

## AN EVALUATION OF THE RELEVANCE OF DELEGATED LEGISLATION IN NIGERIA

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### ABSTRACT

Separation of power is a strong pillar of a democratic government in the world. All arms of government are expected to confine themselves to their traditional responsibilities under the law. However, modern day realities have shown that a strict adherence to this sacred principle have the tendency to beaching in the wheeled government delegated legislation is the statutory donation of law-making power to a person, organ or institution other than the legislature. This practice eases of huge burden on the legislature, and it is an acceptable practice globally. The aim of this paper was to identify ways by which the role of the legislative arm of government in Nigeria can be further strengthened by entrenching the concept of accountability in delegated legislations in Nigeria. In doing so, this paper examined the concept of delegated legislation for the purpose of clarifying its import and dependence for validity on the legislature. It further examined the control mechanism for delegated legislation and harps on the power of the legislature to check delegated legislation as it is done in the United Kingdom and India, especially through legislative committees on subordinate or delegated legislation. This paper later found that the legislative control over delegated legislation in Nigeria is porous, inadequate and restrictive, thereby making the executive arm of government too powerful. Nigeria was used as a case study in this research work and so the laws and machinery of government used for the administration of justice were considered. It concludes by recommending that a law be enacted which will detail the guideline for the making of delegated legislation with strict provisions on scrutiny by the legislature or its committee.

*Keywords:* Legislation, Delegations; Law-making.

### 1. INTRODUCTION

In considering how society generally is regulated, most times focus is always on Acts of Parliament that are passed by the legislative arm of government. However, there is another aspect of law making that is of immense importance for the regulation of any given society. This is especially so with the fact that Acts of Parliament are becoming less detailed and relying more on delegated legislation to make them comprehensive enough to be workable pieces of legislation. Delegated legislation which are laws made by the executive or other administrative bodies is a huge part of any legal system as it forms part of the wider legislative process that is used for the regulation of any given society.

Modern society imposes on government social, cultural and economic matters of human endeavors<sup>2</sup> and the government needs to provide legislations to regulate these activities, but

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legislation in these areas is so enormous that it is impossible for the legislature to legislate in details to cover all these matters. The grant of rule-making power by the legislature to the executive became a necessity and a permanent feature in modern society<sup>3</sup>. Though considered as an infringement on the doctrine of separation of power<sup>4</sup>, the need for such legislation is obvious because parliament lacks the time and the resources to legislate comprehensively<sup>5</sup>.

## **2. CONCEPTUAL FRAMEWORKS**

It has been said that the first step to fully grasping an idea or to gain full understanding of a subject matter is to first define it and understand the essentials of the concept, on that note the concept of delegated legislation is explained below.

### **2.1. *Meaning of delegated legislation***

Delegated legislation also called subsidiary legislation or statutory instrument. It is the legislation that is made under a delegated authority<sup>6</sup>. It is the exercise of power to legislate conferred by or under an act of parliament to the executives or other administrative authorities<sup>7</sup>. In the Nigerian context, it may not be easy to give a concise definition of what the term delegated legislation means, however section 18 of the Interpretation Act, which gave various definitions of which statutory instrument is one, defines it to mean: “Any order, rules, regulation, rules of court, bye laws made either before or after the commencement of this Act in exercise of powers conferred by an act”<sup>8</sup>.

From the above definition it is clear what amounts to delegated legislation in Nigeria. The definition states clearly, the various forms that delegated legislation may take. The subsidiary bodies that powers can be delegated to include the president, governors, ministers, commissioners, administrative agencies, professional bodies etc.<sup>9</sup> when carrying out these powers, these bodies act every bit like the parliament and make laws that have the same force as laws made by the parliament<sup>10</sup>. These legislations derive their legitimacy from acts of parliament and they can only be made where there is express provision in the primary legislation to do so.

