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Conceptual Clarification and Historical Foundation of the Roles of Judiciary in Promoting Democratic Governance in Nigeria

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Abstract*: Democracy is basically characterised by three independent organs of government, namely; the Legislative, the Executive and the Judicial organ. While the Legislature is saddled with the responsibility of making laws for the smooth running of the State, the Executive is charged with the implementation of the laws so made by the legislature and the Judiciary is to interpret the laws in consonance with the dictate letter of the Constitution and settle disputes. The 1999 Constitution of the Federal Republic of Nigeria through its principle of separation of powers affords the independence of the judiciary. The judiciary hold a unique duty to interpret the provisions of the law when they are in question, hence the court is said to be the last hope of the common man. The idea of an autochthonous constitution and constitutionalism is yet another pivotal principle that is inevitable in the actual practice of democratic government. Constitutionalism, however, emphasises the adherence to the wording of the constitution. It connotes the practice where the affairs of the state are operated in conformity with the dictate letters of the constitution. Basically this work adopted purposeful efforts to appraise the concept of constitutionalism and capture its salient features not merely as an imposition of limitation on the exercise of power, but also as a mechanism for accountable and developmental exercise of power. Pursuant to the foregoing, the object of this work is principally in three phases. Firstly, to appraise the judiciary as an organ of government, vis-a-vis the Nigeria legal system. Secondly, the work examined the concept of constitutionalism in contemporary society and how the courts had reacted to it in the last year of democracy. Lastly the work gave a comprehensive analysis of the problems inherent in the 1999 constitution of the Federal Republic of Nigerian. The work concluded by evaluating the concept of constitutionalism with the instrumentality of the concept of impeachment and separation of power, and recommended among others that notwithstanding the political nature of impeachment, due process must be followed and court should be assertive on whether or not due process was observed.*

Keywords: conceptual clarification, historical foundation, roles of judiciary, promoting democratic governance in Nigeria

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INTRODUCTION

It is a well-established truism that democracy is basically characterised by three distinct arms of government. The principle of separation of powers brought the independence of each arm of government, which are; the Legislature, the Executive, the Judiciary. It is a common knowledge that the Legislature is responsible for making laws and the Executive is charged with the implementation of such law, while the Judiciary is responsible for the interpretation of the law in consonance with the dictates of the constitution. Hence, in line with the doctrine of separation of powers, which is a cardinal feature of a democratic system, the Nigerian Constitution guarantees the independence of the Judiciary.

The function of the judiciary is to provide justice to the people. The areas of an individual's life in which he expects the state to provide justice in modern society are, at least, as wide as those interfered with by the state. The more complex economic, social and other activities get in the society, the wider are the areas of their lives in which people demand that the state would provide justice. The demands for justice include the protection of the individual's right against the state as well as against his fellow citizens.[1]

However, the provisions covering these areas of justice are not, and cannot be put in one neat pile in the constitution. In any event, it is not all the protections that a person enjoys or to which he is entitled to enjoy that are contained in the constitution. While many of them are contained in the general law, there are large numbers of individual's right that are not protected or adequately protected, whether in the constitution or in the law.

Concept of Impeachment

The 1999 Constitution of the Federal Republic of Nigeria does not provide any statutory definition of the word impeachment. Likewise, Nigeria legal writers have not been able to reach a consensus on what the word entails. However, an overview of some definitions is pertinent.

In the words of Ozekhome as quoted by Onyinloye[2] "The word impeachment connotes the practice and procedure by which political elected person are constitutionally removed from office by the legislature before the expiration of the tenure of office of such person". It is political because its application and interpretation depend largely on the whims and caprices of the legislature; and Constitutional because it is entrenched in the Constitution of most Countries. At one level, impeachment connotes a formal accusation for wrongdoing. From this perspective, it has been seen as the accusation of a public officer for crime and misdemeanors, in the execution of his duties.[3] The elaboration of Seymour M. Lipset captures relatively, the complexity in the whole idea of impeachment. Impeachment deals with:

[1]Oluwadare A, *Understanding the Nigerian Constitution* of 1999 (MIJ Professional Publishers 2000)p 7
[2]G. Ozekhomo, The Impeachment Process in the Third Arm of Government" in Oyinloye, O. A. "Role of Legislature in Impeachment Proceedings under the 1999 Constitution p. 12.
[3]*Ibid.*

> The method by which government officials may be removed from office, when they have been formally accused of crime or misconduct... it is usually initiated by the lower house of a legislature and is followed by trial and sometimes conviction by the upper house[4] .

