

Federalism and the Nigerian Judiciary: A Conflict of Principles and Structure?

Dr. Benson Omoleye
Associate Professor and
Ag. Dean, Faculty of Law
Ekiti State University
Nigeria

Omidoyin, Taiye Joshua
Lecturer, Faculty of Law
Ekiti State University
Nigeria

Abstract

Federalism connotes power distribution to all tiers and arms of government, including the judiciary. Nigeria however, even though a practicing federal nation, still has over concentration of judicial powers in the central government. This is clearly reflected in the court system established in the Constitution, with only federal courts given constitutional recognition. Is this true federalism? This research therefore analyses federalism as a system of government in Nigeria and attempts to resolve whether the Nigerian judicial system can be said to be truly federal in nature. The research concludes that the judicial arm of government in Nigeria cannot be regarded as truly and fully federal in nature unless constitutional recognition and autonomy is given to state and local court systems. The research recommends that states and local governments should be given independence to operate their autonomous judicial arm of government with little or no interference from the central government.

Keywords: Federalism, Judiciary, Court System, Constitution, Autonomy

1.0 Introduction

The concepts of arms of government and tiers of government are often times interchangeably, but erroneously, used by writers when analysing the structure and roles of government. Arms of government connote the constitutional division of governmental powers among the various organs of government to ensure separation of powers¹ and enhance checks and balances. Tiers of government on the other hand imply the arrangement, delineation and sharing of constitutional powers in the country among the component but independent levels of government. Federalism, in the context of this research, is addressed in relation to division of powers among the tiers of government while judiciary is examined as an arm of government in a democratic nation. The two systems of government are operative in Nigeria, being a democratic nation, but the main issue to be addressed in this research is whether federalism, which is the system of government practiced in Nigeria, is truly reflected in judicial system of the country.

2.0 Conceptual Framework

The major concepts to be examined in this research are federalism, the judiciary and the judiciary under the Nigerian Constitution.

Federalism

The term federalism generally connotes division of governmental powers between the central government and other component units of government. However, the term federalism has gained tremendous popularity and frequency in usage; it has no generally acceptable definition. Indeed, as there are many commentators, there are diverse definitions in conceptualizing federalism. Where, a foremost contemporary exponent of federalism, draws his classic formulation from the structure and processes of the government of the United States of America as the

¹ See Bayo Oluduro (2006) "Basic Constitutional Concepts in Administrative Law" in T.F. Yerima and B. Abegunde, *Essays on Administrative Law in Nigeria* Ado-Ekiti Petoa Educational Publishers, p29

ideal model of federal government, and avers: “by the federal principle, it means the method of dividing power so that general and regional governments are each within a sphere coordinate and independent.”² Federalism is thus essentially an arrangement between governments, a constitutional device by which powers within a country are shared among two tiers of government.

The Judiciary

Judiciary is the third arm of government saddled with statutory responsibilities of interpretation of legislations and resolution of disputes among litigants. Although the term judiciary, is used in the constitution, the term unfortunately is not defined anywhere in the constitution. This deficiency notwithstanding, from the totality of the provisions of the constitution, it is clearly inferable that judiciary simply refers to the arm of government that is vested with the powers to interpret laws made by the executive. Judiciary is universally acknowledged as the cornerstone of a civilized society. It is that arm of government that is constitutionally empowered to adjudicate on disputes and frictions between persons and persons and authorities in a country.

The Judiciary under the Nigerian Constitution

The Constitution of the Federal Republic of Nigeria, 1999 (As Amended) established the judicial arm of government and also instituted the practice of separation of powers in the Nigerian constitutional democracy. The Constitution makes elaborate provision for the separation of powers amongst the three arms of government viz, the legislature, executive and judiciary. Section 4 of the Constitution created the legislature, Section 5 created the executive while Section 6 created the judiciary in a respective order. Section 6(1) of the Constitution succinctly states that, “The judicial powers of the federation shall be vested in the courts...”³ Having analysed basic concepts in this research, the principles of federalism in a constitutional democracy and the Nigerian form of federalism will be evaluated, pointing out the differences and the way forward.

