerable to the people. It must function within the clearly defined goals of the state by distributing state resources among the people in an efficient and equitable manner.

5. Rule of Law

The term “rule of law” refers to a government founded on legal principles rather than those of men. It is a translation of the French phrase “La Principe de Legality,” which means “the principle of legality”. The rule of law in a much more wider sense, implies that the law is supreme and is above every person. No one irrespective of their status, wealth, either as a ruler or a ruled, etc. is above the law. In a more constrained sense, the rule of law connotes that all governmental power must be used in compliance with the written laws passed in line with established and well laid out procedures (Law Teacher, 2013).

- 1) Supremacy of the law, lack of arbitrariness—the power of the government is limited;
- 2) Equality before the law—no special treatment for different people;
- 3) Predominance of the legal spirit i.e. the constitution as a general principle of law.

Constitutional democracy is founded on the rule of law or the principle that refers specifically to a government under the law and to an unending search of reasonableness as the law’s most basic norm. It guarantees that the government or a collection of institutions with the authority to impose legitimate force on a certain territory and its inhabitants, exercises that power in a way that is reasonable and not arbitrary and so to further reduce the chances of governmental power from being abused, proper checks and balances must be established. Accordingly, the government, or the persons who occupy positions of authority in a state, has been carefully selected into three sets of powers based on the organization of their offices and their relationship to the governed. The laws are created, put into effect by way of execution and then the interpretation of the law by the legislative, executive and judicial arms of government respectively. In addition, a vertical division into the central and local levels of government has also been established.

In an attempt to describe the nature of law and the circumstances in which citizens live, the rule of law is thus a regulative principle. According to propo-

²⁴*Ibid.*

nents of constitutionalism, laws should be a set of well-defined, predictable and established rules and regulations that do not provide any individual or group preferential treatment or exemptions based on circumstances of their place of birth, status, race, colour or state of origin. These laws must be impartial, general and must apply to everyone equally, fairly and without discrimination of any sort whatsoever and howsoever. The ultimate aim of this rule of law is to uphold or defend the equal liberties of man, more especially the equality of rights (Pisani, 2010). The rule of law requires that: 1) the rule of law should take precedence over the arbitrary abuse of power; 2) everyone is subject to the ordinary law of the land and so therefore, they must respect the rule of law as a flagrant violation of the rule of law will result in dire consequences resulting in sanctions and punishments; 3) everyone should be treated equally before the law. This is the case because no one is above the law and everyone is of course subject to the law. This invariably implies that everyone is subject to the jurisdiction of the court system put in place by the society; 4) an individual's fundamental rights, which are unalienable in nature, should not be denied, unless as specifically provided for in the Constitution. In its simplest term, everyone has the legal right to a fair trial and due process under the law.

6. Democratic Good Governance

In order to manage a country's affairs, political and administrative authorities must be exercised at all levels. It consists of the structures, procedures and mechanisms that enables individuals and groups to freely express their preferences, assert their legal rights, meet their obligations and finally resolve their differences (Committee of Experts on Public Administration, 2006)²⁵.

Effective democratic governance is described in the Human Development Report of 2004 as a set of principles and core values that gives poor people the ability to participate in decision-making, while protecting them from the arbitrary and unjust measures taken in their lives by the government, multinational corporations and other forces. This entails making sure that certain institutions and powers are set up and dispersed in a way that provides the impoverished people a genuine voice and space as well as develop a system through which the rich and powerful can be held accountable for their deeds and misdeeds. The following essential elements of democratic governance are as highlighted in the Report:

- 1) A system of representation that includes effective political parties and interest groups;
- 2) A voting process that ensures universal suffrage in free and fair elections;
- 3) A check and balance system built on the principle of separation of power, with an independent judicial and legislative arms of government;
- 4) A vibrant civil society that can oversee public policies and private businesses and providing alternative forms of political participation;

²⁵Committee of Experts on Public Administration, Definition of basic concepts and terminologies in governance and public administration (E/C. 16/2006/4) (New York, 2006).

5) A free, unbiased and independent media.

