POST- LEGISLATIVE SCRUTINY IN NIGERIA: A REVIEW OF THE IMPLEMENTATION OF THE VIOLENCE AGAINST PERSONS (PROHIBITION) ACT, 2015

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ABSTRACT

As a growing concern, the notion that the primary problem confronting Nigeria is not the sufficiency of laws, but rather the implementation of the laws passed, demonstrates that the idea of relegating Parliamentary post-legislative scrutiny of law as an oversight function is a stumbling block to the advancement of our democracy and good governance. Consequently, this research work was set out to achieve the following objectives: first, to understand the meaning and import of Post- Legislative Scrutiny; secondly, it explored the legal frameworks of Post- Legislative scrutiny in Nigeria; it also identified the challenges of the application of Post- Legislative scrutiny in Nigeria; and lastly proffered ways to improve Post-Legislative scrutiny in Nigeria. The justification of the study was to proffer ways to strengthen the oversight function of parliament.

The doctrinal method of research was adopted in achieving the set out objectives. Doctrinal research methodology was adopted because this research work was a research into law as a normative science, and research into law as it stands in the books. To this end, statutes such as the 1999 Constitution of the Federal Republic of Nigeria was taken into context, the Violence against Persons (Prohibition) Act, 2015 (VAPPA) was critically examined. Standing Orders of the House of Representatives was also examined, while the opinions of several scholars and writers on the subject were also interrogated.

The following findings were made: first, that there is no provision for Post Legislative scrutiny under the 1999 Constitution of the Federal Republic, as amended. The nearest attempt is the oversight function of Parliament. Secondly, that Post-Legislative scrutiny in Nigeria is still unstructured, unlabeled and parliament is still grappling with the concept. Thirdly, that the Report systems as provided under section 42 of the VAPPA, leaves the channel for reporting vague. And

lastly, that many scholars have reduced PLS to be the business of parliament with regards to Primary Acts of parliament, with little or no consideration for delegated legislations.

The recommendations to the findings in this research work were: first, to amend the constitution of the Federal Republic of Nigeria so as to stipulate clearly the powers and duty to undertake Post Legislative Scrutiny in the same way that Oversight function is provided; the end result of which is to strengthen oversight power of parliament. Secondly, it recommended the National Assembly to take steps to ensure a structured and a well-designed PSL system through Law Reform. Thirdly, it further recommended Post – Legislative Scrutiny to be conducted between 3-5 years after the enactment of the legislation under scrutiny; and last recommended further again that priority should also be given to subsidiary legislations in the consideration for PLS. In conclusion therefore, the broad objective of this research was intended to achieve a structured and well labeled system of Post-Legislative scrutiny in Nigeria. The findings and recommendations proffered herein is believed by the researcher to be a step in the right direction towards achieving the stated objective.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The clamor for post legislative scrutiny of our laws in Nigeria in more recent times, have been really loud. This is so because statistic and experience have proven that the legislature is constantly promulgating and passing laws without necessarily putting mechanism in place to assess and critique their implementation and post legislative effects - their functionality, strictly speaking.

The structure of the Nigerian Government under the 1999 Constitution establishes a presidential system of government based on the principle of separation of powers between the legislature, the executive, and the judiciary.[1] The legislative powers are held by the National Assembly, which consists of a Senate and a House of Representatives[2], and the executive powers are held by the president, who may exercise such powers directly or indirectly through his cabinet of Ministers, or the vice-president etc.[3]

The 1999 constitution of Nigeria gives the legislature the authority to make laws[4]. This has widely spread the belief that Parliament's responsibility is limited to simple lawmaking. However, Parliament bears a slew of additional responsibilities, including oversight. The oversight function referred in this research work translates to Post Legislative Scrutiny.

[1]See generally the provisions of Chapters v, vi and vii of the Constitution of the Federal Republic of Nigeria, 1999
[2] Section 4 (i), Constitution of the Federal Republic of Nigeria, 1999
[3] Section 5 (i), Ibid
[4] Section 4, Ibid

Scholars have opined that in furtherance of the principle of checks and balances, the Nigerian Constitution makes allowances and room for parliament - the Legislature, to not only make laws but ensure that constitutionally, they are also equipped with mechanism for overseeing the implementation of such laws. Activities such as Committee hearings, Public hearings, Referendums, Town Hall meetings and so on are some of the methods used by the Nigerian parliament to assess the implementation of laws.

It is the finding of this research as would be discussed in the subsequent parts, that although the very idea of Post Legislative Scrutiny is not expressly mentioned in the Constitution, the practice has long been used by parliament, consequently the recommendation by this researcher is to clothe the very concept of PLS with statutory flavor through law reforms.

As a consequence of Law assessment, in 2015, the Federal Government saw to the emergence of a novel legislation- Violence Against Persons (Prohibition) Act, 2015, but limits its scope and application under section 27 of the Act, to the Federal Capital Territory, Abuja High Court. This birthed newer dimensions of legal jurisprudence as far as violence against the human person is generally concerned. The Violence Against Persons (Prohibition) Act (2015) is an Act to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishments of offenders; and for related matters.

Prior to the passage of VAPPA, several extant legislations sought to criminalize and address the issues of violence against the human person, particularly issues such as sexual and domestic violence. That is why the Act is said to be an improvement on the Penal and Criminal Codes in

relation to violence[5]. However, the overwhelming degree of antiquity in those extant laws became an issue for concern as they could not address contemporary realities which were never contemplated at the time of their enactment. The judicial system grappled with the obnoxious Criminal Code which limits the criminal jurisdiction of rape and which was no longer in tandem with the present day realities. As laws become obsolete due to the passage of time, the need to constantly ensure their reform becomes germane a concern for parliament, this suggestively forms the idea behind the enactment of the VAPPA.

Flowing from this premise, it is apparent that post legislative scrutiny forms part of parliaments oversight function. Post Legislative Scrutiny is a proactive way of looking at a law already passed for certain purposes and finding out whether it is serving the intended purpose(s) for which it was passed whilst also investigating the likely hood of counter-intuitive or unintended consequences arising from its passage. As an emerging area of public interest, Post legislative scrutiny beckons on parliament to extend its scope of duty to not only promulgating laws but also investigating the law to ascertain the extend of its functionality or otherwise.

This research seeks to expand on the growing conversation in favor of the concept of PLS as an emerging area of public interest, whilst also interrogating the provisions of the new Act, VAPPA to assess the level of its functionality thus far. The research probes the Act generally in furtherance of the subject of discourse – Post Legislative Scrutiny.

1.2 Statement of the Problem

As a growing concern, the notion that the primary problem confronting Nigeria is not the sufficiency of laws, but rather the implementation of the laws passed, demonstrates that the idea

[5] https://lawpavilion.com/blog/the-violence-against-persons-prohibition-act-2015/

of relegating Parliamentary post-legislative scrutiny of law as an oversight function is a stumbling block to the advancement of our democracy and good governance. Section 4 of the 1999 constitution clearly states that the primary function of parliament is to make laws. This function is undeniable, as evidenced by the overwhelming number of laws that have continued to emanate from parliament. It is even believed, albeit incorrectly, as a cliché that the success or failure of any assembly is measured by the number of Bills debated and subsequently passed by that Assembly. As a result, the Legislature has continued to pass law after law with little or no effort put into post-legislative follow-up or implementation. This is a major flaw in our democracy. Until we address post-legislative scrutiny as a primary function of parliament, the problem of improper law implementation may persist.

Conversations and studies like this one on the concept of post-legislative scrutiny are one way to drive the point home until necessary reforms are implemented.

1.3 Aim of the Research

The aim of this research is to explore the legal framework of Post- Legislative Scrutiny in Nigeria and to proffer recommendations if any for improving Post Legislative Scrutiny in Nigeria so as to provoke law reform.

1.4 Research Questions

a) What is Post-Legislative Scrutiny?

b) What are the legal frameworks of Post- Legislative Scrutiny in Nigeria?

c) What are the challenges of the application of Post- Legislative scrutiny in Nigeria?

d) What are the prospects for improving Post-Legislative scrutiny in Nigeria?

1.5 Objectives of the Research

The foregoing are the objectives of the research:

a) To understand the meaning and import of Post- Legislative Scrutiny.

b) To explore the legal frameworks of Post- Legislative scrutiny in Nigeria.

c) To find out the challenges of the application of Post- Legislative scrutiny in Nigeria.

d) To find out what can be done to improve Post-Legislative scrutiny in Nigeria.

1.6 Scope and Limitation

This research examines Post-Legislative scrutiny as a global concept. However, focus is given to the Nigerian context of the PSL, whilst drawing comparative lessons on the subject from advanced democracies such as the United States of America (U.S.A) and the United Kingdom (UK).

1.7 Significance of the Study

This research is significant because it explores the concept of Post-Legislative Scrutiny globally and in Nigeria. The research looks at the practices in other jurisdictions and draws comparative lessons on how post legislative scrutiny can be better practiced in Nigeria.

The recommendations from this research reveal the success or otherwise of the violence Against Person's (Prohibition) Act, 2015 (VAPPA), since implementation. The findings in this research would improve the practice of oversight function of parliament. It would also provoke law reform. This research work will further serve as reference material for students, lecturers, relevant stakeholders and Legal Practitioners.

1.8 Research Methodology

Research methodology has to do with the method of organization and the analysis of the relevant data on the subject of research.[6]There are two types of legal research; one can classify legal research into doctrinal and non-doctrinal.[7] Doctrinal research is the research into the doctrines, this involves analysis of case and statutory provisions by the application of the power of reasoning.[8] Doctrinal research is the research into doctrines; this involves analysis of case law and statutory provisions by the application of the power of reasoning.[9] Doctrinal research is the research into law as a normative science, that is, a science which lays down norms and standards for human behaviors in a specified situation or situations enforceable through the sanction of the state, doctrinal research is the research into the law as it stands in the book. [10] Non-doctrinal research on the other hand, studies the actual working of the law; it studies the relationship between law and behavioral science.[11] Here the emphasis is not really on legal doctrines and concepts but on the people, social values and social institutions.[12]

This research work adopts the doctrinal approach. Doctrinal research methodology is adopted because this research work is a research into law as a normative science, and research into law as it stands in the books. The sources of materials include both primary and secondary sources. The primary sources used in this Research includes – the 1999 Constitution of the Federal Republic of Nigeria (as amended), Violence Against Persons (Prohibition) Act, 2015 and various others foreign Legislations. For secondary sources, the researcher reviewed available materials and

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[6] Alubo, A.O & Danung, M.Y "*Contemporary Legal Research Methodology For Nigerian Universities* (Jos University Press Limited, 2017) 23 quoting National Institute for Policy and Strategic Studies, Kuru, Nigeria, Guides for Writing Projects 83.

[7] Gasiokwu, M.O.U "*Legal Research and Methodology: A-Z of Writing Thesis and Dissertations in a Nutshell"* (reviewed edn. Chenglo Limited 2006) 13.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Ibid.

literatures, such as textbooks, journals, newspapers, annual reports from relevant agencies within Nigeria, the internet, seminar papers and articles in Nigerian. Also, relevant conventions or foreign legislation on the subject matter under consideration were consulted.

This researcher employed the doctrinal (qualitative) method of research having in mind the following factors:

i. The kind of information we intend to collect or use for our research.
ii. What we intend to do with the information collected?
iii. What kind of results we plan to get?
iv. What we intend to do with the result?

The obvious recommended research method for the researcher is doctrinal (qualitative) method, depending on the answers to these and other related questions.

1.9 Synopsis of the Chapters

The work shall consist of 5 chapters. Chapter one deals with the introduction to the main subject of consideration and also covers the background and significance to the study, statement of the problem and the methodology used in the research.

