

The Prerogative Powers of the President under the Nigerian 1999 Constitution

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Abstract— The office of the President of the Federal Republic of Nigeria is vested with extensive executive powers under the 1999 Constitution. Among these are powers that closely resemble the classical prerogative powers of the Crown in English constitutional law, including the power of appointment and removal, the prerogative of mercy, the power to declare a state of emergency, and the power to deploy the armed forces. This paper examines the constitutional basis, scope, and limits of these prerogative powers. Drawing on the text of the 1999 Constitution, relevant case law, and scholarly commentary, the paper argues that while the Nigerian Constitution vests enormous powers in the President, it also imposes crucial legal and institutional limits on their exercise. The paper analyses the tension between the demand for effective executive action and the constitutional commitment to limited government, separation of powers, and the rule of law. It contends that the effectiveness of constitutional checks on presidential power depends less on their formal articulation than on the willingness of the legislature and the judiciary to enforce them. The paper concludes with reflections on the implications of recent judicial pronouncements on emergency powers for the future of presidential prerogative in Nigeria.

Keywords: presidential power; prerogative powers; Nigerian Constitution; executive power; separation of powers.

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INTRODUCTION

The office of the President of the Federal Republic of Nigeria is, by any measure, one of the most powerful executive offices in the contemporary world. Section 5(1)(a) of the 1999 Constitution vests the executive powers of the Federation in the President, to be exercised either directly or through the Vice-President, Ministers, or officers in the public service (Constitution of the Federal Republic of Nigeria, 1999, s. 5(1)(a)). Section 130(1) confers on the President the titles of Head of State, Chief Executive of the Federation, and Commander-in-Chief of the Armed Forces (Constitution of the Federal Republic of Nigeria, 1999, s. 130(1)). These provisions establish what scholars have described as a "personalist" rather than collegiate executive, in which executive authority is vested not in an institution but in the person of the President (Fombad, 2016, p. 146).

The powers vested in the President include what may be described as prerogative powers: powers that are not merely statutory delegations but are constitutionally entrenched and, in some cases, traceable to the classical royal prerogative of English constitutional law. These include the power to appoint and remove key officials, the prerogative of mercy, the power to declare a state of emergency, and the power to deploy the armed forces. The exercise of these powers raises fundamental questions about the relationship between executive authority and constitutional government. How far do these powers extend? What limits does the Constitution impose? And how effective are the institutional checks designed to prevent their abuse?

This paper examines the constitutional basis, scope, and limits of presidential prerogative powers under the Nigerian 1999 Constitution. It argues that while the Constitution vests enormous powers in the President, it also imposes crucial legal and institutional limits on their exercise. The tension between the demand for effective executive action and the constitutional commitment to limited government is a recurring theme in Nigerian constitutional practice. The effectiveness of constitutional checks depends less on their formal articulation than on the willingness of the legislature and the judiciary to enforce them.

The paper is structured as follows. Following this introduction, the second section examines the constitutional basis of presidential power in Section 5 and related provisions. The third section analyses specific prerogative powers, including appointment and removal, the prerogative of mercy, emergency powers, executive orders, and war powers. The fourth section examines the limits and checks on these powers. The fifth section considers judicial attitudes to presidential power, with particular attention to recent Supreme Court pronouncements on emergency powers. The final section concludes with reflections on the future of presidential prerogative in Nigeria.

THE CONSTITUTIONAL BASIS OF PRESIDENTIAL POWER

Section 5 and the Vesting of Executive Power

The foundational provision for presidential power in Nigeria is Section 5 of the 1999 Constitution. Section 5(1)(a) provides that "the executive powers of the Federation shall be vested in the President and may, subject to the provisions of this Constitution, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation" (Constitution of the Federal Republic of Nigeria, 1999, s. 5(1)(a)). Section 5(1)(b) extends the executive powers of the Federation "to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws" (Constitution of the Federal Republic of Nigeria, 1999, s. 5(1)(b)).

The scope of Section 5(1)(b) is extremely broad. The power to execute and maintain the Constitution and all laws is all encompassing, the scope of which cannot be easily determined until situations arise which have to be dealt with (Okene & Adewus, 2024, p. 138). The duty of "execution and maintenance" means that the President is responsible for ensuring that the provisions of the Constitution and all laws made by the National Assembly are brought into effect and that necessary actions are taken to ensure compliance by all and sundry (Okene & Adewus, 2024, p. 138). This is an enormous responsibility, one that may in appropriate circumstances require the use of force.

