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RECALL OF ERRING LEGISLATORS UNDER THE 1999 CONSTITUTION OF NIGERIA: CHALLENGES AND PROSPECTS

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ABSTRACT

The power to recall legislators is a direct democracy mechanism by which the electorate could monitor the performance of their elected representatives and remove them from office before the expiration of their constitutional term. The provision on the power to recall is one of the innovations of the 1999 Nigerian Constitution. However, the implementation of this constitutional provision in Nigeria has encountered several daunting challenges and abuses; as a result of which no successful case of recall has so far been recorded in Nigeria. This article examines the challenges and prospects of a successful implementation of the recall provision in Nigeria. It identifies corruption, absence of credible electoral process and absence of political culture as some of the factors that hamper the successful implementation of the recall provision and advocates that urgent steps should be taken to address these problems so as to achieve the full actualisation of the recall provision and the consolidation of constitutional democracy in Nigeria.

Keywords: Recall, Erring Legislators, Constitution, Electorate

1. INTRODUCTION

In the recent times there have been renewed and persistent calls by the electorate across Nigeria for the recall of their legislators, particularly those who signed the impeachment notices for the removal of their State Governors.¹ This development, once again, generated much interest in the constitutional provision on recall of legislators in Nigeria, especially, on the possibility of its successful implementation. Generally, Nigerians are completely disillusioned with the selfish attitude and dismal performance of their legislators both in the National Assembly and the State Houses of Assembly.²

¹ Esan, A., "Al-Makura: NHRC Calls for Recall of Legislators Over Impeachment", *National Mirror*, July 22, 2014, available at nationalmirroronline.net/news/cal-makura-nhrc-calls-for-recall-of-recall-of-legislators-over-impeachment (reporting that the Nigerian Human Rights Community (NHRC) called on the people of Nasarawa State to recall all the lawmakers involved in the plot to unseat the State Governor. Umaru Al-Makura).

² Nigerian legislators are usually accused of showing more interest in matters that would improve their already bloated salaries and allowances, and general welfare; at the expense of the welfare of the people whom they claim to represent.

It is pertinent to note that, just as the executive heads of the federal and State governments in Nigeria could be removed from office before the expiration of their tenure, an erring legislator could also be removed from his seat in the legislative house before the expiration of his term. The process of removing a legislator from the legislative house by the electorate of his constituency is referred to as “recall”.³ Prior to the coming into force of the 1999 Constitution, the process of recall was unknown to the Nigerian Constitutional jurisprudence, as it did not feature in any previous Constitution.⁴ However, one of the innovations of the 1999 Constitution of Nigeria is the power to recall erring legislators by the electorates.⁵ Thus, under the current Nigerian Constitution any member of the National Assembly or State House of Assembly may have his term of office prematurely terminated through his recall by voters of his constituency.

Surprisingly, the American Constitution on which the Nigerian Constitution is modeled has no provision for recall of legislators by the electorate. However, some states in America have inserted provisions in their Constitutions empowering the electorate to recall its legislators. The implementation of the recall provision under the 1999 Nigerian Constitution has, so far, encountered many challenges, and, to date, no legislator, whether at the National Assembly or the State House of Assembly, has successfully been recalled. Against this background, this article sets out to examine the rationale for the introduction of the recall provision, the challenges confronting its implementation and the prospects and continued relevance of the recall provision in the Nigerian Constitution.

2. MEANING OF RECALL AND ITS RATIONALE

Recall is the process by which a legislator may be removed from his legislative seat before the expiration of his constitutional term⁶ by the electorate of his constituency on grounds of loss of confidence. Bhanu⁷ defines ‘Recall’ as a unique political device exercised by the electorate to remove a particular legislator from office. He asserts that the power enables the electorate to scrutinize the performance of representatives in the legislature and to remove the incompetent ones and those that do not pay enough attention to their constituents. According to Maskell,⁸ the recall provision is seen as a device to assure regular and close oversight of elected public officials, and to make elected officials more continuously, rather than periodically, responsible and responsive to the will and desires of the electorate. With recall procedures available, it is argued that there would be no need for the electorate to tolerate an incompetent, corrupt, and/or unresponsive official until that official’s term is over.⁹

In Nigeria, as in many other countries, operating a constitutional and democratic government, sovereign power resides in the people.¹⁰ Section 14(2)(a) of the 1999 Constitution clearly provides that:

Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority.