Chapter two gives a theoretical framework of Post Legislative Scrutiny. It also undertakes a review of relevant literatures on the subject matter of post Legislative Scrutiny and the implementation of the VAPPA.

Chapter three explores Post-Legislative scrutiny in Nigeria. It takes a look at the legal regime of PLS in Nigeria. The chapter further explores the Violence Against Persons (Prohibition) Act, 2015 (VAPPA) by analyzing the specific sections of the Law with regards to PLS.

Chapter four examines comparative lessons between the United Kingdom and the United States of America on the subject matter of post legislative scrutiny. The chapter x-rays the post legislative function of parliament in both countries for the purpose of understanding their techniques for law implementation.

Chapter five will contain the findings. The analysis of these findings will contain recommendations, and contribution to knowledge. Other areas suggested for further studies also follow in this chapter.

CHAPTER TWO

THEORETICAL FRAMEWORK / BACKGROUND / LITERATURE REVIEW

Introductory

This chapter shall discuss the background to PLS. It shall underscore conceptual frameworks whilst looking at its history and origin in Nigeria. The chapter shall also takes a delve into a review of literature by other scholars on the concept of PLS.

2.1 The idea of Post-Legislative Scrutiny

In many democracies, a process of overseeing the implementation of legislation by parliaments is referred to as Post-Legislative Scrutiny (PLS)[13]. PLS is aimed at both monitoring the implementation of legislation, and evaluating whether laws have achieved their intended consequences.[14] Through the proper application of PLS, parliaments identify legislative gaps and shortcomings in the legislation as well as in its implementation, and ensure targeted and evidence-based lawmaking.

Because parliament is responsible for enacting legislation, it also monitors implementation and assesses whether the laws it has passed have achieved their intended outcomes. Since implementation is a complex task that does not occur automatically, parliament has a role in monitoring legislation implementation. Post Legislative Scrutiny therefore, refers to the process of evaluating laws passed by a legislature.[15]

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[13] Sergiu Lipcean etal 'Post-legislative scrutiny of election campaign finance legislation: Comparative study on legislation and practices in Indonesia, Moldova, and Nigeria' (2022) (2) WFD the PLS series. https:// www.wfd.org. accessed on 31/1/2023

[14] Vrieze, F.D "Post-Legislative Scrutiny: Guide for Parliaments'' (2017) Westminster Foundation for Democracy, vol. 11

[15] Ibid 1

The term Post Legislative Scrutiny (PLS) was coined by the Law Commission of England and Wales in 2006 as: "A broad form of review, the purpose of which is to address the effects of legislation in terms of whether intended policy objectives have been met by the legislation and, if so, how effectively. However, this does not preclude consideration of narrow questions of a purely legal or technical nature."[16]

The practice of monitoring and evaluating the impact of laws is known as post-legislative scrutiny (PLS). The goal is to ensure that laws benefit citizens in the way that legislators intended. PLS is frequently performed by parliamentary committees and is an important feature of parliament in developed democracies like the UK. What is notable here is that the term post Legislative scrutiny and oversight function of parliament have been applied and used in the same context. Under the I999 Constitution of the federal republic of Nigeria, section 88 – 89, provides for the powers to conduct investigation and vest same on the National Assembly. A close perusal of the cited sections reveals that the drafters of the constitution had intended to empower the National Assembly to carry out over sight function, in other words Post legislative scrutiny.

To different legislators and scholars, the concept can have multiple meanings. Vrieze[17] looks at the concept in two contexts: stricter and broader. In its strictest sense, he claims, PLS considers the enactment of the law, whether the legal provisions of the law have been implemented, whether secondary legislation has been enacted, how courts have interpreted the law, and how legal practitioners and citizens have used the law. This, he says, is a more focused and purely legal and technical review because it looks at how a piece of legislation works in practice. In a broader sense,

[16] Law Commission of England and Wales, "*Post-Legislative Scrutiny"* (2006) Post-Legislative Scrutiny - The Law Commission - GOV.UKhttps://assets.publishing.service.gov.uk.

[17] Vrieze, F.D "Post-Legislative Scrutiny: Guide for Parliaments'' (2017) Westminster Foundation for Democracy, vol.11

he adds that PLS considers the impact of legislation, whether the intended policy objectives of the law have been met, and how effectively the law has been implemented. These classifications highlight two dimensions of PLS proposed by Vrieze that he recommends to legislatures:

a) evaluating the technical entry and enactment of legislation (the monitoring function); and

b) evaluating its relationship with intended policy outcomes (the evaluation function).

Having established that conceptually the term post legislative scrutiny may be used to refer to Oversight function of parliament, it is therefore important to note that as an emerging area of oversight function of parliament, PLS, if properly deployed transcends as mechanism for assessing the passage and impacts of legislations- both Primary Acts and subsidiaries. The principle of oversight was born in the exercise of the legislature's power to check on the executive and judiciary: that the legislature has a responsibility to monitor and evaluate the executive and judiciary's exercise of power. The concept is founded first on the principle of checks and balances, and then on that of effective legislation.[18]

Oversight is a method of holding the executive accountable for its actions and ensuring that policies are implemented in accordance with the laws and budget passed by the legislature. Therefore, the concept of Post- Legislative scrutiny (PLS) is that the legislature has a responsibility to monitor and evaluate the exercise of power by the executive and judiciary.

One of the pillars of democracy is the parliamentary oversight function although some legislatures appear to have become well-versed in the concept and practice; others appear to be struggling with understanding and effectively applying the concept. This is exacerbated by the fact that PLS has

[18] Arowolo, G.A "Oversight functions of the legislature: An instrument for nation building" https://www.ajol.info/index.php/naujilj/article/view/138178 accessed on the 2/2/2023

mostly been used in an unstructured manner. Still, there is the issue of determining what the growing concept entails.

While there is no single pattern for organizing PLS in parliaments, the Westminster Foundation for Democracy offers certain methodological steps in the publication "Post-Legislative Scrutiny: Guide for Parliaments"[19] that show how parliaments can conduct PLS in an organized and structural manner. The process, according to the guide, can be divided into four phases: pre-planning, planning, implementation, and follow-up.[20]

Although the successful implementation of legislation is dependent on several variables, the legislature however can contribute to implementation by including provisions in the body of establishing legislation that enable implementation. This will ultimately facilitate executive implementation as well as legislative monitoring and evaluation, as a result, the doctrine of checks and balances is ultimately promoted.

Some of the benefits of PLS include-

i. First, it ensures effective and evidence-based lawmaking. That is, implying the use of a strategic approach and proper planning (including timing) of the legislative process;
ii. It also ensures improved legislative quality based on lessons learned;
iii. It ensures an inclusive and transparent process contributing to legislation legitimacy;
iv. It promotes an in-depth assessment and comprehensive oversight of law implementation;
v. It also encourage government accountability; and

[19] Vrieze F.D "Post-Legislative Scrutiny: Guide for Parliaments", WFD, 2017
[20] Ibid

vi. It promote national parliaments' institutional and human capacity development contributes to a higher standard of legislative drafting and oversight[21]

Conclusively therefore, having a structured PLS process assists parliament in strengthening its institutional and human capacities ultimately by demanding the active engagement of relevant parliamentary units and staff, the collection and analysis of information, flawless communication channels with state and non-state actors, and solid reporting skills.[22]

2.2 Historical Background of Post – Legislative Scrutiny

Woodrow Wilson, President of the United States of America (U.S.A), emphasized the importance of legislative oversight as a tool for monitoring government activities in 1885. He opined that: "There are some scandals and discomforts, but there is an infinite benefit to having every administrative matter subjected to constant scrutiny by the assembly... The vigilante of administration is as important as legislation"[23]

For centuries, legislative practice has revolved primarily around representation, legislation, and oversight. In terms of the role of legislation, the practice has always been to draft, introduce, debate, and enact bills without regard for their subsequent implementation or societal implications. According to Vrieze[24], parliaments devote a significant portion of their human and financial resources to the process of legislation adoption while ignoring the review of legislation implementation. He posits further that this constitutes an abnormally and poses great challenges.

[21] Ibid
[22] Sergiu Lipcean etal 'Post-legislative scrutiny of election campaign finance legislation: Comparative study on legislation and practices in Indonesia, Moldova, and Nigeria' (supra)
[23] Wilson, W. quoted in EGPA study Group on "Legislative Oversight" (Glasgow, Caledonian University, Glasgow (UK) 2000 . 1)
[24] Op cit 7

PLS's history and evolution may not have a clear record or account, but it is known that the idea began to take off and gather speed in the early 2000s. Legislative oversight of the executive has been a contentious issue since the late 14th century, when the United Kingdom (U.K) House of Commons was established. As the financial needs of the Head of State grew, so did the need for increased taxation, which eventually led to the UK Parliament demanding the right to oversee the activities on which tax payers' money was spent.[25]

Some scholars have argued that PLS is essentially a branch of the European Better Regulation movement and America in the 1990s and early 2000s that tried to create laws and policies that were evaluated both ex-ante and ex-post and succeeded in their goals. At the time, European nations came under fire for producing a prodigious amount of badly written laws that overly controlled both residents and corporations. Therefore, "Better Regulation" was a method of creating laws and regulations that achieved their goals at the lowest possible cost; a way of ensuring that political decisions are made in an efficient[26]

'Better Regulation' in Europe aimed to prepare and adapt European Union policy and legislation in light of its expected economic, environmental, and social impacts, avoiding unnecessary burdens and red tape for citizens, businesses, and public authorities by utilizing strategic planning, impact assessment, consultation, and evaluation as its main tools. It is both an objective and a method for preparing, assessing, and revising regulations.[27] The initiative is a hybrid in and of

[25] "Parliamentary Oversight of Finance and the Budgetary Process" - The Report of a Commonwealth Parliamentary Association Workshop, Nairobi, Kenya, 10th - 14th December, 2001. see http:// www.cpahq.org/uploadedfiles/ information. Accessed on the 25th Jan 2023.
[26] Golberg, E ''Better Regulation': European Union Style'. *M-RCBG Associate Working Paper Series* [2008] (98) 9
[27] Ibid

itself, combining the American tool of regulatory impact assessment with European strands like simplification and a standardized approach to measuring administrative costs.[28]

Baldwin contends that the United Kingdom's Better Regulation rhetoric echoed that of the European Union, and that the approach to achieving better regulation was seen as the need to develop and implement a series of regulatory improvement tools and policies, the most important among which was Regulatory Impact Assessment.[29]

Goldberg, for one, observes that the assessment of regulation has become systematic, from the design phase to implementation, with community input throughout the process.[30] It is arguable that this systematization gave birth to PLS, which is an impact assessment of legislation in and of itself. The central goal of PLS, in line with the Better Regulation Initiative, would be to ensure that there are effective laws in circulation that achieve their policy and statutory objectives. It is quickly becoming a systematized legislative process for producing better, more efficient, and effective laws that are specifically designed to address current and emerging societal issues and challenges through the use of special tools.

The conclusion regarding the historical evolution of PLS is ambiguous. What is undeniable is that the indicators of PLS have been demonstrated to exist in the administration of parliamentary duties around the world, despite the fact that the lack of a robust and institutionalized system appears to be a global concern of parliament.

[28] Weiner, J.B "Better Regulation in Europe'. *Duke Law School Faculty Scholarship Series* [2006] (65)
[29] Baldwin, R 'Better regulation in troubled times'. Health Economics Policy and Law [2008] (1) (3) 203.
[30] Op cit 12

2.3 Literature Review

Post-legislative scrutiny has largely been described as a developing area of public interest. While some parliaments in developed democracies have since adopted the practice in carrying out their parliamentary duties, many still struggle with it. While being used interchangeably with the term oversight function, the concept has received increasing attention.

