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Overview, Checks and Controls of Legislative Powers under Nigeria's 1999 Constitution

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Abstract

Legislative power connotes the authority behind law-making and incidental matters thereto as a constitutionally guaranteed role of the legislature - the arm of government charged with the duty of law-making. In acting for the masses, the legislature codifies the rules and norms regulating either the entire federation or the federating units. The aims of this Article are to identify and properly define the various legislative organs in Nigeria, the Legislative Lists, law-making procedures with and without Legislative Lists; who makes and how laws are made in a military junta and, the fate of existing laws after the coming into effect of the Constitution. Others are legislative powers and retrospective laws, impeachment proceedings and, the role of the Judiciary in the exercise of legislative powers in Nigeria. Doctrinal analysis is adopted in this Article since Case laws, Statutes and other legal sources are predominantly analysed. The Article finds that despite practice of separation of powers, there are still giant loopholes in our law-making. The Article ends with policy driven recommendations.

Keywords: Checks and Controls; Legislative Powers; 1999 Constitution; Nigeria.

1.0. INTRODUCTION

In Nigeria, there are three arms of government designated as the Legislature, the Executive and the Judiciary whose functions are well defined in the Constitution. The idea of separating the three arms of government is for efficiency and accountability. Tracing the origin of separation of Powers, Vivek Vilas Sable opined[1] that the concept of separation of power was introduced by Aristotle. Nigeria operates the principle of separation of powers founded on the doctrines of democracy. The French Jurist, Baronde Montesquieu[2] propounded the principle of separation of powers and argued that if liberty and freedom were to be, the three branches of Government (i.e. The Legislature,

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[1]Vivek Vilas Sable "Critical Analysis of Application of Separation of Power Theory in India" (December, 2020) <https://www.researchgate.net/publication/347516753_Critical_Analysis_of_Application_of_Separation_of_Power_Theory_in_India> accessed 5th May 2021

[2] The Spirit of the Laws written in 1748

Executive and Judiciary) must be separated and entrusted in different people.[3] Checks and balances in governance is a system that allows each branch of a government to amend or

veto acts of another branch so as to prevent any one branch from exerting too much power."[4] It is also a principle of government under which separate branches are empowered to prevent actions by other branches and are induced to share power.[5]

The Nigerian Legislature as an arm of government is made up of the National Assembly at the Federal level which is bicameral in nature (the Senate and the House of Representatives) and the State Houses of Assembly which are unicameral in formation. These creations of the Constitution are vested with and consequently exercise the legislative powers as provided for in the 1999 Constitution of the Federal Republic of Nigeria (as amended). There is also the Local Government Legislative Council of each Local Government that makes bye-laws for the Local Government. A Local Government Legislative Council is not a legal entity that can sue and be sued but a mere adjunct of the Local Government created by the Constitution.[6] The Local Government Legislative Council is not clothed with any life of its own and is therefore not a legal personality or a separate legal personality.[7] It is the author's view that the Local Government Legislative Council should be a legal entity with power to sue and be sued. Fusing the legislative Council with the Local Government is grossly antithetical to the principle of separation of powers in a democratic setting like Nigeria.

The items which these legislative bodies legislate on are clearly spelt out by the Constitution – Exclusive, Concurrent or Residual Lists.The paper is divided into different segments which commence with an introduction. Sequel to the introduction is the aspect of the paper which deals with legislative powers – the meaning, the procedure for its exercise, how it exists in a military junta and vis-a-vis the existing laws under the 1999 Constitution. Others are the exercise of the power of impeachment by the legislature - whether such is legislative or judicial and, the checks and controls of legislative powers in Nigeria. The last segment concludes the study and makes material recommendations

The limitation of this Article is that it does not review existing literature on the subject - it is purely research undertaken on legislative powers under the 1999 Constitution (as amended).