³ Malemi, E., *The Nigerian Constitutional Law* (3rd edn. Lagos: Princeton Publishing Company, 2012) p. 211.

⁴ The recall power was included in section 68 of the 1989 Constitution which never came into force.

⁵ 1999 Nig. Const. ss. 69 and 110.

⁶ Akande, J.O., *Introduction to the Constitution of the Federal Republic of Nigeria 1999* (Ibadan: Spectrum Books Ltd, 2000) p. 166.

⁷ Bhanu, V., “Recall of Parliamentarians: A Prospective Accountability” *Economic and Political Weekly*, December 29, 2007, available at www.academica.edu/5794925/Recall_of_parliamentarians_A_Prospective. (accessed 14/2/2015).

⁸ Maskell, J., “Recall of Legislators and the Removal of Members of Congress from Office”, *Congressional Research Service*, (2012), available at <http://www.senate.gov/.../crs-publish.cf> January 5, 2012. (accessed 15/2/2015).

⁹ *Ibid.*

¹⁰ Malemi, supra, note 2 at 54.

In Nigeria, the people are the sovereign and the people exercise sovereignty through their electoral vote and by way of constitutional and democratic government in accordance with the Nigerian Constitution, which is the express will of the people, for the regulation of government and national life.¹¹ The constitutional provision for recall of legislators by the electorate may, therefore, be seen as a clear recognition of the sovereignty of the people under a democratic government. However, recall is a direct democracy mechanism, since it involves the people directly in the control, removal and replacement of legislators before the expiration of their constitutional term of office. The electorates' right to recall legislators is one means of ensuring the latter's accountability towards the people. It is the citizens' prerogative to determine whether an errant or non-performing representative should continue in office for the full term or not, since their poor performance is at the cost of the public exchequer.¹²

Under the 1999 Constitution, a member of the National Assembly duly elected, holds his seat for a term of four years¹³ but before the expiration of his term, he may lose the seat in any of the ways specified in section 68(1) of the Constitution, which includes being recalled by the electorate.¹⁴ Thus, section 68(1)(h) provides as follows:

A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if: The President of the Senate or as the case may be, the Speaker of the House of Representatives receives a Certificate under the hand of the Chairman of the Independent National Electoral Commission stating that the provisions of section 69 of this Constitution have been complied with in respect of the recall of that member.

The recall of a legislator from the Legislative House could be equated to the impeachment of the executive heads of government, such as the President, Vice President, Governor, or Deputy Governor,¹⁵ primarily, as both processes seek to remove the political office holders from office before the end of their constitutional term. However, unlike the impeachment of the executive heads of government, which is the responsibility of another arm of government – the legislature, the recall of the legislator is entirely the responsibility of the electorate of the legislator's constituency. The only ground for exercising the power of recall is that the electorate of the legislator's constituency has lost confidence in him. The power of recall vested in the electorate, is, therefore, intended to be used to check and control the performance of the legislator, who, in turn, is expected to ensure effective representation of his constituency or face removal through recall.

¹¹ *Ibid.*

¹² Bhanu, V., "Right to Recall Legislators: The Chattesgrarh Experiment", *Economic and Political Weekly* Oct. 4, 2008. available at http://clairindia.org/include/vinod_epw.df. (accessed 20/3/2015).

¹³ 1999 Nig. Const. s. 64(1) and s. 105(1). The term of four years applies to legislators both at National Assembly and State House of Assembly.

