

## Judiciary and the Enthronements of Democratic Institution in Nigeria (1999-2017)

Usman Ogboh<sup>[a]</sup>; Michael Daniel<sup>[b],\*</sup>; Boniface Jibrin<sup>[b]</sup>

<sup>[a]</sup>Political Science, Kogi State University, Anyigba, Dekina, Kogi state, Nigeria.

<sup>[b]</sup>International Relation and Strategic Studies, Kogi State University, Anyigba, Dekina, Kogi State, Nigeria.

\*Corresponding author.

Received 15 February 2019; accepted 9 April 2019  
Published online 26 May 2019

### Abstract

An issue related to enthronement of democratic institution in Nigeria, has attracted judicial concern. Democratic institution has allegedly characterised by lots of irregularities; this ranges from rigging to non-compliance to the rules as contained in the Electoral Act. This has established a negative practice on democratic stability. This study specifically set out to evaluate the Judiciary and the enthronement of democratic institution in Nigeria between 1999 and 2017, with emphasis on the performance of Election Petitions Tribunals in democratic institution. The crux of this study reviewed the controversy that surrounding 1999-2017 democratic institution in Nigeria. The study adopted principle of separation of powers as instrument to managing abuse of power, to increasing public confidence and enthronement of democratic institution in Nigeria. The study adopted descriptive explanation that anchored on secondary sources of data. The paper find that injustice in the electoral process, is tool for a misplace principles of democracy, seemingly compromised electoral body and weak judicial system with dishonest, corrupt, and bias officials. This study recommended that victim of electoral fraud should be criminalise, independent judicial system should be encouraged and foster respect for rule of law.

**Key words:** Democracy; Judiciary; Election and Electoral Justice

Usman, O. S., Michael, D., & Jibrin, B. (2019). Judiciary and the Enthronements of Democratic Institution in Nigeria (1999-

2017). *Canadian Social Science*, 15(5), 52-62. Available from: <http://www.cscanada.net/index.php/css/article/view/10956>  
DOI: <http://dx.doi.org/10.3968/10956>

### INTRODUCTION

Sustainable democratic institution in a liberal society depends on a bold, honest and independent judiciary but Nigeria is on the contrary. In Nigeria, dispute often arise from electoral process; whether pre-election or post-election resulting mostly from the attempt by politicians to sideline the constitutions or Electoral Act, which is the foundation through which free and fair electoral process is guarantee. For example, in a liberal democratic society judiciary is an independent branch of government structured to protect human right and civil liberties by ensuring right to fair hearing and trial by competent and impartial tribunal; where all citizens are entitled to equal access to the courts regardless of their position in society (Noel, 2005, p.13). It is, perhaps, on these strengths of judicial role, cases of justice were greeted with general acceptance by the people. It is humbly submitted that Nigerians cannot afford to ignore the role of judiciary in resolving dispute.

In Nigeria democratic institution, it is established that the judicial system is structured to protect and increase the hope of common man (right of the citizens). This set aside a specialized court to resolving the issue of incivility within the democratic institution. This body shall enjoy functional independence and therefore, qualified to make final decisions on challenges brought against democratic process. This court whose decisions after adjudication in the apex court, cannot be challenged and hereby refers as precedent for further consultation. (International IDEA, 2010, p.16). This position acknowledged the belief that judiciary provides an enabling environment for citizens to participating in democratic process. This also

provides that legal systems shall take decision regarding both criminal and electoral matters; in accordance with constitutional interpretation for resolving the questions of justice.

Howbeit, the Judiciary represents a third institution whose significance interpret the laws made by the parliament. The judiciary represents the courts, and the police, who apply the existing law in individual case and to manage justice in the name of the State. In other words, it is a mechanism that adjudicates and resolves disagreement through the effort of the Courts (Edeko, 2002:183). In this sense, it is a legal framework for protecting rights and giving people who believe their rights have been violated the ability to file a challenge, have their cases heard and receive a ruling.

It is a key instrument of the rule of law and the ultimate guarantee of conformity with the democratic principle of holding free, fair and genuine elections with the intentions to avoid irregularities in democratic process, therefore, enthroned democratic institution in Nigeria (International IDEA, 2010, p.5). This position reflects that the judiciary forestalled the aggrieved parties seeking for self help. Whereas, judiciary is willing to enhance, purify, and sanities the democratic process by deciding without fear or favour on any petition brought before it. Today, judiciary made enthronement of democratic institution easier, since inception of 1999 to 2017; thus, Nigeria nascent democracy had held its periodic election at regular interval of four years.

In a democracy based on the rule of law, the role of judiciary as an independent branch of government is to protect human right and civil liberties by ensuring the right to a fair trial by a competent and impartial tribunal, where all citizens are entitle to equal access to the courts regardless of their position in society. By implication judiciary had involve in a number of fundamental decisions which gave it a great leap and created a rational for the third arm of government to be assessed and put in apt outlook. Therefore, judicial role in resolving dispute is essential responsibility this institution. Thus, Okoela (2007) in Ujo (2000, p.3) comments,

The judiciary being so important as one part of the tripod in the governance of Nigeria and the last hope of every common man which consistently taking giant strides in the restoration of confidence in the courts and consolidation of democratic process especially since the beginning of the Fourth Republic.

On the contrary, judicial institution is confronted with enormous challenges such as corruption, political interference in the judicial process and indeed the absence of judicial independence. Possibly, Rawls argues that each member of society has same right to basic freedom as everyone in society. He also argues that in case of inequalities, these can only be permitted if this is to the benefit of everyone, where social position of authority is open to all.

Against this background the paper examine the role of judiciary in enthronement of democratic institution in Nigeria, this clearly look at Nigeria democratic process, election and the performance of judiciary in electoral process; while also discuss the key major challenging of Nigeria judicial system.

---

## RESEARCH QUESTIONS

---

[1] What are the judicial in the enthronement of democratic institution? [2] What are the major challenges of judicial system in Nigeria democratic institution? [3] Do the judicial system, have the capacity to build public confidence and enthroned democratic institution in Nigeria?