[3]Ibid.6
[4]Webster's Dictionary < https://www.merriam>webster.com/dictionary</checks%20and%20balances >accessed 6th May, 2021
[5]Online Britannica < https://www.britannica.com/topic/checks-and-balances>accessed 6th May, 2021
[6]Dwana V. Ibrahim &Ors (2014) LPELR-24165(CA) (Pp 20 - 25 Paragraphs B - C) Per Jummai Hannatu Sankey, JCA.
[7] Dwana v. Ibrahim & Ors (2014) LPELR-24165(CA)

2.0. LEGISLATIVE POWERS IN NIGERIA

The term legislative power has been defined as the authority under the Constitution to make laws and to alter or repeal them.[8] Legislative power is said to consist of

> The enactment of general rules determining the structure and powers of public authorities and regulating the conduct of citizens and private organizations. In the strict connotation, it is the law making power of the Constitution vested in the legislature.[9]

A legislative act on the other hand is an act within the exclusive jurisdiction of the legislature.[10] The essence of a Constitution is to define the functions of the various organs of Government and as such, where the power of the legislature to make laws is not defined in the *grundnorm*, then its functions may no doubt have a mixture of both judicial and executive characteristics. In *A.G Bendel State v. A.G Federation & Ors*[11], the court held that if legislative power is undefined, it includes judicial and executive attributes. Further, it is to define the powers of the Legislature that written Constitutions are written.[12] Both the process of enacting laws and the act of amending the law earlier enacted are legislative duties if carried out within the confines of the Constitution. The Legislature is the appropriate authority with the requisite power to amend laws made by it.[13]

The courts have in various decisions unanimously agreed that the act of law-making, though a legislative function, must strictly comply with the laid down procedure under the Constitution. The Legislature in the exercise of its legislative power has a duty to ensure that the law it intends to make will not conflict with the Constitution and also that it strictly follows the procedure set out by the Constitution for making the laws. In essence, there is an implied duty on the Legislature to conduct extensive and thorough research before exercising its legislative power to enact laws.[14]

The motive of the Legislature in enacting a law in the exercise of its legislative power does not affect the validity of the law made if the legislative body acts within its powers and legal competence.[15] The Constitution is the supreme source of legislative powers. Other sources like the Legislative Houses (Powers and Privileges) Act, etc also exist side by side

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[8] See online Legal Dictionary <https://legaldictionary.thefreedictionary.com/Legislative+power>accessed 6th May, 2021

[9]A-G Federation v. Guardian Newspapers Ltd &Ors (1999) LPELR-3162(SC)

[10]Danladi v. Taraba State House of Assembly& ORS (2014) LPELR-24021(SC)

[11](1981) LPELR-605(SC)

[12]Cooper v. Telfair 4 Dall 14 I L. Ed. 721].

[13] Amoshima v. The State (2011) LPELR-471(SC)

[14] A.G of Lagos State v. A.G. of Federation (2004) LPELR-10 (SC).

[15]Obayuwana v. Gov. Bendel State & Anor (1982) LPELR-2160 (SC) Radio Corporation Proprietary Ltd. v. The Commonwealth (1937-38) 59 CLR 170 at 185; Elliot v. The Commonwealth of Australia and Anor. (1935-36) 59 CLR 657, 665-666 and Huddart Parker Ltd. and Ors. v. The Commonwealth of Australia and Anor. (1931) 44 CLR 492; See also Arthur Yates and Company Proprietary Ltd. v. The Vegetable Seeds Committee and Ors. (1945) 72 CLR. 37 at 64.; Obayuwana v. Gov. Bendel State & Anor (1982) LPELR-2160(SC)