Subsidiary legislation also known as subordinate legislation is made by a body on which parliament has conferred limited powers to make laws and which laws are always subject to abrogation, amendment, or alteration by parliament or other parliamentary control. Whenever parliament delegates power to another person or authority to make laws, the end product or law that is made thereto is known as delegated legislation or subsidiary legislation because they are subordinate or secondary laws to the primary laws or parent statutes made by the parliament and are subject to the control of parliament which delegated the power to make them in the first place. Additionally, subsidiary laws are also subject to control and review by the court. Delegated legislation is also referred to as ‘subordinate legislation’, ‘subsidiary legislation’, ‘administrative legislation’ or ‘administrative rule making’. The court will declare as null and void (as being fundamentally *ultravires*) any exercise of power

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<sup>3</sup>. C Wheare, ‘Controlling Delegated Legislation: A British Experiment, The Journal of Politics Vol. 11 No 4, 1949 748.

<sup>4</sup> H W R Wade, Administrative Law (Oxford Clarendon Press 1967,291.

<sup>5</sup>. Beatson, Mathews and Elliot’s, Administration Law Text & Materials, Third edn, Oxford University Press, 2005, 633.

<sup>6</sup>. Xanthaki meaning of law

<sup>7</sup>. Report on joint committee of delegated legislation,1972HL 1 84HC 475 par6

<sup>8</sup>. Interpretation Act 1964 LFN

<sup>9</sup>. So imanhobe “delegated legislation” fundamentals of legislative drafting

<sup>10</sup>. Ibid.

to make a subsidiary legislation that is derived from an enabling law. Therefore, in *Buhari v. Obaanjo*, the court held that the Independent Electoral Commission is empowered pursuant to section 149 of the Electoral Act 2002 to make regulations, manuals or guidelines subject to the provisions of the Act, for the purpose of giving effects to the provisions of the Act.

### **2.2 The nature of delegated legislation**

The changing nature of the society requires that state would regulate more the activities of its citizens and the way to go about this is through delegated legislation. Therefore, its importance cannot be over emphasized. As it is argued “if parliament were not willing to delegate law making powers, it would be unable to pass the quality of law which modern society require.”<sup>11</sup> In this regard, several writers have seen the need for delegated legislation. As far back as 1893 Sir Henry Jenkins in support of the delegation of legislation wrote:

Statutory rules are in themselves great public advantage because the details can thus be regulated after the bill passes into an Act with greater care and minuteness and with great adaptation to local and other special circumstances than they can possibly be in the passage of a Bill through Parliament.<sup>12</sup>

Smith is also of the view that complex reforms will prove abortive unless parliament after laying down the general principle were to entrust the responsible Ministers with their detailed implementation<sup>13</sup>. What this shows is the inevitability of delegated legislation. Succinctly, some reasons have been given why delegated legislation is regarded as a normal feature in most modern societies.

### **2.3 Functions of delegated legislation**

From the foregoing on the nature and concept of delegated legislation, the following objectives and aims can be distilled as the functions of delegated legislation. It has been contended that the legislation must share its law-making powers with the executive arm of government in order to attain the modern-day expectations demanded of her. No wonder Henry Jenkins<sup>14</sup> argued in favor of delegated legislation in the 19th century when he said that:

Statutory rules are in themselves great public advantage because the details can thus be regulated after the bill passes into an Act with greater care and minuteness and with great adaptation to local and other Special laws pursuant to the same power declared state of emergency in some States in the North Eastern part of Nigeria ravaged by Boko Haram insurgency.<sup>15</sup>

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<sup>11</sup>. Report of the Committee on Ministers p 23

<sup>12</sup>. 55 Greenberg, Craise on Legislation, (n 22) quoting Sir Henry Jenkins First Parliamentary Counsel, 291

<sup>13</sup>. S.A De Smith, Delegated Legislation in England, the Western Political Quarterly Vol.2 ,No 4 Dec 1949, 514- 526 at 516

<sup>14</sup>. . Daniel Greenberg. Craise on Legislation, London Sweet and Maxwell, 2012, quoting Sir Henry Jenkins First Parliamentary counsel 291

<sup>15</sup>. State of Emergency (Certain States of the Federation) Proclamation 2013.