¹⁴ Other reasons by which a member of the National Assembly any lose his seat include: (a) Becoming a member of another legislative house, (b) Any other circumstances that would have caused him to be disqualified for election as a member (c) He ceases to be a citizen of Nigerian, (d) He becomes a President, Vice President etc, (e) He becomes a member of a Commission or other body established the Constitution or by any other law, (f) Absence from meetings of the house for more than one third of the total number of days which the house meets in any one year, (g) He becomes a member of another political party than the one that sponsored him.

¹⁵ Malemi, supra note 2 at 166, see also 1999 Nig. Const. ss. 143 and 118 (providing for the removal of the President and Vice President; and the Governor and Deputy Governor from office, through the process of impeachment).

3. RECALL OF LEGISLATORS: THE UNITED KINGDOM AND THE UNITED STATES CONSTITUTIONAL STRUCTURES

Most well-established democracies of the world, such as India, do not have any constitutional or statutory provision empowering the electorate to recall members of Parliament, with whose representation they are dissatisfied. Bhanu¹⁶ laments that: “In India the power to recall is not granted to the citizens either by the Constitution or by a statutory device”. With regard to the United Kingdom, it is only recently that the electorates have been granted the power to recall their Members of Parliament, who are found guilty of serious wrongdoing. This feat was achieved through the Recall of MPs Act, 2015.¹⁷ Only 10% of registered voters in the constituency is required to sign the petition calling for a by - election to trigger the recall process. The grounds or conditions for recall include the following:

- a) Conviction of an MP in UK for an offence, with a custodial sentence of 12 months or less;¹⁸
- b) Suspension of an MP by the House of Commons for at least 10 days (or at least 14 calendar days if the motion is not expressed in terms of sitting days);¹⁹ and,
- c) Conviction of an MP for an offence under section 10 of the Parliamentary Standards Act, 2009 (intentionally providing false or misleading information to claim MP’s allowances) – even if they have not received a custodial sentence. The UK Parliament relies on the recommendations of a Standards Commissioner who investigates petitions by constituents or is directed by the House to look into reports of wrong doing. If any of the grounds for recall is met, the MP’s seat will be declared vacant and a by – election will be held. The unseated MP will be eligible to stand in the by – election.

Calls to introduce the power to recall in the UK grew, following the scandal of 2009 on the expenses of Members of Parliament.²⁰ Obviously, the need to grant the electorate the power to recall its legislators has become more pressing in India and many other democratic nations, the world over.²¹

Under the American Constitution, a member of Congress may be removed from office before the normal expiration of his or her constitutional term, by his resignation or death or by action of the House of Congress in which he or she is a member, by way of an expulsion, or by a finding that in accepting a subsequent incompatible public office, the member would be deemed to have vacated his congressional seat.²² The constitutional term of office of a member of the Senate²³ or House of Representatives²⁴ cannot be prematurely terminated through recall by the electorate of his constituency or by his State. The United States Constitution does not provide for, nor authorise, the recall of United States officers such as Senators, Representatives,

¹⁶ Bhanu, *supra* note 6.

¹⁷ The Recall of MPs Bill received Royal Assent and became an Act of Parliament on 26 March, 2015 but the Act shall come into force in September, 2015.

¹⁸ Recall of MP’s Act, 2015, s. 1(3).

¹⁹ *Ibid.*, s. 1(4) and (5).

²⁰ “Cameron ‘Still Plans’ Recall Power to get Rid of MPS” BBC News, United Kingdom Politics, 4th March, 2014, available at <http://www.bbc.com/news/uk-politics-26441194>. (accessed 20/3/2014).

²¹ See T. Pack, “High Crimes and Misdemeanors: Removing Public Officials from Office in Utah and the case for Recall” (2008) 666*Utah Law Review*, 2 at 190 – 191 (contending that the argument for recall in Utah outweigh those against, and that Utah is in need of a recall provision to keep public officials continuously accountable for their actions, and to increase the citizen’s participation in the Utah political process).