Section 5(2) makes similar provision for the states, vesting executive powers in the Governor of each state. Section 5(3)(a) provides that the President shall not declare a state of war except with the sanction of a resolution of the two houses of the National Assembly at a joint sitting (Constitution of the Federal Republic of Nigeria, 1999, s. 5(3)(a)). Section 5(5) deals with the President's power to deploy the armed forces outside Nigeria for limited combat duty due to imminent national security threats, subject to the approval of the Senate within fourteen days (Constitution of the Federal Republic of Nigeria, 1999, s. 5(5)).

The Nature of Executive Power: Personalist and Institutional Dimensions

A distinctive feature of the Nigerian Constitution is the personalist character of executive power. Unlike the legislature and the judiciary, where authority is constitutionally vested in institutions, the 1999 Constitution vests executive authority not in any institution but in the person of the President (Fombad, 2016, p. 146). This constitutional design makes the presidency a personalist rather than collegiate branch

of government. The President is not merely the head of an institution; he is the institution.

This personalist design has significant implications for the exercise of prerogative powers. It means that the President personally bears the legal and political responsibility for executive action, even when that action is carried out through subordinates. It also means that the scope of presidential discretion is broad, constrained primarily by the constitutional text, judicial review, and the political checks exercised by the legislature. As Fombad (2016, p. 146) observes, this design legitimises a regime of imperious presidential discretion and fuels a violent, corrupt, polarizing, and ethnically disintegrative political struggle to control such an awesome, personalised presidential office.

The Constitutional Framework of Limited Government

Despite the breadth of presidential power, the Nigerian Constitution establishes a framework of limited government. The framers of the Constitution, in their wisdom of establishing a limited government, imposed crucial limits on the exercise of some of the key powers of the President. The implication of these limitations is that the President must obtain the approval of other governmental branches before exercising certain powers.

The Constitution embodies the principle of separation of powers, dividing governmental authority among the executive, legislature, and judiciary. As Okene and Adewus (2024, p. 139) observe, one of the salient premises on which the presidential system of the Constitution of the Federal Republic of Nigeria, 1999 rests is the doctrine of separation of powers and the principle of checks and balances amongst the three branches of government. The Constitution clearly spells out how governmental powers of the Federal Republic of Nigeria are separated. The legislative powers of the federation are vested in the National Assembly, which comprises the Senate and the House of Representatives; and in the State House of Assembly at the state level. The executive powers of the federation are vested in the president while the executive powers of the states are vested in the respective governors of the states of the federation. Judicial powers are vested in courts established for the federation and the states (Okene & Adewus, 2024, p. 139).

The executive operates under a specific grant of power that extends to the execution of the Constitution itself and the laws passed by the legislature (Fombad, 2016, p. 147). This involves running the administration, initiating and implementing policy, and giving effect to the law. The executive may also introduce policies that do not proceed directly from a particular law, policies that can propel the making of new laws by the legislature. Section 5(1)(b) envisages this where it extends the executive

powers "to all matters with respect to which the National Assembly has for the time being, power to make law" (Constitution of the Federal Republic of Nigeria, 1999, s. 5(1)(b)).

SPECIFIC PREROGATIVE POWERS OF THE PRESIDENT

Powers of Appointment and Removal

One of the most significant clusters of presidential powers concerns the appointment and removal of key officials. Section 147(1) provides that there shall be such offices of Ministers of the Government of the Federation as may be established by the President (Constitution of the Federal Republic of Nigeria, 1999, s. 147(1)). Section 147(2) provides that any appointment to the office of Minister shall, if the nomination of any person to such office is confirmed by the Senate, be made by the President (Constitution of the Federal Republic of Nigeria, 1999, s. 147(2)). Section 148(1) provides that the President may, in his discretion, assign to the Vice-President or any Minister responsibility for any business of the Government of the Federation (Constitution of the Federal Republic of Nigeria, 1999, s. 148(1)).