One of the most important principles of the research process is the review of literature, which exposes the researcher to various studies and information about the research area. So far, some research scholars have held varying perspectives on the concept of PLS or Oversight and have attempted to develop it further through ongoing discussion. As a result, this research heavily relies on written materials of scholars consulted from a wide range of research tools available to the researcher.

Vrieze, F.D[31] discusses practical guidance for organizing Post- Legislative Scrutiny (PLS). He defines Post-legislative scrutiny as the stage at which a parliament applies itself to this question: whether the laws of a country are producing expected outcomes, to what extent, and if not, why not. He also argued that there is no single blueprint for conducting Post-Legislative Scrutiny by parliament, but suggested methods for better organizing Post-Legislative Scrutiny inquiries by parliament.

Vrieze believes that reviewing legislation's implementation is inextricably linked to parliament's oversight function. Parliaments can take on this responsibility by establishing specialized

[31] Vrieze, F.D "Post-Legislative Scrutiny: Guide for Parliaments'' (2017) Westminster Foundation for Democracy.

committees and conducting their own analysis, or by relying on information and reports provided by the government. He proposed various options (or combinations of options) for introducing Post-Legislative Scrutiny in its policy advice and capacity building support to parliaments through the WFD to wit:

i. Ministries could be asked to provide regular reporting to parliament on the implementation of laws, possibly based upon the UK model where the ministries prepare a Memorandum for parliament on implementation of each law - three to five years after its enactment.

ii. Parliament could outsource or commission research on law implementation to external institutions, either autonomous official institutions (such as the Auditor General's Office) or external independent institutions such as universities.

iii. Parliament could conduct its own inquiries on the implementation of selected laws by holding public hearings, collecting evidence and conducting in-house research by staff of the Parliament, such as through a Research Unit or Legislative Unit.

Vrieze recommends planning and implementing a two-year pilot project approach in which the parliament examines the implementation of a limited set of laws in contexts where a parliament has limited resources to sustain a fully integrated system of Post-Legislative Review (two to three). After two years, the pilot project can be evaluated and lessons learned for a more generalized and institutionalized approach identified. The pilot project could take the form of a Committee review of Ministry reports on selected law(s) implementation, a Committee review of outsourcing research by external institutions or Committee-led inquiries, and in-house research on selected legislation implementation. He noted finally, that the Post-Legislative Scrutiny work must

demonstrate its relevance to the public and be carried out in such a way that citizens can contribute to the evaluation of legislation.

This guideline is very rich in information and the Researcher shall be relying heavily on the information contained with due credit to its source.

Arowolo, G.A in her article[32] stated that nation building that is likely to contribute to stable and sustainable international peace necessitates the development of society, economy, and polity in order to meet the basic needs of the people. It entails creating a common identity for the people as well as the formal institutions of democracy. It entails the advancement of education, human rights, and other issues (political, civil, economic, social and the rule of law). It allows civil society to participate in the development of democratic state institutions that promote welfare. She went on to say that in a democratic setting like Nigeria, the exercise of an effective legislative oversight function is critical. Its goal is to provide a powerful check on executive authority, increasing accountability in situations where a dominant executive branch may operate with impunity.

She stated further that as a developing country, Nigeria's legislature's capacity to carry out its oversight functions remains limited because the legislative role and culture are in their infancy and thus frequently confronted with numerous challenges.

However, Arowolo's work focuses on the role that oversight play towards nation building but very shallow conversation on the legal regime of oversight function in Nigeria. This research shall be addressing this gap in due course.

[32] Arowolo, G.A "Oversight Functions of the Legislature: An Instrument for Nation Building"

Golberg, E[33] in his article noted that the European Union is frequently chastised for enacting too many - sometimes poorly drafted - laws that interfere excessively with the lives of citizens and businesses in areas better regulated at the national or local level. He noted further that the EU's major failings are seen as red tape and bureaucracy. The European Commission, as the European Union executive, has responded to this criticism by giving priority to regulatory policy, termed 'Better Regulation'. 'Better Regulation' aims to prepare and adapt EU policy and legislation in light of its expected economic, environmental, and social impacts, avoiding unnecessary burdens and red tape for citizens, businesses, and public authorities through strategic planning, impact assessment, consultation, and evaluation. Regulation evaluation has become systematic, from the design phase to implementation, with public consultation throughout the process.

Despite these efforts, EU Member States, businesses, and a large segment of the public remain dissatisfied with the volume and quality of legislation. To limit the volume (and thus the costs) of legislation, Member States and business groups advocate for reduction targets and regulatory budgeting schemes. By illustration he noted that, the coalition agreement that serves as the German government's policy platform recently called for the European Union to implement a 'one in/one out' regulatory budgeting scheme.

Based on personal experience and available evidence, he attempts to describes the forces that have shaped and driven regulatory policy over the last fifteen years in the European Commission. He describes the main components of the European Commission's 'Better Regulation' system and assesses its effectiveness and relevance. The analysis' findings, which include examples from three case studies on roaming surcharges, air quality legislation, and climate change legislation, shed

[33] Golberg, E "Better Regulation': European Union Style". M-RCBG Associate Working Paper Series [2008] (98)

light on whether 'Better Regulation' has improved policy outcomes and decision-making, and whether commonly prescribed solutions to 'overregulation' (targets and quantitative offsetting schemes) are fit for purpose at the EU level.

Golberg's work though rich in substance and serves as pointer for tracing the concept of Post-Legislative Scrutiny in the EU regions, the paper falls short of addressing how the Better Regulation movement subsequently birthed the concept for Post- Legislative scrutiny in the United States of America precisely. This Research intends to cover the gap.

Caygil, T[34] in a report published by WFD analyzes the frequency and outcomes of PLS in the UK Parliament between 2008 and 2019, in order to provide insight into how this type of scrutiny is carried out. The following are the primary goals of PLS, according to the report:

i. To determine whether legislation is working as intended and providing solutions if it is not;
i. To increase emphasis on legislation implementation within government;
ii. To make and promote better legislation.

The study's findings show that post-legislative scrutiny is carried out in the UK Parliament and is possible even when legislatures have capacity constraints. However, there are some issues that must be addressed, such as a bias in the legislation that was chosen to receive PLS. To address such challenges, the report makes key recommendations to the UK Parliament, including the establishment of a dedicated PLS committee, either as a joint committee of both Houses or as a Lords Committee.

[34] Caygill, T "Post-Legislative Scrutiny in the UK Parliament: The Post-Legislative Series'' (2021) Westminster Foundation for Democracy.

Caygil's report on PLS in the UK parliament serves a rich reference tool for this research; consequently this research work shall be relying heavily on the report for the purpose of making comparative lessons of the concept of PLS in the UK and Nigeria.

Vrieze, F.D[35] in his case study titled: "Gender-sensitive post-legislative scrutiny of general legislation" examines how post-legislative scrutiny of general (non-gender-specific) legislation can integrate a gender-informed approach. It also examines the meeting point between Post-Legislative scrutiny and gender analysis. He argued that gender is a factor that accounts for differences in all aspects of life, from mobility and travel behavior to migration, governance, and justice, as well as agriculture, climate change, and environmental issues. Even procedural rules can have profoundly gendered effects in encouraging or discouraging men and women to perform work-related roles, allowing them to be influenced by the dominant group's priorities and behavioral styles and ultimately undermining their ability to achieve work-related results. He held further that there are several examples of how legislation can interfere with the distinct realities and lifestyles of women and men to create or perpetuate disadvantage.

Vrieze noted further that a gender-sensitive post-legislative scrutiny adds a gender perspective to the scrutiny by assessing whether legislation has produced (positive or negative, unintended or unexpected) impacts on gender results and outcomes. Post-legislative scrutiny has the advantage of hindsight – and offers the possibility to look at cross cutting impacts and identify positive and negative change at a larger scale. In other words, post-legislative scrutiny can show what worked, what did not work and why, and what needs to be changed. Gender-sensitive post-legislative scrutiny adds one complementary layer of analysis: how the law worked for women and men,

[35] Vrieze, F.D 'Gender-sensitive post-legislative scrutiny of general legislation'

whether there were achievements and unwanted impacts from a gender equality perspective and how to 'correct' them.

Vrieze concluded by suggesting the main steps for a gender-sensitive post-legislative scrutiny to wit:

First, by putting gender in the scrutiny radar; secondly, by identifying gender relevance and ask the right questions; thirdly, by Collecting gender-relevant information, data and evidence, and finally, integrating a gender lens in the scrutiny findings and recommendations

This researcher finds this paper very resourceful for addressing the implementation of the Violence Against persons (Prohibition) Act, 2015 (VAPPA). The recommendations provided by Vrieze would be very put side by side, the VAPPA to assess the prospect for implementation.

Griffith, G[36] His paper, "Parliament and Accountability: The Role of Parliamentary Oversight Committees," focuses on parliamentary oversight committees and their role as oversight mechanisms. He began with an overview of parliamentary accountability as a conceptual and practical context for the discussion of oversight committees.

While Parliament's accountability role is more important than ever, he noted that Parliament must consciously share that work with other agencies. 'The key is to establish a proper working relationship between Parliament and the extra-parliamentary accountability institutions,' says the author. Parliamentary oversight committees are one response to this challenge, putting Parliament

[36] Griffith, G "Parliament and Accountability: The Role of Parliamentary Oversight Committees" (2005) https://www.parliament.nsw.gov.au/researchpapers/Pages/parliament-and-accountability-the-role-of-parlia.aspx accessed on the 2/ Feb/2023

in a supervisory or monitoring role, keeping an eye on the intricate web of accountability relationships that has evolved in modern times.

The author emphasizes that there are at least five types of parliamentary oversight committees:

a) legislative review committees that scrutinize government and other bills;
b) Public Accounts Committees concerned with the supervision of public finance;
c) estimates committees that examine the appropriations of government departments and agencies;
d) other select or standing committees concerned with the scrutiny of policy and administration; and
e) Finally, the more powerful Select Committees.

The first's mandate is to protect individual rights from legislative intrusion, the second to protect the public purse, the third and fourth to act as watchdogs over the Executive, and the fifth to protect the guardians of integrity.

This researcher shall be reviewing this literature further in this course of this work.

Amadi, F.C & Gabriel-Whyte, A.E in their article[37] extensively discussed legislative innovations introduced under the VAPPA. Innovations such as- Harmful widowhood practices under section 14, Emotional, verbal and Psychological Abuse under section 46, forced isolation or separation from family and friends under section 13 etc.

[37] The Violence against Persons (Prohibition) Act 2015: Legislative Asset or Liability?

Their argument buttresses the fact that while the VAPPA and its modern innovative provisions were a step in the right direction in our current legal jurisprudence it was however still a legislative liability due to its limited scope of application i.e. the Federal Capital Territory. They also faulted the legislation for recognizing the National Agency for the Prohibition of Trafficking in Person (NAPTIP) to be the regulatory body responsible for administering the provisions of the Act rather than the Nigerian Police Force. They stated that this development is capable of causing a breach or overlap of government function.

While the arguments and submissions of the Authors are germane to the development of this research work, their work however did not carry out an impact assessment exercise of the Act on the residents of the F.C.T thus far since its enactment so as to be able to underscore the extent to which the legislation has been able to combat all forms of violence against the human person. This is one of the areas that this research work shall be exploring in due course. The Researcher intends to carry out a survey on this area and hopes to fill in the gap.

Uniga, O.J & Fwa, Y.D in their article[38] carried out a survey research by means of Google form to assess the level of awareness and literacy of the VAPPA amongst a selective demographic in the FCT. They used a quantitative approach of investigation to obtain the views of Respondents. The survey also revealed the responses gathered, as they sought to inquire the types of Gender Based Violence (GBV) known by the demographic covered.