(a) The Need for Experts to Handle Technical Matters

Sometimes, the subject matter of legislation may be of technical nature.<sup>16</sup> The legislators may not be equipped with the requisite needed for such laws. Sometimes when they have professionals in such a field in the legislature, they may not be able to carry their colleagues along. More so, technical matters require discretion in implementation, hence the need for experts to deal with the deals of such legislation.

It is, therefore, sensible to relinquish regulation of these technical fields to seasoned experts in the ministries or parastatals from which the bills emanate. This in turn encourages effective service delivery and accelerates efficiency in law enforcement, aside from promoting professionalism in the given field. The British Committee on Ministers' Powers in 1932 opined inter alia that: "The truth is that if Parliament were not willing to delegate law-making Power, parliament would be unable to pass the kind and quality of legislation which modern public opinion requires."<sup>17</sup>

(b) Medium of Bringing an Act into Effect

Sometimes the legislation enacts a law, but the actual operation of the provisions of the law cannot be effected due to exigencies of the time which may be lack of finance, or other exigencies. The Legislation will then relinquish the enforcement of the said law to the requisite governmental agency charged with the enforcement of such law the required power to effecting the law once the challenge is surmounted.

(b) Flexibility

One cardinal feature of delegated legislation is the fact that it is strut with rigidities that clog the making, amending, and repealing process of substantive legislations. Delegated legislations are speedily made<sup>18</sup>. Delegated legislations can easily adapt to situations and can also be swiftly amended or changed.<sup>19</sup>

## 2.4 *Types of Delegated Legislation*

Delegated legislation in Nigeria appears in various forms, classifications, and names as evident in the Laws of the Federation of Nigeria.<sup>20</sup> The validity or ranking of a delegated legislation is not determined by its nomenclature but its enabling law. The various types of delegated legislation include the following:

(a) Regulation

This is the most common name by which delegated legislations are named in statutes and the constitution in Nigeria. They are used for "matters of wide national importance that require rules of general application"<sup>21</sup>. The president of Nigeria for example is given the power to enact laws pursuant to section 32 of the Constitution of the Federal Republic of Nigeria (as Amended) to make regulations pertaining to the prescription of special immigrant status with

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<sup>16</sup>. For example, Law on climate change, drugs, airspace, professional bodies regulation, cyberspace, science and technology etc.

<sup>17</sup>. Benson Supra

<sup>18</sup>. Ian McLeod, Principles of Legislative and Regulatory Drafting, Oxford and Portland Oregon, 2009. 160

<sup>19</sup>. 72 S GG Edger, Craise on Statute Law, Seventh edn, London Sweet and Maxwell, 1971,291

<sup>20</sup>. Section 37 of the Interpretation Act, defined subsidiary instrument as any order, rules, regulation rules of court, bye law, made either before or after the commencement of this Act in exercise of power conferred by the Act.

<sup>21</sup>. A.W Bradley & KD Ewing, constitutional and Administrative law 13<sup>th</sup>edn (2003) 654-655.

III residential rights to non-Nigerian spouses of citizens of Nigeria Who do not wish to acquire Nigerian citizenship. In practice, the National Assembly and the State House of Assemblies are the major delegators of powers to make regulations. For example, section 25 of the National Housing Fund Act<sup>22</sup> empowers the Minister of Housing to make regulation on terms and conditions for obtaining of National housing Fund loan.<sup>23</sup>

(b) Rules

This is usually made where the enabling law seeks to prescribe a procedure. For example, the 1999 Constitution empowered heads of courts of records to make rules to regulate practice and procedure of those courts<sup>24</sup>. Another example is the right conferred in the Chief Justice of Nigeria to make rules with respect to the practice and procedure of a High Court in accordance with Section 46(3) of the 1999 Constitution of the Federal republic of Nigeria (as Amended), to be valid (legal). These procedures include legal principles and certain constitutional adherence. 3-Order- An order is typically used 'to bring into effect some or specific intendment of the law'. An example is the power conferred on the president to make by order necessary modifications to existing laws prior to the advent of Constitution in order to bring them into conformity with the Constitution. Orders are also used in relation to exercise of some judicial and quasi-judicial powers.

