

Implications of Separation of Powers and Federal Character Principle on Public Sector in Nigeria

Dr. Cornelius, O. Okorie, Dr. Sunday Onwe Onwe

Abstract: *Nigeria adopted the principle of federal character and doctrine of separation of powers due to inherent problems of disunity and possible altercations arising from the relationship among arms of government. After some decades those bifurcations that necessitated their (principle of federal character and doctrine of separation of powers) inclusion have not abated. Worst are the notable implications of the principle and doctrine in the output performance of public sectors. This paper is set to bring out the implication of applying the principle and doctrine in the public sector. Significance of this work lies in the understanding of why in spite adopting the principle and doctrine, public sectors has not improved. This paper identified some implications of applying the principle and doctrine and made recommendations. Implications identified among others include, corruption, indolence and low productivity, misunderstanding and political crises, politics of bureaucracy, systemic shutdown and so on. It recommended attitudinal change, re-definition of the principle and doctrine, empower the private sector and so on. The paper adopted content analysis of scholarly inputs.*

Keywords: *Nigeria, principle, doctrine, public sector, implications*

1. INTRODUCTION

Nigeria's economy is government driven where public sector is at the epicenter. For years, service delivery by this sector is seemingly truncated by many factors due to some notable centripetal issues that fundamentally impede output performance in the public sector. Some of the issues are natural while others are artificial. The natural issues are related to ethnic diversity and religious differences (Kukah, 2003, Obiora, 2008), cultural, languages and personal issues (Pilkington, 1956: 219), whereas the artificial issues include, colonial experiences, many years of military intervention (George, Amujo & Cornelius, 2012), corruption (Ibraheem, Umar & Ajoke 2013), neglect to the rule of law and human right violation, disrespect to the core principles of democracy, institutional failure and so on.

Various regimes of government (military and civilians alike) have made several attempts through constitutional provisions, policy initiation, and reforms to improve the services of public sector. Specifically, the 1999 constitution assigned some responsibilities to the federal government under the principles of federal character and, separation of powers which were believed to be very instructive in improving the services of public institutions by instilling confidence, fairness, equity and probity in the conduct of government businesses. There are also notable reforms in the public sector some of which include public service reform 1972-1974, Onasode reform 1984, Philips 1988, Ayida panel 1995 (Abba 2008 and Obikezie & Anthony 2004), others are Obasanjo reform 1999-2007 and Ya Adua/Goodluck Jonathan reforms 2007-2014 (Okorie 2014)

Indeed the principle and doctrine as enshrined in the constitution are very fundamental in achieving effective public sector because it would provide the source of strength to public sector policies as well as open windows of equal opportunities in the event of competition. However, attainment of the desired aspiration requires political commitment and will which can translate constitutional provisions in general and the principles in particular into positive action. Institutions, Ministries, Departments and Agencies are therefore, established and assigned the responsibility of initiating the needed policies as well as give it the legal blending that will help it achieve the set goals.

In order to achieve the desired unity, various regimes of government, military and civilian alike at different times diversified the core principles (Freedom, Equality and Justice) and introduced certain policy thrusts aimed at addressing the observed bifurcations inherent in the Nigerian nation.

This paper is therefore, anchored on identifying problems in the application of federal character and separation of powers in the public sector. For the purpose of this article, separation of power was limited to the relationship between arms of government (executive, legislature and judiciary) and their

roles in public policy. Also principle of federal character was discussed in relation to activities in the appointment and recruitment and performances of public officers. The paper is partitioned into six sections: it presented contextual explanation of the principle of federal character and its implications in the public sector. It also discussed the meaning of doctrine of separation of powers and its implications. Finally the paper made conclusion and recommendations.

2. PRINCIPLE OF FEDERAL CHARACTER

The fundamental reason for introducing federal character was to solve issues of diversity and disunity in Nigeria which by extension, manifest in the public sector. The principle was proposed by the 1976 Constitution Drafting Committee (CDC) and enshrined into the 1979 and 1999 constitution respectively. Though the principle was introduced, there are pockets of issues that affect public sector performance.