In one of their findings, they argued that based on statistical data obtained in their survey, women suffer disproportionately to men. They recommended that the Legislature needs to promulgate

[38] "Effective Implementation of the Violence Against Persons Prohibition (VAPP) Act, Curbing the Impunity of Perpetrators of Gender Based Violence (GBV) and Promoting Socio-Economic Development in Nigeria." International Journal of Management, Social Sciences, Peace and Conflict Studies- Vol.4 No.2 June,2021

specific laws for the protection of women across Nigeria. In their conclusion they held that the VAPPA is an epic legislation and quite comprehensive in breaking new grounds especially as it addresses the issues of rape in greater details.

This research finds that the authors did a remarkable job of carrying out surveys to identify the level of awareness of the law amongst residents in the FCT. By presenting verifiable data of identifiable demographic of respondents who cut across different works of live, social status and background before arriving at the results gives an extra plus to their work. However, the writers didn't consider in their survey the impact of the VAPPA in combating and addressing all forms of violence against persons in general. They also failed to assess the commitments to duty of the various Agencies charged under the Act.

This research is going to address these areas whilst also comparing the data that would be collected eventually with those gotten by the authors above, for comparative analysis.

The Westminster Foundation for Democracy commissioned a national research in twelve (12) states of the federation to assess the impact of the VAPP Act in Nigeria, five (5) years after it was enacted. Titled "The Impact of the Violence against Persons (Prohibition) Act and Related Laws in Nigeria"[39], the project aligned with WFD's objective of promoting inclusion by ensuring gender equality and protecting women and girls from violence. The increased number of cases of violence against women and girls in particular in the context of COVID-19 and the frequent cases of perpetrators of gender-based violence facing insubstantial punishment. According to them, this

[39] https://www.wfd.org/2021/12/07/the-impact-of-the-violence-against-personsprohibition-act-and-related-laws-in-nigeria

provided the need for the implementation of the Violence Against Persons Prohibition Law (VAPPL) in states that had already domesticated the Act across the country.

The research by **WFD** is the first national impact assessment of the Act since its enactment. It was originally designed to focus on the implementation of the Act in the Federal Capital Territory (FCT) and in eleven (11) out of the eighteen (18) states across the six geo-political zones where it had been domesticated at that time. The study assessed the adoption, successes, and challenges of the implementation of the Act, identified the factors that promote or limit the implementation of the Act, as well as the gaps that need to be addressed to ensure the Act achieves its objective of prohibiting violence against citizens, especially women, and promoting gender equality in the Nigerian society. It was also aimed at assessing the level of citizen participation and engagement in the adoption and implementation processes of the VAPPA. The study was undertaken in Abia, Akwa Ibom, Anambra, Bauchi, Cross River, Edo, Enugu, FCT, Kaduna, Lagos, Osun, and Plateau States.

We find that this research is very significant and shall be pivotal to our work especially as it concerns the impact assessment of the VAPPA on the citizenry since its enactment.

2.4 Summary

PLS introduces a new frontier to parliamentary practice by granting legislatures the power and duty to oversee, monitor, and assess the application of laws and their consequences. Besides deepening democracy across jurisdictions, it opens up new avenues for responsibility on the part of the legislature and executive, reduces ambiguity, makes legislation fit for purpose, improves overall legislative quality, and keeps legislatures relevant and in tune with societal dynamics.

The legislature's oversight functions are an important tool for nation building because they ensure that the nation's resources, in addition to state revenue and expenditure, are properly considered and fiscally sound, and that government programs address the people's relevant needs and are carried out in a timely and proper manner. Through effective oversight functions, the legislature can ensure adequate checks and balances, transparency, and political legitimacy, as well as better enforce financial regulations and policies, ensuring broad participation, ownership, and long-term democracy. The legislature has the ability to foster a responsible and accountable environment that promotes the achievement of development objectives.

CHAPTER THREE

POST LEGISLATIVE SCRUTINY IN NIGERIA: PROSPECTS AND CHALLENGES

Introductory

This chapter examines the legal framework of PLS in Nigeria. The 1999 Constitution and House of Representatives National Assembly Oversight Manual were looked at extensively. The chapter also discusses the legal frame of the Violence against Persons Prohibition Act, 2015 in other to distill whether or not the intention of parliament in section 42 amounts to sufficient provision for PLS. Prospects as well as challenges of PLS were also discussed.

3.1 Legal Framework of Post – Legislative Scrutiny in Nigeria

Post -Legislative Scrutiny (PLS) is perceived as an abstract concept in Nigeria. This is due to the lack of an institutionalised and systematic mechanism to assess the effectiveness of previous legislative Acts. The practice appears to be in its early stages in Nigeria's legislature, with the

legislature still grappling with its interpretation.[40] Within the Nigerian context, the pillars of Post Legislative scrutiny is reflected in the oversight function of parliament as evidence in the I999 Constitution and various statutes. Therefore, the terminologies may mean one and the same thing within the Nigerian Context.

Interestingly, some scholars have noted the thin dividing line between the two concepts of PLS and Oversight. Separating one from the other but in the end, they are targeted towards the same goal. While Post-Legislative Scrutiny is a separate mechanism within parliament, the evaluation process is also a by-product of a parliament that performs effective executive oversight and effective law-making. A parliament measures the extent to which a country's laws are fit for purpose, as well as the extent to which a government manages the effective implementation of its policies and complies with statutory obligations, by reviewing government action or inaction and amending various types of legislation.[41] However, the act of conducting primary Post-Legislative Scrutiny extends beyond executive oversight as an internal monitoring and evaluation system through which a parliament can consider and reflect on the merits of its own democratic output and internal technical ability. Post-Legislative Scrutiny, when viewed in this light, also provides an approach that a parliament may take to its legislative role as not only the maker of laws but also the legislative watchdog of a country.[42]

The Nigerian constitution of 1999 generally vests the legislature with the power to make laws,[43] though this responsibility is not limited to simply making laws, as it also includes oversight. The

[40] Ogbu,D.C "Post Legislative Scrutiny as a Mechanism for Effective Legislation" International Journal of Legislative Drafting and Law Reform [2021]
[41] Vrieze, F.D & Hasson, V "POST-LEGISLATIVE SCRUTINY Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance" London, 2017 at 12
[42] Ibid
[43] Section 4, 1999 Constitution of the Federal Republic of Nigeria.

powers and functions of the legislature are outlined in Section 4 (1) of the Constitution. The Constitution specifies the following basic features of the legislature: The legislature is divided into two chambers. That is, the National Assembly's legislative powers will be exercised by two bodies, the Senate and the House of Representatives.[44] The Constitution establishes a single legislative house, or unicameral legislature, for each state.[45]

Legislative Committees[46] are in charge of the majority of the legislative detail work. They go on investigative or fact-finding tours, hold public hearings, and so on; exercise of general legislative power through the passage of bills by both the Senate and House of Representatives, assented to by the president except when he withholds his assent and the bill is again passed by a two-thirds majority of each House when it becomes law, and the president's assent is not required[47]; exercise of legislative power over money bills.

There are varieties of instrument that provide the National Assembly with the mandate to carry out its oversight functions including the Constitution, Statues and Standing Rules of the two Houses of the National Assembly.

3.1.1 The Constitutional Authority

The Constitutional authority to conduct oversight is enabled by a number of statutory provisions which include:[48]

[44] ibid
[44] ibid
[45] ibid
[46] Section 62, Ibid
[47] Section 58, Ibid
[48] NILDS "House of Representatives National Assembly Oversight Manual" first edition

a) **Appropriation Authority**: Section 59 and 80[49] provides that the National Assembly should, through an appropriation or supplementary appropriation bill, approve, vary or question budgets submitted to it by the Executive and authorize a withdrawal, by the Executive, of monies so appropriated.

b) **Investigative Authority**: section 88 – 89[50] provides that the National Assembly is empowered to investigate the conduct of any person and MDAs on matters over which the legislature has competence.[51]

This type of oversight is scheduled only when facts must be ascertained prior to a legislative decision on whether to amend a law, enact a new law, or expose and recommend prosecution of an agency or individual for corruption, waste, and inefficiency in the administration of public funds. Any such investigation must be initiated by a resolution published in the National Assembly Journal or the Federal Government Official Gazette, and it must concern issues within the legislative competence of the relevant legislature.

c) **National Assembly Legislative Authority**: The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the federation, which shall consist of a Senate and a House of Representatives. The National Assembly shall have power to make laws for the peace, order and good governance of the Federation or any part thereof with respect to matters contained in the Exclusive Legislative list shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of states. In

[49] 1999 Constitution of the Federal Republic of Nigeria.
[50] Ibid
[51] See also section 4, Ibid

addition, and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following:

- Any matter in the concurrent Legislative List set out in the first column of part II of the Second Schedule to this constitution to the extent prescribed in the second column prescribed opposite thereto; and

- Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

- Subsection (5) provides that if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall, to the extent of the inconsistency, be void.

d) **Committee Authority:** The authority conferred by the Constitution is exercisable by the whole House, joint committees or special committees. Some of the authorities of these committees are defined by the Constitution, by designation of their jurisdiction, while others are defined in the relevant legislature's rules. Specifically, section 62 (1) (3), and 85(5) confer the power to create these committees and to define their jurisdiction in the relevant rules.

e) **Special or General Committees:** Section 62(1) empowers the senate and the House of Representative to "appoint a committee of its members for such special or general purpose as in its opinion would be better regulated and managed by means of such a committee, and may by resolution, regulation or otherwise, as it thinks fit, delegate any functions exercisable by it to any such committees".

f) **Joint Finance Committee:** Section 62(3) of the Constitution empowers the Senate and the House of Representative to appoint a joint committee on finance consisting of an equal number of persons appointed by each House and m ay appoint any other Joint Committee under the provisions of this section. By Section 62(4) the various committees are only authorized to make recommendations to the House on matters within their Jurisdiction.[52]

3.1.2 Statutory Authority

The National Assembly delegated some oversight functions to various bodies and agencies through Statutes. These bodies are then required by law to report to the National Assembly, which may also exercise oversight over individual agencies. The National Assembly has the authority to continue expanding its authority and/or to establish new agencies subject to its legislative competence.

Nigeria has subtle forms of PLS mechanisms in addition to the oversight feature enshrined in the 1999 Constitution. This is evidenced by the inclusion of provisions establishing structures or institutions to ensure legislative implementation, as well as executive officials submitting reports to the legislature. However, it is worth noting that these mechanisms are only found in a small number of pieces of legislation, stifling effective monitoring and evaluation of legislative implementation and its consequences. For example, Order 17 Rule 9 of the Standing Order of the House of Representative, 2016 makes provision for investigative hearing.

Flowing from the above discuss on the legal regime of Post- legislative scrutiny and having examined the constitutional provisions and oversight manual of the House of Representative in this regards, it become imperative at this point to examine the Violence against Persons

[52] See also section 85 on Public Accounts Committee

(Prohibition) Act, 2015 within the context of PLS, by analysing specific provision of the VAPPA that discusses Post- Legislative Scrutiny.

3.2 Violence against Persons (Prohibition) Act, 2015 (VAPPA)

To take this research a nudge further, the researcher examines the operationalization of the legislative process of Post-Legislative Scrutiny as an important duty of the legislature, in relation to reviewing the applicability of this duty on the duly enacted Violence Against Persons (Prohibition) Act, 2015.

The primary goal of post-legislative scrutiny is to ensure that legislatures revisit the laws they passed in order to determine whether the laws are being implemented and whether the intended policy objectives are being met. To be sure, the Parliament is an important part of democracy and governance, with the sole responsibility of making laws and the secondary obligation of ensuring that these laws achieve their objectives.