with the Constitution. Section 4 of the 1999 Constitution of the Federal Republic of Nigeria embodies the legislative powers and same is vested in the National Assembly. The section creates legislative bodies known as the National Assembly and the State Houses of Assembly. The National Assembly is further sub-divided into the Senate and the House of Representatives. It further in subsection (2) thereof divided the legislative lists into Exclusive, Concurrent and Residual. The power to make laws on matters in the Exclusive list is exclusively vested in the National Assembly while the National Assembly also has concurrent powers to make laws on the matters in the Concurrent list alongside the States' Houses of Assembly subject to the doctrine of covering the field.[16] The doctrine of covering the field forbids a State House of Assembly from enacting a law in a matter which the National Assembly has already legislated upon.[17] It only applies in a federal set up where legislative powers are shared between the central government and the federating units where a law or an Act tends to legislate on an area already legislated upon by the Constitution or a state law tends to legislate on an area where an Act already covers.[18] It is unarguable that once the National Assembly has expressed an intention in writing to cover the field, any law made by the State legislature must kowtow to the federal legislation and remains in abeyance until the federal law is repealed.

Item 11 of the Second Schedule under the Concurrent Legislative Lists empowers the National Assembly to make laws for the Federation in respect of the procedure to regulate elections to a local government council, while item 12 also empowers a House of Assembly of a State to make laws with respect to the same Local Government council in addition to but not inconsistent with any law made by the National Assembly. Where there is inconsistency, the State law is void to the extent of the inconsistency.[19] One wonders why the Constitution limited the exercise of legislative powers of the Local Government Council to make electoral laws or similar kind of laws for the Local Government and instead, vests same on the Federal and State legislative organs as opposed to the Local Government Legislative Council. In a democratic setting like ours, it is the strong considered view of the author that the Local Council if well-equipped will be better positioned to make laws for the Local Government Council. To this end, the Constitution should be amended to clothe the Local Government Legislative Council with the necessary legal wherewithal to make such laws.

Laws made by a state in exercise of its legislative powers cannot apply inter-state. That is, laws made in a particular state are applicable and strictly limited to that state; hence, different states have different laws on the same subject even though the contents of such laws may be similar. For instance, laws made by states on tax cannot apply inter-state or restrict inter-state trade.[20]

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[16] See subsection 5 thereof.
[17] Airtel Networks Ltd v. A.G. of Kwara State & Anor (2014) LPELR-23790 (CA)
[18] INEC v. Musa (2003) LPELR-1515 S.C.; A.G. Lagos State v. Eko Hotels Ltd & Anor (2017) LPELR-43713(SC).
[19] O.S.I.E.C. v. A.C (2010)19 NWLR (Pt. 1226) 273; APC v. Plateau State Independent Electoral Commission & Ors (2018) LPELR-44569(CA)
[20] A.G. Ogun State v. Aberuagba & Ors (1985) LPELR-3164 (SC).

Instances where concurrent legislative powers can arise may be classified into three:

a. as expressly provided in Subsection (4)(a) and Subsection (7)(b) of Section 4 of the Constitution;
b. to the extent that the Constitution may provide that, in terms of Subsection 3 of Section 4, any matter included in the Exclusive Legislative List shall not be to the exclusion of the House of Assembly of States; and,
c. to the extent that in terms of Subsections (4)(b) and (7)(c) of Section 4, the Constitution may have empowered both the National Assembly and the House of Assembly of a State to make laws in accordance with the provisions of the Constitution on the same matter.[21]

Residual powers reside in the States. A careful perusal and proper construction of Section 4 of the Constitution would reveal that the residual legislative powers of government are vested in the States. Residual legislative powers within the context of Section 4 means what was left after the matters in the Exclusive and Concurrent Legislative Lists and those matters which the Constitution expressly empowered the Federation and the States to legislate upon had been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature.[22] The Federal legislature has no power to make laws on residual matters. A good example of residual power of the State legislature is making laws on issues bordering on urban and regional planning. Matters like Town/Urban Planning Laws are within the legislative competence of the State Houses of Assembly.[23] Such laws deal with among other things, the planning and control of citing/erection of buildings and other structures and the provision of open spaces and similar use of land for the improvement of human environment. Town planning simply is how much of what is put where.[24]

It is a non-controversial political philosophy of federalism that the Federal Government does not exercise supervisory authority over the state governments, i.e., the National Assembly cannot enact any law, in contravention of the Constitution, imposing any responsibility on a State and expect obedience to such a law where by the Constitution, it is within the exclusive legislative reserve of the State to make such laws.[25].