The principle of federal character evolved through some stages which included the period of informal federation 1900-1946; the period of formal federation, first phase, 1946-1966, and the period of formal federation second phase: 1967-present (Ezeibe, 2013). He noted that the principle arose out of a compromise among the protagonists of the 1976 CDC.

In the view of Tamuno, (2003:15) *“Amalgamation” theories of the 1898-1914 were not necessarily the first to hit the political horizon in the territories that later became Nigeria.* He noted that the principle nurtured ethnic and primordial nationalists.

Some scholars (Adamolekun, Erero & Oshionebo in Publius 1991, Ahmed B. A. 2011 and Adesoji & Alao 2009) are of the view that federal character principle has not instilled the desired positive changes in the character of most Nigerians as it has affected socio-political and economic activities. There are still signs of disunity, political crises, lopsided development and most importantly ethnic domination and inequality during recruitments and political appointments. Adamolekun in <http://chrisdonasco.blogspot.com/2014/02/federal-character-principle-and-in.html> raised some questions on the implication of federal character in public administration. These pitiable developments have unprecedented implications on the output performances of public sector.

3. IMPLICATIONS OF FEDERAL CHARACTER APPLICATION IN THE NIGERIA PUBLIC SECTOR

There are many problems facing the application of federal character in the Nigerian public sector; some of which include indolence and low productivity, inequality, corruption and lack of transparency and above all tribal dominance. These problems have adversely affected performance output in the public sector.

3.1. Indolence and Low Productivity

Before now, Nigerians are known and widely respected for hard work, and good work ethic. These traits are gradually been replaced with dull, nagging, lazy and venal. The culture of indolence and low productivity has now dominated recruitments and appointments in the public sector. Key policies that would ordinarily reposition public sector are based on the principle rather than specialization and chosen areas of interest and proven capability. Workers in the public sector are not only recruited on this basis, but their promotion and ascendancy to positions of leadership in their respective offices are based on the dictates of the principle. It is more problematic given the imbalance in the state creation and representation among the regions, and the loose statements by implementers of the policy. It is therefore very essential to redefine the principle so as to provide for clause that would engender hard work and promote enviable ethic in the public sector.

3.2. Inequality

The principle promotes inequality as the few privileged ethnic groups and key actors share juicy positions in the public sector among the favored individuals from few states. In the recent times, the principle is not considered in the resource allocation, instead other principles were introduced in that sector. In the view of Haruna (2008) whereas the goal should be to empower each of the geographical regions in the provision of social amenities, such a proposal empowers a couple of states and continuously increase ceaseless drift of young and ambitious men to a particular area. The principle should be redefined to widen its areas with constitutional protection. There is the need to ensure quality in the states of the federation as well as sharing of amenities and positions among the states, but emphasis should be placed more on effective out rather than the principle.

3.3. Corruption and Lack of Transparency

The principle promotes corruption, burry transparency and due process in the public sector. It is instructive to note that corruption and poverty have been identified as the bane of the nation's development as they have paralyzed activities in the public sector (Ocheni & Nwankwo 2012) Introduction and implementation of Due Process principle by former president Olusegun Obasanjo (2003-2007) was seen as a right step in the right direction in fighting corruption. Chijioke, (2004) noted that the principle of due process which was introduced because of the manner public officers go about circumventing laid down procedures in the award of contracts and other transactions. The manner in which ministers and there cohort share federal contracts negates contents of the principle of federal character. It is very rare for a minister of the federal republic to award contract in respect of federal character except where he has interest. It is rather a tradition for public officers to float companies and award contracts to themselves in negation of the contents of federal character principle. There is therefore the need to constitutionally empower anti graft agencies to nose and prosecute violators of the principle.