In 2015, Nigeria began its journey towards achieving SDG5 by enacting the Violence against Persons (Prohibition) (VAPP) Act in the aftermath of 15 years of advocacy efforts. This law aims to eliminate and prohibit all forms of violence including physical, psychological, economic, political and sexual violence. It criminalises harmful and discriminatory traditional practices such as child abuse, harmful widowhood practices, female genital mutilation and spousal abandonment. It also provides maximum protection and effective remedies for victims and punishment for offenders. Rape, violence against people, and sexual abuse are recurring social issues throughout the world, and Nigeria, as a sovereign entity, has had its fair share of laws enacted to address these heinous crimes and has been forced to legislate on the issues over time. To exacerbate the existing social issues, and following the legislature's assessment of the laws already in place and the never-

ending calls for more legislation to that effect, the legal framework already in place was made abundantly clear that it was, in many ways, insufficient to combat violence, particularly rape. As of June 2021, only 18 of the Federation's 36 states had passed similar laws at the state level, albeit with different titles, scope of coverage, and sanctioning regimes.[53]

To begin, despite the wide gender distribution of sexual abuse, the Criminal Code[54] only recognized rape when the victim was a female. Thus, despite UNICEF's alarming findings that one in every four girls and one in every ten boys had experienced sexual violence before the age of 18[55], the case of male sexual abuse was still not recognized under existing Criminal Codes; with the exception of Lagos state Criminal Code Law. The traditional code was not adequately prepared for emerging forms of sexual abuses. Thus, pedophiles who committed sexual abuse on minors by penetrating the anus and forcing oral sex could avoid the long arms of the law. However, this could be prosecuted as an unnatural offence.[56] It was obvious that it should be included in the stigmatized and harshly punished crime of rape. Despite the severe emotional trauma that rape victims experienced, the criminal code was overly punitive. The victim is left to nurse her wounds after the offender has been punished. The situation created an urgent need for a victim-oriented Code that awards compensation to victims while broadening the categorization of persons capable of being raped following the review of this law through the mechanism of the legislature's scrutiny of the existing laws guiding the said offence and other related laws.[57]

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[53] Ladan, M.T "An Overview of the Violence Against Persons (Prohibition) Act 2015" A presentation made at the virtual National Workshop for investigators and prosecutors organised by National Judicial Institute, Abuja 6TH September, 2021

[54] Cap C38, Lfn 2004

[55] https://www.unicef.org. Child Protection/UNICEF Nigeria. Accessed on the 30th of January, 2023.

[56] Section 214 (1) of the Criminal code act, criminalises carnal knowledge against the order of nature. See also the courts view in Mogaji v. Nigerian Army(2008) 34 NSCQR (pt 1) 108.

[57] See also section 45 VAPPA

Furthermore, the United Kingdom, from which Nigeria borrowed its rape laws, passed the Sexual Offence Act in 2003, indicating that the Nigerian Criminal Code needed to be revised. This situation necessitated a legislative review, which resulted in the Violence Against Persons Prohibition Act, which was signed into law in 2015. The stated goal of the Law is to eliminate violence in public and private life by providing maximum protection, effective remedies, and punishment for offenders. The provisions of the new rape law are not without challenge(s). The Act's definition of rape appears to be overly broad and superfluous; if the literal rule is followed, the result will be shocking: many non-sexual acts, such as inserting a pen into the mouth of a sleeping person, will be considered rape.

The Acts also make no special provisions for the capacity of minors. A month-old baby can be tried for rape under the Violence Against Persons (Prohibition) Act. There are no special provisions for the insane either. The Act continues to ignore older women's sexual abuse of minor boys. The gap in the new law itself (VAPPA, 2015) is a clear indication of a concise and desperate need for legislative review, as it is readily apparent that the law's intent, namely a broader definition and extension of persons capable of being raped, elimination of domestic violence, and adequate compensation for victims, has - to a greater extent - gone unrealized.

Although the successful implementation of legislation is dependent on external factors or structures, the legislature can contribute to implementation by including provisions in the body of legislation that establish institutions or frameworks to enable implementation. This will ultimately facilitate executive implementation as well as legislative monitoring and evaluation.

3.3 Prospects of Implementation

Although there is no explicit mention of post-legislative scrutiny in most Nigerian legislation, and indeed in some jurisdictions such as the United Kingdom, a careful reading of the law's wordings reveals an unmistakable recognition of the concept. The VAPPA clearly demonstrates the preceding, and the measure put in place to monitor the Act is unequivocal. Section 42[58] provides-

> The Body vested with the enforcement of this Act shall appoint a person as the Coordinator for the prevention of domestic violence who shall submit annual report to the Federal Government on the implementation of this Act, a copy of which shall be deposited with the National Bureau of statistics

A careful reading of the above cited section 42, clearly demonstrates that the intention of the National Assembly in the drafting of the cited section was to put in place measures for overseeing implementation of the Act, through an Annual Reporting system. This is an unmistakable case of Post legislative scrutiny of the law, unequivocally intended by the National Assembly. In close comparism with the United States Corona Virus Act (CARES ACT), the reporting system is a vital tool in the hands of parliament to monitor implementation of legislation. Oversight functions entail, among other things, examining the activities of a government agency or department in its entirety to determine whether it has met the objectives set for it. That is, an examination of the department's or agency's administration's effectiveness, efficiency, and adequacy. It also seeks to investigate the process within such an organization in order to determine whether due process of law has been followed.

[58] VAPPA 2015

As righted noted by Arowolo[59] oversight or surveillance of the executive and administration is based on the fact that the legislature enacts laws that allow for the establishment of administrative agencies, which are then assigned functions and responsibilities by such enabling legislation.

In similar fashion, section 44[60] provides- "The National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP) is mandated to administer the provisions of the Act and collaborate with relevant stakeholders including faith based Organization."

By the above mandate, the National Assembly through NAPTIP has been able to set up an institution that can contribute to implementation of the Act. In unequivocal terms, this underscores the earlier position in this research that the successful implementation of legislation is dependent on external factors or structures, the legislature can contribute to implementation by including provisions in the body of legislation that establish institutions or frameworks to enable implementation. The law stipulates that NAPTIP, being the body charged with the responsibility of administering the Act, shall collaborate with relevant stakeholders and faith based organisations to ensure the effective implementation of the law. This has actually been done over the years as NAPTIP has partnered with Civil Society Organisations and is currently a part of the Sexual Assault Referral Centre in the FCT where they take up cases of sexual and gender based violence and secure arrests and prosecution of perpetrators.[61]

Furthermore, Section 1 (4) of the VAPP Act provides that "A Register for convicted sexual offenders shall be maintained and accessible to the public". Section 43 Provides for "Dangerous Sexual Offenders". Dangerous Sexual Offenders are persons who have been convicted more than

[59] Arowolo, G.A Op cit at 3
[60] Ibid
[61] FIDA "The Effective Implementation of the Violence Against Persons (Prohibition) Act, 2015: How Far?" a report to the House committee on the implementation of VAPPA (unpublished)

once of a sexual offence or convicted of a sexual offence against a child. So far, 38 Persons have been convicted and updated in the Sexual Offenders Register in the FCT by NAPTIP.[62] This is one of the laudable provisions of the Act that has been complied with.

It is clear that the VAPP Act is innovative and a step in the right direction in the protection of women and other victims of violence. However, despite the robust provisions contained in the VAPP Act, progress remains slow in implementation. Violence against women and girls is being increasingly reported. News of rape, spousal abuse, child abuse and other forms of gender-based violence are circulated on social media platforms daily. Child labour, child trafficking and exploitation continue to persist. Civil Society Organisations that work to protect women and girls are overwhelmed with the level of impunity with which these acts are committed.

There are many reasons why the implementation of the VAPP Act is slow, but to this research, the major reason for the slow implementation of the Act is traceable to a lack of robust system of post legislative scrutiny of the Act. Currently, there appears to be more legislative activism in Nigeria, but it cannot be said to be replicating best practices, as evidenced by the challenges discussed subsequently in this work.Two critical issues must be addressed in the framework for effective legislative scrutiny (oversight).

First, specific oversight mechanisms must be established to effectively hold the executive accountable for their actions. Unlike suggestive provisions that appears to be the style. Second, when it comes to overseeing executive activities in parliament, a bipartisan approach is required. This would improve the legislature's ability to carry out its oversight responsibilities. The chosen oversight mechanism must seek to address the interplay of the governing party's inalienable right

[62] See the NAPTIP website https://naptip.gov.ng/

to govern, while also allowing members of opposition parties to ventilate, criticize, and present alternative positions and policies within the parameters of the set mechanisms. A truly participatory parliament, particularly for members of opposition parties in the House, is required in order to achieve a minimum commonly accepted standard for specific oversight mechanisms that would pass the public approval test.[63]

Following a review of the cited sections of the VAPPA, the recommendation of this research work is that the National Assembly, as Nigeria's law-making body, ensures that future legislative enactments include similar reporting provisions, so that every Act becomes self-monitoring. The long-term impact of which include, among other things, assisting Parliament in evaluating the acceptability of the Law and its workability.

3.4 Challenges of Implementation

Despite the critical role that Post-Legislative scrutiny play in strengthening democracy, a number of factors contribute to the legislature's inability to engage in consistent and resourceful oversight of the executive. From a constitutional perspective, the challenges undermining the legislature's ability to carry out post-legislative scrutiny are as analysed below.

The Legislative Oversight Committee is not a court, and its actions are subject to judicial scrutiny and decision. Sections 4(8) and (9)[64] imply that the investigation proposed in sections 88-89 cannot be conducted or perceived as a judicial function. It is a legislative function, and the investigation can have only two outcomes: First, new legislation is enacted, or existing legislation is repealed or

[63] "Parliamentary Oversight of Finance and the Budgetary Process" - The Report of a Commonwealth Parliamentary Association Workshop, Nairobi, Kenya, 10th - 14th December, 2001. see http:// www.cpahq.org/uploadedfiles/ information.
[64] 1999 Constitution of the Federal Republic of Nigeria.

amended. Second, exposing corruption, waste, and inefficiency in government finance and possibly referring it to the executive branch for a decision on whether to prosecute.[65]

Committees can only investigate issues over which the legislature can pass laws. The purpose of the investigation must be stated from the start and must fulfill all or any of the purposes stated in sections 88 or 128 of the CFRN 1999 as amended. Even if obvious corruption, waste, or inefficiency is discovered, the National Assembly cannot criminalize or otherwise sanction an action or conduct in the past. As a concerned body, it can only refer the matter to the Attorney General or Police for prosecution.[66]

While the aforementioned constraints are well-known for undermining the legislature's ability to carry out post-legislative scrutiny, additional challenges include the following:[67]

i. Inadequate Democratic Culture:

The presence of a large number of amateur legislators, as well as a shortage of staff aides due to a lack of continuity in legislative membership, accounts for the legislature's failure to discharge its functions. The vast majority of new democracies lack a democratic culture, dialogue, tolerance, and mutual respect. These are all relatively new ideas. This is a significant impediment to the development of parliamentary democracy, which is built on the virtues of vigorous debate and compromise on major issues of national interest.[68]

ii. Legislators' personal ambitions, interests, and agendas

[65] See Oversight Manual Op. cit at 18
[66] Ibid
[67] NILDS "House of Representatives National Assembly "Oversight Manual" first edition
[68] G.A Arowolo "Oversight Functions of the Legislature: An Instrument for Nation Building"

The leadership of the National Assembly or State Houses of Assembly frequently shows a proclivity for confrontation with the executive without considering the negative impact on national or public interest.[69]

iii. Corruption

In the past, the Nigerian National Assembly was plagued with allegations of corruption and the resulting compromise of their independence. Members, for example, were bribed during the threatened impeachment of former President Obasanjo in order to persuade them not to support the impeachment. The executive was also accused of giving money to legislators in order to compromise their integrity in carrying out their duties.[70]

iv. Unfavourable Legislative Environment

The large number of legislators in the House of Representatives or state Houses of Assembly tends to induce members to compromise their positions in order to be noticed or to get projects for their constituency noticed by executives.[71]

Conclusively, from the foregoing discussion some of the challenges of implementation of the VAPPA include- low level of awareness of the provisions of the Act (it might be assumed that a good knowledge of the protections in the Act will act as check to perpetrators of gender based violence.