(c) Statutory Instrument

It is normally employed to signify the exercise of a delegated power emanating from an empowering law in a formal document published as statutory instrument (S.i.) with accompanying serial numbers.' Eg. S.I. No. 12 of 2018. The Statutory Instrument may be a formal pronouncement that has the force of law deriving from the enabling statute': a rule; an order, or a regulation.

(d) Bye-Law

A bye-law or by-law is "an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers- ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. For example, section 58 of the Nigerian Railway Corporation Ordinance of 1955, conferred on the Nigerian Railways the power to make bye-laws. Section 20 of the then Western State Interpretation Law empowers the Local Government Councils to make by-laws.

(e) Directions

Directions are given by the Minister to a public body by way of legally binding instructions on how it exercises its functions. Example the Electoral Tribunal and Court Practice Direction 2011 were made by the President of the Court of Appeal under the powers conferred by Sections 243 and 285 of the 1999 Constitution and section 245(2) of the Electoral Act.

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<sup>22</sup>. Cap. N45 LFN 2004

<sup>23</sup>. Civil Aviation Act. Cap. C13 LEX 2004; Armed Forces Pension Act. Cap A23 LFN 2004.

<sup>24</sup>. Section 236 of 1999 Constitution reposes on the chief justice of Nigeria the power to make rules of procedure for the Supreme Court. Section 248 of the same Constitution grants similar powers to the President of the Court of Appeal with respect to the rules of Procedure of the Court of Appeal. The Chief Judges of the High Courts, the National Industrial Courts and all courts listed under section 6 of the Constitution are conferred with similar powers.

## **2.5      *Valid Delegation***

Since the power and right to make laws were constitutionally conferred on the legislature. Any delegation i.e. transfer of such rights to another authority must follow certain procedures in order for it to stand; any law inconsistent with the constitution shall to the extent of inconsistency be null and void. Also, in accordance to section 4 the legislative arm of government has been given the power to make laws for the maintenance of peace, order and good government of the federation. However, the constitution still remains supreme and any other legislation inconsistent with its provision will be null and avoid. Therefore, for a delegated legislation to be valid the power must have been delegated pursuant to an existing law and must be consistent with such legislation.

## **2.6      *Significance of delegated legislation***

The significance of delegated legislation can be seen in terms of the number of people that is affected by it generally. Therefore, a theory that proposes that the law making power should be left only in the hands of the elected officials may not be sound at this point. In its exercise, it should be confined to the normal type of delegated legislation where powers are open and confined to details rather than those that are vague and their limits cannot be defined. This will prevent authorities from doing whatever they please in delegated legislation or even go to the extent that the primary legislation has not envisaged.<sup>25</sup>

Confined within its limits, delegated legislation is not incompatible with good administration. The fact that powers are delegated to other authorities does not impair the superior power of law making conferred on the legislature. But, the situation in Nigeria still leaves a lot to be desired. There are no general patterns or procedure that must be followed in the making of these legislation. The procedure to be followed in a particular case largely depends on the enabling law itself.<sup>26</sup> This leaves every case to be adjudged on its own merit. Government officials are seen to give any reason they deem fit for regulations that are made. The point as to whether these regulations that are made are used to fill in details rather than make substantive laws are not been checked by anyone. Statutes empowering executives to make regulations may include powers to alter the enabling statute that confers the power<sup>27</sup>. In other words, the law makers' control of delegated legislation is not as effective as it should be. Judicial control which is mostly relied on is not satisfactory because often times it is belated if not crippled by the sheer indifference of people. Several other problems could be pointed out but suffice it to say that a situation where delegated legislation does not fall within clearly defined details of the primary Act or where the powers conferred are so wide that one cannot tell what the actual limits are is to say the least not justifiable.