Thus, governance is further stated as the process by which authority is used to judiciously utilize a country's social and economic resources for growth and development (Odunuga, 2003). Three (3) crucial elements that can be used as a yardstick to measure an effective good governance are the structure of a political system, the process through which power is used to maximise the economic and social resources of any country and the capacity of the government to create, formulate and implement policies²⁶.

(Sharma, 2007), further asserted that:

The term "governance" encompasses all aspects of the way a country is governed, good governance has several characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective, efficient, equitable, and inclusive and follows the rule of law. At a minimum, good governance requires fair legal frameworks that are enforced impartially by an independent judiciary and its decisions and enforcement are transparent or carried out in a manner that follows established rules and regulations.

Governance is also defined as "the exercise of economic, political, and administrative authority to manage a country's affairs at all levels. It comprises mechanisms, processes, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences" in addition to the United Nations Development Programme (UNDP), which classified governance into political, economic and administrative categories²⁷.

As stated by the UNDP, the following are some examples of how effective good governance is defined in societal terms: 1) Participation—All men and women should be involved in decision-making, either directly or through representatives and this participation must be based on freedom of speech and association, 2) Rule of law—Laws, especially those pertaining to human rights, should be fair and equally enforced across board, 3) Transparency—Information should flow freely and this is the foundation of transparency. People who are interested in information should have direct access to processes, institutions and information, 4) Responsiveness—Institutions and processes work to accommodate all parties involved, 5) Consensus orientation—Good governance mediates conflicting interests to reach a broad consensus on what is in the best interest of the group and where possible, on policies and procedures, 6) Equity—Every man and woman has the opportunity to maintain or improve their wellbeing, 7) Effectiveness and Efficiency—Institutions and processes deliver results that meets needs, while making the best use of resources, 8) Accountability—Institutional stakeholders as well as the general public hold decision-makers in government, the private sector and civil society organisations accountable.

²⁶ *Ibid*, 20.

²⁷ UNDP, *Definitions of Governance from UNDP*.

Good governance as noted by the (European Commission, 2003), is asserted to be the transparent and accountable management of a country's resources for its fair, equitable, sustainable economic, social growth and development. It outlines a variety of characteristics of what portrays good governance such as equity and the significance of law in the allocation and management of resources, an independent and easily accessible judicial system with transparency and recognizing the fact that corruption is the main bane to enjoying good governance.

According to the African Development Bank (ADB), good governance involves energizing the private sector, mobilizing civil societies in addition to enhancing the ability and competency of a state. On the other hand, the UNDP, defines good governance as "a commitment and the capability to effectively address the allocation and management of resources to respond to collective problems." Also, the Organization for Economic Cooperation and Development (OECD), posits that participation, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and respect for the rule of law are the eight elements that make up good governance²⁸.

Accountability in all its ramifications can be equated to good governance. In addition, it connotes the practical application of the law and an independent judiciary, as well as the freedom of expression and political associations. Transparency, equity and honesty in public office are the hallmarks of good governance. In addition, good governance in Nigeria necessitates constitutional law and a truly federal system of government (The World Bank, 1992).

(Diamond, 2004) posits that there are different aspects of good governance. One is the ability of the government to exert efforts geared towards the interest and welfare of the general public. The training of state officials in their different disciplines is required for the policies and rules to operate effectively to which, it will better serve the overall interest of the public. This relates closely to the second aspect, which is commitment and dedication to the interest of the public. Where does this commitment then come from? It may emanate from dedicated and charismatic leadership or it may come from a cultural ethic group that values and appreciates an institutional incentive structure that rewards disciplined service to the country or to the general public over and above the use of power for personal gain and aggrandizement. Coincidentally, it is now for personal gain and aggrandizement in most modern democracies but it must at least be supported by a system that penalizes betrayal of public trust.