²² U.S. Const. art 1 s. 5 cl 2.

²³ The constitutional term of office for Senators in America is six years.

²⁴ The constitutional term of office for Members of the US House of Representatives is two years.

or the President or Vice President, and, thus, no member of Congress has ever been recalled in the history of the United States.²⁵

Indeed, American constitutional history indicates an understanding of the framers and ratifiers of the Constitution that no right or power to recall a Senator or Representative from the United States Congress existed under the Constitution as ratified.²⁶ Members of Congress are clearly federal officials, not State officers, and owe their existence and authority solely to the federal Constitution. The Attorney General of North Dakota, for example, ruled in 2010, in an opinion upheld by the North Dakota Supreme Court, that “neither the Constitution nor laws of the State of North Dakota allow for the recall of a congressional officer, specifically a United States Senator.”²⁷

However, in some American States, the electorate could recall their erring legislators. Recall provisions for States or local officers became popular in the “progressive movement”, particularly, in the western and plains States, in the early part of the 20th century.²⁸ The progressives, amongst other things, sought to divest their legislatures of their monopoly on policy making authority.²⁹ However, it is generally agreed that the use of the recall device began in the United States in the municipality of Los Angeles, in 1903.³⁰ Currently, nineteen American States³¹ have provisions in their respective Constitutions allowing for recall of legislators. Thus, under the American constitutional structure, the recall of legislators is a feature of the Constitutions of the States, and, therefore, applicable only to state officers. There is no provision under the United States Constitution nor under any federal statute allowing for the recall of federal officers.³² The recall process varies in its details from one State to another, but in general, it follows these steps:³³

- a) Filing an application to circulate a recall petition.
- b) Circulating a recall petition and gathering a specified number of signatures within a specified period of time.
- c) Submitting recall petition to election officials for verification of signatories.
- d) If sufficient valid signatures are presented, then a recall election is held.

It is also significant to note that under the Constitution of some States in the United States, the petition for recall must clearly indicate the grounds upon which it is based; and they must fall within the grounds prescribed in the Constitution. For example, in Alaska, the grounds for recall are lack of fitness, incompetence, neglect of duties and corruption; while in

²⁵ Maskell, J., “Recall of Legislators and the Removal of Members of Congress from Office” Congress Research Service, 2012, 2012 available at <http://www.senate.gov/.../crs-publish.cf> January 5, 2012.

²⁶ *Ibid.*

²⁷ North Dakota, Attorney General Letter Opinion 2010-L-08, at 1, May 13, 2010. The Attorney General’s opinion was confirmed by the Supreme Court of North Dakota in *Recall N.D. v Jangler Secretary of State*, 792 N.W. 2d 511 (N.D. Supreme Court, December 21, 2010).

²⁸ Maskell, supra note 22. See also Schechter, D.I., “California’s Right of Removal: Recall Politics in the Modern Era”, *California Politics & Policy*, Dec, 2008, p. 2 (asserting that the direct democracy movement and the standard provision itself were products of the progressive era).

²⁹ Persily, N.A., “The Peculiar Geography of Direct Democracy: Why the Initiative, Referendum and Recall Developed in the American West” (1997) 2 *Michigan. Law & Policy Review* 11, 27.

³⁰ Davenport, J.P., a Member of the Los Angeles City Council was America’s first political casualty caused by a recall provision.

³¹ The States with constitutional provisions for recall are Alaska, Arizona, California, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Michigan, Minnesota, Montana, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, Washington and Wisconsin.

³² However, there are calls for constitutional amendment to grant citizens the power to recall federal officers. See Hirschhorn J.S., “Americans Deserve Recall Power to Fire Federal Officials,” available at <http://www.smirkingchimp.com/thread/jocl-s-hirschhorn/28180/americans-deserve-recall-power-to> (accessed 10/3/2015).

³³ “Recall of State Officials”, National Conference of State Legislators, 2013, available at: <http://www.ncsl.org/research/elections-and-campaigns/recalls-of-state-officials.aspx> accessed 2/3/2015.