The Blacks" Law Dictionary defines impeachment as "a criminal proceeding against a public officer before a quasi-political court, instituted by a written constitution called "articles of impeachment"[5].

Hood Philips also defines impeachment as:

> a judicial proceeding against any person, whether Lord or commoner, accused of state offence beyond the reach of the law, or which no other authority in the state would prosecute. The commons were accusers and the Lords were judges both of fact and of law.[6]

It is relevant to mention that the definition of impeachment is not short of judicial attention. The apex court (Supreme Court) in the notorious case of *Inakoju v Adeleke*[7] also known as Ladoja's Case also offered a definition of impeachment in the following words:

> a criminal proceeding against a public officer before a quasi-political court, instituted by a written accusation called the article of impeachment; for example, a written accusation of the House of Representative of the United State to the Senate of the United States against the President, Vice President or an officer of the United States including Federal Judges.[8]

Although the word "*impeachment*" has no precise definition, all attempted definitions agree that, it is a legislative weapon of finding fault or calling to question a public officer[9]. However, it will be agreed that impeachment involves a protection of public interest incorporating a public law element; which is instituted by an arm of government of the community.

It is to be noted that the definition of impeachment may not yield any significance except when one looks into what an impeachable offence is and what constituted an impeachable offence. There seems to be a consensus among scholars that impeachment involves a protection of public interest incorporating a public law element much like criminal proceeding; impeachment is a process instituted by the government of the community. The process

[4]M. Seymour (eds.). *The Encyclopedia of Democracy*,(vol II, London Routledge,1999)p 594.
[5]*Ibid.*
[6] Hood Philip and Jackson Constitutional and Administrative Law (2015) p 154
[7] (2007) 4 NWLR Pt (1025) at 578 Para E.
[8]*Inakoju v Adeleke* (supra) at 578, Para F.
[9]K. Salaman.., *The Impeachment Power of the Legislature; Comparative Analysis* (Federal Ministry of Justice 2006).

however, is adversarial in nature and resembles to a large extent, a judicial trail[10]. Most impeachments were instituted for alleged "high crime and misdemeanors" which means different offences at one time or the other. On the strength of determining what constitutes an impeachable offence. The Court of Appeal in Jimoh v. Olawoye,[11]held inter-alia that impeachment is an act by the legislature of calling for the removal from office of a public official accomplished by presenting written charge of the official alleged misconduct which the legislature sees as gross.

It is relevant to offer a statutory definition of impeachable offence with particular reference to the 1999 constitution of the Federal Republic of Nigeria. According to the constitution, an impeachable offence is a "gross misconduct" which in turn is defined as:

> a grave violation or breach of the provision of this constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct[12].

While attempting to define an impeachable offence, another scholar commented as follows:

> there was also a considerable debate on the convention in Philadelphia over the definition of impeachable crime. In the original proposal, the president was to be removed on impeachment and conviction for "malpractice or neglect of duty". Later the word was changed to treason and bribery alone. Contending that treason and bribery were narrow, George mason proposed adding "mal-administration" which means "other high crimes against the state": then Maidson said mal-administration was too broad. Final revision defined impeachment crimes as treason, bribery or other high crimes and misdemeanor.[13]

Like a snail cannot move without its shell, there cannot be an impeachment without a previous election. The reason is not far-fetched because an elected officer cannot be removed without having been elected ab-initio. In the light of this, it is incumbent to proffer a simple definition of what is meant by election. In a very simple language, election can be defined as the selection of one person from a specified class to discharge certain duties in a state, corporation or society. The bottom line of that definition is that the selection is done by certain people who equally have the right to remove elected persons by means of impeachment if they deem it fit.