4. DOCTRINE OF SEPARATION OF POWERS

The doctrine of separation of power could be traced to the writings of John Locke and Montesquieu (Kwaghga & Robert 2011). Specifically, the concept of separation of powers in its modest form would be credited to the articulation of a French author, Montesquieu, He improved on an argument of Locke in his book, *Second Treatise on Civil Government*. He insisted on the need for the separation of the King, representing the Executive, from Parliament, representing the Legislature. (www.nigerianlaw.com/.../constitutional%20law/SEPARATION%20). As a follow up, Montesquieu in his book, *The Spirit of Laws* emphasised the need to separate powers of the executive, legislatures and the judiciary so that each of them acts as check to the other as this would make for liberty and effectiveness in governance. The interface in the application of separation of powers and governance has significant impact on the effectiveness of public sector particularly in Nigeria given the composition.

The concept of separation of power was adopted in Nigeria with more emphasis on the 1979 and 1999 constitutions respectively. Advocates of the doctrine meant to safeguard the unity because its contents and unprejudiced application would guarantee freedom, confidence and promote good governance across all tiers of government. Separation of powers may be horizontal and vertical depending on whether it is among state organs at the central or between the state and its constitutive territorial units (www.cpahq.org/.../Good%20Governance%20in%20African%20Union%). The diverse composition of Nigeria in both nationality and religious practice may reasonably explain the prevailing primordial allegiance which the principle was meant to mitigate. Public sector is the centre of activities arising from diverse nationalities, religious practice, and political demarcation.

Application of the concept has directly and indirectly affected performances in the public sector and various reasons have been advocated. Suleiman (2009) first blamed it on politicians and militicians, but later assigned more blames on civil servants who he described as the permanent feature of government whether military or politician. El-Rufai (2015) was of the view that we need to retrieve our public service-effective, ensure they are well paid and largely meritocratic, attract bright people imbued with a spirit of promoting public good as this is seen to be the foundation for peaceful coexistence. Submissions of the authors (Suleiman and El-Rufai) are very instructive and point to problems either with the content of the principle, its application or both. The problems manifest in the observable under or sometimes non productivity in the public sector. Effective public sector performs the role of palliative mechanism, especially in a government driven economy like Nigeria.

5. IMPLICATIONS OF SEPARATION OF POWERS IN THE NIGERIA PUBLIC SECTOR

5.1. Politics of Bureaucracy

Here, politics of bureaucracy explains the dichotomy of politics and administration. Whereas separation of powers is concerned with politics, bureaucracy explains activities in the public sector. Separation of powers implies independence of the three major (Executive, Legislature and Judiciary) arms of government and this has been observably impracticable. Policies that shape the activities in the public sector originate from laws made, protected and executed by the respective arms. The

processes of policy initiation and implementation require connectivity and symbiotic relationship among the three arms of government. In the views of Meier & Bohte (2007) regulatory agencies affect policy through the normal mechanism of policy implementation and congress sets general guidelines on regulatory policy; and agencies expand these general guidelines into policy actions.

In a complex political system like Nigeria, the doctrine has resulted in more problems. Where legislatures lack technical skill in special areas, such laws may not satisfy people's aspirations and where the interests of bureaucrats are jeopardized, they tend to frustrate such laws. Sharma, Sadana & Kaur (2011) aptly says that policies are subject to various interpretations.

In Nigeria, separation of powers impliedly insists on strict dichotomy between politics and administration and this has consistently affected output performances in the public sector. The effect could be seen in low or non productivity of most public establishments and constant rift which sometimes result in strike action by various labor organizations.

5.2. Systemic/Government Shutdown

Strict application of separation of powers on some sensitive issues in a complex political system like Nigeria may result in systemic shutdown. Systemic shutdown refers to a situation where the various arms of (executive, legislature and judiciary) government for any reason refuse to carry out its constitutional responsibilities. Systemic shut down relates to non functionality of government institutions either as a result of policy summersault or disagreement.

Each of the arms of government is constitutionally assigned specific role which together explains the doctrine of separation of powers. Functions and responsibilities of the arms of government seems to be interwoven, such that, if any of the arms shuts down its spill-over effect on the other arms in particular and the public sector in general will be instant and monumental with devastating effects.