### Objective of the Study

The general objective of this study is to examine the implication of corrupt judicial system and lack of judicial independence in the enthronement of democratic institution. Howbeit, the following are the specific objective of the study:

[1] To define the concept of judiciary and its role in the enthronement of democratic institution [2] To examine the challenges of judicial system in Nigeria democratic institution [3] To evaluate whether or not judicial system have the ingredients to build public confidence and enthroned democratic institution in Nigeria.

### Research Methodology

The paper adopted Historical and content analysis that anchored on secondary date. This method benefited from the collection, analysis, and evaluation of information on relevant literature gathered from Textbooks, Journals, Newspapers and Magazines, Conference and Seminars paper, Reports and Court Judgment.

---

## CONCEPTUAL CLARIFICATION AND THEORETICAL FRAMEWORK

---

This is substantive part of this study; it is divided into two parts. The first part deals with the review of relevant literature on democracy, election judiciary and electoral justice in Nigeria democratic institution, it also examine the challenges of judiciary in democratic institution with emphasis on 1999-2017 electoral process in Nigeria. The second part deals with the theoretical framework adopted for the study.

### The concept of Democracy, Election and Judicial Institution

Politician and social scientists have offered a number of definitions and explanations on the concept of democracy, election and judiciary. Democracy is the government of the majority rules which embodies fundamental human right such as freedom of expression,

right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to freedom of thought, political participation (Attahiru & Ibeanu, 2007). In fact, democracy means government of the majority rule. Egbewole (2003 and 2007) structured that democracy is the form of government that guarantees fundamental human rights such as freedom of choice, freedom of association, freedom from discrimination, and unlimited respect for the rule of Law. It is imperative to note that lack of freedom of choice is a factor impeding the enthronement of democratic institution in Nigeria despite the endless effort of judiciary towards sustaining justice in the electoral process. We consented in this content that justice in electoral process is not without the political liberty of the people which determine the issue of free, fair, and credible election. It is, perhaps, about the government will not to interfering with individuals in exercising a range of different rights.

Similarly, Nwoye (2001) maintains that democracy signifies political system dominated by representatives either directly or indirectly chosen by the people. Nzongola (2002, p.14) succinctly explains democracy as a continuous process of promoting equal access to fundamental right. According to him, democracy cannot be negotiated. To Baker (1995) democracy is political systems that operate on the basis of popular election or through the representative to control the affairs of the State.

The various definitions of democracy structured above indicate that nobody has monopoly of defining democracy. As such, we suggested that democratic institutions must therefore keep a watchful eye on all elements of the government and probe allegations of wronging to obtain justice in electoral process.

Election is a cardinal principle of democracy and it is a model in which citizens freely express themselves on how to choose someone for an official position. Moulin in Isa and Zakari, (2008, p.112), write election is about the free will of the people in electing their leaders and orderly change of government as the hall marks of any democratic process. In the current edition of the International Encyclopaedia of Social Science vol.5, defined election as one procedure of aggregating preferences of a particular kind. The two feature of this definition are procedure and preferences. By procedure, the concept is used to describe a special way of doing something. Preference connotes choice between alternatives. Perhaps, this conception obviously argued: Election can, also be structured as a procedure that allows members of an organisation or community to choose representative who will hold position of authority within it. Election can be practice and run through forms of procedure accepted as binding within the political society (1993- 98 Microsoft Corporation). To realize perfect and credible election, a more realistic approach to the issue of free fair election and adequate legal framework been the criteria for just

electoral process should be reconsiders. For example, Dundas in (Abdulahi, 2000) identified the following criteria for fair electoral process:

To have adequate legal framework in order to ensure that the organization of free and fair multi-party elections is achieved in a given situation .To have full potential to contribute to the holding of free and fair multi-party elections, its need reflect in the provisions of the constitution and those of electoral laws. The courts should be given the fullest possible role in assisting the aggrieved persons who complain about failures in the procedures of major election processes (Abdulahi, 2000, p.3).

Nigeria has had its own fair share of Election and Electioneering since its independence on 1st October 1960 including the 1964 federal elections, the Western Region parliamentary elections of 1965 which was characterized by a number of irregularities.

The malpractices that characterized the 1965 elections have been identified as one of the causes of the military intervention in the Nigerian politics on 15th January 1966. This military incursion was in place until 1st October 1979 when Alh. Shehu Shagari was elected as president in the second republic. This was short lived till 1983 when another military regime was effectively in place till 1999. An attempt at Election was made in 1991 and the Presidential Election was held on 12th June 1993. The final result was not declared, thus leading to another political violence in Nigeria without recourse to the Court. When the fourth republic came on board on 29th May 1999 Olusegun Obasanjo contested for presidential poll, won and was sworn in. The fourth republic has been stable for more than sixteen years with the effort of judicial intervention. Before 1999, Nigeria democratic institution has never managed a peaceful handover from one democratically elected President at the end of its constitutional term to the next. Unarguable, Omotola (2010n pp.30-31) submit that elections represent the core component problems of democratic transitions in Nigeria from the colonial era; Nigeria has not been able to organised credible elections acceptable to all democratic players particularly the opposition parties. But for first time in the post-independence experience, Nigeria was able to hold five successive elections at regular intervals 1999, 2003, 2007, 2011 and 2015. Despite the elections were accompanied with more of irregularities than having a credible electoral process, yet we acknowledge that elections for first time in the post-independence experience holds at regular interval. Although, Egbewole (2010, p.4) argued that this stability was derives from the role of the judiciary in resolving some of the disputes arising from the Electoral process.

The interesting thing about this discussion is the attempt to highlight the realities of judiciary in a democratic society, which plays a decisive role in ensuring the stability of the political system, adherence to the legal framework in sustaining electoral justice, and enthroned democratic institution and governance in Nigeria.