Kansas, the grounds are felony conviction, misconduct in office, incompetence and failure to perform duties prescribed by law.³⁴ Under the Ugandan Constitution,³⁵ the grounds for a recall petition shall consist of one or more of the following:

- a) Physical or mental incapacity rendering that member incapable of performing the functions of the office; or
- b) Misconduct or misbehaviour likely to bring hatred, ridicule, contempt or disrepute to the office; or
- c) Persistent deserting of the electorate without reasonable cause.

4. THE PRACTICALITY OF RECALLING LEGISLATORS UNDER THE NIGERIAN CONSTITUTION

Unlike the American constitutional arrangement, where recall of legislators is only allowed at the State and local government levels, the 1999 Nigerian Constitution clearly provides for recall of legislators at both National and State Levels. Thus, section 69 of the 1999 Constitution provides for the recall of members of the National Assembly, as follows: “A member of the Senate or of the House of Representatives may be recalled as such a member if:

- (a) There is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member’s constituency alleging their loss of confidence in that member; and
- (b) The petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the person registered to vote in that member’s constituency.”

From the foregoing, the process of recalling a federal legislator from the Nigerian National Assembly may be summarised as follows:

4.1 *Petitioning Mechanism*

In Nigeria, the process of recalling a federal legislator from the National Assembly starts with the presentation of a petition to that effect; signed by more than 50% of the registered voters in the legislator’s constituency, to the Chairman of the Independent National Electoral Commission (INEC). The said petition must allege that the electorate of that constituency has lost confidence in the legislator who is their representative in the National Assembly. Obviously, lack of effective representation of the constituency by the legislator would be the basis for the loss of confidence. Malemi³⁶ opines that to avoid being recalled, a legislator has to ably represent the people of his constituency. What really constitutes lack of effective representation is highly subjective and is for the electorate to determine. Nevertheless, from the wordings of section 69(a) of the 1999 Nigerian Constitution, it is clear that the specific acts and omissions of the legislator, which have incurred the wrath of the

³⁴ McKnight, D., and Todd, T., “Recall of State Elected Officials: A Proposed Minnesota Constitutional Amendment,” Information Brief, 1996, available at www.house.leg.state.mn.us/hrd/pubs/recall96.pdf. See also Gelb, J., “Recall Provision and Legislative Proposals,” OLR Research Report, 2004, available at: <http://www.house.leg.state.mn.us/hrd/pubs/recall96.pdf>. (accessed 12/4/2015) .

³⁵ Uganda Constitution, Art 78.

³⁶ Malemi, supra note 2 at 166.

electorate and made them to lose confidence in him, need not be stated in the petition.³⁷ The two important things, which a valid petition must contain, are the allegation of loss of confidence in the legislator, and the signatures of more than 50% of registered voters in the constituency. Shehu³⁸ rightly observes that the failure of the 1999 Nigerian Constitution to prescribe grounds for exercising the power of recall is not good as it is capable of making it a mere political weapon in the hands of the constituencies or the political godfathers.

4.2 Referendum Mode of the Independent National Electoral Commission

Within ninety days of the receipt of the petition, the Independent National Electoral Commission must conduct a referendum in the legislator's constituency to determine the approval or otherwise of the petition for recall by the electorate. Where the petition is approved by a simple majority of the votes of registered voters in that constituency, then the legislator stands removed from the National Assembly. Based on the favourable outcome of the referendum, which validated the petition for recall, the Chairman of the INEC shall present a certificate of recall of the legislator to the President of the Senate; stating that the provisions of section 69 of the Constitution in respect of the recall of that member have been complied with.³⁹ This marks the conclusion of the recall process and the INEC shall thereafter conduct a bye-election in that constituency to fill the vacancy created by the recall exercise. With respect to the recall of a member of a State House of Assembly, section 110 of the 1999 Nigerian Constitution provides as follows: "A member of the House of Assembly may be recalled as such a member if:

- (a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and
- (b) the petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of the receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency."