3.0 Principles of Federalism and the Nigerian Warped Federal Structure

Federalism is a system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units. In other words, federalism refers to a division of jurisdiction and authority between at least two levels of government, with a component stronger than the other. Wheare, who is generally regarded as the father of federalism, defined federalism as an association of states which has been formed for a certain common purpose, but the member states reserve a large measure of their original independence. It is a written constitutional mechanism through which governmental powers, functions and procedures are distributed among the national, state and local governments (3 tiers of governments) or constituent units, ensuring in the process the independence and exclusively defined area of responsibilities for each tier of government.⁴ Wheare further posited in his treatise that “by the federal principle, I mean the method of dividing powers so that the general and regional governments are each, within its spheres co-ordinate and independent.”⁵ He classified Australia and United States of America as beacons of Federation, while Canada and India are portrayed as coercive federations because more powers are given to the central government than the regional ones under their constitution. It is apparent Nigeria falls in the list of countries with coercive federalism.

In conceptualising federalism, Wheare draws his classic formulation from the structure and processes of the government of the United States of America as the ideal model of federal government, and avers: “by the federal principle, it means the method of dividing power so that general and regional governments are each within a sphere coordinate and independent.”⁶

Accordingly, he said the federal principles specify the following:

- i. Constitutional divisions of powers among levels or tiers of government.
- ii. The operation of a written constitution showing this division.
- iii. Coordinate supremacy of the two levels of government with regard to their respective functions.
- iv. The existence of a bicameral legislature.
- v. An independent judiciary and Supreme Court.

² Wheare K.C. (1953) *Federal Government* New York: Oxford University Press p. 10

³ The Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

⁴ Obi S Ogene (2001) *Fashioning the Constitution of a Federal Democratic System – Comparative Analyses of Nigeria, Australia, Canada & USA Representative System* Enugu: CIDJAP Press, p. 25

⁵ Wheare, n 3 11

⁶ *ibid*

- vi. An independent electoral system for both levels of government.
- vii. Constitutional provision for human rights
- viii. Existence of multi-party democracy, among others.⁷

Nwabueze, a foremost constitutional lawyer in Nigeria, defined federalism as an arrangement whereby the powers within a government within a country are shared between a national, country-wide government, and a number of regionalized (that is territorially localised) governments in such a way that each exists as a government separately and independently from the others, operating directly on the persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs, and with an authority in some matters exclusive of all the others.⁸ An ideal federal system of government would give the federal government a *quasi* supervisory role in the affairs of states or component units while encouraging the component governments to regulate their domestic activities within the agreed federal constitutional framework.⁹ Hence, the ideal federalism is essentially on devolution of governmental powers as well as autonomy of the component units within the federal system rather than concentration of powers at the central government. Olanipekun remarked that devolution of powers and fiscal autonomy of the component units are the hallmark of an ideal federalism.¹⁰ Streamlining the evaluation to the Nigerian situation, Section 2(1) of the Nigerian Constitution¹¹ brands Nigeria as a Federal Republic. The Nigerian Constitution further provides that Nigeria shall be a federation consisting of states and a federal capital territory.¹² Section 3(1)¹³ further provides that there shall be thirty-six states in Nigeria and went on to list the thirty six states. The Constitution also provides¹⁴ that Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria. This provision is to the effect that the federal state with its entire territory is one and indivisible, and its people form one, indivisible nation. The territorial divisions, known as states exist for the purpose of delimiting the areas within which each regional government is to exercise the powers assigned to it. But their existence does not imply that power is shared between them as geographical divisions with distinct legal identity on the one hand, and the federation on the other, or between their different peoples and the nation. In the Nigerian federalism, there is no dichotomy between the nation and the people living in different geographical locations of the country. The America theoretical model of K. C. Wheare was adopted for Nigeria, although the adaptation of American federal democratic principles in Nigeria is at a crossroads, due to discrepancies in the internal contradictions of the country's political economy. According to Ikejiani Clark, the ideal features of classical federalism include the following:

- i. the desire of concerned communities to be under a single independent government for some purpose;
- ii. the desire of the federating units to retain regional autonomy in some areas at least and;
- iii. the imperative that the federating units must be reasonably proportional in size in order to ensure a fair distribution of political power, in coping with sectional diversities of geography, heterogeneity of social culture, nationality, language and religion.¹⁵

The following are observations from the Nigerian federalism viz:

- i. Unlike the United States America where states control resources in Nigeria, the federal control the resources located in the state.
- ii. The judiciary in Nigerian federalism is not completely independent.
- iii. The electoral body in Nigerian federalism is not also independent.
- iv. There is no desire of concerned communities to be under a single independent government etc. The Niger Delta Avengers claim of being independent, the Indigenous People of Biafra (IPOB) claim of being a sovereign state etc.