Judiciary is an institution with legal frameworks that explain the systemic mechanisms designed to resolve disputes and thus protect both civil and electoral rights of its citizens. It possesses the competence to impose restriction on what these political leaders may do outside the law. Tadora (2008, p.131) argued that this legal system is often highly politicized and remained tightly controlled by ruling clique, which manipulate the courts in an effort to keep the population in line. In Michael submission, he failed to acknowledge that in another category of cases, the judiciary plays a critical role in defining and even widening the scope of civil right and liberty for the people when these rights are ought to be violated by other branches of government. For instance, in the country like Egypt, the courts have played this quasi- independent role where the central executive have used heavy hand methods of repression against political opponents, and in various countries in transition of democracy, where the formal definition of the executives authority and the people's rights are still being worked out (Nathan, 1997). This argument looks plausible because it concerned how to justifying people's rights and liberties towards having realistic chances to gain something from abiding democratic rules and procedures.

In a different tone, Appodaria (1975, p.567) also observed that "there is no better test of the excellence of governance than the efficiency of its judicial system, for nothing more nearly touches the welfares and security of the citizen than his knowledge that he cannot rely on the certain prompt and important administration of Justice". For effective justice administration, he asserted that the Judges fulfill onerous functions in the community, where his primary duty is to interpret law, and apply the existing law to individual cases to secure justice in the face of structural injustice. To justify this every group in the country should have realistic chance to exercise its political will from the abiding democratic rules and procedures if embittered in the process exercising its fundamental rights.

The primary duty of the judiciary as pointed out by Appadorai, is to interpret law, to apply the existing law to individual cases, and by so doing, to hold the scales even on both between one private citizen and another, and between private citizens and members of the government. On this important role of the judiciary, he argued that it is obviously essential to choose men of honesty, impartiality, independence and legal knowledge to fill the places of judges. This to extent will guarantee public confidence therefore, increases the chances of enthroning democratic institution in Nigeria.

Consequently, the judicial arm of government in no distance time will increases its efforts in protecting human right and civil liberties by ensuring the right to fair hearing and trial by a competent courts. Where all citizens are entitled to equal access to the courts and

equal treatment by the investigative bodies, prosecutorial authority and the courts themselves, regardless of their position in society (Noel ,2005, p.13). Perhaps, it is on these strengths of judiciary; cases of civil justice will be greeted with general acceptance of the public. It is humbly submitted that Nigerians cannot afford to ignore the role of judiciary in the entire justice system.

Thus, judicial role in the enthronement of democratic institution is about exercising those mechanisms designed to resolve electoral dispute that arises from the breach of the provisions of the Electoral laws. This resolution mechanism includes institutional mechanism and alternative mechanisms of dispute resolution (International IDEA, 2010, p.6). The institutional mechanism involves the process of filing and challenging the entire process of elections. And if upheld, it will lead to decisions that modify the irregularities in the electoral processes. As the courts imposes penalties on the perpetrator. In the content of alternative mechanism, is about when parties play in line with rules of the games, to guarantee free, fair and genuine election. Then, the judiciary is less likely to participate in democratic institution in Nigeria.

In simple terms, it is accepted that judicial systems often have specialised courts in electoral matters, to resolve electoral crisis. These bodies enjoy functional independence and are certified to make final decisions on challenges brought against election results. This specialised court in electoral matters whose decisions can be challenged before the Court of Appeal and Supreme Court (Ibid, p.16). This position acknowledged the belief that judiciary provides an enabling environment for democratic development and judicial institution service.

To enthroned democratic institution in Nigeria, the electoral body (INEC) must hold genuinely democratic elections that represent consent of the people and translate the consent into government authority. In such democratic election, it establishes competition, periodic elections without discrimination and definitive, free and fair elections. If elections, as suggested above implies the process of getting free and fair electoral process and without which is considered inconclusive. Indeed, it is instructive to note that this process is no doubt daunting and challenging. As Chukwu (2007, p.75) argued that all modern democracies hold Elections but not all Elections are democratic. The reason is simple, not all modern democracies that hold Elections adhere to the rules.

The early arguments for democracy derive from principles concerning the protection of interests and rights. That is, to prevent exploitation of general public by their government (Bentham, 1823; Mill, 1820). Most recently, democracy has been justified in more positive terms, with suggestions that it allows people to express their differences and input these into the decision-making process (Dahl, 1987; Dahl, 1998). This structure is about voters not always getting what they want, but they can

feel that governments must take account of their wishes.

The concept of democracy needs to be clearly understood before we can appreciate the relevance of judiciary in the enthronement of democratic institution in Nigeria. Scholars such as Todaro, (2008), Ntalaja (2000), and Nwoye (2001) have variously explained democracy. Its basic tenets are everywhere the same. Basically, it connotes the government of the majority rule and the protection of the minority right.

Howbeit, Mbachu (2009, p.4) structured democracy as institution where majority rule, political equality, the rule of law, due process, popular sovereignty, respect of human rights, and popular participation are exercise. For us, the above scholars expositions is about putting in place good democratic institution and governance that efficiently control the resources for the people, who is accountably, visibly and adhere to the rule of law established by the constitution. Furthermore, the exposition failed to acknowledge punishment for those who infringe the principles of democracy identified above. As such, for any infringement against these principles of democracy should be criminalised so that the offender of such principle could be persecuted.

Certainly, if the basic definition of democracy is accepted as government of the people by the people and for the people, then elections would appear to be the only mechanism by which democratic government can be realized in the modern society (Uche, 2007, p.45). In modern societies, the main features of Democracy are free, fair elections, Judicial Independence, free press, majority rule and protection of minority right (Onika, 2007). Then democracy is about free choice; it is about opening up the political space so that the people of any given entity can choose their own leaders without hindrance. Where this freedom of choice is respected, the people begin to also expect the dividends of democratic institution as it is said in popular parlance (Egwemi, 2010, p.3). The recent dilemma of choice has given rise to a new set of debate and literature where choice has been one of the factors that have tainted the decade of democracy in Nigeria (Egwemi, 2007 and 2009). On the surface, this argument looks plausible. Howbeit, it may be argued that any attempt to divorce freedom of choice considerations from democracy may be self-defeatist. This is because many individuals and institutions have involved in the struggle to expand political space and freedom of choice while on the other hand, to constrict the political space.

Moreover, to enthroned democratic institution in Nigeria, judiciary should intensify its constitutional responsibilities as contained in Section 286 (1) of the 1999 Nigerian constitution which provides that Judiciary shall take decision regarding both criminal and electoral matters based on the question of interpretation of the constitution to bring about justice in the electoral process. On this note, it is important to inferring that Politics in any ideal

societies which uphold electoral justice is not possible without the effort of organised judicial institutions. Better still, Appadorai (1968, p.567) opined that there is no better test of justice than the efficiency of its judicial system.