Historical Development of Impeachment

Impeachment of an elected public officer is a very serious and weighty business. Comparative constitutional analysis reveals, according to Professor Philips,[14] that the first ever recorded

[10]B. Melton.*The Impeachment; the Constitutional framers and the Case of Senator William Blount*, (Merce University Press 1998) at 24.
[11](2001) 10 NWLR (Pt. 929) 307 at 336.
[12] Section 143(11) 1999 CFRN (1999 as amended).
[13]*Ibid.*
[14] Philips and Jackson, *Constitutional and Administrative Law (* 8thEdition, London, Sweet and Maxwell 2007) p 5.

case of impeachment in history occurred in 1376 when two British Lords and Fox Commoners were charged with removing staple from Calasis (the nearest French Pot to England under British control between 1347-1558) lending the King's money at usurious interest and buying Gown debts for small sum and then paying themselves in full out of the treasury.

Thus it can be said that the concept of impeachment originated from England, although the concept is considered obsolete in British Constitutional history today. However, many of the American Constitutional governments and states adopted the impeachment concept in their constitutions. It is worthy to mention that it is from the American Constitution of 1787 that the 1999 Nigerian constitution borrowed the concept of impeachment.

Throughout the history of the USA, there has been about fourteen impeachments, most of which were concerned with judicial office holders. There was also the impeachment of a senator in 1978 and the impeachment of former President Andrew Johnson is also well-known. In recent times, there was the unsuccessful impeachment of President Bill Clinton[15]. Etymologically, the concept of impeachment derived its origin from Latin expression, which explains the idea of being caught or entrapped and it is analogous to the modern French verb "*impeache*" which means to prevent and the English word impede.

Historians have found antecedents for the practice of impeachment in the early Norman period and even as far back as the city-state of the ancient Greece. In England, during the 13th and 14th centuries, several antecedents occurred which involved the removal of Royal officers by the King with the consenting parliament. Such events served as precedents which parliament especially the House of Commons used to justify later impeachments[16]. Yet some consensus exist that these were not impeachment in a modern context[37]. Historians have instead identified the 1376 impeachment of Richard Lyons, a London Merchant and Lord William Latimer, a peer of the realm as the first modern impeachment. The history of impeachment however continues as each country of the world adopts new procedures for impeachment.

On the 25th of August 2004, Cymru Adam announced his intention to move a motion for the impeachment of Tony Blair (Erstwhile Prime Minister of the United Kingdom), for his role in involving Britain in the 2003 invasion of Iraq. In response to that, Peter Hein, the Common Leader, insisted that the impeachment was obsolete given modern responsibility to parliament.[17] However, impeachment in modern politics has over the time become revelry used and some authorities consider it to be properly obsolete.[18]

Clearly, impeachment in Nigeria has been around for barely three decades. Nigeria's experience, particularly under the fourth republic depicts a situation whereby the legislature would appear to have perceived the impeachment machinery as one for political vexation. This

[15]*Ibid.*
[16] R. Mathew, *The origins and scope of Presidential impeachment* (Hinckney Journal of Politics 2000) [37.] Melton Buckner, *The First impeachment: The Constitution framer and the case of Senator William. Blount* (Oxford University Press, 1998) p 6.
[17] R. Mathew, *The Origins and Scope of Presidential impeachment* (Hinckney Journal of Politics 2000) p 8
[18]*Ibid.*

reinforces the belief that impeachment could really be abused, as was the case in the USA during the impeachment and trial of President Andrew Johnson of the USA[19]and Balarabe Musa, second Republic Governor of Kaduna State, Nigeria.

Be that as it may, the first celebrated case of impeachment was initiated on 13 May, 1981 with the presentation of notice of allegations to Governor Balarabe Musa of Kaduna State during the second republic. Among others, the notice of allegation which was allegedly presented by 69 members of the state House of Assembly contained such articles of impeachment including illegal exercise of power, unconstitutional appointment, and unlawful establishment of various boards[20]. This matter eventually came to an end on 18 June, 1981 with the impeachment of Alhaji Balarabe Musa as Governor of Kaduna State. This whole proceeding was characterized by various inadequacies like which made the impeachment a case of political vendetta.