⁷ *ibid*

⁸ Nwabueze B.O. (1983) *Federalism in Nigeria under the Presidential Constitution* London: Sweet and Maxwell p. 1

⁹ Wole Olanipekun (2017) *Breaking the Jinx – The Cyclical Nature of Nigeria's Problems* Convocation Lecture Delivered at the 22nd Convocation of Ekiti State University, Ado-Ekiti on 30th March, 2017

¹⁰ *ibid*

¹¹ Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

¹² Section 2(2) *ibid*

¹³ Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

¹⁴ Section 2(1) *ibid*

¹⁵ Ikejiani Clark (1991) *Main Features of the Nigerian Politics since Independence*, A paper presented to the Nigerian Institute of Policy and Strategic Studies, Kuru, March 4, 1991

A major challenge bedeviling the Nigerian federalism and making it far from the ideal nature of federalism is the over-concentration of governmental powers in the federal government, thereby creating an all-powerful, overbearing and domineering centre.¹⁶ The Nigerian federal system made component states over-dependence on the federal government, especially in the area of resource allocation and revenue generation. Most states in Nigeria owe their continuing economic survival to the resources accruing to them from the federal purse. The notion of fiscal autonomy of component states remains a mirage.

A close evaluation of some Nigerian statutes clearly shows the overpowering, overconcentration and domineering status accorded to the federal government in Nigeria. The Constitution of the country, which is the grundnorm, expressly divides governmental powers into exclusive, concurrent and residual powers. The Constitution creates items which fall under the Exclusive Legislative List and Concurrent Legislative list.¹⁷ The federal government is the body saddled with the constitutional powers to legislate on matters on the Exclusive Legislative List and this consists of 68 items listed while the federal government still shares legislative powers with the state governments on matters within the Concurrent Legislative List, meanwhile in areas of conflict of decisions, the federal government has an overriding power.¹⁸

The creation of specialised federal courts like the Federal High Court¹⁹ and the National Industrial Court²⁰ further exposes the exclusiveness and overrating of the federal government above component state governments. Taking an instance of the provisions of Section 251 of the 1999 Constitution, exclusive jurisdiction is granted to the Federal High Court over matters relating to the federal government and her agencies. Cogent matters of national interest were also exclusively embedded in the jurisdiction of the Federal High Court.²¹ The National Industrial Court, by virtue of the Third Alteration Act,²² being a federal court, likewise have exclusive original jurisdiction over labour and industrial matters in Nigeria. These are clear pointers to the fact that the exclusive power of the federal government is reflective in the judiciary and the court system.

Another vivid situation that captures the nature of Nigerian federalism is in the conflicting provisions of the Land Use Act²³ and the Petroleum Act.²⁴ Section 1 of the Land Use Act vests ownership of all land within the territory of a State on the State Governor, however a careful look at the Petroleum Act reveals a provision in sharp contrast with the earlier provision of the Land Use Act. The Petroleum Act provides vests ownership of mineral resources found beneath the land within the territory of same state, and 200metres offshore, in the Federal Government, leaving the states, the actual owners of the land, and by extension, the resources situated therein, at the mercy of the national derivation formula. This likewise shows the superiority and control of the federal government over component states. It therefore leaves no one in doubt that, going by the ideal principles of true federalism, Nigeria can safely be categorized as part of the country practicing a warped federal system. In a bid to analyse judiciary and federalism, it is expedient to examine federalism and the Nigerian court system.

4.0 Restructuring the Nigerian Court System along Federal Principles

The Nigerian 1963 Post-Independence Constitution of Nigeria created a fairly reasonable federal arrangement in Nigeria which allowed every component region the latitude to proceed at its own pace, economically, politically, socially, educationally and on other spheres.²⁵ Governmental powers were reasonably distributed between the federal and component regions in the country. The judiciary was not left out in the delineation as the idea of what is today known as the Court of Appeal was first rooted and established by the then Western Region, acting under Section 127 of the 1963 Constitution of the Federal Republic of Nigeria.²⁶ Thereafter, a formidable Court of

¹⁶ Olanipekun (n 9)

¹⁷ See Second Schedule, Part 1 and II of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

¹⁸ *ibid*

¹⁹ Section 249 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

²⁰ See Section 2 of the Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010

²¹ Matters like bankruptcy, insurgencies, diplomatic matters, aviation, arms, ammunitions, mines, minerals, drugs, weighs, customs, coinage and so on. See Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

²² Section 249, *ibid*

²³ CAP L5 LFN 2004

²⁴ CAP P10 LFN 2004

²⁵ See generally the provisions of the Nigerian 1963 post-Independence Constitution

²⁶ *ibid*

Appeal was constituted. It was however unfortunate that the idea of the Court of Appeal from the old Western Region was unconstitutionally abolished by the Murtala/Obasanjo military junta, and a Federal Court of Appeal was imposed on the entire country.