An act is *ultra vires* the National Assembly when it is enacted outside the legislative powers of the National Assembly; whereas where the enactment of an act is within the legislative powers or the legislative competence of the National Assembly, such an act is *intra vires* the National Assembly.[26]

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[21]A.G. Lagos State V. A.G. Federation & Ors (2003) LPELR-620 (SC)
[22]A.G. Ogun State V. Aberuagba & Ors (1985) LPELR-3164(SC)
[23]Helios Towers Nig. Ltd V. Nesrea & Anor (2014) LPELR-24624(CA); Town Planning Registration etc, Act, Cap.431 LFN 1990.
[24] Helios Towers Nig. Ltd V. Nesrea & Anor (2014) LPELR-24624(CA); A.G. Lagos State v. A.G. Federation & Ors (2003) LPELR-620(SC)
[25] Attorney General, Ogun State v. Attorney General of the Federation (1982) 13 NSCC 1.United States of America in Bailey v. Drexel Furniture Co. 259 U.S. 20 (1922)
[26]Olafisoye v. FRN (2004) LPELR-2553(SC)

3.0. PROCEDURE FOR THE EXERCISE OF LEGISLATIVE POWERS

The legislative process commences when a Bill is introduced and first read in any of the two Houses of the National Assembly and ends when that Bill has been passed into law by those Houses and assented to by the President of the Federal Republic of Nigeria.[27] The procedure to exercise the legislative powers of the National Assembly and the States' Houses of Assembly are clearly spelt out in the Constitution[28]. There are eight stages involved in the passage of a bill by the National Assembly[29], thus:

1. Sponsorship by the executive, the judiciary or any member of the two legislative houses or private individuals, or organizations.
2. First reading of the bill - formal introduction of the bill, without debate by the person presenting it or the person moving it, on behalf of the person presenting it. Where it is so read, it is recorded in the journal of the house for record purposes. A date is now fixed for the 2nd reading of the bill.
3. The 2nd reading of the bill - general debate is allowed.
4. The Committee stage - either the Committee of the whole House or the standing committee.
5. The report stage. The report of the Committee with observations and recommendations is presented to the whole house.
6. The 3rd reading where the recommendation of the committee is debated and considered and when it is accepted, the bill is taken as having been passed.
7. The passage of the bill by the other house.
8. The presidential assent.

Once the bill is vetoed by the President, the National Assembly cannot by a motion override the veto of the President but must repeat the process of law-making again as listed above. In repeating the said process, the quorum required is two-third majority and not otherwise. The legislature must go over again the second time the process of law making with the aim of considering the amendments proposed by the President.[30] Two-third majority and not One-third majority of the legislature is the required quorum to pass a Bill when such Bill is not assented to by the President. Appropriation Bills or Bills for the imposition of tax or related matters undergo special procedures when vetoed by the President. The Constitution requires that such a Bill must be passed in both Houses of the National Assembly within two months of the beginning of every fiscal year; else, the President of the Senate will convene a joint meeting of the Joint Finance Committee of both Houses. If the meeting of the Joint Finance Committee ends in a deadlock then both Houses would sit jointly to pass the Bill and send same to the President for assent. If the

[27]A.G Bendel State v. A.G Federation & Ors (1981) LPELR-605(SC); Bribery Commissioner v. Ranasinghe (1965) A.C. 172 (P.C.); Gallant v. The King (1949) 2 D.L.R. 425 at p. 428.
[28] See Section 58 of the Constitution
[29] NASS v. President, FRN & ORS(2003) LPELR-10151(CA)
[30]NASS v. President, FRN & ORS (2003) LPELR-10151(CA)

President fails to assent to it within thirty days, a joint sitting of the National Assembly will pass the Bill to become law with two-third majority[31].