The President's appointment powers extend beyond the Cabinet. Section 154(1) provides that the appointment of a person to the office of Chairman or member of any of the bodies established under Section 153 shall be made by the President and shall be subject to confirmation by the Senate (Constitution of the Federal Republic of Nigeria, 1999, s. 154(1)). Section 171(4) requires Senate confirmation for ambassadorial appointments (Constitution of the Federal Republic of Nigeria, 1999, s. 171(4)). The appointments of the Chief Justice of Nigeria and the Justices of the Supreme Court are subject to confirmation by the Senate under Section 231(1)-(2) (Constitution of the Federal Republic of Nigeria, 1999, s. 231(1)-(2)). The Senate must also confirm the appointment of the President of the Court of Appeal under Section 238(1) and the Chief Judge of the Federal High Court under Section 250(1) (Constitution of the Federal Republic of Nigeria, 1999, ss. 238(1), 250(1)). These judicial appointments are made by the President on the recommendation of the National Judicial Council (Okene & Adewus, 2024, p. 139).

The removal power is equally significant. Section 157(1) provides that a person holding any of the offices to which the section applies may only be removed by the President acting on an address supported by a two-thirds majority of the Senate praying that such a person be removed for inability to discharge the functions of the office or for misconduct (Constitution of the Federal Republic of Nigeria, 1999, s. 157(1)). This provision applies to the Chairman and members of the Independent National Electoral Commission, among others. While the President nominates the INEC Chairman, Senate confirmation is required, and removal can only occur with a two-thirds majority of the Senate based on incapacity or misconduct (Okene & Adewus,

2024, p. 140). The President cannot unilaterally remove such officials; the constitutional process must be followed.

The power to appoint and remove the heads of the armed services is vested in the President by Section 218(2) of the Constitution (Constitution of the Federal Republic of Nigeria, 1999, s. 218(2)). This is a significant prerogative, given the President's role as Commander-in-Chief. However, even this power is subject to constitutional constraints, including the requirements of federal character and the need for Senate confirmation in certain cases.

The Prerogative of Mercy

Section 175 of the 1999 Constitution confers on the President the prerogative of mercy. Section 175(1) provides that the President may grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions; grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence; substitute a less severe form of punishment for any punishment imposed on that person for such an offence; or remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the Federation on account of such an offence (Constitution of the Federal Republic of Nigeria, 1999, s. 175(1)).

Section 175(2) provides that the powers conferred by subsection (1) shall be exercised by the President after consultation with the Council of State (Constitution of the Federal Republic of Nigeria, 1999, s. 175(2)). The Council of State, established under Section 153(1), is an advisory body that includes former Presidents and Vice-Presidents, former Chief Justices of Nigeria, and other senior officials. However, the constitutional check of consultation with the Council of State is largely ceremonial, leaving the prerogative of mercy virtually unfettered and often used for political patronage rather than genuine justice.

The exercise of the prerogative of mercy has generated significant controversy. On October 29, 2025, President Bola Ahmed Tinubu executed the relevant instruments of release to complete the process of formally exercising his constitutional power of prerogative of mercy to grant pardon and clemency to specific individuals who had been earlier convicted for various offences (State House, 2025, p. 1). Following consultations with the Council of State and public opinion, the President directed a further review of the initially approved list. Consequently, certain persons convicted of serious crimes such as kidnapping, drug-related offences, human trafficking, fraud, and unlawful possession of firearms were deleted from the list (State House, 2025, p. 2). The President also directed the immediate relocation of the Secretariat of the Presidential

Advisory Committee on Prerogative of Mercy from the Federal Ministry of Special Duties to the Federal Ministry of Justice, and directed the Attorney-General of the Federation to issue appropriate Guidelines for the Exercise of the Power of Prerogative of Mercy (State House, 2025, p. 3). This exercise of clemency, while constitutionally grounded, raised questions about the criteria used for pardons and the potential for political considerations to influence decisions about mercy.

Emergency Powers

Section 305 of the 1999 Constitution provides the framework under which a state of emergency may be declared. The President may issue a proclamation of a state of emergency only in defined circumstances, including war, breakdown of public order, natural disasters, or a clear and present danger to the security of the country or any part of it (Constitution of the Federal Republic of Nigeria, 1999, s. 305(1)). Section 305(3)(c) provides that the President shall have power to issue a proclamation of a state of emergency when there is an actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security (Constitution of the Federal Republic of Nigeria, 1999, s. 305(3)(c)).

