

Juxtaposing Constitutionalism and Democratic Process in Nigeria Vis a Vis the South African Perspective

Authors : Onyinyechi Lilian Uche

Abstract : Limiting arbitrariness and political power in governance is expressed in the concept of constitutionalism. Constitutionalism acknowledges the necessity for government but insists upon a limitation being placed upon its powers. It is therefore clear that the essence of constitutionalism is obviating arbitrariness in governance and maximisation of liberty with adequate and expedient restraint on government. The doctrine of separation of powers accompanied by a system of checks and balances in Nigeria like many other African countries is marked by elements of 'personal government' and this has raised questions about whether the apparent separation of powers provided for in the Nigerian Constitution is not just a euphemism for the hegemony of the executive over the other two arms of government; the legislature and the judiciary. Another question raised in the article is whether the doctrine is merely an abstract philosophical inheritance that lacks both content and relevance to the realities of the country and region today? The current happenings in Nigeria and most African countries such as the flagrant disregard of court orders by the Executive, indicate clearly that the concept constitutionalism ordinarily goes beyond mere form and strikes at the substance of a constitution. It, therefore, involves a consideration of whether there are provisions in the constitution which limit arbitrariness in the exercise of political powers by providing checks and balances upon such exercise. These questions underscore the need for Africa to craft its own understanding of the separation of powers between the arms of government in furtherance of good governance as it has been seen that it is possible to have a constitution in place which may just be a mere statement of unenforceable 'rights' or may be bereft of provisions guaranteeing liberty or adequate and necessary restraint on exercise of government. This paper seeks to expatiate on the importance of the nexus between constitutionalism and democratic process and a juxtaposition of practices between Nigeria and South Africa. The article notes that an abstract analysis of constitutionalism without recourse to the democratic process is meaningless and also analyses the structure of government of some selected African countries. These are examined the extent to which the doctrine operates within the arms of government and concludes that it should not just be regarded as a general constitutional principle but made rigid or perhaps effective and binding through law and institutional reforms.

Keywords : checks and balances, constitutionalism, democratic process, separation of power

Conference Title : ICCLIL 2018 : International Conference on Constitutional Law and International Law

Conference Location : New York, United States

Conference Dates : June 03-04, 2018