Having realized the need for delegated legislation, the argument that law making power should be concentrated only in the hands of the elected officials is an argument that does not appear to be sound. This is why the criticisms against delegated legislation do not seem to be based on the volume or the cumbersomeness<sup>28</sup> of the legislation; rather it is based on other matters such as the lack of adequate control and the tendency of it being abused. An analysis of the criticisms that has been put up against delegated legislation will be made to see the extent to which such critics are justified. It is only when we fully understand some of the

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<sup>25</sup>. A F Benette M P, *Uses and Abuse of Delegated Power*, Stat LR (1990)11(1) 23-27, 24 73 P A Oluyede, *Nigerian Administrative Law*, Ibadan University Press (1988) 333.

<sup>26</sup>. P A Oluyede, *Nigerian Administrative law*, Ibadan University Press (1988) 333

<sup>27</sup>. Emergency power act on Nigeria 1961

<sup>28</sup>. 75 A Toriola Olewo, *Administrative Law in Nigeria*, Jator Publishing Company (1997) 66

challenges that this form of law brings that we will be able to respond properly with solutions that can effectively address the problem.

### **3. Theoretical Framework**

From the thematic preoccupation of this research the theories of natural law, positive law, historical law and realism shall be discussed to the extent that they have any affinity with the concept of delegated legislation. It is expedient to examine how these theories of law are interwoven with delegated legislation to determine the subject of this research.

#### **3.1 *Delegated Legislation and the Natural Law Theory***

The delegation of legislative power is an old concern, older than the Constitution or even the delegation of powers principle. According to Locke, one of the four unbreachable boundaries confining legislative authority was that:

The Legislative cannot transfer the Power of Making Laws to any other hands. For it being but a delegated Power from the People, they, who have it, cannot pass it over to others.... And when the people have said, we will submit to rules, and be governed by Laws made by such Men, and in such Forms, no Body else can say other Men shall make Laws for them; nor can the people be bound by any Laws but such as are Enacted by those, whom they have Chosen, and Authorized to make Laws for them. The power of the Legislative being derived from the People by a positive voluntary Grant and Institution, can be no other, than what the positive Grant conveyed, which being only to make Laws, and not to make Legislators, the Legislative can have no power to transfer their Authority of making laws, and place it in other hands<sup>29</sup>.

Locke's insistence that legislators cannot delegate their legislative authority derives from an ancient rule of agency law: power entrusted to an agent as a consequence of his special fitness cannot be delegated, because such a delegation would be inconsistent with the purposes of the

### **4. LEGAL AND INSTITUTIONAL FRAMEWORK**

Legal and institutional framework regulating delegated legislation in Nigeria Laws are the foundation on which principles and doctrines stand. Through law, these principles are applied to ensure strict compliance. On this note, the legal framework of the subject matter of this research, in Nigeria, is constituted by the laws captured below, amongst others.

#### **4.1 *The 1999 constitution of the Federal Republic of Nigeria***

The Constitution of the Federal Republic of Nigeria<sup>30</sup> is the primary law of the land, also referred to as the grundnorm. It is the basic law from whence every other law gains validity, the instrument used to test the correctness and legality or otherwise of every other law. By reason of its supremacy clause as contained in Section (1) to (3), every other law is made subject to its provisions and any law which goes directly contrary to its provisions will be void to the extent of its inconsistency. By Section 1(1), the constitution is supreme and has

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<sup>29</sup>. J. LOCKE, Two TREATISES OF GOVERNMENT 380-81 (2d Treatise) (Cambridge University Press, 1960). The other three boundaries are that (1) established laws do not vary among different classes of people; (2) the good of the people should be the only object of legislation: and (3) there should be no taxation except with the consent of the people or that of their deputies. Id ch. 11.