7. The Nexus between Constitutionalism, the Rule of Law and Democratic Good Governance

The road to democracy and constitutionalism is built on a constitutional legal framework which enables the government to control the governed. The law of nature was not man's making nor is it in man's inherent power to amend or alter his cause. Man has the volition to either obey or disobey laid down rules and

²⁸The United Nations Educational, Scientific and Cultural Organization, (2004) on *Good Governance*.

regulations. Constitutionalism consequently indicates that the authority of the government and its leaders should be well-defined and limited by the dictates and confines of the body of fundamental rules, regulations and laws of the land known as the constitution which coincidentally is the *fons et origo* or the *grundnorm* of the land.

Thus, the practice of good governance includes the following components, which forms part of the whole multifaceted idea of governance:

1) The foundation of good governance is the constitution and it serves as the primary source of legitimacy, power and authority. The main component of effective governance is adhering to the statutory provisions of the constitution, particularly those statutory provisions that addresses the concept of separation of power, the rule of law and adhering to due process. The constitution must be created by the people and it must belong to the people or else, its legitimacy and foundation for successful administrations to dwell upon will constantly be in doubt by being questioned.

2) The rule of law includes the legislative process of law making, the judiciary, law enforcement and correctional systems of inmates, as well as the independence of the judiciary devoid of corruption.

3) Laws and institutions that provide transparent means of effective dispute resolution.

4) Freedom of the press including having unrestricted access to pertinent information and the ability to work without any interference whatsoever and howsoever.

5) The integrity, morality and sincerity of purpose in managing public affairs alongside a disciplined, responsible and selfless leadership with the absence of all forms of corruption and responsiveness of the government and its staff to the people should be emphasized.

6) Also, it further requires the presence of two essential components namely: equality and liberty. “With these elements, men are released from the suffocating grip of the tyrannical state and allowed to fully flower, without them, men wallow in squalor and society becomes the breeding ground for vices and anti-social behaviour”.

7) The legitimacy of the government is also important, and this can be done by promoting “popular participation in government through elections, referenda or plebiscites, social mobilization, political education about the state and its institutions with a view to making them comprehensible to the people, programme of social welfare services designed to make the state meaningful and relevant in the lives of the people, the right of every citizen to equality of opportunities and equality before the law, a sense of allegiance to the state and its institutions, a sense of community and of a common destiny.”²⁹

8) The indicators of good governance includes public accolades for outstanding performances and punishment of indicted public officials in the light of the principles upheld or condemned by the government.

²⁹*Ibid.*

9) Transparency, accountability and respect for due process in governmental activities is important as this would bring about a transparent regulatory working environment having consistent and sound policies without fear or favour with equal opportunities for all. Good governance, accountability, transparency and democracy are all interrelated concepts. Accountability and transparency are essential components of democracy, since they will ultimately lead to good governance.

(Oyovbaire, 1999) posits that the challenges facing democracy are how to compel a process of development that is inclusive of all citizens, sensitive to and protective of individual rights, freedoms and liberties, thereby accommodating numerous and competing allegiances in an environment conducive for economic progress and distributive justice.

(Uya, 1999) emphasized that democratically transforming a policy entails much more than the successful conduct of a free, fair and credible election, which tends to serve as a crucial pillar of support for democracy and good governance. (Jega, 2002) however pointed out that the legislative arm, the judicial arm and the executive arms of government must be restructured in order to make them more receptive to proposed political and socio-economic reforms in order to achieve a sustainable and viable democracy, rule of law, constitutionalism and good governance. Democracy is impossible without a functional legitimate government in place, just as good governance is impossible when there is prebendalism, piracy, lethargy and ineptitude.

Consequently, the necessity for restructuring then becomes inevitable so as to give everyone a sense of belonging as a motivating factor for participating in the nation-building process. Thus, on the basis of Nigeria's corporate existence, a restructuring that incorporates the right to self-determination should also be considered by the Nigerian government.

As a policy framework, good governance places obligations on policy makers as they exercise power. According to (Boeninger, 1999), it encompasses:

- 1) An effective state, that is, one with a favourable legal and political platform for economic growth with equitable and fair distribution;
- 2) The state then facilitates political and social interactions by promoting societal cohesion and stability, while including civil society organisations and communities in policy-making processes;
- 3) A private sector that is permitted to operate independently in an economy.