Public sector is the epicenter of activities arising from separation of power in any government. In Nigeria, strict application of separation of powers is capable of resulting to systemic shutdown because, the political players are more inclined to satisfying their personal interest than national interest. On 28th April 2012, the rift between President G.E Jonathan and the Speaker of House of Representative Alh A Tambuwal over who is responsible in preparing budget for sometime grounded the system. Jonathan warned that strict application of separation of powers would hurt development and good governance (www.allafrica.com/stories/201205290694.html) Top in the fears of systemic or government shutdown is the implication on employees and consumers.

5.3. Promotes Corruption

Strict application of separation of powers means that the constitution would spell-out responsibilities and limits of each arm of government in order to ensure liberty in governance. Separation of powers works better in an ideal democracy where each organ of government keeps to their responsibilities without interference by another.

In Nigeria, application of separation of powers significantly promotes corruption because an organ may intentionally cause delay in carrying out its constitutional responsibility so as to be approached for negotiation on what should be their commission. Corruption among constitutive organs of government is different from lobbying which is an acceptable practice in democracy. It is common to hear government agencies gratify other organs in order to be favored in a matter that is ordinarily their right. This is particularly common during budget defense, appointment and recruitment into public ministries, departments and agencies. In situations of unprecedented corruption, public policies are skewed and violators go unpunished. In the event of corruption occasioned by strict application of separation of power, employees and the general public suffer.

5.4. Political Misunderstanding, Crises and Underdevelopment

In an ideal democracy, separation of powers promotes development and guarantee liberal democracy where voice of the majority prevails and minority opinion heard with every sense of caution. Strict application could as well result in underdevelopment especially if there is no good understanding between the arms of government.

Misunderstanding is part of human relationship and so political misunderstanding is part of political process. It sometimes strengthens democracy and promotes development where it is logically

presented and pursued for the interest of the public. Ideally misunderstanding among the arm of government should be issue based rather than selfish interest of the few representatives which results in political crises and underdevelopment. Misunderstanding degenerates to political crises when some requests are probably not granted. In Nigeria, there have been pockets of misunderstanding between organs and sometimes within members of the organ. Such misunderstandings are particularly common during budget presentation, screening of political appointees, election matters and so on.

Strict application to separation of powers permits each organ to be stiff-necked in pursuance of its goals, even when such are against national interest. For instance, there is no justifiable reason to refuse granting state of emergency request by the president in some parts of north eastern Nigeria due to security challenges.

6. CONCLUSION

Nigeria has been described as a British product of social cloning for which the principle of federal character was later introduced. In order to consolidate the independence and enjoy the dividends of democracy, doctrine of separation of powers was also introduced. Both the doctrine and the principle were enshrined into the 1979 and 1999 constitutions. There are however some advantages of the principles and doctrine even as the implications seemingly outweigh the advantages.

This paper investigated and listed some of the implications of the doctrine and principle. We understand that probably the intention of introducing the principle and the doctrine were genuine and commendable but its application resulted in pockets of problems in the public sector, a situation that effect their output performances. It is very instructive to note that intention has been misapplied. It is therefore very important to make some recommendations which can blend application of the principle and doctrine while it act as guide in the checking the activities in the public sector.

7. RECOMMENDATION

There is the need for change of attitude by the leaders to rise above ethnic interest and see the country as belonging to every Nigerian irrespective of the ethnic nationality. The leaders should spearhead the campaign for unity and be seen to preach and practice it. This will contribute significantly in promoting and sustaining the principle of federal character and separation of powers. The constitution should reflect the will of the masses rather than the few elites (Sanusi 2012).

There is the need to re-define separation of powers and federal character. The essence is to ensure that it provides adequate protection to public sector activities since it plays cardinal role in improving the services of public sector.

There is the need to re-organize agencies and commissions that implement the principle and doctrine. This is to empower them to take legal action against violators of the principle and doctrine in public sector activities.

Government should own up their actions and inactions as to restore people's confidence in the public sector by ensuring that reforms meant to improve the services of public sector are implemented.

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