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[69] Ibid

[70] Oyewo O "Promoting Positive change: Legislative oversight functions and the management of public expenditures" Sanusidaggash.org "Constitutionalism and the oversight functions of the legislature in Nigeria". being a paper presented at the African Network of Constitutional Law Conference on fostering constitutionalism in African in April 2007 at Nairobi, Kenya.

[71] Oyewo, O. op cit at no. 7

Another notable challenge as argued by many scholars is the jurisdiction of the Act; (Section 27, only the High Court of the FCT, Abuja has jurisdiction to hear any application under the Act. Section 47 limits the applicability of the Act to only the Federal Capital Territory, Abuja). It follows that the Act does not have general application in Nigeria

Finally, lack of the political will to put in place the machinery for the full implementation of the provision of the Act and lack of policy formulation, and subsequent transfer of existing policies into programmes and projects for GBV protection.

CHAPTER FOUR

COMPARATIVE ANALYSIS AND LESSONS

Introductory

In this chapter, a comparative analysis of PLS was carried out using the United States of America and the United Kingdom as case study. The goal of this comparative analysis is to understand the working and operations of PLS in the two jurisdictions.

4.1 Post-Legislative Scrutiny in the United States of America

Comparing experiences broadens understanding and presents feasible options for incorporation into other legislative processes. While some legislatures appear to have become well-versed in the concept and practice, others appear to be struggling with understanding and effectively applying the concept. This is exacerbated by the fact that PLS has mostly been used in an unstructured manner. Still, there is the issue of determining what the nascent concept means and entails. To gain a thorough understanding of the concept that serves as the foundation for this paper, it is necessary

to examine PLS as it is practiced in the world's two most advanced democracies, the United Kingdom (UK) and the United States (USA).

The United States Constitution, like the Nigeria Constitution, establishes the doctrine of separation of powers among the three branches of government (Executive, Congress, and Judiciary). In the United States, the Congress (legislature) establishes government policies or approves policies proposed by the Executive branch, while the Executive branch and the President carry out approved government policies. The Constitution grants Congress many powers in order to ensure that the people, through their representatives, control the affairs of the United States.

The foregoing shows that while there is no specifically defined framework that goes by the name or description of "Post Legislative Scrutiny," there are very powerful structures and mechanisms for monitoring, evaluating, and assessing the implementation of legislations. These structures and mechanisms are very similar to, and in some cases, more advanced than, standard PLS mechanisms.

In the United States of America, post-legislative scrutiny primarily takes the form of congressional oversight. The power of the United States Congress to monitor and, if necessary, change the actions of the Executive branch, which includes many federal agencies, is referred to as congressional oversight. The primary goals of congressional oversight are to prevent waste, fraud, and abuse while also protecting civil liberties and individual rights by ensuring that the executive branch follows the law and the Constitution.

Congress's oversight is one of the key elements of the American system of checks and balances of power among the three branches of government: executive, legislative, and judicial, as derived from its "implied" powers in the United States Constitution, public laws, and House and Senate

Rules.[72] Accordingly, Woodrow Wilson, former President of the United States of America (U.S.A), emphasized the importance of legislative oversight as a tool for monitoring government activities in 1885: "There are some scandals and discomforts, but there is an infinite benefit to having every administrative matter subjected to constant scrutiny by the assembly. The vigilante of administration is as important as legislation."[73]

The powers of Congress to oversee virtually all programs, activities, regulations, and policies implemented by presidential cabinet departments, independent executive agencies, regulatory boards and commissions, and the president of the United States are broad. If Congress finds evidence that an agency has misused or exceeded its powers, it can pass legislation overturning the action or limiting the agency's regulatory authority. The power of an agency can also be limited by Congress by reducing its funding in the annual federal budget process.

Though the powers stated above, it is apposite to note that the Constitution of the United States of America does not formally grant Congress the authority to oversee the actions of the executive branch, but rather, oversight is clearly implied in the many enumerated powers of Congress. The power of congressional oversight is reinforced by the "necessary and proper" clause of the Constitution[74], which grants Congress the power: "To make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."[75]

Article I, Section 8, Clause 18 Constitution of the United States (1787) also implies that Congress has the authority to investigate the executive branch's actions. Without knowing whether federal

[72] Longley, R "Congressional Oversight and the US Government" September 2022 https://www.thoughtco.com/congressional-oversight-4177013 accessed on the 2/2/2023
[73] Wilson, W. Op cit
[74] Article I, Section 8, Clause 18 Constitution of the United States (1787)
[75] Longley, R Op cit at 2

programs are being administered properly and within budgets, and whether executive branch officials are obeying the law and complying with the legislative intent of the laws, Congress would be unable to exercise its oversight powers. The United States Supreme Court has upheld Congress' investigative powers and has given life to this function in a plethora of cases. In the famous case of **McGrain v. Daugherty**[76], the court determined that Congress had constitutionally considered a subject "on which legislation could be had or would be materially aided by the information which the investigation was calculated to provide." PLS in the United States can be categorized under 3 heads to wit: the Constitution; by Legislation, and by Congressional Committee system.

4.1.1 Statutory Authority of Post-Legislative Scrutiny in the U.S.A

Post- Legislative Scrutiny as a broad concept remains unstructured in many jurisdictions including the United States of America. There appears to be a general deficiency in the application of the concept as evident in the lack of clear description of same in the Constitution of many jurisdictions including those considered in this work. The common way of identifying this mechanism for scrutiny is usually by a careful look at the wordings of the law. Most often than not, when parliament intends to input mechanism for impact assessment or evaluation of legislation, the function is drafted in the manner intended for it to be carried out. By looking at the function and description only, can PLS be deciphered. The United States conducts PLS primarily through means, such as appointing external bodies to conduct evaluation and report back to Congress, or by establishing monitoring frameworks in the body of legislation, and utilizing review and sunset clauses.

[76] 273 U.S. 135 (1927),

A recent example is the Coronavirus Aid, Relief, and Economic Security Act (**CARES Act**). The CARES Act is a $2.2 trillion economic stimulus bill passed by the 116th U.S. Congress and signed into law by President Donald Trump on March 27, 2020, in response to the economic fallout of the COVID-19 pandemic in the United States. To ensure that the Act's reliefs have an impact on the population and to ensure accountability, the US Congress established multiple oversight mechanisms for effective and efficient monitoring and evaluation of implementation and impacts of the Act. Three newly established oversight mechanisms are included in the package: the Special Inspector General for Pandemic Recovery (SIGPR), the Pandemic Response Accountability Committee (PRAC), and the Congressional Oversight Commission (COC).

According to the Act, the SIGPR is responsible for conducting, supervising, and coordinating audits and investigations into the "making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury."[77] The Inspector General Act of 1978 empowers the SIGPR to conduct investigations without prior approval, issue subpoenas, make arrests, and seek arrest and search warrants without prior approval from the Attorney General.[78] It can also refer matters to the Department of Justice (DOJ) or other agencies for prosecution, and it must submit quarterly reports to Congress, as well as report any instances where the information it seeks is being withheld unreasonably. According to the Act, the SIGPR will expire five (5) years after its enactment.[79]

PRAC is in charge of all funds appropriated under the Act, as well as any previous or future COVID-19-related measures. 30 It has broad authority to conduct investigations and audits to

[77] See Section 4018 CARES Act
[78] Latham & Watkins, 'Caring for the CARES Act: The New Oversight and Investigations Landscape for COVID-19 Relief Programs' Client Alert [2020] (2705) 2.
[79] Section 4018(h) CARES Act

prevent and detect fraud, waste, abuse, and mismanagement, including with regard to private entities. PRAC will operate for a little more than five (5) years[80], as provided by the Act. It is required to submit semi-annual reports to Congress and notify appropriate Congressional committees if information or assistance requested by it is withheld unreasonably.[81]

The COC, on the other hand, is in charge of overseeing government implementation of Title IV of the Act (Economic Stabilisation and Assistance to Severely Distressed Sectors of the United States Economy) and assessing the effectiveness of Congressional efforts to provide economic stability in the aftermath of the pandemic.[82] The Act gives it the authority to take testimony, hold hearings, and receive evidence. Every thirty days,[83] reports are to be forwarded to Congress. It has a five (5) year lifespan.

Another example of measures for Post legislative scrutiny through Legislation is the **Leahy Laws**, also known as the Leahy Amendments. They are US human rights laws that prohibit the US Departments of State and Defence from providing military assistance to foreign security forces that commit human rights violations with impunity.[84] It is named after the bill's primary sponsor, Senator Patrick Leahy.[85] The law is carried out through a process known as "Leahy vetting," in which US embassies, the Bureau of Democracy, Human Rights, and Labour, and the appropriate regional bureau of the US Department of State vet potential recipients of security assistance, and if they are found to have been credibly implicated in serious human rights violations, assistance is

[80] Ibid Section 15010(k)
[81] Ibid Section 15010(d)(2)(A)(B);(e)(3)(C)
[82] Latham & Watkins, 'Caring for the CARES Act…' 2
[83] Ibid Section 4020(b)(2)(B)-(c)
[84] S Harrison, 'The "Leahy Laws" and U.S. Assistance to Ukraine' (9 May 2022) <https://justsecurity.org> accessed 15 November 2022
[85] https://www.google.com/search?q=WHAT%20ABOUT%20THE%20LEAHY%20LAW&wdnwtto=1 accessed on the 15th/feb/2023

denied until the host nation government takes effective steps to bring the responsible persons within the unit to justice.

The term “Leahy law” refers to two statutory provisions. One statutory provision applies to the U.S. Department of State (State) and the other applies to the U.S. Department of Defense (DoD). State Leahy Law provides that “No assistance shall be furnished … to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.”[86]

Department of Defense Leahy Law provides –

> The Secretary of Defense shall, in consultation with the Secretary of State, ensure that prior to a decision to provide any training, equipment, or other assistance to a unit of a foreign security force full consideration is given to any credible information available to the Department of State relating to human rights violations by such unit.

In 2008, Congress made the State Leahy provision permanent by adding it to the Foreign Assistance Act of 1961, as amended. The new section is titled "Limitation on Assistance to Security Forces".[87] The implementation and evaluation of the Leahy law is made possible through a reporting system. The Human Rights Reporting Gateway collects reports of gross violations of human rights committed by non-United States security force unit(s) consisting of military, paramilitary, or law enforcement agencies. Conclusively therefore, can be achieved by parliament through a reporting system.

[86] See Foreign Assistance Act of 1961, Sect. 620M
[87] Ibid Sec. 620M

Having established that oversight power of Congress in the USA enjoys statutory flavour, several other important statutes provide broad mandates for the power of congressional oversight. The Government Performance and Results Act of 1993, for example, requires executive agencies to consult Congress when developing strategic plans and to report on their plans, goals, and results to the Government Accountability Office at least annually (GAO).