<sup>30</sup>. Cap C23, L. F.N.2004

binding force on every authority and person throughout the federal republic of Nigeria. Also, by Section 1(3) if any other law is inconsistent with the provisions of the constitution, the constitution will prevail and the other law shall to the extent of the inconsistency be void.<sup>31</sup> It is also referred to as the fons et origo of the law of the land, not only of jurisprudence but also of the legal system. Niki Tobi JSC (of blessed memory) in delivering the lead judgment in the celebrated case of *Attorney-General of Abia State v. Attorney-General of the Federation* made beautiful pronouncement on the supremacy of the Constitution. According to Him: The constitution is the fons et origo, not only jurisprudence but also of the legal system. It is the beginning and the end of the legal system. In Greek language, it is the alpha and omega. It is the barometer with which all the statutes are measured. In line with the kingly position of the constitution, not in the sense of undergoing servitude or bondage, but in the sense of obeisance and loyalty to it<sup>32</sup>.

## 5. THE JUSTIFICATION OF DELEGATED LEGISLATION IN NIGERIA

Delegated legislation has become part of the legal system in Nigeria. The legislature like in other countries sees the need to delegate powers to the executive but, there are hardly opportunities for the scrutiny of these legislations by the parliament before or after they are passed. Also, unlike other jurisdictions, there is no general pattern or procedures that are laid down that can be followed for the making of these legislations<sup>33</sup>. The procedure to be followed in each particular case largely depends on the enabling law and this causes a lot of variations between the different regulations that are made and as such the safeguards in place are too far meager to constitute an adequate control of delegated legislation.

Generally, the delegation of law-making powers can be traced to the constitution. Section 4(1) and 4(6) vests the legislative powers on the National Assembly and State Houses of Assembly respectively.<sup>34</sup> This power to make laws that reside with the legislative arm can however be delegated to another body but the legislature must first lay down the legislative policy and principle and must afford guidance for carrying out the policy before it to a subsidiary body.<sup>35</sup> Section 27(1) of the interpretation Act underscores this fact.<sup>36</sup>

### 5.1 *The Nature of Delegated Legislation in Nigeria*

Nigeria, has achieved considerable growth in democracy, economic output and sociological advancement<sup>37</sup>. Since 1960, democratic development essentially implies the creation of a social order, which guarantees to everyone maximum opportunity, productivity, self-fulfilment capacity, social justice and security. Social justice entails social development, that is, the social objective whose essence is the social democratization of the development process. At independence in 1960, Nigeria comprised of only three regions<sup>38</sup>. After the attainment of republican status in 1963, it added a fourth region (Mid-West Region) the same Nigeria is now made up of thirty –six states and the Federal Capital territory, Abuja. In accordance with the 1999 constitution, there are now seven hundred and sixty – eight local

<sup>31</sup>. *Adeleke v. Oyetola* (2020)6 NWLR (Pt. 1721)440; *Kelly v. FR.N.* (2020) 14 NWLR (Pt. 1745) 479.

<sup>32</sup>. (2006) 16 NWLR (Pt. 1005) 381 SC.

<sup>33</sup>. LEGISLATIVE INSTRUMENT ACT 2003(lia) Australian

<sup>34</sup>. Constitution FRN 1999 as Amended

<sup>35</sup>. *Ihunanobe* (n 20) 196

<sup>36</sup>. Cap 192 LFN 1990

<sup>37</sup>. Ese Melami (2018) *Administrative Law* 3<sup>rd</sup> Edition Published by Princeton Publishing Co. Ikeja Lagos.

<sup>38</sup>. Malemi – *Administrative law* supra @ pp 155 – 162, esp p. 162



government councils and six area councils in Nigeria. These councils as well as the states are centres of development. The following are the sources and recipients of Delegates of Powers

- Governors /Governors of States
- Ministers, Commissioners and Heads of Departments
- Local Government Authorities, Local Government Chairmen supervisors of works c
- Statutory public corporations e.g. Nigerian Electric Power Authority (NEPA) Nigerian Ports Authority (NPA) etc; etc.
- Special Boards and Commissions.
- Industrial and Professional bodies e.g. Trade Unions, the Nigerian Bar Association. (NBA) The Nigerian Medical Association (NMA)
- Regulatory Agencies e.g. The Public Service Commission etc