The Judiciary represents a third significant institution in Nigeria. Judiciary is regarded as organ of government which is responsible for interpreting the laws made by the legislature. It also expounds the laws of the land; and where there is no adequate rule laid down by the legislature, it exercises its inbuilt jurisdiction and formulates rules. The judiciary consists of the courts and judges who apply the existing law in individual case and to manage justice in the State. Similarly it is a mechanism that adjudicates and resolves disagreement through the effort of the Courts and Judges as well as Police Force (Edeko, 2002, p.183). The unspoken assumptions of judiciary is about its political importance demonstrated in the resolution of controversy aroused from 1999,2003, 2007, 2011 and 2015 general elections in Nigeria and also evidently shown when the U.S Supreme Court decided the outcome of the 2000 presidential election when a dispute arose over whether George. W. Bush or Al Gore should be awarded Florida Electoral College votes (Todaro, 2008, p.130).

Nevertheless, Edeko submission on the meaning and functions of judiciary, failed to acknowledge disobedience of courts order, which effect the enthronement of democratic institution in Nigeria. This belief was derived from disobedience and character seeking self help, which undermining public trust in Nigeria justice sectors. The issue of obedient has been abused over a period of time; where citizens are less likely to abide by the law if others particularly the leaders are disobeying the court order, avoiding punishment and detection. As such the aggrieved parties will resort to taking the law into their hands to resolve their differences instead of submitting to a judicial system. Therefore, it is imperative that court should have appropriate measures to nip the noncompliance of court order in the bud. Therefore, the judiciary should increase emphasizes on resolving electoral dispute that forestalls people taking laws into their hands.

Electoral justice is about ensuring action, procedure and decision related to the electoral process, which complies with the legal framework in protecting or restoring electoral rights and giving people who believe their electoral rights have been violated the ability to file a challenge, have their cases heard and receive a ruling. It is a key instrument of the rule of law and the ultimate guarantee of conformity with the democratic principle of holding free, fair and genuine elections with the aims to avoid and recognize irregularities in elections and to provide the means and mechanisms to correct those irregularities and punish the perpetrators (International IDEA, 2010, p.5). This position indicated that election is not a tea party from the dispositions of the courts, it

is clear that the electoral justice embolden the aggrieved parties of ensuring action of judiciary willingness to enhance, cleanse, and sanitise the electoral process by deciding without fear or favour on any petition brought before it.

Consequently, the judicial arm of government in no distance time will increase its efforts in protecting human right and civil liberties by ensuring the right to fair hearing and trial by a competent courts. Where all citizens are entitled to equal access to the courts and equal treatment by the investigative bodies, prosecutorial authority and the courts themselves, regardless of their position in society (Noel, 2005, p.13). Perhaps, it is on these strengths civil justice was greeted with general acceptance of the public. It is humbly submitted that Nigerians cannot afford to ignore the role of judiciary in the entire justice system.

---

## THE ROLE OF JUDICIARY IN NIGERIA DEMOCRATIC INSTITUTION

---

The role of judiciary in democratic system is about the legal frameworks that explain the systemic mechanisms designed to resolve electoral disputes and thus protect electoral rights of the citizens. Most resolution of disputes in electoral process is therefore, entrusted to judicial bodies using the Court institution (International IDEA, 2010, p.12). In this, by implication we consent that judiciary possess the competence to impose restriction on what these political leaders may do outside the law.

International IDEA (2010, pp.13-16) submitted that the role of judiciary in democratic process is to ensure credibility and the integrity of the electoral process. Similarly, it allows unlawful electoral action to be annulled or amended through challenges and sanctions imposed on the perpetrators or person responsible for an irregularity. Also the judicial role in democratic process is to accept challenges and complaints lodged by any electoral participant who believes his or her electoral right have being violated. Consequently, it protects the legality of electoral process using punitive mechanism that punish either the person who committed the violation or the person who was responsible for ensuring that the violation do occur. But Tadora (2008, p.131) argued that this legal system is often highly politicized and remained tightly controlled by ruling clique, which manipulate the courts in an effort to keep the population in line. Whereas, the judiciary is meant to play a critical role in defining and even widening the scope of civil right and liberty for the people when these rights are ought to be violated by other branches of government. For instance, in the country like Egypt, the courts have played this quasi- independent role where the central executive has used heavy hand methods of repression against political opponents (Nathan, 1997). This argument looks reasonable and pleasing because it concerned how to justifying people's rights and liberties

towards having realistic chances to gain something from abiding democratic rules and procedures.

In a different tone, Appodaria (1975, p.567) also observed that "there is no better test of the excellence of governance than the efficiency of its judicial system, for nothing more nearly touches the welfares and security of the citizen than his knowledge that he cannot rely on the certain prompt and important administration of Justice". For effective justice administration, he asserted that the Judges fulfill onerous functions in the community, where his primary duty is to interpret law, and apply the existing law to individual cases to secure justice in the face of structural injustice. To justify this every group in the country should have realistic chance to exercise its political will from the abiding democratic rules and procedures if embittered in the process exercising its fundamental rights. But today corruption has take over the character of our judicial system; this in away detent the prospect of public confidence in the judicial system of Nigeria.

Although, the primary duty of the judiciary as pointed out by Appadorai, is to interpret law, to apply the existing law to individual cases, and by so doing, to hold the scales even on both between one private citizen and another, and between private citizens and members of the government. On this important role of the judiciary, he argued that it is obviously essential to choose men of honesty, impartiality, independence and legal knowledge to fill the places of judges.

In liberal societies, which exercise the content of rule of law, the judiciary is seen as independent and equal branch of government that protect human right and civil liberties by ensuring the right to a fair trial by a competent and impartial Tribunal. Where all citizens are entitled to equal access to the courts and equal treatment by the investigative bodies, prosecutorial authority and the courts themselves, regardless of their position in society (Noel, 2005, p.13). It is, perhaps, base on these strengths of judicial role in democratic process that cases of justice was greeted with general acceptance by the people. Therefore, Nigerians cannot afford to ignore the role of judiciary in a democratic institution. Thus, Judiciary is responsible for the prevention of abuse of power, and it is also the duty of the Judiciary to carry out proceeding impartially.