Although the Nigerian Constitution, on the face value depict Nigeria as a federal nation, even from the long title, 'Constitution of the Federal Republic of Nigeria', however in the *jure* sense, the constitution does not represent the wishes, thinking, yearnings, vision, mission, ideas, ideals, ethics and values of the people.²⁷ In fact, the current Nigerian grundnorm²⁸ was imposed on the country by the 1999 military government led by General Abdulsalam Abubarka. This body of rules, despite referred to as the organic law and fountain of all laws in Nigeria, it does not represent the true wishes and collective aspiration of the people.²⁹ In fact, Wole Olanipekun recently referred to the Nigerian Federal Constitution as foisting on Nigerians 'unfederal federalism' and what we have as a caricature federal constitution that has created a hydra-headed unitarism.³⁰

It appears from the provision of the section 6 of the 1999 Constitution of the Federal Republic of Nigeria that the Constitution intended that the judiciary should be truly federal as pragmatically defined by Prof. Ben Nwabueze. A clear indication of this is in section 6(1) of the Constitution, "The Judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation." On the other hand, section 6(2) provides that: "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." The Constitution further underscores the separateness of Federal Courts and State Courts by the delimitation it provided in its Chapter 7 which is headed 'The Judicature'. Whilst Part I of the Chapter is headed 'Federal Courts', Part II is headed 'State Court'. Under the Federal Courts, we have the hierarchy of courts in the following order:

Supreme Court of Nigeria³¹

Court of Appeal³²

Federal High Court³³

National Industrial Court of Nigeria³⁴

High Court of the Federal Capital Territory, Abuja³⁵

Sharia Court of Appeal of the FCT³⁶ and

Customary Court of Appeal of the FCT³⁷

For the State Courts, which are listed under Part II, these are

High Court of a State³⁸

Sharia Court of Appeal of a State³⁹ and

Customary Court of Appeal of a State⁴⁰

This ordinarily would have appeared as a clear indication that the Nigerian constitution envisaged a federal structure to be reflected in the judicial arm of government. The federal structure of the judiciary is however not limited to the Courts. The Constitution also delineates the administration of the Court between the Federation and the States. One of the bodies created for the Federation under section 153 of the Constitution is the Federal Judicial Service Commission. This is the body vested with the power to advise the National Judicial Council in nominating persons for appointment to federal judicial offices.

At the State level, there is the State Judicial Service Commission, which is one of the bodies established under section 197 of the Constitution, to exercise similar power as its federal counterpart. From the foregoing, it

²⁷ Olanipekun (*n 9*)

²⁸ The Constitution of the Federal Republic of Nigeria, 1999 (As Amended) is the Nigerian grundnorm

²⁹ Olanipekun (*n 9*)

³⁰ *ibid*

³¹ Section 230 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

³² Section 237 *ibid*

³³ Section 249 *ibid*

³⁴ Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010

³⁵ Section 255 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

³⁶ Section 260 *ibid*

³⁷ Section 265 *ibid*

³⁸ Section 270 *ibid*

³⁹ Section 275 *ibid*

⁴⁰ Section 280 *ibid*

appears, from parallel existence of the Judicature at the Federal and State levels, that there is judicial federalism in the Nigeria under the 1999 Constitution. A careful look at the constitutional division of the Nigerian judicature between the federation and the states paints an image of a caricature reflection of federalism in the judiciary, which in actual sense is not true. The true nature of federalism reflects in the arrangement of powers in both the legislative and executive arms of government, but not in the judiciary. The Constitution expressly stated that the powers of the federation shall be vested in the President or Vice President or Minister or any officer so appointed.⁴¹ The same Constitution further distributed executive powers to the states to be exercised by the Governor, Deputy Governor, Commissioners or any other officer so appointed.⁴² Interestingly, these two levels of executive powers operate independently. The same was reflected in the legislative arm of government where law making powers are expressly shared between the National Assembly (federal legislature)⁴³ and the State Houses of Assembly (state legislature)⁴⁴, all in the interest of making law for peace, order and good governance of the federation and state respective. Unfortunately, the above federal delineation of powers was not reflected in the judiciary.