There practical circumstances in Nigeria that illustrates the existence of Delegation for example, Section 21 of the Banking<sup>39</sup> provides inter alia, that the minister may make such regulations as may be required from time to time for carrying into effect the provisions of this Act. In S. 2. Of the Act, “Minister” is defined as the Minister charged with responsibility for matters relating to Banking in the Federation, or a person acting under his direction or on his behalf as was held in, *Merchant Bank Ltd v. Federal Minister of Finance*. Section 1, of the explosives Act 1964 provides that the Minister responsible for explosives may by regulations make such provisions with respect to explosives as he considers expedient for the purpose of maintaining and securing public safety. Section. 7(1) the Nigerian Research Institute Act 1964 empowers the council (set up under the Act) to make regulations inter alia, for the general purpose of the Act and the discipline of staff.

### ***5.2 The Practice of Delegated Legislation in Nigeria***

The 1999 constitution provides that a House of Assembly may appoint a committee of its members for any special or general purpose as in its opinion would be better regulated by means of such a committee, and may by resolution, regulation or, otherwise as it thinks fit delegate any function exercisable by it to any such committee.<sup>40</sup> In Nigeria, the issue is not whether delegated legislation is on a sound- foot, but whether it sprang up from an enabling statute. The committee of Ministers powers 1932, expressed a principle basically similar to the standard requirement. According to the committee. The precise limits of a law-making power which parliament intends to confer on a Minister should always action must operate, otherwise, the legislature is in effect abdicating its function as primary legislator to the administrator.

### ***5.3 The need for sustenance of delegated legislation in Nigeria***

The need for delegated legislation in modern society is not farfetched. Due to the increasing complexities of modern societies and the impossibility of regulating all activities in primary legislation delegated legislation has become inevitable.<sup>41</sup> Government rely on it as public general Acts to give legal effect to its policies<sup>42</sup> and as legislative machinery in relation to

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<sup>39</sup> Act. Cap 19 laws of the Federation and Lagos 1958 (now replaced by the Banking Decree NO. 3 of 1966)

<sup>40</sup>. 1999 Constitution of the Federal Republic of Nigeria as (amended)

<sup>41</sup>. Muktar A, Etudaiye, ‘The Status of Tax, Duties, Fees and Legislative Powers’, Unilorin.edu.ng assessed August 4th 2014

<sup>42</sup>. McLeod (a 5) 147

matters of commencement,, duration or application of an Act and to modify existing laws.<sup>43</sup> It has been used as reserve power to make consequential amendment on matters that may not have been foreseen at the time when the enabling Act was enacted.<sup>44</sup> In such instances such a delegated legislation amends the enabling Act which is known as the Henry VIII Clause.<sup>45</sup> Some Acts wholly depend on the enactment of delegated legislation. These Acts are described as “Skeleton Acts” They have the general structure of an intended law but leave all the details to be provided in a delegated legislation.<sup>46</sup> Others rely on delegated legislation not merely to administer their provisions but also to give them substance.<sup>47</sup> Consequently, through delegated legislation immense legislative powers have been delegated to the executives and other administrative bodies without adequate measures put in place to check how these powers are exercised.

One of the first arguments that was put in support of delegated legislation was the pressure on parliamentary time. Modern legislation requires more time and details than Parliament has the time or inclination to handle.<sup>48</sup> With this shortage of parliamentary time, requiring them to enact the minute details of every legislation will be impossible. Therefore, its concentration on the essentials<sup>49</sup> while leaving details to be worked out by the departments is a welcome development. Henry Thring in support of this is of the view that, parliament will have more time for the consideration of more serious questions involved in legislation, if subordinate matters can be withdrawn from its cognizance<sup>50</sup>.