It means that the role of judicial system is to intervene when the constitution is or being or about to be violated, because it is vital mechanism for securing justice. Indeed, we agreed on this submission that the duty of judiciary is a vital mechanism responsible for preventing abuse of power and carry out proceeding impartially towards securing justice. Because justice can be secure even in the face of corrupt judicial systems. For instance, even if the most powerful and wealthy citizens claimed to hide under their affluence to escape prosecution and conviction,

nevertheless, the rule of law which connotes equality before the law will treat all equally. It means all segments of the society cannot exclude the possibility of treason or denied benefit to fair judicial services, because judges are the ultimate decision makers in the justice system and meant to reduce structural injustice and promote the rule of laws.

We advise that judges should disengage collecting bribe to make decision on matters before the laws, thereby keeping the rules and procedures in enforcing precedent. As such, Noel (2005, p.14) warned that this perception of corruption in the judicial system has undermining the public's trust in the justice system. As citizens are less likely to abide by the law if they believe others particularly governmental leaders, are disobeying the law and avoiding detection and punishment. As such, the aggrieved individuals will resort to "taking the law into their hands" to resolve dispute rather than submit to a judicial system that perceived to be dishonest and biased.

The judiciary has been involved in a number of fundamental decisions which gave it a great leap and created a rationale for the third arm of government to be assessed and put in proper perspective. The courts have not shied away from pronouncing its role in the determination of the occupier of elective offices. This belief was driven from the spot of Judiciary over 1999, 2003, 2007, 2011 and 2015 Elections, where it resolved the electoral dispute which could lead to an endless violence by the aggrieved parties, as such it avoid military intervention in politics, by ensuring obedience to the Rule of Law that forestall Nigerians taking laws into their hands. In this light, the judiciary has foreclose possibility of people taking law into their hands through resolving the electoral dispute as it is in the cases of Anambra, Kebbi, Kogi and Rivers State, which presage the return to sanity in the judicial system. Despite all these efforts put forward by judicial institution to sanitise democracy in Nigeria; justice was made difficult for the less privilege in the class of the electorate whose sometime feel their electoral right has been denied. These sets of the aggrieved party under Nigeria law cannot file a petition before the court except the candidate for an election. Thus, this part of the constitution needs to revisit to accommodate both the right of the electorate and party candidate over the electoral fraud.

---

## **CHALLENGES OF JUDICIAL PERFORMANCE IN NIGERIA DEMOCRATIC INSTITUTION**

---

The enthronement of democratic institution depends on strong independent and incorruptible judiciary. In Nigeria democratic process, dispute often arise from electoral process, whether pre-election or post-election period, as the politician attempt to side-line their parties' constitution

or the Electoral Act. This provides reason for judiciary to participate in election related matters as means of managing country's reality of democratic existence (Shehu, 2012). In Africa and particularly in Nigeria where electoral process has become do or die affairs. The judiciary has a duty of ensuring constitutionalism in the process. On the contrary, judicial institution is confronted with enormous challenges such as corruption, political interference in the judicial process and indeed the absence of judicial independence.

Similarly, the Judiciary in Nigeria today is generally be-devilled by delay in the dispensation of Justice. The judiciary is the last hope of the common man and thus if matters are not determined timorously, it may lead to chaos, anarchy and breakdown of law and order in the system. After the 2007 General Elections, some aggrieved contestants did not know their fate until two years after the Elections, such State are Ondo, Edo, Ekiti, Sokoto, and Kogi States. While the petitions in Kogi and Sokoto States were concluded the three remaining States were in the stage of conclusion for a long time (Popoola, 2007).

The speed of dispute resolution is more important as delays have negative impact on the credibility and legitimacy of the electoral process (Authman, 2004). Zeisel (1959, p.23) submit that quick adjudication on electoral dispute is important, as delay in the dispensation of justice deprives citizens of a basic public service; it also causes deterioration of evidence and makes it less likely that justice be done when the case is finally tried, and bringing the entire courts system a loss of public confidence, respect and pride. Reacting to Authman and Zeisel submission, we agreed that promptness in the dispensation of electoral matters is important, because the outcome of disputes is not unduly delayed.

But, Jennings (1972, p.111) and Francis (1959, p.1) both argued that quick adjudication on electoral matters limits lead to other errors. Because the resultant pressure to dispose of cases more and more quickly lead to still other wrongs, but when less and less attention is given to each case and greater reliance is place on the disposition of case that guarantee justice. In fact, in search for a panacea to remedy, delays become very necessary to enable the Courts to gather facts before ruling. The court delay cases to enable them understand the problem of inflated and deflated ideas of the value of case cause by the laissez-fair attitude of lawyers from both sides who are comfortable with the system. This position is not agreement with this study because justice delay is justice denied this pose greater threat to our judicial service. Thus, less and less attention given to each case, lead to greater confidence placed on the disposition of the case through plea bargaining and the likelihood of injustice will increase. So, there is need to have a special Court with special feature of an Electoral Tribunal that distinguishes it from other adjudicative bodies. This will help to determine not

only the rights of individuals and their claims to office but also decide who takes over the reign of authority as their decisions affect the society and its expectations. For example, a situation where judgement cannot be delivered until almost the tail ends of the tenure of an incumbent whose election to the office is being contested is nothing, but encouraging injustice and self-help (Shehu, 2012, p.85). Governor, Oyinlola almost completes the four years tenure before his election was annulled. This means that he, for almost four years, occupied the governor office illegal. And the real winner of the election was for that periods denied access to the office he legitimately won. Shehu (2012) argued that election which is the means of investing legitimacy in the activities of the office of the elected public officials, but where after a period of three years an election is annulled without any legal consequence on the seize the power, it amounts to state of illegality, unconstitutional and official robbery of mandate. But, it is obvious that it is better to exercise caution in handling cases for justice delayed is justice denied. Thus, it is wrong to allow person whatever reason to illegally occupy an elective office is undemocratic, and by implication is capable of degenerating into violent crisis. There is need to focused on speed hearing of Petitions before Tribunals by identifying the issues for determination and narrowing the number of witnesses called at the hearing of the Petition. This is why the Supreme Court in the case of *Unongo V Aper Aku*, (1983) declared the Electoral Act 1982 unconstitutional, for not establishing the provision of a time-frame within which Election Petitions must be concluded. As such Uwais, CJN retired, call for amendment in these words:

An Election Tribunal shall deliver its judgment in writing within 120 days (4 months) from the date of the election. An appeal from a decision of election tribunal shall be heard and disposed of within 60 days (2 months) from the date of giving judgment by the Election Tribunal and in all appeals; the courts shall adopt the practice of first pronouncing their verdict and then reserving the reasons for the verdict to a later date (Uwais, 2006).