The Inspector General Act of 1978 established an independent watchdog Office of Inspector General (OIG) within each executive branch agency, tasked with investigating and reporting waste, fraud, and abuse to Congress. The Reports Consolidation Act of 2000 requires OIGs to identify and report on the most serious management and performance issues within the agencies they oversee. Indeed, the Treasury Department was established by one of the first laws passed by the first Congress in 1789, which required the secretary and treasurer to report directly to Congress on all public expenditures and accounts.

4.1.2 Post- Legislative Scrutiny through Congressional Committees

Another key feature of PLS in the USA, like in many democracies around the world, is the Congressional committee system. Congress in the United States of America also performs its oversight function through the congressional Committee system. House and Senate rules allow committees and subcommittees to conduct "special oversight" or "comprehensive policy oversight" on issues relating to legislation under their jurisdiction. The House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Governmental Affairs have oversight jurisdiction over virtually every aspect of the federal government at the highest levels.

In addition to these and other standing committees, Congress has the authority to create temporary "select" oversight committees to look into major problems or scandals within the executive branch. The combination of these mechanisms results in a dynamic interplay of law enforcement, internal oversight mechanisms, newly established mechanisms, and congressional oversight.

4.1.3 Summary

The mechanisms detailed above demonstrate a combination of PLS measures strategically deployed by the US. What is unmistakeable according to this research is that, there is a hybrid application of legislative oversight; review clauses; sunset clauses; the establishment of structures and institutions to carry out reviews, performance evaluations, and impact assessments; the submission of periodic reports by executive branch officials; and internal and external institutional reviews with reports to Congress. These mechanism and characteristics firmly establish the concept of PLS in legislative and even inter-branch practices and procedures in the United States, albeit in terms of structures and functions rather than labels.

4.2 Post-Legislative Scrutiny in the United Kingdom

In the UK, post-legislative scrutiny is undertaken by committees in the two Houses of Parliament. In the House of Commons, it depends on the initiative of individual committees. In the House of Lords, it is more systematic, with an ad hoc (now known as a special inquiry) committee appointed each year by the House to review a particular legislation(s). Ad hoc committees are formed to carry out specific functions. In the House of Commons, PLS is carried out by departmental select committees (sessional committees).

There are significant distinctions between these two types of committees. Sessional committees are formed for the duration of a parliamentary term, which can be up to five years, whereas ad hoc

committees cease to function once their reports are published.[88] Therefore, the amount of time available to committees varies. While Sessional committees must complete additional tasks, ad hoc committees are given only one task. This allows them to devote more time to tasks such as PLS. A significant portion of the Select Committee's work involves Post-Legislative Scrutiny work, even if Members do not explicitly refer to it as such.

Another significant difference is that the Lords do not currently receive post-legislative review memoranda from the government unless they specifically request them. Outside of the government's agreed memorandum process in the Commons, the Lords process allows members and clerks to propose ideas for PLS.

Different concepts associated with policy and legislation evaluation can be found in the Westminster parliament such as policy evaluation, post-implementation reviews, and Post-Legislative Scrutiny. The converging point however is that, there is freedom for all Committees, in both the House of Commons and the House of Lords, to conduct Post-Legislative Scrutiny work.

The Committees' regular Post-Legislative Scrutiny work is supplemented by a system initiated and owned by the government for a semi-systematic approach by publishing a memorandum on legislation implementation. This is a formal requirement for Acts of Parliament that are carried out three to five years after Royal Assent. Its primary audience is Parliament, specifically the House of Commons' departmental Select Committees. The competent Department publishes a Post-Legislative Scrutiny Memorandum, which is then submitted to the relevant House of Commons Select Committee, which decides whether further investigation is required.

[88] Caygill, T "Post-legislative scrutiny in the UK Parliament" Nottingham Trent University November 2021 at 12

On the need for PLS, the Law Commission argument, arises within the context of an increasing volume of legislation being enacted and the reduced parliamentary time available to scrutinize each.[89] In addition, committee scrutiny of legislation in the House of Commons has frequently been criticized as ineffective due to executive dominance. It is against this backdrop that the importance of PLS becomes apparent. Not only does it allow parliaments to assess whether legislation is meeting its key objectives, but it also allows parliament to deal with potential problems arising from legislation as a result of the above issues.

Ultimately, the Law Commission recommended that PLS in the UK Parliament be more systematic. However, the government rejected their proposal to establish a dedicated PLS committee. Instead, the government agreed in 2008 to implement a systematic process of post-legislative review by government departments (or ministries). Legislation would be subjected to a departmental review three to five years after it became law. Once such a review was completed, a memorandum containing its findings would be sent to the relevant House of Commons departmental select committee for additional scrutiny if the committee deemed it necessary. Since 2008, the House of Commons has used this formalized system. Although it was rarely used to begin with, the number of published memoranda by government departments has increased. Furthermore, ad hoc committees in the House of Lords have been conducting PLS since 2012, with the promise of at least one inquiry per session.

Due to the competition between core tasks, committees focus on breadth rather than depth in their investigations. The sessional committees were established in 1979 and serve an important oversight function. Their success in holding the executive accountable stems from the fact that

[89] Op cit

these committees lack authority over issues critical to the government's survival, such as the passage of legislation and the budget. They are treated differently than the chamber because they pose less of a threat to the passage of government bills and the survival of the government. This has allowed them to develop somewhat independently of political control. They set their own agendas and aim to produce cross-party reports. The emphasis of these committees was on increasing the influence of individual MPs (rather than parties) in decision making. Select committees enable backbenchers on both sides of the House to contribute to government oversight in a less partisan manner. As a result, committees have significantly improved the scrutiny processes in ways that the House of Commons chamber could not.

Recent reforms have increased the importance and influence of select committees, including the election of committee chairs and members, which has given them a welcome boost in legitimacy by removing the whips' and government's patronage powers.

4.2.1 Analyzing Post-Legislative Scrutiny in the House of Lords and Common

There are differences in how the two Houses select legislation to receive post-legislative scrutiny. As was noted earlier in this research, the creation of ad hoc committees in the House of Lords is determined by the House of Lords Liaison Committee (which oversees the committee system in the Lords); however, in the House of Commons, post-legislative scrutiny is one of the core tasks of departmental select committees and, as such, with their independence it is up to them to determine when to undertake such scrutiny.

In relation to the House of Commons, there are a number of reasons why a committee may decide to undertake post-legislative scrutiny and select the legislation that it does. The Culture, Media and Sport Committee’s inquiry into the Gambling Act 2005 was selected on the basis that they had

received “a large number of representations from the gambling industry”[90] The industry was concerned that legitimate commercial interests were being interfered with and that the Act was difficult to interpret because it was overly complex.[91] Philip Davies MP, a member of the committee, noted that “it is common for organizations to approach committees with their concerns and problems”.[92]

In terms of the Justice Committee’s inquiry into the Freedom of Information Act 2000, it was selected because the Committee had received the memorandum from the Ministry of Justice, and these government-produced memoranda do often act as a trigger for post-legislative scrutiny. So there is a benefit to the government’s system of departmental post-legislative review. The issue was also salient at that particular moment as “the government was proposing to make changes to the Act in terms of narrowing the scope and restricting the use of it”.[93] “The fact that the government wanted to make changes made it more urgent to get the report out as quickly as possible” as the committee wanted to share its assessment of the challenges before the government made a decision. The Chair also noted that there was “a reasonably high level of interest among the Members”, particularly as the committee had previously assessed whether departments were ready for freedom of information.[94]

The Liaison Committee in the House of Lords is more proactive when it comes to post-legislative scrutiny than its House of Commons equivalent, as it formally recommends which committees are

[90] House of Commons Culture, Media and Sport Committee, The Gambling Act 2005: a bet worth taking, July 2012, HC 421.
[91] Ibid
[92] Interview with Philip Davies MP, former member of the Culture, Media and Sport Committee https://www.elevenjournals.com/tijdschrift/ejlr/2019/2/EJLR_1387-2370_2019_021_002_002 Accessed on 15/2/2023
[93] ibid
[94] Ibid

set up and what topics are examined. As such, the ad hoc committees themselves are set up to undertake scrutiny of a particular Act and have no choice over the matter once it has been created. One of the key factors that the House of Lords Liaison Committee takes into account is whether the inquiry would "make the best use of the expertise of Members of the House of Lords". Indeed, one of the unique characteristics of the second chamber is that it contains many people with expertise in different sectors, so when undertaking post-legislative scrutiny it is important to tap into that expertise as well.

Another obvious criterion is whether the legislation or topic has been or is likely to be considered by a Commons Committee. This is an important consideration, because while resources are stretched, it is important to ensure that there is as little overlap as possible between the two Houses. Hence, if committees were assessing the same issue, then it would be a waste of resources but it would also raise the question of what else committees might be foregoing. It is also important here to take into account the primacy of the House of Commons as well as the general timidity of the House of Lords as a result of its unelected status.[95]

Timing is also an important factor, in the sense of whether it is the right time to review the legislation. The Clerk of the Lords Liaison Committee noted that "there is an optimal time for post-legislative scrutiny and that is five to ten years after it has come into force".[96] This is different from the time frame that the Cabinet Office guidelines suggest, with the publication of post-legislative memoranda (3-5 years).

Other criteria noted by Clerks are that "the Act should be a major one that has reformed the law in a fairly substantial way and to avoid anything too politically controversial". This is because the

[95] Norton, P "Reform of the House of Lords, Manchester", Manchester University Press, 2017.
[96] See the House of Lords Liaison Committee recommendation.

focus of post-legislative scrutiny is more on the Act itself rather than looking at the underlying politics of the policy but it also suggests timidity from the Lords. This does restrict the House of Lords in terms of potential post-legislative scrutiny inquiries. Another criterion the Clerk noted was to "avoid legislation that is about to be substantially amended" because there would not be much point in conducting a full review. However, that being said, surely there is an argument that if an Act were to be amended (even through another Act), a post-legislative inquiry might help to inform such amendments.

With the processes of selection being different between the two Houses, there is a clear difference in how they approach the criteria used to select legislation for post-legislative scrutiny, with the House of Lords paying attention to its role as a chamber that adds value and complements the work of the House of Commons. A difference in selection is important, because if the criteria were the same then they may well select similar legislation for review, which would be a waste of limited resources.

4.2.2 Summary

Legislative oversight of the executive has been a contentious issue since the late 14th century. To summarize, there are several differences in how legislation is chosen for scrutiny by both Houses of Parliament. There is a focus in the House of Commons on representations from outside organizations, the production of memoranda, and the salience of issues. The focus on the House of Lords is on its subservient role in the UK Parliament. For example, it focuses on whether House of Commons committees are likely to conduct post-legislative scrutiny. It is also more concerned with technical issues, such as whether the timing is correct. There is also consideration of whether it is a significant piece of legislation and whether they have the necessary expertise.

Since March 2008, the Cabinet Office has produced detailed guidance for departments on Post-Legislative Scrutiny. A system has also been put in place to ensure that all departments will produce Command Papers for Select Committees on the implementation of each Act passed in 2005, within three-to-five years of Royal Assent.[97]

4.3 Comparative Lessons

A comparison of the American, UK and Nigerian models reveals significant differences. While the United States and UK have institutionalized mechanisms that compete favorably with the PLS initiative and mechanisms, Nigeria primarily has the tool of legislative oversight, which is frequently not used properly or effectively. The United States employs a one-of-a-kind set of mechanisms to ensure that laws are implemented as intended and that impacts are profound and in line with objectives. The PLS in the United States of America is notable for the following reasons:

i. The United States follows the practice of utilizing institutions or organizations outside of Congress to handle monitoring and evaluation of legislation, such as the Government Accountability Office;
ii. the office of the Inspector General is a feature of virtually every Department in the executive branch, which office is responsible for internal oversight; and
iii. While all Congressional committees have the power of oversight, there is a standing committee specially created for that purpose.
iv. monitoring and evaluating frameworks or institutions are established within the body of legislation, with oversight powers over the entire legislation or specific parts of it; and

[97] Caygill, T. op cit

v. review and sunset clauses are used effectively.