Thereafter, we have had several scenes of impeachment in our emerging democracy. However, the impeachment saga in the Nigerian polity does not seem to exclude legislative members at both national and state levels. This statement is vindicated with the impeachment of former speaker of the House of RepresentativesSalisuBuhari and his counterpart Cletus Eriebe in the Enugu state House of Assembly. Other notorious impeachment saga will be discussed later in this chapter.

Impeachment Proceedings Under the 1999 Constitution

By virtue of Section 308 of the 1999 Constitution, the President, Vice President, Governor or Deputy Governor are immune from civil and criminal prosecution. Inspite of this provision, the National Assembly or state House of Assembly is Constitutionally empowered in appropriate or deserving cases to initiate the removal of such office holders referred to in Section 308 from office, if found guilty of gross misconduct in the discharge of his or her duties. It must however be noted that what amounts to gross misconduct, from the words of the Constitution, is at the discretion of the legislature.[21]

Basically, Section 143 subsection 2(b) and Section 188 subsection 2(b) provide for the impeachment of the President and Governors respectively, only if such office holder is guilty of gross misconduct in the performance of the function of his or her office. Both provisions went further in their subsection 11 to define gross misconduct as "a grave violation or breach of the provisions of the Constitution or a misconduct of such nature as amount in the opinion of the National Assembly or House of Assembly as the case may be to gross misconduct".

It is glaring from the foregoing that gross misconduct and the violation of the provisions of the Constitution are the major grounds for the impeachment of the president, vice president, governor and deputy governor. However the Constitution also makes it clear that gross misconduct could also mean whatever in the opinion of the National Assembly or State House of Assembly amounts to gross misconduct. This in my view gives too much powers to the

[19] B. Raoul, *Impeachment : the constitutional problem*" (cited in Frank Magill,2014) p 610.
[20]A. A. Adeoye, *"Impeachment of Governor AbdulkadirBalarabe Musa of Kaduna State (*Wusen Publishers 2002)p 204.
[21] Section 143(11) of the 1999 CFRN (1999 as amended).

legislature in respect of impeachment as it places the president and governors at the mercy of the legislature. In other words, the legislature could be erroneous in their opinion as to what constitutes "gross misconduct".

The gale of impeachments in Nigeria are described as paradoxical not only because of its incessant occurrence or personnel involved but because the entire processes were done in a flagrant contravention to the provisions of the Constitution. They were characterized by absurdity and irregularities and they were done without having recourse to due process and rule of law. However before delving into the detailed analysis of the different impeachment procedures adopted by the various Houses of Assembly in respect of impeachment, it is pertinent to outline the provisions of the Constitution regulating impeachment. Section 188 which is in pari-materia with Section 143 provides that:

> (1) The Governor or Deputy Governor of a state may be removed from office in accordance with the provisions of this section.
> (2) Whenever a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly:
> (a) is presented to the Speaker of the House of Assembly of the state
> (b) stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified.

The speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office, to be served on each member of the House of Assembly.
Having giving a detailed constitutional provisions on impeachment proceedings in the Nigeria context, it is now appropriate to appraise some few impeachment scenarios in the last twenty-one years.

The Fourth Republic and the Impeachment Hurricane

The spate of impeachment as well as it threats began in 1999 at the National Assembly with the removal of Salisu Buhari, the then speaker of the House of Representatives. After that, the trend has remained unabated, the Senate President Evans Enwerem was removed in November 1999, his successor, Chuba Okadigbo was removed on 8th August 2000 by a vote of 81 against 14.[22] The removal saga was not limited to the National Assembly. The State Houses of Assembly too have not been excluded. For instance in Abia state, the speaker of the House of Assembly was tried twice due to impeachment[23]. The 1st elected speaker of Enugu House of Assembly, Cletus Eriebe and his Edo state counterpart Okosun, were impeached on charges of inefficiency, impropriety and highhandedness[24] in the running of the state House of Assembly respectively.