We acknowledged that it is pleasing, reasonable and realistic to provide for a time limit in determining election petitions. Because speedy resolution of electoral disputes is necessary for peaceful resolution of disputes arising from elections in order to win the confidence of the generality of the people.

Another major challenge facing the judiciary in democratic consolidation is corruption. According to Spector (2005, p.14) judiciary involves in the use of improper delivery of legal protection for citizens. In a democracy based on the rule of law, the judicial arm of government is to protect human right and civil liberty by ensuring the right to a fair trial by competent and impartial Tribunal. All citizens are entitled to equal access to the Court. Yet, Justice was made difficult for the poor to obtain. We had here the empirical evidence of corruption in the judicial system.

For instance, they were two of the three Judges of court of appeal who preside over 2007 Election Petition Tribunal and were alleged of receiving bribe to give judgement in favour of the respondent (Gani, 2007). The perception is that judgements are purchasable and judges have no integrity. They all have their prizes in cash, and in fact there are some lawyers whose special function is to be the middleman between litigant, who want to buy justice and judges (Sagay, 2013, p.2). This position unarguable because corruption is a global trends, though it has become a household name in Nigeria, almost becoming part of the cultural system and norm within the institutions of governance including, the judiciary. For instance members of the Akwa-Ibom State Governorship Election Tribunal in 2003 were dismissed from bench on the allegation of bribery; Chairman of the Tribunal Justice M.M.Ademu, Justice D.T. Ahura, justice A.M. Elelegwa and the Chief Magistrate O.J.Isede. They were found guilty of receiving large sum of money as bribe from Governor of Akwa-Ibom State (Babatunde, 2010). Also Gani (2007) talks about downright dishonesty of some of the Judges who have been involved in 2007 Election Petition Tribunal gave Nigeria much worry for receiving bribe to give judgement to either the respondent or the plaintive which cost Nigerians to lose confidence in the reformed judicial system. Chief Fawehinimi was referring to sorry case of Justice Okwukchukwu Opene and Justice David Adebayin Adeniji. After the judgement at the Court of Appeal, the National Judiciary Council received petition that two of the three Justices took bribe. Following proof of those allegations, the National Judiciary Council (2007) recommended to the president of the Federal Republic of Nigeria as follows that those two Justices of the Court of Appeal be sacked as they have offended against section 292 of the Constitution of the Federal Republic of Nigeria (Gani, 2007).

Better still, there are other factors that affect the judicial efficiency. Such includes: funding process, mode of appointment, few number of Election Tribunal, and lack of clarified electoral offences. It is our hope that if these issues are frontally attacked the problem will become a thing of the past. Perhaps, to address this judicial independence should be guarantee, the number of Election Tribunals should be increase so that justice may be dispensed more quickly before term of office are underway, and electoral offences should be clarified to ensure a standardised approach.

Undue political influence over Court is another challenge of judiciary in Nigeria. Judges are human with their likes and dislike for any particular things or institutions, be they political parties. Judges have their sympathy and preferences because of their human nature. So, we suggested there should be a separation of powers within the arms of government. As such, it is important to note that political influence over the Courts precedent affect the Courts verdict, as Montesquieu (1748) opined:



...to be one legislation and judges is to mingle together justice and the prerogative of mercy, adherence to the law and arbitrary departure from it. If justice is not well administered, the litigant politics are not free enough; they are crushed by the authority of the sovereign. Again, there is no liberty, if the judicial power cannot be separated from the legislature and the executive arms. Where judicial power is joined with the legislature the life and liberty of the subject would be exposing to arbitrary control; for the judge would then be also the legislator; where the judiciary is joined with violence and oppression.

We acknowledged absolute separation of does not permit applying influence or exert control over the judge on any matter before him. The concept, though may appear fluid bearing in mind, the nature of man and the society, dictates that judges must be free to decide the case before them base on the totality of the evidence adduced before them without cognizance for any extraneous facts or influence; be it from within or outside the Courts. Because, it is more dangerous if influence of any kind would emanate from within the judiciary itself.

Election Petitions in Nigeria, is also facing undue legalism on the part of the parties and consequently leading to delay in its conclusion. Until recently, special appeals are filed whenever the substantive cases are delayed. Akinola (2006) posited that until a wise counsel and judges should keep their eyes on doing substantial Justice. Because, this is the only alternative to which the choice of the Electorates will be respected by the Court.

So far identified, made enthronement of democratic institution in Nigeria, less likely if it is well manage. It is on this note the study adopted application of doctrine of separation of powers in controlling abuse of power that thwart the judiciary in enthroning democratic institution in Nigeria.

### Theoretical Framework

The choice of this theoretical framework helps us to establish the limit, in terms of range of variables, facts, and figures to be studied. This in turn led to better understanding of the topic before us. To accomplish this analytical task, the theory of separation of powers is adopted in this study.

John Locke and Baron de Montesquieu were the early Western political philosophers that dominated the formulation of the doctrine of separation of power.

According to John Locke in his book; second treaties of civil government,

“it may be too great a temptation to human frailty, likely to grasp power, for the same person who have the power of making laws, to also have in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they made, and suit the law, both in its making and execution, to their own private advantage” (Edeko, 2002, p.64).