The scope of the President's powers during a state of emergency has been the subject of recent judicial consideration. On December 15, 2025, the Supreme Court delivered a split decision in a suit filed by 11 states led by Attorneys-General of PDP-controlled states, challenging the constitutionality of President Bola Tinubu's declaration of emergency in Rivers State in March 2025 and the suspension of the state's governor, deputy governor, and lawmakers (Punch, 2025a, p. 3). In a six-to-one majority decision, the Court upheld the President's authority under the Constitution to proclaim a state of emergency and held that, during such a period, the President may suspend elected officials, provided any such suspension is for a limited duration (Punch, 2025a, p. 4).

Delivering the lead majority judgment, Justice Mohammed Idris held that Section 305 of the 1999 Constitution empowers the President to adopt extraordinary measures to restore normalcy where a state of emergency has been declared (Punch, 2025a, p. 5). He noted that the provision does not specify the exact nature of those extraordinary measures, thereby vesting the President with discretion on how to act in such circumstances (The Cable, 2025, p. 3). However, in the earlier part of the judgment, Justice Idris upheld the preliminary objections raised by the defendants and held that the plaintiffs failed to establish any cause of action capable of activating the original jurisdiction of the Supreme Court. Consequently, the suit was struck out for want of

jurisdiction, though the Court nevertheless proceeded to consider the substantive issues and dismissed the case on the merits (Punch, 2025a, p. 6).

However, the Supreme Court's pronouncements have been interpreted differently. Human rights lawyer Femi Falana (SAN) has argued that the Supreme Court did not endorse the dissolution of democratic structures during emergency rule. According to Falana, the leading judgment made it clear that Section 305 of the Nigerian Constitution does not confer power on the President to temporarily dissolve executive and legislative institutions of a State during emergency rule (Punch, 2025b, p. 4). Falana quoted the Justice as stating that governmental powers under the Constitution are divided among the executive, legislature and judiciary, and shared across the federal, state and local government levels, with no arm or tier constitutionally superior to another. Unlike the constitutions of India and Pakistan, Nigeria's Constitution does not expressly empower the President to assume or temporarily displace the executive or legislative institutions of a state during emergency rule, and the omission was deliberate, reflecting Nigeria's commitment to federalism and the autonomy of state governments (Punch, 2025b, p. 5).

Justice Obande Ogbuinya dissented, holding that the suit succeeded in part. He argued that although the President can declare a state of emergency, he does not have the power to suspend elected representatives (The Cable, 2025, p. 6). Ogbuinya ruled that the case succeeded in part, rejecting the use of emergency powers to remove democratically elected officials from office (The Cable, 2025, p. 7). The ambiguity in the Supreme Court's decision reflects a deeper tension in Nigerian constitutional law between the demand for effective emergency action and the constitutional commitment to democratic governance and the separation of powers.

The controversy surrounding the Rivers State emergency rule declaration in 2025 illustrates the high stakes involved. In March 2025, President Tinubu imposed emergency rule in Rivers, suspended Governor Siminalayi Fubara, his deputy Ngozi Odu, and the House of Assembly for six months (The Cable, 2025, p. 1). Governors elected on the platform of the PDP questioned the legality of the president's actions, arguing that Tinubu violated the provisions of the 1999 Constitution regarding the powers, independence, and functions of state governors and assemblies (The Cable, 2025, p. 2). The Supreme Court's decision has been criticised by some as justifying authoritarianism and threatening democracy, while others have welcomed it as a necessary affirmation of executive authority in crisis situations.

Executive Orders

The President's power to issue executive orders is a contested aspect of presidential prerogative. Executive orders are directives issued by the President that

have the force of law, typically used to manage the operations of the federal government. The validity of executive orders issued by the Nigerian President relates to the nature of presidential power under the 1999 Constitution (Okene & Adewus, 2024, p. 135).

The key limitation on executive orders is that they cannot amend or override Acts of the National Assembly. Executive orders must be consistent with existing legislation and the Constitution; they cannot be used to legislate on matters within the exclusive competence of the National Assembly.