[22]T. Bola The Daily Trust News Paper, (August 9, 2000) 50.
[23]S. Omotola *Challenges of Sustainable democracy in Nigeria*: *Impeachment Treat and Nigeria's democracy* (1st ed., 2006) 184.
[24]*Ibid.*

The threats of impeachment which assumed the dimension of a scourge and dizzying height which came to the climax with the two–weeks ultimatum issued by the House of Representatives[25] on August 13th 2002, against President Olusegun Obasanjo to either resign or face impeachment. This was consequent upon the institution of a 17 count charge, which in the argument of House of Representatives amount to impeachable offences.[26] The executive arms of government at the state had to contend with the same fate; an attempt was made to impeach the Taraba state Governor by the state House of Assembly. The Governor, Jolly Nyame was accused of dictatorial tendencies. Though the attempt was jettisoned by the House based on the intervention of the vice president, Atiku Abubakar[27], the threat was sufficient to evidence the possibility of an impeachment.

The impeachment saga of the former Governor of Oyo state Governor Rashidi Ladoja was an interesting scenario and therefore worthwhile to consider it in this piece. The situation was characterized by illegalities and abnormalities to the extent that the first procedure required by the Constitution was breached. In other words, no valid notice of allegation was presented to the Governor. The notice that was passed did not go through the Clerk of the House neither was it recorded formally by the Speaker of the House of Assembly in accordance with Section 188 (3) of the constitution.[28] Also subsection 4 and 9 of the same provision laid emphasis on two-third majority to support a motion that an allegation be investigated and to consider the report of the panel and the adoption of the report. It is interesting to point out that the Oyo state House of Assembly consist thirty-three members, two-third majority of which would be twenty-two, but the impeachment proceeding was carried out by just eighteen law makers. Is eighteen two-third of thirty-three?

It is also exiting to mention that the whole impeachment process of the Governor took place at an unparliamentarily hour and place. It could be termed as legislative immorality and unethical for a House of Assembly to sit outside its designated official venue most especially when considering a sensitive issue like the impeachment of a sitting governor as done by the Oyo state House of Assembly when it sat at D"Rovans Hotel, Ring Road, Ibadan where the notice of allegation of misconduct was signed against the Governor at 6:00 am. It is important to note that the Constitution is a sacred book that deserves to be treated and applied with sanctity, the breach of which would lead to substantial injustice[29]. This led to the initiation of the popular case of *Inokoju v. Adeleke*[30]which reinstated the Governor.

Similarly, the Ekiti state House of Assembly signed a notice of allegation (Financial impropriety) against Governor AyodeleFayose and his Deputy. In accordance with Section 188(5) of the Constitution, the Speaker of the state House of Assembly requested the Chief Judge to set up a panel to investigate the allegation. The report of the panel which eventually

[25]*Ibid.*
[26] D. Tony, Thisday News Paper, House of Representative moves to impeached OlusheguObasanjo (August 20 2002) 64.
[27]*Ibid.*
[28] The 1999 CFRN.
[29]*Ibid.*
[30]*Inokoju v. Adeleke* (2007) 4 NWLR (pt 1025) 423.

exonerated the Governor and his Deputy was rejected by the House of Assembly subsequent upon which the Chief Judge was removed and an acting judge was appointed instead. The acting Chief Judge appointed another panel to investigate the allegation which failed to absolve the governor and his deputy of the allegation. on 16th October 2006, the House of Assembly adopted the report of the panel, consequent upon which the governor and his deputy stand removed from office in accordance with the section 188 (9) of the 1999 Constitution. In view of this, the foregoing issues raised questions about the Constitutionality of this impeachment and they are highlighted as follows:

a. The provision Section 188(8) was breached. Simply put, the impeachment proceeding has ipso facto come to a final halt since the panel has exonerated the governor. It therefore implies that appointing another panel to investigate the allegation was null and void to the extent of its inconsistency with the above provision. Thus, it amounts to subjecting the Governor to double jeopardy.
b. The manner in which the Chief Judge was removed in connection with the impeachment proceeding is in sharp contrast with the provision of Section 292 of the 1999 constitution which provides that a judge shall not be removed from office before his age of retirement except by the governor acting on an address supported by two-third majority of the members of the state House of Assembly praying that he be so removed.
c. The legality of the appointment of an acting Chief Judge by the members of the state House of Assembly was also questionable. By virtue of Section 271[31], a Chief Judge of a state can only be appointed by the governor on the recommendation of the national Judicial Council subject to the ratification of the state House of Assembly.