French political theorist, Montesquieu was of the view that only separation of powers can erode abuse of power and protect political freedom. This is because where two or more powers and shared by different persons or

different bodies of persons, they act as check and balance against one another.

Montesquieu (1748) identified the three branches of government, namely: the legislative power, the judiciary and the executive; where he discussed the structure and framework of each of these powers. He argued that different persons or different bodies of persons should exercise the powers of the three arms of government independently, it is by so doing, State can avoid pitfall of the tyranny that come from concentration of powers in few persons or bodies of persons. It means that the assurance of liberty in any given government to the citizens is the practice of the theory of separation of powers. According to Gettel (2006, p.282), he writes that the three functions of the government “should be performed by different bodies of persons; each department limited to its own field of action, and within that sphere should be independent and supreme”. Otherwise this argues that if, a single group holds all the three powers of the government, they are bound to have unlimited powers. This could set off abuse of power, because they exercise unlimited powers that pronounce the criminals guilty without recourse to fair trial. It is through the separation of powers that any given group cannot at the same time prescribe, execute and adjudicate in any case. Otherwise, there will be no justice. That is why, it is only through the combination of all these departments that a government can use force especially in a military rule, which is not longer democratic rather tyrannical.

That is why these days, the constitutions of most countries, including Nigeria, are codified based on the theory of separation of powers, considering the independence of three powers from one another as one of the principles of democracy. Internationally, a country is considered democratic if its legislative, judicial and executive powers are independent and no single power dominates the other two.

Thus, the theory acknowledged that different body of persons is to administer each of the three departments of government. And that, no one of them is to have a controlling power over either of the others. Such separation is necessary for the purpose of preserving the liberty of the individual and for avoiding tyranny (Appadoria, 2003, p.518).

Montesquieu stated the reason separation of powers is desirable as follows:

When the legislative and the executive powers are united in the same person in the same body of magistrates, there can be no liberty. Again, there is liberty if judicial power were not separated from the legislative and executive. Where it joined with legislative, the life and liberty of the subject would be exposed to arbitrary control for the judge would then be the legislator. Where it joins to the executive, however, the judge might behave with violence and oppression. There would be an end to everything where the same men or the same body whether of the nobles of the people, for executing the public resolution and of trying the cases of individual” (Edeko, 2002, pp.65-66).

This is situating to manage abuse of human right that will emanate from the use of tyranny, than the rule of law which, gives hope to the common man. Whereas, where these kind of human right abuses occur such country will experience oppression that hold their country to ransom, especially if it is without the consent of the people. This is why there is no alternative to separation of powers in a political society where freedom of the individual is certain (Ogoloma, 2012, p.134). The reason prompted Montesquieu to commence writing on separation of powers is because man naturally tends to dominate and oppress others. If all three powers remain under the control of a person or a group, the ground for repression and abuse of power will be much greater because a single person or group engages in legislation, adjudication and implementation of laws (Appadoria, 1978, p.517).

I submit that to enjoyed functional judicial system in enthronement of democratic institution in Nigeria, powers to make law, punish the offender and execute policies be separated. This to extents reduces political meddling of executive arm and corruption in the judicial institutions. For instance, if the courts lack independence it increases the tendencies of the public losing confidence in the judiciary and the pursuit of its rights. On the other hand, if there is no provision for rule of law to accept challenges from the electoral crime in the courts, then common man on the street is less likely to experience justices, which thwarts enthronement of democratic institution in Nigeria. Thus, as the ordinary person suffers and certainly there would be a breakdown of civil society. To sustain this judiciary may not need outside interference leading to lose of its independence. If for instance, judiciary engages only in rendering justice, while the legislature makes law, it hinder corruption and political interference of any arms threaten the democratic consolidation in Nigeria. Perhaps, if it is the implication is that the life and freedom of the subject would be exposed to arbitrary control. These provoked Montesquieu to commence writing on separation of powers to frustrate oppressor, combat corruption to restricting abuse of power. So, judiciary will enjoy total autonomous, where all are equal before the law, none is immune from punishments, and all are obliged to respond to summons from the judiciary. The judiciary has the opportunity to summon from the highest ranking to the least in the country, if they are found violating the laws.

## CONCLUSION

In the last 19 years of resumed civil rule has not been a soar-way success in terms of democracy and democratization on two crucial fronts: the transparency of the judiciary and governance. Extra work must be done in these areas to make Nigerians belief in the process by making democracy sustainable. However, other indices like fundamental human right, separation of powers and

respect for rule of law to make appreciable strides, even in a great democratic challenge. Whereas, even if enthroning democratic institution will depend on how these itemized flaw like corrupt judicial system, arbitrary control of power are corrected. But key challenges remain judicial reform and massive poverty. We therefore, need strong judiciary to making the practice of our constitutional status vibrant. Overall, there is nothing to celebrate after 19 years of civil rule. We need serious, courageous and compassionate leader with social conscience. We can do it, no doubt, if we put our minds to it. For now what we need is sober reflection to make judiciary and democracy workable tools of good governance.

This time therefore calls for a renewed commitment to the progressive national ideas for a grater life. It is in that spirit that I wish to leave us with these inspiring words from late American president Calvin Coolidge while preaching for restoration of confidence in national institutions in the early part of 20th century. "We need a broader firmer, deeper faith in the people; a faith that men desire to do right, upon which this righteousness will endure to reconstruct our faith and confidence".

This study recommended that victim of electoral fraud should be criminalise and from further participation in the entire democratic process. Thus, independent judicial system should be encouraged and foster respect for rule of law.