It is clear from the foregoing provision, that the process of recalling a federal legislator from the National Assembly is similar to that of recalling a State legislator from the State House of Assembly. Thus, the process also starts with the presentation of a petition for recall of the State legislator to the Chairman of the Independent National Electoral Commission. The petition must be signed by more than 50% of the registered voters in the legislator's constituency, and must allege their loss of confidence in the legislator. Within ninety days of the receipt of the said petition, the Independent National Electoral Commission must conduct a referendum in the legislator's constituency to determine the approval or rejection of the petition by the electorate. Where the petition is approved by a simple majority of the votes of registered voters in that constituency, then the state legislator stands removed.

³⁷ The Ugandan Constitution requires the recall petition to state the grounds upon which it is based. See Uganda Const. Art 78. It has also been shown that the Constitutions of some States in the United States of America clearly specify the grounds upon which the recall petition must be based.

³⁸ Shehu, T.A., "Constituency Control of Legislators: Lessons from Nigeria", (2001) 19 *African Journal of International and Comparative Law* 1, 124.

³⁹ 1999 Nig. Const. s. 68(1)(h).

5. JUDICIAL REVIEW OF RECALL

As a general rule, a member of the National Assembly or House of Assembly who is being recalled cannot challenge the action of the electorate in a court of law.⁴⁰ He is not also entitled to any injunctive or prohibitive order stopping any of the constitutional processes that could lead to his recall. Thus, in *Peter v Okoye*,⁴¹ the respondent, a member of the Anambra State House of Assembly, had secured an order of interlocutory injunction, restraining the 1st defendant and certain other persons from taking any further steps pursuant to recalling him from the State House of Assembly; while the 2nd defendant (INEC) was restrained from relying on the allegations made in a petition written by the 1st defendant/appellant (representing other petitioners for recall of the plaintiff/respondent) to demand for the recall of the plaintiff/respondent. The appeal by the 1st defendant/appellant to the Court of Appeal was unanimously allowed. The Court of Appeal held, *inter alia*, that a court of law should not restrain a proposed constitutional event. It held that if the injunction were refused, the INEC would have gone ahead to conduct a referendum within the time frame of 90 days as allowed by section 110(b) of the Constitution. On the other hand, that if the injunction were ordered, as the lower court had done, a chain of hardship will thereby be created, in that, the Constitution will be destabilised, as the referendum ought to be conducted within 90 days. Further, that the plaintiff's frustration of his recall meant that he was still sitting in the House of Assembly against the wish of the electorate. Having held that a legislator holds his position in trust for his people, Ubaezonu, J.C.A., concluded thus:-

“We must not place the interest of the individual above that of the Constitution. Section 110 of the Constitution merely gives a legislator an opportunity to go back to the electorate and test his popularity as to whether the mandate they gave him still subsists. Nobody should shy away from it or try to block it by judicial technicalities.”

6. CHALLENGES CONFRONTING IMPLEMENTATION OF THE RECALL PROVISION

While the provision for recall of legislators under the Nigerian Constitutions is a welcome development,⁴² as the electorate now have the constitutional power to scrutinise the performance of their elected representatives and terminate their tenure, where necessary, the challenges in the implementation of this provision have been quite daunting. It should therefore not be surprising that so far, no legislator in Nigeria, whether in the National Assembly or the State House of Assembly, has been removed from his seat through the process of recall. However, a few unsuccessful instances of the exercise of recall power have occurred throughout Nigeria. For example, in 2006, shortly after the failure of the third term agenda of President Obasanjo, which Senator Ibrahim Mantu was a frontline supporter, the people of Central Senatorial district in Plateau State, presented a petition to the Chairman of INEC for the recall of Senator Ibrahim Mantu from the Senate, alleging their loss of confidence in him.

