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Amending the Constitution of the Federal Republic of Nigeria 1999

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Abstract

The amendment of the Constitution of the Federal Republic of Nigeria 1999 has not been free of controversies. The latest controversy dogging the amendment relates to whether or not it is necessary for the President to assent to the Bill of the National Assembly amending the Constitution, even after the amendment has been ratified by at least two-thirds of the Houses of Assembly of the States of the Federation. There are two schools of thought on this issue; each with sound arguments in support of their respective position. A dispassionate and realistic consideration of the issue has been undertaken in this article. The conclusion is reached that the provision of the constitution dealing with its amendment is not free from ambiguity. Its lack of clarity on its amendment procedure has made it obviously in dire need of amendment. Consequently, necessary suggestions on how to resolve the issues, including the amendment of the amendment-provision of the constitution have been proffered.

Keywords

constitutional law; constitutional amendment; 1999 Constitution of the Federal Republic of Nigeria; assent of the President; interpretation of statutes; National Assembly; Senate; House of Representatives

1. Introduction

Amending the Constitution of the Federal Republic of Nigeria 1999[1] has *ab initio* not been free from controversies. The latest controversy on the amendment of the 1999 Constitution relates to whether the assent of the President of the Federal Republic of Nigeria is necessary before any purported amendment to the constitution can become effectual.[2] As can be imagined, there are two views on the matter.

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1) Hereinafter referred to as the "1999 Constitution".

2) Alifa Daniel, 'Senators disagree over assent to new constitution', *THE GUARDIAN* (Lagos, Nigeria, 17 June 2010) 1; Azimazi Momoh Jimoh *et al.*, 'Cracks in legislature over presidential assent to amended constitution, others', *THE GUARDIAN* (Lagos, Nigeria, 21 July 2010) 1.

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The arguments of the President-must-assent group superficially appear weighty, but a dispassionate consideration of the issues and circumstances sends them collapsing like a pack of badly stacked cards. That point is obvious from the critical appraisals of their propositions above. It is, for balance and fairness, appropriate to consider the grounds for contending that the assent of the President is irrelevant in the amendment of the 1999 Constitution. It must be pointed out up front that some of the grounds have been revealed in the critical appraisal above, but there are some more grounds yet unexplored or some further elucidation to be added to previously canvassed points.

3.2. *Assent of the President Is not Required*

There exist unassailable reasons to hold that that the assent of the President is not necessary to amend the 1999 Constitution. These would now be considered.

3.2.1. *The Practice in the United States*

It is a widely-acknowledged fact that the Nigerian presidential system of government is fashioned after the American model.[36] Also, it is an acknowledged fact that the Constitution of the United States of America greatly influenced the 1979 Constitution after which the 1999 Constitution was modelled.[37] It is not surprising therefore that reference is made to the practice in the United States on constitutional amendment in determining the appropriate practice for Nigeria. The Deputy President of the Senate has been, quite rightly, very forthright on this issue. He has been quoted to have said:[38]

> Don't forget we copied from the American Constitution. Once the American Congress passes the Constitution Amendment and it's sent to the states just like our own and you have the requisite number, it becomes automatically operative. No American President has ever signed a constitutional amendment.

The equivalent of Section 9 of the 1999 Constitution in the Constitution of the United States is Article V.[39] It is clear from the provision of article V of the Amer-

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[36] See *supra* note 33.

[37] See *supra* note 34.

[38] Alifa Daniel, 'Senators disagree over assent to new constitution', *THE GUARDIAN* (Lagos, Nigeria 17 June 2010) 1, 2. See also Alifa Daniel, 'Why president doesn't need to sign constitutional amendment, by Ekweremadu', *THE GUARDIAN* (Lagos, Nigeria, 28 July 2010) 9; Davidson Iriekpen, 'Amended Constitution: An Impending Lacuna?', *THISDAY* (Lagos, Nigeria, 28 July 2010) 23.

[39] In the case of *Hollingsworth v. Virginia* 3 U.S. (3 Dall.) 378 (1798), the United States Supreme Court ruled that the President of the United States has no formal role in the process of amending the United States Constitution. This decision has been the subject of interesting academic debate. See, for example, Seth Barrett Tillman, 'A Textualist Defense of Article I, Section 7, Clause 3: Why *Hollingsworth v. Virginia* was Rightly Decided, and Why *INS v. Chadha* was Wrongly Reasoned', (2005) 83 *Texas Law Review*, 1265; Gary S. Lawson, 'Burning Down the House (and Senate): A Presentment Requirement for Legislative Subpoenas Under the Orders, Resolutions, and Votes Clause', (2005) 83 *Texas Law Review*, 1373;

ican Constitution that the assent of the President is not contemplated. Even though Section 9 of the 1999 Constitution is not couched in exactly the same words as article V of the American Constitution, it is not difficult to identify some similarities between the two provisions. In the first place, there is the requirement of two-thirds majority of votes of both Houses of the Federal Legislatures. Secondly, there is the involvement of the States in the process. The approval of the requisite number of Houses of Assembly of the States seals the amendment of the constitution. Thirdly, there is a clear intention on both provisions to be the sole provision in respect of the amendment of the respective constitutions. In the case of article V, this is evident from the phrase "shall be valid to all Intents and Purposes". In the case of the 1999 Constitution, it is evident from the provision of Section 9(1) which subject the section to itself. Thus, reference to any other section of the 1999 Constitution to add to the constitution amendment process is untenable.

3.2.2. *Section 58*

As has been shown above, it does seem that the President-must-assent champions allowed themselves to be misled by relating the power of the National Assembly to amend the constitution with the general law-making powers of the National Assembly conferred by Section 4(1) and (2). Such linkage is erroneous. The irrelevance of Section 58 of the 1999 Constitution in the process of amending the constitution is very clear. The first proof is the marginal note to the section which is "Mode of exercising Federal Legislative power: General".[40] From the marginal note to Section 58, it is evident that it is a provision for the regulation of the general powers of the National Assembly to make laws for those matters under the Exclusive Legislative List and Concurrent Legislative List. Constitution amendment is not a federal legislative exercise, strictly speaking, since the Houses of Assembly of the States are involved and crucial to the process. Even if the entire 469 members of both Houses of the National Assembly pass a bill for constitutional amendment and the resolution of the requisite number of the Houses of Assembly of the States approving it is lacking, the amendment of the constitution fails. The realisation of the special nature of constitutional amendment, distinct from the other legislative powers of the National Assembly, necessitated the provision of Section 9(1) which confers the power to amend any part of the constitution on the National Assembly. That subsection went further to expressly stipulate

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Seth Barrett Tillman, 'The Domain of Constitutional Delegations under the Orders, Resolutions and Votes Clause: A Reply to Professor Gary S. Lawson', (2005) 83 *Texas Law Review*, 1389. See also *Dillon v. Gloss*, 256 U.S. 368 (1921); *United States v. Sprague*, 282 U.S. 716 (1931); *Coleman v. Miller*, 307 U.S. 433 (1939); *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). *See also*, Jason Mazzone, 'Unamendments', (2005) 90 *Iowa Law Review* 1747 (where it was contended that not all amendments to the American Constitution can be effected under article V).

[40] This is different from that of section 59 which deals with the mode of exercising federal legislative power in respect of money bills.