4.0. CIRCUMSTANCES WHERE LEGISLATIVE POWERS DO NOT EXIST BUT MAY BE EXERCISED

A matter may fall under the legislative power of the Legislature directly where it has a legislative competence to make law on it or indirectly where the matter is not under its legislative competence but which the legislature has a duty to exercise in executing a policy. So, if there is need to make a policy on a matter whether or not directly within the legislative competence of the legislature, it can exercise its legislative powers to make laws on it.[32]

5.0. LEGISLATIVE POWERS IN A MILITARY JUNTA

In a military government where there is no constitutionally elected law-making body, the legislative power at the centre is vested on the Head of State or Head of Military Government who will have the power to make laws through Decrees. Anything purporting to be a Decree made by the said military administrator must be duly signed by him to be valid[33]. Such instrument signed by the Head of State, Commander-in-Chief of the Armed Forces will be a Decree when it is in furtherance of a law made under the legislative powers of the Federal Military Government.[34] Legislative lists exist in military administrations exercisable by the military dictators. The powers exercisable under the Concurrent legislative list during a military junta by the State and Federal military governments could conflict with each other. This necessitates the need for State military government prior to exercising legislative powers in matters contained in the Concurrent list to obtain the consent of the Federal military government.

The functions of the executive and legislature are fused into one in military administrations.[35]
The courts in exercise of their powers as watchdogs should judiciously and judicially keep to the letters of the law where there is an obvious or subtle fusion of the powers of the executive and the legislature in one authority or organ of the state or where these functions are vested in two different organs of government and the legislature in that arrangement is merely a puppet of the executive.

6.0. LEGISLATIVE POWERS AND EXISTING LAWS UNDER THE 1999 CONSTITUTION

[31] See Section 59 of the Constitution
[32]A.G. Ondo State v. A.G. of the Federation& Ors (2002) LPELR-623(SC)
[33]A.G. Federation v. Guardian Newspapers Ltd & Ors (1999) LPELR-3162(SC) (Pp 26 - 27 Paragraphs E - C) Per Samson Odemwingie Uwaifo, JSC.
[34]Uwaifo v. A.G. Bendel State & Ors (1982) LPELR-3445(SC)
[35]A.G. Federation V. Guardian Newspapers Ltd & Ors (1999) LPELR-3162(SC)

Prior to the 1999 Constitution, some laws existed made by the Federal and State Governments. Section 315 of the Constitution saved these laws except those which are inconsistent with other provisions of the Constitution. Such existing Laws are defined in *Section 315(4)(b)* as meaning,

> dry law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date. Such existing law as defined above could be deemed either a Federal or State Law. The deciding factor is whether the subject matter lies within the exclusive competence of the National Assembly or a State House of Assembly; or whether it is within the concurrent powers of both the National and state Assemblies.[36]

It is pertinent to note here that even though the law is deemed to be made by the federal or state legislature, it is actually the President or the Governor that has the legislative wherewithal to make the modifications provided for in Section 315 of the 1999 Constitution as amended. It indeed means that, if the Federal Military government had made laws which are now under the Concurrent list, the State Governor may modify them as he deems fit and not the President.[37] Modification" includes addition, alteration, omission or repeal.[38] The President or Governor must modify the law to bring it within the legislative competence of the Federal or State government as the case may be and in accordance with the Constitution. Examples of such laws that underwent modifications ar*e* the adaptation of the Public Order Act, 1979; the repeal of the Petroleum (Special) Trust Fund (PTF) Decree 25 of 1994 by President Obasanjo; Modification of Allocation of Revenue (Federation Account, etc) Act 1990 as amended by Decree (No. 106) of 1992; the amendment of Local Government Laws, and the adoption of Sharia law."[39]

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[36]Oloyede v. State (2013) LPELR-22215(CA)

[37] M.C. Anozie "Executive Modification of Existing Laws Under Section 315 of the 1999 Constitution" (2002-2010) 9 Nigerian Juridical Review, Faculty of Law, University of Nigeria, Enugu Campus Sylva Prints; <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjZ_5Tl9KjyAhWJsaQKHeDyBFsQFnoECAMQAQ&url=https%3A%2F%2Foer.unn.edu.ng%2Fread%2Fthe-nigerian-juridical-review-vol-9-executive-modification-of-existing-laws-under-section-315-of-the-1999-constitution%2Ffile.pdf&usg=AOvVaw2DZPL-Kn2hB3CCyJAXrO9U> accessed on 10th August, 2021; Attorney-General of Lagos State v. Attorney-General of the Federation [2002] 12 NWLR (Pt. 833) p. 592

[38] Section 315(4) c) of the 1999 Constitution (as amended).