A vivid illustration is seen in section 6(6) of the Constitution which provides that: “The judicial powers vested in accordance with the foregoing provisions of this section – shall extend , notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a Court of law...to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any questions as to the civil rights and obligations of that person.” It is arguable from the above that the framers of the Constitution did not intend a surgical separateness between the Federal Courts and State Court as we have with the Legislature and the Executive. This is also the view of Nwabueze who opined that the provision: “...is not a definition of the extent of federal or state judicial powers. It is rather a definition of the nature of judicial powers, as a power for the determination of the civil rights and obligations of persons in justiciable matters brought before the courts by such regular proceedings as are recognized by law.”⁴⁵ Section 286 of the Constitution empowers State Courts with jurisdiction in respect of ‘Federal Causes’. It provides that: “Subject to the provisions of this Constitution, whereby law of a State, jurisdiction is conferred upon any court for the hearing and determination of civil causes and of appeals arising out of such cause, the court shall have like jurisdiction with respect to the hearing and determination of Federal causes and of appeals arising out of such causes.” The implication of the provision is that the Constitution recognises the fact that state judicial powers may extend to justiciable matters arising under laws made by the National Assembly. This underscores, again, the fact that separation between Federal Court and State is not in a watertight compartment.⁴⁶ The existence of the appellate courts is also another indication to refer to Nigeria’s federalism as ‘unitary federalism’ of Nigerian Judiciary.⁴⁷ Another area of major focus for the non-federalisation of the Nigerian judiciary is the centralisation of the appellate court system.

Whereas the Constitution recognises the separateness and the parallel existence of the Federal High Court and the State High Court, the Sharia Court of Appeal of the FCT and the Sharia Court of a State, as well as the Customary Court of Appeal of the FCT and the Customary Court of Appeal of a State, there is no provision for the establishment of Appeal Court and the Supreme Court by the State under the 1999 Constitution.⁴⁸

In effect, there is only one Court of Appeal and only one Supreme Court for the entire Federation of Nigeria. It could therefore be argued that whilst there exists federalism of some sort at the level of the High Court, the same argument cannot be convincingly made at the appellate court.

⁴¹ Section 5(1) *ibid*

⁴² Section 5(2) *ibid*

⁴³ Section 4(1) *ibid*

⁴⁴ Section 4(5) *ibid*

⁴⁵ Nwabueze (n 8)

⁴⁶ Babatunde Raji Fashola (2014) *Judicial Federalism under The Nigerian Constitution* A paper presented at the 8th Annual General Conference of the Section on Legal Practice of the Nigerian Bar Association, Uyo, Akwa Ibom State, November 11, 2014

⁴⁷ *ibid*

⁴⁸ Fashola (n 46)

The position of Itse Sagay that: “In a federal system, there is no hierarchy of authorities, with central government sitting on top of others. All governments have a horizontal⁴⁹ relationship with each other”⁵⁰ could therefore not be applied, *mutantis mutandis*, to Nigerian Judiciary. According to Nwabueze, the Court of Appeal and the Supreme Court are “...courts of appeal for the whole country in cases arising under federal as well as state judicial power.”⁵¹ This is an exercise that had earlier been done by Prof. Nwabueze and he concluded by making a lucid comparison with federalism practiced in the United States, that: “While decisions by the state courts on issues of federal law may be appealable ultimately to it, the Supreme Court of the United States has no appellate jurisdiction whatsoever over their decisions on matters arising under state laws. No federal court in the United States other than the Supreme Court in its original jurisdiction in cases in which the United States is a party or in cases between two states or in which certain other specified persons are parties, has jurisdiction to administer state laws.”⁵² If we compare the position in the United States what is obtainable in Nigeria under the Constitution of the Federal Republic of Nigeria, the question again is this: ‘How federal is Nigerian Judiciary?’⁵³ It is also expedient to evaluate the role of the National Judicial Council in judicial federalism in Nigeria.