The relative speed with which delegated legislations are usually made is also an advantage to it.<sup>51</sup> This is very necessary in times of emergency. An example is the Emergency Power Act of Nigeria 1961, which confers on the President the power to make regulations that are necessary or expedient for the purpose of maintaining order in the country. Subsequent upon that, the President has made regulations declaring some states in the federation under Emergency rule.<sup>52</sup> These laws are easy to amend and revoke so as to make them up to date and meet up with the needs of the society. They allow for quick changes without government having to push through a completely new Act and they can be used for those schemes involving economic control that require high level of flexibility for their implementation.<sup>53</sup>

Legislators do not most times have the expertise and the knowledge that is required for certain legislations. An example of this are laws concerning safety and technology. These laws require experts that are knowledgeable in the particular area. In such a situation, Parliament will be required to deliberate on the main issues thoroughly and leave out the details to be field in by the experts. in connection with that, Parliament may not be the best institution to recognize and deal with local issues as it affects local people. As such Councilors that have

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<sup>43</sup>. Carr (n 25)

<sup>44</sup>. Greenberg, Craise on Legislation (n 22)337

<sup>45</sup>. C Forsyth & E Kong, ‘The Constitution and Prospective Henry VIII Clauses’, 2004 Judicial Review

<sup>46</sup>. Greenberg, Craise on Legislation (n 22) 117

<sup>47</sup>. National Migration and Asylum Act 2002 in the United Kingdom

<sup>48</sup>. R v St Helens Justices ex p Jones [1991] 2 All ER 73 at 83.

<sup>49</sup>. S G G Edger, Craise on Statute Law, Seventh edn, London Sweet and Maxwell, 1971,291 59 Thring (n 31)

<sup>50</sup>. Thring (n 31)

<sup>51</sup>. McLeod, (a 5)160

<sup>52</sup>. State of Emergency (Certain States of the Federation) Proclamation 2013

<sup>53</sup>. Xanthaki, Thornton’s Legislative Drafting (n 7)404

been elected by the local people who are more aware of their needs tend to pass bye laws that will take care of the needs of their local communities.

Another justification for delegated legislation could be seen with regards to the relative speed with which it can be made.<sup>54</sup> Delegated legislation is capable of changing rapidly and adjusting to situation.<sup>55</sup> This makes it suitable to be used for certain types of regulations like those whose details have not been fully worked out at the time when the act is being passed.

## 6. CONCLUSION

Despite the challenges observed on delegated legislation above, there is no gainsaying that delegated legislation is paramount in a modern dispensation. On this background, we pray a law be enacted in Nigeria like in England on the general guideline for the making of delegated legislation. The law should require that all delegated legislations must be laid before the legislature or better still a committee set up for such purpose for approval before it can come into operation. The essence of the requirement of laying a delegated legislation is to subject same to scrutiny by the legislature in order to ascertain that it conforms with its enabling law. The law should also make it mandatory for the delegates to consult with relevant stakeholders and the general public in the course making the delegated legislation. The law should also contain a mandatory provision for publication of all delegated legislations. In the alternative, since in India just like in Nigeria, there is no statutory requirement for laying of delegated legislation before the legislature. Nigeria may adopt the Indian approach as laid down by the Indian Scrutiny Committee of India, which is to the effect that in the absence of a general law on laying procedure made; the following suggestions are adhered to, to wit of Parliament should uniformly require that rules be laid on the table of the legislative house “as soon as possible”.

## 7. RECOMMENDATIONS

A general law should be enacted providing for the control, procedure and scope of delegated legislation, just like the Statutory Instruments Act of Canada. This would provide a general Framework that would be applicable across all situations where legislative authority is delegated.

- That draft from proposed instrument as a matter of requirement should be laid in parliament and receive approval before they are made.
- That provision should be made in the enabling Act for the revocation and amendment of instruments that does not comply with the enabling Act.
- That laying requirement should be complied with as it serves as a check
- Upon the powers that are conferred<sup>56</sup> it invariably raises the interest to ensure that adequate scrutiny is given to those measures that are laid before it.
- That legislative committees to scrutinize delegated legislation is a system that should be transplanted to Nigeria. The importance of this cannot be over emphasized as an effective control measure for delegated legislation.
- That a general statute be made that will regulate the making of delegated legislation.

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<sup>54</sup>. McLeod. (n 5)160

<sup>55</sup>. Edger, (n 58) 291

<sup>56</sup>. Schwartz (N 110) 460