Furthermore, the impeachment account of the former Deputy Governor of Ekiti state, Mrs Abiodun Aluko has also been a subject of debate. The impeachment followed the report of Mr. kayoed Odunlana led panel, which investigated 16 impeachable offences raised by the House. She was however found guilty of three of the charges. It must be noted that the hammer of impeachment which wrongly fell on the deputy governor has come under scathing criticism from the legal community. In an interview with Professor ItseSagay, he observed that:

> the lawmakers had participated in a major breach of fair hearing as put in place in S.36 of the 1999 constitution. What they have done is illegal.

In a similar vein, Femi Falana, the President of the West African Bar Association commented thus:

> in their haste, the lawmakers deliberately ignored subsection 6 of section.188 of the 1999 constitution that says the holder of an office whose conduct is being investigated shall have the right to defend himself in person or be represented before the panel by a legal practitioner of his own choice.

[31] The 1999 CFRN

Clearly, the gale of several impeachments discussed in this chapter, have shown that the constitutionality of most of the impeachment proceedings in the fourth republic is in doubt.

Effect of Impeachment in the Nigerian Polity

It is no gain saying the fact that impeachment is a political trial. Indeed, it is to preserve the political nature of the process and to keep it outside the judicial purview that courts are excluded from entertaining or questioning the procedures or determination of the panel or of the National Assembly or any matter related thereto. However, a critical look at the foregoing discussions on the various impeachment proceedings, it is evident that the entire procedure is grossly politicized. It is reluctantly submitted that most impeachment proceedings have been carried out with the influence of the President and the EFCC acting as shadow director in the name of fighting against corruption.

> Speaking on the politicization of the process, Professor Ben Nwabueze remarked that: Yet the qualifying word "gross" which is defined by the new Webster's Dictionary of English language as a "flagrant" or "enormous", makes it clear enough that impeachment under our constitution is not, nor is it intended to be a political device enabling two-third majority in a house of thirty-three members to remove, because of factional or partisan disagreement or differences or loss of confidence, a Governor elected by millions of voters in a state like Oyo.[32]

The process of impeachment has been grossly politicized against the spirit of the Constitution, which has had a effect in our society. We must aver our mind to the fact that the essence of impeachment doctrine came into place as a means of checking the excesses of elected Public officers. Unfortunately, there is a misconception of this notion in the contemporary Nigerian polity, which results in the impeachment of Public office holders in an unbridled manner.

Impeachment of Elected Officers

The Nigerian Constitution, just like other democratic constitutions, create the offices of the president, the vice president, the Governor and the Deputy Governor as well as how they leave office and the powers of the legislature to that effect[33]. A cursory look at the constitution will review that election and impeachment are the only two means of enthroning and dethroning a government. In view of this, attempt will be made to define impeachment, being the subject matter and election as the antecedent to impeachment, as there cannot be an impeachment without a previous election.[34] Hence, this study shall attempt to discuss in details and give analysis of impeachment and its procedures which include the grounds for impeachment.

The 1999 Constitution is not the first provision for statutory basis for impeachment in Nigeria. In other words, the reality and perpetration of impeachment in the fourth republic under the 1999 Constitution is not a new ideology in the Nigerian constitutional and democratic development. The then 1979 constitution pursuant to its section 132 and 170 make adequate

[32]B. Nwabueze, Illegality of Ladoja"s Removal as Governor, (The Guardian News Paper, March 9, 2006) p 8.
[33] S. 130, 141, 143, 176, 186 and 188 of the (CFRN) 1999 respectively.
[34]M.O. Alabi *Constitutional law; constitutionalism* (2006) p 56.

provisions for impeachment of the president and governors which is to a large extent replicated by Sections 143 and 188 of the 1999 constitution. Though these two provisions are similar to a large extent, there are some important differences between the two.

Also, it is necessary to note that there has not been an impeachment of a president in the history of Nigerian democracy. Thus, impeachment in this regard is meant to refer to the removal of governors and perhaps members of the legislative houses. However there were attempts in the early part of the fourth republic to impeach erstwhile President, Chief Olusegun Obasanjo, but it went down the drain because the requirements of the provisions of Section 143[35] were not adequately met. This goes a long way to show that the Constitution serves as an incorruptible arbiter in impeachment proceedings. The question now is, was the Constitution allowed to play its noble role in the recent past fleet of impeachment of state governors in Nigeria? In the light of this, this study will attempt to examine some of the impeachment processes and the procedures involved, in line with the provisions of Section 188 of the 1999 constitution in order to weigh their justification.