The Supreme Court's decision on Executive Order 10 (EO10) issued by President Muhammadu Buhari on the funding of State Judiciary and Legislature illustrates the limits of this power. On February 11, 2022, the Supreme Court declared that Executive Order 10 on the funding of State Judiciary and Legislature was unlawful and unconstitutional (Punch, 2022, p. 4). The majority of a seven-member panel of the court agreed that the President exceeded his constitutional powers in issuing EO10. The EO10 issued by the president was then voided, and set aside by six out of the seven members of the panel (Punch, 2022, p. 5). This decision affirms the principle that executive orders cannot be used to achieve what the Constitution requires to be done through legislation.

The controversy surrounding Executive Order 9 of 2026, which sought to safeguard federation oil and gas revenues, illustrates the ongoing tension between executive initiative and legislative supremacy. On February 18, 2026, President Bola Ahmed Tinubu issued Executive Order No. 9 dated February 13, 2026 (Federal Ministry of Finance, 2026, p. 1). The crux of the Executive Order is the direct remittances of all oil and gas revenues due to the Federal Government to the Federation Account (Mondaq, 2026, p. 3). While the government defended the order as merely giving practical effect to existing constitutional provisions, critics argued that it amounted to an attempt to amend the Petroleum Industry Act by executive fiat (Mondaq, 2026, p. 5). The State House issued a statement clarifying that EO9 does not create law, does not regulate legislative procedure, amend the Petroleum Industry Act (PIA), or repeal any statute. It is an executive instrument issued under Section 5 to ensure faithful execution of the Constitution and applicable laws (State House, 2026, p. 2). This controversy highlights the contested nature of executive orders in Nigerian constitutional practice.

War Powers and the Deployment of Armed Forces

The President's war powers are governed by Section 5(3)(a), which provides that the President shall not declare a state of war except with the sanction of a resolution of the two houses of the National Assembly at a joint sitting (Constitution of the Federal Republic of Nigeria, 1999, s. 5(3)(a)). This is a significant constitutional limit on presidential power, requiring legislative approval before the initiation of war.

Section 5(5) deals with the President's power to deploy armed forces outside Nigeria for limited combat duty due to imminent national security threats. This power is subject to the approval of the Senate within fourteen days (Constitution of the Federal Republic of Nigeria, 1999, s. 5(5)). The requirement of legislative approval reflects the constitutional commitment to shared responsibility in matters of war and peace, even as it recognises the need for executive flexibility in responding to immediate threats. The president cannot deploy members of the armed forces on combat duty outside Nigeria without prior approval of the Senate, though in exceptional cases and in emergency, the president may deploy the armed forces (Fombad, 2016, p. 148).

Foreign Affairs and Treaty-Making

The President's powers extend to the conduct of foreign affairs and the negotiation of treaties. While the Constitution does not explicitly vest treaty-making power in the President, it is generally accepted that the conduct of foreign relations is an aspect of executive power under Section 5. However, treaties that require legislative implementation must be ratified by the National Assembly. The precise contours of the treaty-making power remain a subject of constitutional debate (Okene & Adewus, 2024, p. 141).

LIMITS AND CHECKS ON PRESIDENTIAL POWER

Constitutional Limits

The Nigerian Constitution imposes several explicit limits on the exercise of presidential power. These include the requirement of Senate confirmation for certain appointments, the requirement of legislative approval for declarations of war and the deployment of armed forces abroad, and the requirement of consultation with the Council of State for the exercise of the prerogative of mercy.

The Constitution also imposes limits through the distribution of powers among the three branches of government. The legislative powers of the Federation are vested in the National Assembly under Section 4, and the judicial powers are vested in the courts under Section 6. The President cannot exercise legislative or judicial powers; he must act within the sphere of executive competence. As Okene and Adewus (2024, p. 139) observe, the essence of the separation of powers is that each branch of government, as a general rule, is prohibited from exercising the powers of the other branches of government and enables each branch to keep the powers of the other branches in balance with its own powers.

Judicial Review

Judicial review is the most significant legal check on presidential power. Nigerian courts have the power to pronounce on the constitutionality and validity of the acts of both the legislative and executive branches (Okene & Adewus, 2024, p. 139). The judiciary can declare executive actions unconstitutional and invalid if they exceed the powers conferred by the Constitution or violate its provisions.