The petition was signed by more than 50% of the registered voters in the Senatorial district as required by section 69(a) of the 1999 Constitution, but the referendum conducted by the INEC in the said Central Senatorial district of Plateau State did not secure the approval of a simple majority of the voters in the Senatorial district. The recall attempt therefore failed.⁴³ It is

⁴⁰ Malemi, *supra* note at 116.

⁴¹ (2002) FWLR (Pt. 110) 1864.

⁴² Hon, S.T., *Constitutional Law and Jurisprudence in Nigeria* (Port Harcourt: Pearl Publishers, 2004) p. 163.

⁴³ *The Punch*, Nov. 8, 2006, p. 7; *The Punch*, January 12, 2007, p. 10.

therefore necessary to examine some of the endemic problems that hamper the effective implementation of the constitutional provision on recall of legislators in Nigeria.

6.1 General Apathy of Nigerian Electorate Towards Political Programmes

There is a general apathy of Nigerians, especially the educated class, towards political programmes in the country. Indeed, the electorate have lost confidence in the fairness of the electoral process. Even the recently concluded 2015 elections, adjudged to be free and fair by national and international observers, have failed to restore the citizens' confidence in the electoral process. This is because in many States of the federation, electoral fraud and violence were rampant, and yet, deliberately overlooked by the election observers.

The absence of a credible electoral process, where every citizen's vote is counted and every vote counts, has significantly contributed to the general apathy and loss of confidence of Nigerians towards political programmes in the country. Free, fair and periodic elections are among the distinguishing features of constitutional democracy by which the people are able to elect leaders and representatives of their choice and also reject incompetent leaders and representatives by denying them re-election. The degree of transparency of electoral process as an integral part of genuine democracy therefore presents a good yardstick for the determination of a country's smooth growth or retardation, democratically.⁴⁴ An electoral process that delivers periodic and genuine election is the crucial starting point for the existence and consolidation of democracy and responsible government.⁴⁵ The current situation in Nigeria, where elections are characterised by rigging and violence, does not only deprive the people of their right to choose their leaders and representatives but also results in the emergence of incompetent leaders who are not accountable to the people. The politics of godfatherism, by which elections become the official forum for confirmation of an already chosen godson,⁴⁶ renders the electoral process meaningless and disgusting to the average, reasonable and responsible citizens of Nigeria.

Though, intended to be a potent weapon in the hands of the electorate against erring legislators, the recall power under the Nigerian Constitution is bound to suffer from the general apathy of the Nigerian electorate to political programmes arising from their complete loss of confidence in the electoral process. Thus, most recall attempts are bound to fail because of the difficulty in securing the signatures of more than 50% of the registered voters in the constituency in support of the recall petition, as required under the Constitution. Even where this hurdle is passed, the people would still be reluctant to turn out to vote during the referendum conducted by INEC; thereby frustrating the exercise and the recall attempt.

The institutionalisation of a credible electoral process in Nigeria would restore the people's confidence in the system and enhance their participation in political programmes. This would lead to the emergence of competent legislators who would strive to interact with their constituents to achieve effective representation of the people. Ultimately, it would enable the electorate to utilise the recall provision maximally as it is done in the United States of America and most other democratic Nations.

⁴⁴ Oladipupo, A.K., "Democratic Waves in West Africa: Nigeria and Ghana as a Case in View" (2011) 2 *Afro Asian Journal of Social Sciences* 6; See also Omodia, S.M., "Elections and Democratic Survival in the Fourth Republic of Nigeria" (2009) 3 *The Journal Of Pan African Studies*, 38 (noting that in Nigeria, just like most of the countries in Africa elections especially its freeness and fairness constitute the central factor in ensuring democratic survival).

⁴⁵ *Ibid.*.

⁴⁶ See generally, Wenibowei, K.M.C., "Political Godfatherism, Violence and Sustainable Democracy in Nigeria" (2011) 2 *International Journal of Advanced Legal Studies And Governance*, 1, 118.