[39] M.C. Anozie "Executive Modification of Existing Laws under Section 315 of the 1999. Constitution" (2002-2010) 9 Nigerian Juridical Review, Faculty of Law, University of Nigeria, Enugu Campus Sylva Prints <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjZ_5Tl9KjyAhWJsaQKHeDyBFsQFnoECAMQAQ&url=https%3A%2F%2Foer.unn.edu.ng%2Fread%2Fthe-nigerian-juridical-review-vol-9-executive-modification-of-existing-laws-under-section-315-of-the-1999-constitution%2Ffile.pdf&usg=AOvVaw2DZPL-Kn2hB3CCyJAXrO9U> accessed on 10th August, 2021.

7.0. POWER OF IMPEACHMENT: LEGISLATIVE OR JUDICIAL?

For an impeachment to be constitutional there must be strict compliance with the provisions of the Constitution[40]. The first step in the impeachment process is to present a notice of allegation signed by one-third of the entire members of the House to the speaker[41]. The notice must contain the details or particulars of the allegation. The onus is on the Speaker to serve the allegation on the person sought to be impeached within seven (7) days. The House within fourteen days the notice of allegation is submitted to the speaker will decide whether or not to investigate it. If two-thirds majority of the House passes a resolution by motion to investigate the allegation, then the Chief Judge will, upon request by the Speaker in the exercise of quasi-judicial function, nominate seven (7) persons with the requisite qualification within seven days who shall form the Panel. The Panel will allow the person sought to be impeached to defend himself and must submit its report within three months to the Speaker. If the report is adopted by two-third majority of the House, the person stands removed from office.

The Legislature in impeachment proceedings under the 1979 Constitution exercised judicial, not legislative functions conferred on it by the Constitution.[42] Under the 1999 Constitution, there is a radical departure from what obtained under the 1979 Constitution with regards to procedure leading to impeachment.[43] Whereas under the 1979 Constitution, the process was left entirely with the Speaker and Members of the Legislature, under the 1999 Constitution, the Chief Judge of the State has a quasi-judicial function to perform in setting up the Panel to investigate any allegation of gross misconduct by the holder of the office. The Courts too have power to nullify any impeachment which is not carried out strictly in accordance with Section 188(1) - (9)[44]. The right position therefore is that under the 1999 Constitution, the legislature is not exercising judicial function as was the case under the 1979 Constitution.

8.0. LEGISLATIVE POWERS AND THE JUDICIARY

Under the 1999 Constitution, the Judiciary has a duty to see that the legislative powers are correctly exercised. It has to be accepted that our Constitution has undisguisedly put the Judiciary in a "pre-eminent" position where the Judiciary has to see to the correct exercise of the legislative powers. [45] Until the process of law-making is concluded, the procedure adopted to exercise legislative powers cannot be questioned in a court of law. This is because it is the law itself which is the subject of the legislative process and not the process of making the law that is litigated in court. The internal processes undertaken towards the passage of a Bill cannot be interfered with by the Court. That is, until the