The Judiciary as an Arm of Government.

The judiciary is the arm of government concerned in this work and it is that arm which interprets the law and adjudicates in judicial matters. It is expedient to point out that for the nascent democratic rule to survive in Nigeria, there must be a just and dependable judicial system. A judicial system that would not only be independent but stands as the watchdog and hope of the common man. The 1999 constitution provides for federal and state courts, as well as election tribunals. At the apex of the Judiciary is the Supreme Court. The constitution provides that:

> *The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation*[36]

Also, the constitution further provides as follows:

> The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State."[37] The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (1) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record."[38] Nothing in the foregoing provisions of this section shall be construed as precluding:- the National Assembly or any House of Assembly from establishing courts, other

[35] The 1999 CFRN(as amended).
[36] Section 6(1) 1999 CFRN.
[37] Section 6(2) 1999 CFRN.
[38] Section 6(3) 1999 CFRN.

> than those to which this section relates, with subordinate jurisdiction to that of a High Court; the National Assembly or any House of Assembly, which does not require it, from abolishing any court which it has power to establish or which it has brought into being.[39]

This section relates to:- the Supreme Court of Nigeria; the Court of Appeal; the Federal High Court; the High Court of the Federal Capital Territory, Abuja; a High Court of a State; the Sharia Court of Appeal of the Federal Capital Territory, Abuja; a Sharia Court of Appeal of a State; the Customary Court of Appeal of the Federal Capital Territory, Abuja; a Customary Court of Appeal of a State; such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and such other court as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.[40]

However, several other provisions relating to the Nigeria judicial system are contained in Chapter VII of the 1999 Constitution, which provides for the judicature in details. This portion of the constitution is made up of sections 230 to 296. Therein, the provisions of sections 230 to 269 are concerned with Federal courts and provide for the establishment, jurisdiction, constitution as well as practice and procedure of the Supreme Court of Nigeria, Court of Appeal, Federal High Court and the High Court of the Federal Capital Territory[41].

Similarly, the provisions of Sections 270 to 284 of the 1999 constitution of Nigeria are concerned with the State Courts and provide for the establishment, jurisdiction, constitution, practice and procedure of High Court, Shariah Court of Appeal, Customary Court of Appeal and few others[42]. In addition, Section 285 provides for the establishment and jurisdiction of election tribunals to hear and determine election petitions throughout Nigeria[43]. In a like manner, sections 286 to 296 make supplemental provisions for both Federal and State Courts and their personnel[44].

It must be pointed out that save as provided in the 1999 Constitution, the exercise of legislative powers conferred on the National Assembly and the Houses of Assembly of the States is made subject to the jurisdiction of the courts of law and the judicial tribunals established by law and accordingly, "the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law".[45] However, each of the courts created by the Constitution is conferred with its own specified jurisdiction outside of which it cannot adjudicate.

It is a fundamental and rigid principle of law that a court can exercise only such jurisdiction as it is specifically conferred on it by law. In the case of Nigeria therefore, this means that

[39] Section 6(4) 1999 CFRN.
[40] Section 6(5) 1999 CFRN.
[41] The 1999 CFRN.
[42] The 1999 CFRN.
[43] The 1999 CFRN.
[44] The 1999 CFRN.
[45] Section 4(8) 1999 CFRN.

courts can only exercise such jurisdiction as is conferred by the Constitution or any other law made in consonance with the relevant provisions of the constitution. Jurisdiction is the legal authority conferred on any person or group of persons to hear, determine and adjudicate on, according to the law, any matter or issue in a dispute or contention[46]. However, any person or authority can hear and settle a matter without the legal authority to do so. In such a case, he would not be exercising any kind of jurisdiction as the term is used here. Consequently, such jurisdiction and determination would not be enforceable under the law.