6.2 Possibility of Abuse of Recall Process

The observation of Pack⁴⁷ that recall is subject to many political abuses and might be used to wield a political sword against an incumbent legislator, is apt to the Nigerian situation. As a result of the electorate's apathy to political programmes, daring Nigerian politician could use the recall process to settle scores with political opponents. It is possible under the current political situation in Nigeria for an influential politician or political group to initiate, sponsor and execute a recall. Specifically, politicians who are bent on effecting a recall could hire signatories who are not members of the particular constituency seeking the recall of its representative, to assume the names on the voter's register for that constituency. Bhanu⁴⁸ asserts that the recall could be misused by special interest groups with money power and the genuine politicians may become victims of this power.

However, in Nigeria, political godfathers who are usually instrumental to the electoral successes of most political office holders, have, so far, restrained themselves from adopting the recall process to prematurely terminate the constitutional term of their errant political godsons. They rather prefer to wait for the next general election season to dump the errant political godson who may be interested in re-election; and to raise and sponsor another political godson into office.

The impact of the above political environment is to render the Nigerian electorate incapable of utilising the recall power granted them in the Constitution to influence the performance of their elected representatives in the legislature. The Nigerian legislators could therefore afford to distance themselves from the electorates in their constituencies and generally act in accordance with their whims and caprices without any fear of premature termination of their tenures through recall. This situation is quite unfortunate as it frustrates democratic advancement and enhances corruption and abuse of power by the legislators.

7. CONCLUSION

The article has examined the power of the electorate to recall its legislators under the Nigerian and American constitutional jurisprudence. It is significant to note that, though the Nigerian Constitution is modeled on the American Constitution, the framers of the Nigerian Constitution refused to follow the American pattern by providing for the power to recall legislators both at the National Assembly and the States House of Assembly. The American concept of regarding members of Congress, consisting of Senators and members of the House of Representatives, as federal officers, and, therefore, not subject to recall, is not applicable in Nigeria. However, unlike in the United States of America where the recall power has been fully exercised at State and Local Government levels by the electorate to recall their erring legislators and other public officers, the Nigerian electorates have not been able to utilise this power, due to the prevailing socio-political environment in Nigeria.

There is an urgent need to amend the recall provision in the Constitution of Nigeria to specify the grounds upon which a legislator could be recalled. Under the Constitutions of most of the States in America where the recall of legislators is authorised, the recall petition must specify the grounds upon which it is based. This introduces objectivity and fairness into the recall process and limits arbitrariness and abuse. A holistic approach must be adopted to address the problem of corruption in Nigeria. It has been shown that poverty is a major contributing factor to the high rate of corruption in the country. The government should take practical steps to reduce the level of poverty by creating jobs for the unemployed youths and improving the living standard of the citizens.

⁴⁷ Pack, *supra*, note 18 at 690.

⁴⁸ Bhanu, *supra*, note 6.

It is important also for the Nigerian government to overhaul the country's electoral process to ensure its credibility and general acceptance by the people. The government must exhibit transparency in all its decisions on electoral matters and allow the Independent National Electoral Commission to be truly independent and effective. Above all, the government should be resolute and decisive in stamping out electoral violence and fraud, so that citizens would be free to participate in political programmes and be sure that election results would be a true reflection of the voting pattern. The INEC should be well staffed with competent and honest officials and also well-funded. Indeed, the role of INEC in the recall process is quite significant. The INEC should be able to scrutinise all the recall petitions to ensure that they comply with constitutional requirements, particularly on the grounds for the recall and minimum percentage of signatories. It should also be ready to exhibit high integrity and firmness in the validation of signatures to ensure that the process is not hijacked by hired signatories. It is obvious that, if well implemented and utilized, the recall power would enable the electorate to monitor and control the performance of its elected representatives and make them continuously accountable for their actions. However, until these suggested reforms are made, the recall power shall continue to be abused and treated as an irrelevant constitutional provision.

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