[40]Danladi v. Taraba State House of Assembly &Ors (2014) LPELR-24021(SC) (Pp 6 – 9, Paragraphs F - E) Per Olabode Rhodes-Vivour, JSC.
[41] See Section 188 of the 1999 Constitution (as amended)
[42] Abaribe v. the Speaker, Abia State House of Assembly & Anor (2000) LPELR-6801(CA).
[43]Ekpenyong v. Umana & Ors (2010) LPELR-8653(CA)
[44]Adeolu Adeleke & Ors. v. Oyo State House of Assembly & Ors. (2006) 16 NWLR (Pt.1006) 608; Dapianlong v. Dariye (2007) 8 NWLR (Pt. 1036) 239.
[45]A.G. Bendel State v. A.G. Federation & Ors (1981) LPELR-605(SC)

exercise of the legislative powers is completed and becomes law, the legislative procedures cannot be the subject of litigation.[46] The exception is where the law has laid down procedures for the exercise of the legislative power. In such cases, the court can interfere with the process of law-making and in the exercise of its jurisdiction, question the legislature and compel it to follow the laid down procedures[47]. This is more particularly so because the court has to give effect to the law creating the procedure to be followed by the legislature. Subsection (8) of Section 4 of the Constitution makes the exercise of legislative powers subject to the jurisdiction of courts of law and judicial tribunals established by law. The Supreme Court in the case of *Unongo v Aku & Ors.*, [48] upheld the power of the judiciary to control the legislative excesses of the Legislature and cautioned on the need to uphold and respect the independence of the Legislature in the spirit of separation of powers. The court held that internal proceedings of the Legislature and the mode it has adopted to exercise its legislative functions should not be the subject of judicial pronouncements except where the Constitution or any law has expressly provided how the Legislature should exercise its functions. This explains why a Writ of *Certiorari* does not lie against executive or legislative acts because such acts are not performed or expected to be performed judicially.[49]

Though there is immunity for the exercise of legislative powers, such immunity is limited to the activities conducted while the power is being exercised[50].

9.0. LEGISLATIVE POWERS AND RETROSPECTIVE LAWS

Another control on the powers of the Legislature is their power to make retrospective laws in criminal offences.[51] The court reasoned that,

> legislation by which the conduct of mankind is to be regulated ought, when introduced, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law - See Willes, J. in Phillips v. Eyre[52]; see also Scrutton L.J. in Ward v. British Oak Insurance Co. Ltd.[53]. …If it were not so, the Act might annul rights already acquired, while the presumption is against this intention. Coming to the policy of the Court, the consensus of judicial opinion is that the courts lean against so interpreting an Act or Law as to deprive a party of an accrued right. Perhaps no rule of construction is more firmly established than this, that a retrospective

[46] Lassa &Ors V. Gov, Borno State & Anor (2020) LPELR-51461(CA)
[47] A.G. Bendel State v. A.G. Federation & Ors (1981) LPELR-605(SC)
[48](1983) LPELR-3422(SC).
[49]See the cases of Idowu v. A-G Ogun State & Ors (2017) LPELR-43257(CA); Amaka v. Lt. Governor Western Region (1956) SCNLR page 122 ;Ayoade v. Military Governor Ogun State (1993) 8 NWLR (Part 309) page 111; Fasade v. Babalola (2003) 11 NWLR (PART 830) PAGE 26; Obiyan v. Military Governor of Midwestern State (1972) 4 S.C page 248.
[50] Lawan v. Zenon Petroleum & Gas Ltd &Ors (2014) LPELR-23206(CA
[51] Section 4 subsection (9) of the 1999 Constitution (as amended)
[52] (1870) L.R. 6 Q.B. 89
[53](1932) 1 K.B. 392 at p. 397.

operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards a matter of procedure.[54]

10.0. CONCLUSION, RECOMMENDATIONS AND POLICY IMPLICATIONS

The 1999 Constitution of Nigeria elaborately, in the spirit of separation of powers made provision for the legislative arm of government at the Federal and State levels, albeit, without reproducing same at the Local Government. Since the Local Government is a tier of government in Nigeria, it is the view of the author that the Local Government Legislative Council should be given the necessary environment to legislate on all matters that concern the Local Government.