6.0 The Role of the National Judicial Council in Judicial Federalism in Nigeria

The National Judicial Council is one of the bodies established under section 153 of the Constitution as “Federal Executive Bodies.”⁵⁴ One of the functions of the National Judicial Council is to recommend to the Governors from the list of persons submitted to it by the State Judicial Service Commissions persons for appointment to the offices of the Chief Judges of the States and Judges of the High Court of the States, the Grand Kadis and Kadis of the Sharia Courts of Appeal of the States and the Presidents and Judges of the Customary Courts of Appeal of the States.⁵⁵

There is no doubt that the independence of the National Judicial Council and other bodies is enshrined in the Constitution. Section 158 provides that the National Judicial Council “...shall not be subject to the direction or control of any other authority or person.” Therefore viewing this from the angle of federalism, the fundamental issue is the appropriateness of such a body in a federal structure. The existence of a single regulatory body for both the Federation and the States judiciary put a question mark on Nigerian federalism. Sagay remarked that one of the constitutional defects inherent in the Nigerian Constitution is the establishment of an essentially federally controlled National Judicial Council for the appointment, discipline and removal of judicial officers.⁵⁶

Historically, under the 1979 Constitution, the power being exercised by the National Judicial Council was vested in the Federal Judicial Service Commission. The then FJSC had the power to “advise the President in nominating persons for appointment, subject to the approval of the Senate, as respects appointments to the Office of...” federal judicial officers.⁵⁷

In the same vein, the State Judicial Service Commission had the constitutional responsibility to advise the Governor in nominating persons for appointment to State Judicial Offices.⁵⁸ It is evident from the above comparison between the 1979 Constitution and the 1999 Constitution that whilst former was in consonance with the fundamentals of federalism, the latter appears to be a sort of hybrid between federalism and unitary structure.

7.0 Conclusion

The concepts of federalism and the judiciary have been examined in this research. The research evaluated the Nigerian form of federalism in relation to the ideal nature of federalism, and it was revealed that the system

⁴⁹ Under the Republican Constitution of the Federation, 1963, the Regions had the option of establishing an intermediate appellate court between the High Court and the Supreme Court. See sections 52 and 53 of the Republican Constitution of the Western Region, the Court of Appeal Edict, No. 15 of 1967 and the Court of Appeal (Commencement of Provisions) Notice, 1967

⁵⁰ Itse Sagay, “Anatomy of Federalism With Special Reference to Nigeria” in *Trends in Nigerian Law: Essays in Honour of Oba DVF Olateru Olagbegi*, page 188

⁵¹ Nwabueze (n 8)

⁵² *ibid*

⁵³ Fashola (n 46)

⁵⁴ Paragraph I, Part 1 of the Third Schedule of the Constitution

⁵⁵ Section 21 *ibid*

⁵⁶ Sagay, (n 50) page 202

⁵⁷ see the Third Schedule to the 1979 Constitution

⁵⁸ see the Third Schedule to the Constitution

practiced in Nigeria is best categorized as warped or unitary federalism. The research further analysed the judicial system of government in Nigeria on the scale of whether or not federalism truly reflects in the Nigerian judiciary, and the finding of this research is that, even though federalism is the institutionalised system of government in Nigeria, the judicial arm of government cannot be said to be truly and fully federal in nature. From the foregoing, it appears that Nigerian judiciary is in the process of evolution. For the Nigerian judiciary to be truly federal in nature and in character, the power of the state, as a coordinating government in the federation, must be enhanced. To further enhance federalism in the Nigerian court system, the composition and powers of the National Judicial Council must be reviewed to reflect true federalism in the Nigerian judiciary. Judges of the State High Court must not be subjected to the appointment, suspension or dismissal by the National Judicial Council, which is a federal government agency regulating the affairs of state judiciary. The existence of the appellate courts is also another indication to refer to Nigeria's federalism as 'unitary federalism' of Nigerian Judiciary. The appellate court system in Nigeria did not reflect federalism because only courts at the state level depict federalism whereas these courts aren't with finality; appeals go to higher courts which are courts of the federal government. It is very instructive and directional to admit the opinion of Itse Sagay that in order that our federation should survive, we must shed the current federal stranglehold on Nigeria and go back to true federalism, not only structurally, but also in spirit. We must imbibe and practice respect for the independence of the state, the rule of law, the solidarity of the centre with the federating units in mutual cooperation. That is the only way forward for a united and harmonious Federal Republic of Nigeria.⁵⁹

⁵⁹ Sagay, (n 50)page 205