The Functions of the Judiciary under the 1999 Constitution

The judiciary also known as the judicature is the system of courts that interprets and applies the law in the name of the state. Under the doctrine of the separation of powers, the judiciary generally does not make or enforce law, but rather interprets law and applies it to the facts of each case before it. This branch of government is often tasked with ensuring equal justice under the law. It usually consists of a court of final appeal called the Supreme Court together with other lower courts.[47]

An independent judiciary is universally acknowledged as one of the most defining and definitive features of a functional democracy. In fact, many perceive it as an essential bulwark against abuse of power, authoritarianism and arbitrariness. How it functions as well as how the various stakeholders in a democratic setting appropriate its interventions and role in the polity are critical indicators of the strength or otherwise of a democracy. There seems to be no where in the world presently where this reality is more apt as it is in Nigeria, one of the world's largest democracies with a population of over 140 million people.[48] Apparently, democracy in Nigeria is taking a strong foothold and it is sincerely hoped that the judicial arm of government will be able to discharge its function freely.

Furthermore, the judiciary is the arm of government saddled with the function of justice administration[49]. However the previous Constitution of Nigeria[50], gave a pride of place to the judiciary and this was also reiterated under the 1999 constitution. The judicial powers of the federation are within the purview of Section 6 of the Constitution[51] and such powers extend (not withstanding anything to the contrary in the Constitution), to all inherent powers and sanctions of a court of law. The general import of this provision is that the courts are given general power of adjudication to the exclusion of the other arms of the government.

Unlike in some other countries, the powers of adjudication of the judiciary in Nigeria extend to all matters between persons, or between government or authority and any person and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. In this regard, the nature and extent of judicial powers are enshrined in the provisions of Section 6(6) of the 1999 Constitution which provides thus:

[46] *Ibid.*
[47] Section 6(5) 1999 CFRN.
[48] J. Nwokeoma, *The Judiciary"s Redemptive Role in Nigeria's Democracy*, (Patrioni Books, Lagos 2002)p18.
[49] The New Lexicon Webster"s*Dictionary of English Language* (Deluxe Encyclopedia edition). 530.
[50] The 1979 CFRN.
[51] The 1999 CFRN.

The judicial powers vested in accordance with the foregoing provisions of this section -

(a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law
(b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;
(c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of 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;
(d) shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.

The point to be deciphered is that, except as otherwise provided by the Constitution, any issue or question as to any act or omission by any authority, person, law or whether a judicial decision is in conformity with the fundamental Objectives and Directive principles of state policy set out in chapter II of the Constitution are not justiciable in any court of law.

The judiciary has recorded a major triumph when the Supreme Court gave a momentous judgment when it affirmed that the gubernatorial candidate voted for by the electorates in the oil rich Rivers State of the Niger Delta region during the 2007 general elections was Hon. Rotimi Amaechi, former Speaker of the State House of Assembly and not Sir Celestine Omehia. It further directed that Amaechi be sworn in immediately.[52]Also the most recent Supreme Court case that brought Senator Hope Uzodinma as the Executive Governor of Imo State, shows that the judiciary in carrying out its function must do so without fear or favour.

However, in order to be able to perform its duties fearlessly and impartially, the Constitution attempts to grant the judiciary some amount of independence from the other two arms of the government.[53] It should be noted that the legislators are elected by the electorates and the chief executives are also elected. However, the Nigeria constitution provides for the appointment of most members of the judiciary but many debates have supported the existence of the Judicial Service Commission and criticized its composition very seriously. There have been few voices advocating the election of the Justices of the supreme courts[54].

From the above, it is glaring that all government and political institutions are the creations of men. In the words of British Economists John Stuart Mills[55], he observed that:

[52]*Ibid.*
[53]*Ibid.*
[54]A, Aguda. *The judiciary in the Government of Nigeria* (New Horn Press, Ibadan 1983) 17-19.
[55] J, Mill Representative Government (parker, son and bourn Publisher, London, 1861) p 11-1 4.

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> Political institutions are the works of man; they own their whole existence to human will. Men did not wake on a summer morning and find them spring up. Neither do they assemble trees which once planted are growing, while men are sleeping. At every stage of their existence they are made what they are by voluntary human agency.

At this point, it is important to give kudos to the various Courts of records in Nigeria as they perform a very formidable role in exercising their functions.