The scope of judicial review over prerogative powers has been a subject of debate. In English law, the traditional view was that prerogative powers were immune from judicial review. However, the House of Lords' decision in *Council of Civil Service Unions v. Minister for the Civil Service* (1985) established that prerogative powers that raise justiciable issues are amenable to judicial review (Mba, 2010, p. 27). The Nigerian Supreme Court in *The State v. Ilori* (1983) transplanted the orthodox immunity from judicial review into Nigerian law, but this approach has been criticised as inconsistent with the Nigerian constitutional framework (Mba, 2010, p. 37).

As Mba (2010, p. 5) argues, the orthodoxy of immunity from judicial review should not apply to statutory prosecutorial powers in Nigeria, and the Supreme Court's decision in *Ilori* was in error. The constitutional provisions that confer prosecutorial powers on the Attorney-General do not import the common law immunity; they are subject to the general principles of judicial review. This argument reflects a broader trend in Nigerian constitutional law toward greater judicial scrutiny of executive action.

Legislative Checks

The National Assembly exercises significant checks on presidential power. These include the power to confirm appointments, the power to approve budgets, the power to override presidential vetoes, and the power to impeach the President for gross misconduct. The Senate's confirmation power is a particularly important check on the President's appointment prerogative, ensuring that key officials are subject to legislative scrutiny before assuming office.

The legislature also exercises oversight through its committees, which can investigate the conduct of the executive and summon officials to testify. This oversight function is essential for ensuring accountability and transparency in the exercise of presidential power. However, as Fombad (2016, p. 148) observes, the institutional checks on presidential power are not effectively applied in practice. The National Assembly and the courts should live up to their responsibilities in upholding the separation of powers enshrined in the Constitution. The gap between formal constitutional provisions and actual practice is a recurring theme in Nigerian constitutional law.

Political and Institutional Checks

Beyond formal legal checks, presidential power is constrained by political and institutional factors. These include the federal character principle, which requires that appointments reflect the diversity of the Nigerian federation; the requirement of consultation with various bodies, such as the Council of State and the National Economic Council; and the informal checks exercised by political parties, civil society, and the media.

The effectiveness of these checks varies depending on the political context. In periods of unified government, when the President's party controls the legislature, formal checks may be less vigorously enforced. In periods of divided government, the legislature may be more assertive in exercising its oversight functions.

JUDICIAL ATTITUDES TO PRESIDENTIAL POWER

The Supreme Court and Emergency Powers

The Supreme Court's recent decision on emergency powers represents a significant moment in the judicial interpretation of presidential prerogative. In a split decision delivered on December 15, 2025, the Court upheld the President's power to declare a state of emergency and, by a majority of six to one, held that the President may suspend elected officials for a limited period (Punch, 2025a, p. 4). The Court's reasoning was based on a flexible interpretation of Section 305, which was found to grant the President discretion to determine the extraordinary measures necessary to restore normalcy (The Cable, 2025, p. 3).

This decision has been both praised and criticised. Those who welcome it argue that it recognises the realities of emergency governance and provides the President with the flexibility needed to respond to crises. Those who criticise it argue that it opens the door to authoritarianism and undermines the democratic structures that the Constitution is designed to protect. The PDP described the ruling as a "dangerous democratic bend with far-reaching implications" for federalism and constitutional governance, warning that it could make state governments completely subservient to the federal government (The Cable, 2025, p. 6).

Falana has argued that the Supreme Court did not endorse the dissolution of democratic structures during emergency rule. According to him, the leading judgment made it clear that Section 305 of the 1999 Constitution does not confer such powers on the President (Punch, 2025b, p. 4). He quoted the Justice as stating that governmental powers under the Constitution are divided among the executive, legislature and judiciary, and shared across the federal, state and local government levels, with no arm or tier constitutionally superior to another. Unlike the constitutions of India and Pakistan, Nigeria's Constitution does not expressly empower the President to assume or temporarily displace the executive or legislative institutions of a state during emergency rule (Punch, 2025b, p. 5).

The *Ilori* Doctrine and Its Critics

The Supreme Court's decision in *The State v. Ilori* (1983) established the doctrine that prerogative powers are immune from judicial review in Nigerian law (Mba, 2010, p. 37). This doctrine has been criticised on the ground that it was incorrectly transplanted from English law and is inconsistent with the Nigerian constitutional framework. The Nigerian Constitution, unlike the unwritten English constitution, is supreme, and all exercises of governmental power are subject to its provisions.