The aforementioned features, individually and collectively, alongside a sound economic management are all essential for a sustainable good governance and development in Nigeria³⁰.

Good governance requires charismatic and sterling leadership qualities with an attendant dedication to the general welfare and interest of the public. This results from institutional incentives that values and encourages discipline, service to the state or the general community over and above the use of an official position for one's own personal gain and aggrandizement in addition to cultural

³⁰*Ibid.*

ethics that encourages the aforementioned. However, it must at least be supported by institutions that do penalize betrayals of public trust in every contemporary society.

Transparency and the making of governmental business operations open and easily accessible to all alongside scrutiny of the conduct of state actors and of the general public is a key component of good governance. Democratic governments should therefore demonstrate with integrity an attitude of responsibility, accountability and responsiveness to guarantee good governance.

Additionally, constitutionalism and good governance can only be effective when they are constrained by the law and that is when the law is applied equally to the powerful and the weak, to the rich and poor alike and when there are qualified independent institutions in place to enforce the law in a free, fair and equitable manner. Clear-cut rules and regulations about what is permitted under the constitution in areas of economic, social and political life are necessary for an effective government in a well-functioning system.

Thus flowing from the above, globalization has influenced democracy as discussed above.

8. Conclusion

Despite some standards in place, the term “constitutionalism” is relative. Even though, some circumstances are working against its full implementation in Nigeria, Nigeria’s constitutionalism is dynamic and ever evolving. It is therefore the basis of democracy and good governance in Nigeria, which is in essence the driving force behind the operation and workings of a constitution and the observance of the rule of law for sustainable development. The rule of law sustains democracy, whereas good governance, on the other hand, supports and strengthens both constitutionalism and the rule of law in contemporary societies in order to spur out economic growth.

This paper thus concludes that constitutionalism, the rule of law and good governance are significantly interrelated in Nigeria. Therefore, some basic recommendations are proffered so as to how Nigeria can actually implement and achieve real constitutionalism so as to reach that enviable level of western countries. Also, it is anticipated that the Freedom of Information Act 2011 will increase the current level of accountability and transparency in Nigeria. In order to strengthen Nigeria’s constitutionalism, the courts are essential as in any constitutional issue brought before it, the court must be dogged, relentless and also exercise some forms activism too. The courts may need to import creative ideas of constitutional jurisprudence of far more advanced democracies in checking the government. In addition, issues of public interest litigation should be entertained by our judicial system as this is the simplest pathway through which government officials could be checked. The court must consistently uphold the spirit and letters of the constitution at all times. Nigerian leaders must always strive to uphold these sacrosanct constitutional principles in carrying out their every-

day constitutional responsibilities based on the approval and consent of the governed. This will in turn ensure that Nigeria's constitutionalism is firmly entrenched and transparency, the rule of law and good governance are issues that the government must address.

This relationship states that good governance sustains them, with the constitution serving as their reinforcing element for durability and sustainability. Democracy can only exist in a state where there is the rule of law; otherwise, the rule of law will remain an article of faith without democracy. The establishment of a democratic government, which ensures that all citizens participate equally in governance, the promotion and sustenance of the rule of law, the provision and protection of the constitution and the promotion and protection of the fundamental human rights of citizens are all essential components of good governance in Nigeria. The provision and maintenance of freedom of the press, the accessibility to transparent, accountable and participatory governance at all levels of government with free, fair and credible elections, as well as the provision of basic amenities such as water, electricity, standard education, sound healthcare delivery system and good roads, as well as creating a system that works rather than building governance focused on individuals and their charisma upon attaining power, among other things, are all important.

The aforementioned proffer a direction towards an effective democratic good governance in Nigeria. Thus to ensure the growth and advancement of the entire society, there is the need for the formulation and implementation of the constitution, the rule of law and policies aimed at enhancing the quality of life of citizens so as to promote sustainable good governance in Nigeria. It is hoped that there is a need for an attitudinal change alongside leadership reorientation, which will respect the principles of separation of power, the rule of law, constitutionalism and credible policy-making processes in Nigeria.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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