From our discussion above, it is clear that the legislature whether at the federal or state levels performs the business of law-making. In doing this, the legislature is mandatorily required to carry out research on how best to make the law. It is the author's position that the research should among other things be on what laws are best for the federation or state. The research should aim at finding out the effect of such laws on other jurisdictions where they are already in force, the various amendments made in those jurisdictions and the reasons for those amendments. Other things to be researched on may include the economic or developmental impacts the legislation may bring, the applicability and or utility of the law, ease of understanding and application, etc. Due to the inability of the legislature to carry out these and other researches prior to the enactment of the law, some pieces of legislation are nearly of no utilitarian value - like the Nigerian Bankruptcy Act. The dearth of cases on bankruptcy law in Nigeria attests to this fact. The peculiarity of our people, their education, our facilities as a third world country and the need to employ the instrumentality of the law to improve the society and curb societal anomalies are also to be considered while engaging in legislative research.

Also, ample knowledge of items in the Legislative Lists will guide the legislature in its exercise of the right to make laws under the Constitution. Sometimes, the federal government makes laws infringing on the exclusive right of states to make their own laws especially in revenue related matters. It is the author's view that except in very remote cases where the federal legislature is allowed to make laws in execution of a policy for the wellbeing of the nation, the courts should be very bold and assertive in declaring laws made by the federal legislature in the place of a state legislature to be null and void.

In a military government, the executive and legislative functions are vested in the head of the military government at the state or federal levels. The absence of the legislature in a military junta supposes little or no research to ensure the laws sought to be enforced on the people are suitable. It is the author's view that the court must, in such circumstances rise to the full embrace of judicial activism.

[54]Afolabi & Ors. v. Governor of Oyo State & Ors. (1985) LPELR-196(SC)

In this article, it is clear that one of the principles behind limiting the powers of the legislature to make retrospective laws is so that acquired rights or existing obligations preceding the enactment of the law would not be disturbed.

It is also clear that within the context of law making, there is a constitutional romance between the Head of the executive and the legislature since both have roles to play.[55] In the process of law-making, circumstances may arise where there is a veto by the President or the Governor and the legislature is expected to re-enact the law with the aim of debating the amendments by the President. It is the author's view that strong public hearings should be employed in debating the amendments sought by the President. The law should allow the citizenry to make their contributions and take sides on the argument between the executive and the legislature through public hearing. Also, the third arm of government should equally step in to declare as null and void where invited, any law made by the legislature *mala fide* after the veto of the executive without accommodating strong views expressed by the citizenry during such public hearings.

It is my further finding in this study that pursuant to Section 315 of the 1999 Constitution (as amended), it is the duty of the Head of the executive to modify existing laws which existed prior to 1999 into conformity with the Constitution. Such modification may be in the form of repeal, amendment, alteration, etc. The author has canvassed above that once the modification is completed, the legislative function of the executive comes to an end. Also, that the modified law falls under the legislative competence of the legislature to amend, repeal, or modify it in any other manner whatsoever for the benefits of the people which it could do with any other law enacted by it. It is the author's view that where an existing law is modified by the President or Governor in a way that in the opinion of the legislature is not to the best interest of the nation, the legislature should be clothed with the power to override the modification of the President. The author further states that in such circumstances, the citizens should be accorded opportunity to be heard publicly and the legislature acting on the most popular opinions expressed by the people should, where necessary, override the executive.

The procedure for impeachment under the extant law seems to be better than what was obtained prior to 1999. It is the author's view that the law should provide instances where the legislature would be compelled to initiate impeachment proceedings against the holder of a particular office. It is possible in our clime to have an unholy provocative romance between the executive and the legislature in a way that defeats the ends of democracy. In such circumstances, it is the author's view that the law should be amended to accommodate a situation where if a certain percentage of the citizens, say, 50% signify their grievances publicly against a particular office holder, the legislature should be compelled to immediately commence impeachment proceedings against such office holder.

[55]Sections 58, 59 and 100 of the Constitution

The author believes strongly that if these amendments are done, the legislative powers in Nigeria will be exercised to optimally benefit our democracy and will in turn, bring a quantum leap to the prevalence of good governance in Nigeria.