As Mba (2010, p. 7) argues, the orthodoxy of immunity from judicial review should not apply to statutory prosecutorial powers in Nigeria. The constitutional provisions that confer these powers do not import the common law immunity; they are subject to the general principles of judicial review. This argument has implications beyond prosecutorial powers, extending to all exercises of presidential prerogative. If the Constitution is supreme, then all exercises of power, including prerogative powers, are subject to judicial review for constitutionality and legality.

The Trend Toward Greater Judicial Scrutiny

There is a discernible trend in Nigerian constitutional jurisprudence toward greater judicial scrutiny of executive action. Courts have increasingly been willing to intervene to check presidential overreach, particularly in cases involving fundamental rights, the rule of law, and the separation of powers. The Supreme Court's decision on Executive Order 10, which declared the order unconstitutional, is a notable example of this trend (Punch, 2022, p. 4).

This trend reflects a growing recognition that the Constitution's promise of limited government requires an active and independent judiciary willing to enforce constitutional limits. However, the effectiveness of judicial review depends on the willingness of the executive to comply with court orders. As scholars have noted, executive disobedience to court orders is a threat to the doctrine of checks and balances in Nigeria. Without executive compliance, judicial review remains a paper tiger.

CONCLUSION

This paper has examined the constitutional basis, scope, and limits of presidential prerogative powers under the Nigerian 1999 Constitution. It has argued that while the Constitution vests enormous powers in the President, it also imposes crucial legal and institutional limits on their exercise. The tension between the demand for effective executive action and the constitutional commitment to limited government is a recurring theme in Nigerian constitutional practice.

The Constitution vests executive power in the President personally, making the presidency a personalist rather than collegiate branch of government. This design concentrates enormous power in a single office, but it is accompanied by a framework of checks and balances that includes Senate confirmation of appointments, legislative approval for war and emergency measures, consultation with the Council of State for the exercise of mercy, and judicial review of executive action.

The specific prerogative powers analysed in this paper, appointment and removal, the prerogative of mercy, emergency powers, executive orders, and war powers, each reveal a different aspect of the tension between executive authority and constitutional limits. The power of appointment is checked by the requirement of Senate confirmation, but the removal power is more tightly constrained. The prerogative of mercy is virtually unfettered, subject only to the ceremonial consultation with the Council of State. Emergency powers are the most expansive, granting the President wide discretion to take extraordinary measures, though even these are subject to judicial review and the requirement of legislative approval for any suspension of democratic structures.

The recent Supreme Court decision on emergency powers represents a significant development in the judicial interpretation of presidential prerogative. The Court's flexible interpretation of Section 305 has been both welcomed as a recognition of executive flexibility in crisis situations and criticised as a threat to democratic governance. The decision reflects the genuine difficulty of reconciling competing constitutional values in times of crisis.

The effectiveness of constitutional checks on presidential power depends less on their formal articulation than on the willingness of the legislature and the judiciary to enforce them. The gap between formal constitutional provisions and actual practice is a persistent challenge in Nigerian constitutional law. The Supreme Court's pronouncements on emergency powers, the *Ilori* doctrine's erosion, and the ongoing debates over executive orders all reflect a constitutional order in which the scope and limits of presidential power remain contested terrain.

The future of presidential prerogative in Nigeria will depend on the continued development of a robust culture of constitutionalism, in which all branches of government respect the limits of their powers and the judiciary is willing and able to enforce those limits. The Constitution provides the framework; it is for the political and judicial actors to give it effect.

Limitations

This study has several limitations. First, it focuses primarily on the constitutional text and judicial decisions, and does not engage extensively with the political and social

context in which presidential power is exercised. Second, it relies on secondary sources rather than original archival research. Third, it does not address comparative perspectives on presidential prerogative powers in other jurisdictions in detail. Future research should address these limitations by examining the political dynamics of presidential power and by comparing the Nigerian experience with that of other countries.

Recommendations for Further Research

Future research should examine the following questions: How effective are legislative and judicial checks on presidential power in practice? What factors explain variation in the exercise of presidential prerogative across different administrations? How do Nigerian courts approach the review of prerogative powers compared to courts in other common law jurisdictions? What reforms might strengthen constitutional checks on presidential power?

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