PLS in the UK is notable for the following reasons:

i. To see whether legislation is working out in practice, as intended;
ii. to contribute to better regulation (secondary legislation);
iii. to improve the focus on implementation and delivery of policy aims;
iv. to identify and disseminate good practice so that lessons may be drawn from the successes and failures revealed by this scrutiny work.

Nigeria, on the other hand, relies heavily on the legislative oversight system. The system is generally flawed due to the over-concentration of legislative oversight on the financial accounts of Ministries, Departments, and Agencies in most cases. While such scrutiny ensures financial probity and accountability to some extent, continuous and, in some cases, absolute fixation leads to utter neglect of other areas or aspects that deserve intense scrutiny, such as the level of legislation implementation and recorded impacts. Apart from the oversight feature, Nigeria employs a small number of mechanisms that are similar to those used by PLS, namely:

(a) sunset clauses; (b) the inclusion of provisions establishing structures or institutions to ensure legislative implementation; and (c) executive officials submitting reports to the legislature.

There are also minor changes, such as reporting to the Chief Justice of Nigeria, making recommendations for the review of legislation and subsidiary legislation, publishing activity reports, conducting periodic reviews of program performance, reporting to the President, and utilizing an executive institution (such as the Budget Office) to monitor and evaluate implementation and achievement of targets. While these additions are commendable, they appear in only a few Acts, reducing the cumulative effects that broad application would normally have.

Nigeria has a lot to learn from both the USA and UK as far as PLS is concerned. Although one notable similarity across the three jurisdictions of this research is that the concept of Post Legislative scrutiny is still unstructured and unlabeled.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Summary of Findings

In chapter one (1), the researcher laid the foundation for the study by categorizing the research into key areas that are note-worthy. The chapter commenced with a general background to the study then the researcher made a statement of the problem from which four (4) research questions were formulated. The aim and objectives of the research were identified in this same chapter. The significance of the research, limitations/scope of the research as well as the research methodology employed in the research was also highlighted. The chapter was concluded by a chapter analysis of all the five (5) chapters of the research.

Chapter two (2) discussed the theoretical framework and background of the concept of PLS and further examined the positions of other scholars via a literature review. The chapter examined PLS as a stand-alone subject whilst also tracing its historical evolution

Chapter three (3) subsequently narrowed the discussion on PLS down to Nigeria, where its acceptability and viability was thoroughly discussed. This carved a new dimension to the research work because both constitutional and statutory provisions with undertone of PLS were examined. The research found that the closest thing to PLS under the legal regime in Nigeria is the Oversight function of the National Assembly as constitutionally provided.

Taking the study a nudge further in Chapter four (4), a comparative analysis of PLS in the United States of America and the United Kingdom was undertaken. This equips the reader to fully grasp the practice of the concept and its variances in parliaments of other jurisdictions. The finding in

the study reveals that many jurisdictions are still grappling with the concept and same remains unlabeled. While PLS in Nigeria is largely viewed viz-a-viz oversight function of parliament, the concept in the USA is also described as Congressional Oversight. Putting the concept in the two jurisdictions at the same level. The study also shows that while there is no specifically defined framework that goes by the name or description of "Post Legislative Scrutiny," in the USA, there are very powerful structures and mechanisms for monitoring, evaluating, and assessing the implementation of legislations. These structures and mechanisms are very similar to, and in some cases, more advanced than, standard PLS mechanisms. Within the Nigerian context, the pillars of Post-Legislative scrutiny are reflected in the oversight function of parliament as evidence in the I999 Constitution and various statutes. Therefore, the terminologies may mean one and the same thing within the Nigerian Context. In the UK, post-legislative scrutiny is undertaken by committees in the two Houses of Parliament, to wit: the House of Lords and House of Common. In the House of Commons, PLS depends on the initiative of individual committees. In the House of Lords, it is more systematic, with an ad hoc (now known as a special inquiry) committee appointed each year by the House to review a particular legislation(s). Chapter five (5) concluded the research by summarizing the work, made recommendations, highlighted the contributions of the study to knowledge as well as suggested areas for further research. The research made observations most of which stem from the previous chapters and made recommendations from the observations earlier made. It is the Researcher's opinion that should the observations and recommendations made in this research be put into consideration PLS attain its full potential in Nigeria and if properly employed would go a long way in bringing Nigeria's legislature to the forefront of legislative competence.

5.2 Conclusion

The research took an X-ray of Post- Legislative Scrutiny as an emerging area of public interest and parliamentary function while giving attention to the recent legislation, the Violence Against Persons (Prohibition) Act, 2015. The focus was to bring attention to the novel legislation (VAPPA) and to access its performance. More so, since PLS has been a concept in the legislative domain for quite some time now, albeit unstructured and unlabeled, the research provides insight as to whether more recently passed legislations have been saddled with the mechanism for evaluation and assessment.

This research also stresses the fact that, as society evolves and the dynamism of governance changes, the need to put mechanism in place to ensure that proper implementation of laws becomes a top priority of law makers also becomes sacrosanct. The best way to achieving this is through Post- Legislative scrutiny. The exercise of post- legislative scrutiny has become imperative in Nigeria in view of the potential contribution it makes to deepening democracy and promoting good governance. This ultimately brings a new dimension to legislative practice, which is that legislatures have the right and responsibility to oversee, monitor and evaluate the implementation of laws and their impacts. Apart from deepening democracy across jurisdictions, it creates new frontiers for accountability on the part of the legislature and executive, reduces ambiguity, makes legislation fit for purpose; improves the overall quality of legislation, and keeps legislatures relevant and in tune with the dynamics of society.

The findings of this study reveal that while there is no identifiable legislation that is labeled by the description of PLS in Nigeria and other counties under review in this study, there are certain mechanisms for monitoring and evaluating the implementation of laws and assessing their impacts.

Scholars have argued that the framework for effective legislative scrutiny takes two important issues into account. First, there must be the establishment of specific mechanisms for scrutiny to effectively hold the executive to account for their activities. Second, there is need for a bi-partisan approach in parliament when overseeing executive activities. This would assist the capacity of the legislature to attain best practice.

As a result, the following observations were made and are detailed below:

i. There is no provision for Post Legislative scrutiny under the 1999 Constitution of the Federal Republic, as amended. The nearest attempt being Oversight function of Parliament cannot be said to be a constitutional recognition of the concept in Nigeria as both concepts though similar, do not mean the same thing.

ii. Post-Legislative scrutiny in Nigeria is still unstructured, unlabeled and parliament is still grappling with the concept. This is evident because the laws being passed in recent years particularly in the last 8 years still do not reflect measures for PLS as it ought to. Although there is no specially defined framework that goes by the name or description of PLS in both the United States of America and Nigeria, there are certainly mechanisms for monitoring and evaluating the implementation of laws and assessing their impacts in both jurisdictions.

iii. Report systems as provided under section 42 of the VAPPA, leaves the channel for reporting vague. It provides that the appointed Coordinator for the prevention of domestic violence shall submit Annual report on the implementation of the Act to the Federal government, a copy of which to be deposited with the National Bureau of Statistics. The question that then comes to mind is, who is the federal government? Is it the Executive or the National Assembly? The idea behind PLS is that parliament through scrutiny may be

able to evaluate the laws that they pass to ascertain their performances. Firmly speaking, PLS remains the business within the purview of the legislature and should remain so. Section 42 referred to above suggest that the drafters of the VAPPA intended that the annual report be submitted to the Executive branch of government. This doesn't align with the principles of PLS.

iv. That many scholars have reduced PLS to be the business of parliament with regards to Primary Acts of parliament, with little or no consideration for delegated legislations. Again, this notion is wrong and doesn't promote the idea behind PLS completely. Strictly speaking, this notion seems to have been driven into the domain of the National Assembly. If clue is borrowed from the UK Parliament where the practice is distributed between the House of Lords and Common, both the Senate and the House of Representatives may take same approach splitting the duties of PLS for a seamless evaluation of laws. This is not to discountenance the House of Representative's Committee for delegated legislations which currently stands almost incognito.

This research work has been successful in adding to knowledge, particularly in two (2) arms. First, it has aided the practice of post-legislative scrutiny in Nigeria, and second, it has aided the law. In practice, this research demonstrates that the practice of PLS in the United Kingdom, in which the two Houses of Parliament (House of Lords and Commons) engage in PLS, is quite commendable. The two Houses select legislation for post-legislative scrutiny in different ways. The House of Lords Liaison Committee (which oversees the committee system in the Lords) determines the formation of ad hoc committees; however, in the House of Commons, post-legislative scrutiny is

one of the core tasks of departmental select committees, and as such, with their independence, it is up to them to determine when to undertake such scrutiny.

The above recommendation has a practical application in that the National Assembly should ensure that responsibility for PLS is shared by the Senate and House of Representatives. The Senate focuses on the Principal Act, whereas the House of Representatives focuses on Subsidiary legislation. Nigeria, as a developing country, has a weak legislative capacity to carry out PLS because the legislative role and culture are in their infancy. This research would contribute to the advancement of democracy and accountability. In order to produce workable laws in a democratic setting like Nigeria, effective post-legislative scrutiny is essential.

5.3 Recommendations

The power and capacity to carry out evaluation and assessment of the performance of laws is vested in the legislature as a fundamental principle of the separation of powers and on account of the legislature being an institution saddled with the responsibility of law making and the people's representative. As the people's representatives they are to ensure performance of duty in accordance with their constitutional mandate. Consequently, the following recommendations are hereby proposed:

i. There is a crucial need to amend the constitution of the Federal Republic of Nigeria so as to stipulate clearly the powers and duty to undertake Post Legislative Scrutiny in the same way that Oversight function is provided. Oversight function under section 88 of the 1999 Constitution is narrow and Post Legislative Scrutiny is targeted at exposing corruption and

recommending good laws. Therefore, PSL would strengthen oversight, which is why it should be included in the Constitution.

The justification is to strengthen the already narrowed oversight function of parliament. Therefore PLS should be conducted as a stand-alone activity which would enable the National Assembly to self-monitor, evaluate and reflect on the merits of its own democratic output. The combination of both PLS and oversight would make for a robust delivery of governance.

ii. The National Assembly must take steps to ensure a structured and a well-designed PSL system through Law Reform. All future laws should expressly carry provisions for PLS and same should be labeled accordingly. The right of citizens to participate in the functioning of government is a fundamental principle therefore to ensure proper structuring of PLS, Civil societies and the media should therefore be encouraged to become actively involved in law tracking and monitoring.

iii. Post – Legislative Scrutiny should be conducted between 3-5 years after the enactment of the legislation under scrutiny. The justification is that a too early review runs the risk that there will be insufficient evidence for a mature judgment on the impact of the legislation.

iv. To amend section 42 of the VAPPA to be more precise and definite by mandating the Coordinator to submit the Annual Report to the National Assembly. Roles should be clearly recognized and further enhanced through appropriate modalities and mechanisms.

v. Priority should also be given to subsidiary legislations in the consideration for PLS.

vi. Also, there must appear be a truly participatory parliament especially for members of opposition parties in the House aimed at having a minimum commonly accepted standard for specific PLS mechanisms which would meet global best practice.

The researcher believes that if the observations and recommendations made in this research are implemented, PLS will reach its full potential in Nigeria and, if properly implemented, will go a long way toward bringing Nigeria's legislature to the forefront of legislative competence.

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