## REFERENCES

- (1998). *On democracy*. New Haven: Yale University Press.
- (2003). Professional challenges and practices in democratic set up. *16<sup>th</sup> Conference of the Institute of Certified Secretaries and Reporters*, 14<sup>th</sup> November 2003, Ilorin.
- (2009). From three to fifty: Some comments of the paradox of increasing number and diminishing relevance of political parties under Obasangu administration "1999-2007". *International Journal of Social Sciences*, 1(2), 33-40.
- (2010). *A decade of democracy in Nigeria, 1999-2009: Issues, challenge and prospects of consolidation*. Makurdi: Aboki Publisher.
- (2010). Election petition and peaceful resolution of dispute in Nigeria: Prospects and challenge. *International Conference of the Society for Peace Studies and Practices*, Mina, Niger State.
- Abdulahi, A. U. (2000). *Understanding elections: A guide for students and election managers*. Kaduna, Joyce Graphic Printers & Publishers co.
- Akinboye, S. O. (2000). Nigeria's 1999 multi-party elections: an interview of electoral Conduct results. In O. Lai & Anifowose (Eds.), *Issue in Nigeria 1999 General Elections*, pp.146-147
- Akinola, O. (2006). The role of the judiciary in the electoral process in Nigeria. Lecture delivered at the *INEC Conference* held at Abeokuta may 9<sup>th</sup>.

- Appadorai, A. (1978). *Substance of politics*. New York: Oxford University Press.
- Attahiru, J., & Okechukwu, I. (2007). Conclusion: A trouble path to democratic consolidation. In J. Attahiru & I. Okechukwu (Eds.), *Elections and the future of democracy in Nigeria*. Abuja: Political Science Association of Nigeria.
- Authman, V. (2004). The resolution of disputes related to election result. *International Foundation for Electoral System Report* February.
- Babatunde, L. (2010). Abuse and misuse of judicial power are inimical to the development and growth of electoral laws. A Paper Presented at the National Symposium Organised by Mustapha Akanbi Foundation. Abuja July, 2010.
- Baron, De Montesquieu (1748). Spirit of law. In S. E. Edeko, *Fundamental issue in Nigeria constitutional law*. Anointed Teas: Printing Press Benin City.
- Bentham, J. (1823). *An introduction to the principles of morals and legislation*. London: Pickering in O. P. Gauba (2003) *An introduction to Political Theory* Fourth Edition: Macmillan India Ltd.
- Chukwu. P. (Eds.) (2007). The 1999 constitution and independent national electoral commission: prospect for impartial supervision and conduct of election in Attahiru Jega. *Elections and the Future of Democracy in Nigeria*. Abuja: Political Science Association of Nigeria.
- Dahl, R. A. (1987). *Democracy and its critics*. New Haven: Yale University Press.
- Edeko, S. (2002). *Fundamental issue in Nigeria constitution*. Benin City: Anointed Tesa Printing Press.
- Egbewole, W. O. (Eds.) (2007). Nigerian judiciary, globalisation and democracy. In Taiwo Kupolati Current, *Issues in Nigerian Jurisprudence*.
- Egwemi, V. (2007). The People Democratic Party (PDP) and Emergence of a Dominant Party System in Nigeria. *NASHER Journal*, 5(2), 178-185.
- Encyclopedia (2008). *People and history*. <http://hospitalitynigeria.com/kogi.php> retrieved 5<sup>th</sup> July, 2012.
- Francis, H. M. (1959). Court delay: Some causes and remedies. Published Faculty of Law University of Chicago. ([www.ask.com](http://www.ask.com) retrieved 25<sup>th</sup> July, 2018)
- Gani, F. (2007). **The Role of the Election Tribunal**. *GUARDIAN Nigeria Newspaper, May 2<sup>nd</sup> 2007*.
- Geertz, C. (1983). *Local knowledge*. London: Fontana Press.
- International IDEA. (2010). Electoral Justice. *The International IDEA Handbook*.
- Isa, Y. I., & Zakari, M. Y. (Eds.) (2008). The courts and the management of elections in Nigeria. In S. M. Omodia, *Managing Elections in Nigeria (Vol.1)*: Keffi, Onaivi Printing & Publishing Co. Ltd.
- Jenning, J. B. (1972). *Evaluation of the Mahattan Criminal Courts Calendar Project* (Phase 1). New York.
- Mbachu, O. (Eds.) (2009). Democracy and national security. In O. Mbachu & C. M. Eze, *Democracy and national security: Issues, challenge and prospects*. Kaduna: Medusa Academic Publisher.
- Natalaja, N. (2000). Tribute to Claude Ake: Democracy and development in African. Abuja: *AFRIGOV*.
- Nathan, J. B. (1997). *The rule of law in the Arab world*. Cambridge: Cambridge University Press.
- Noel, M. P. (Eds.) (2005). Justice system. In B. I. Spector, *Fighting corruption in developing countries: strategies and analysis*. Bloomfield Kamarian Press Inc.
- Nwoye, K. (2001). *Corruption, leadership and the dialectics development*. Enugu: Flight Publisher.
- Nzongola, N. G. (2002). The democratic transition in Africa's lesson learned. LECTURED DELIVERED AT THE USMAN DANFODIYO UNIVERSITY SOKOTO.
- Ogoloma, F. (2012). The theory of separation of powers in Nigeria: assessment. *An international multidisciplinary Journal Ethiopia*, 6(3).
- Okoeka, O. (2007, Feb.). *Nations*, p.8.
- Okoela (2007). In A. A. Ujo (2000), *Understanding elections: A guide for students and election managers*. Kaduna: Joyce Graphic Printers & Publishers co.
- Omotola, J. S. (Eds.) (2010). Electoral Governance and the Democratisation Process in Nigeria under the Fourth Republic. In V.Egwemi (2010), *A decade of democracy in Nigeria 1999-2009: Issues challenge and prospects of consolidation*. Aboki Publishers, Makurdi.
- Onika, B. (2007, Feb. 14). Role of judiciary in sustaining democracy. *Daily Trust*, p.38.
- Popoola, O. (Eds.) (2007). Election petitions and challenges of speedy dispensation of justice in Nigeria. In T. Kupolati, *Current Issues in Nigerian Jurisprudence*.
- Sagay, I. (2013). On judicial system. *Daily Trust Newspaper*, Abuja Fri. Jan.11<sup>th</sup> 2013.
- Schedler, A. (Eds.). *Electoral authoritarianism: The dynamics of unfree competition*. Boulder, Co: Lynne Rienner.
- Shehu, A. T. (2012). Strengthening judicial intervention in electoral dispute in Nigeria. *Africa Journal of Social Sciences*, 2(2), 74-88.
- Spector, B. I. (2005). *Fighting corruption in developing countries: Strategies and analysis bloomfield*. Kumarian Press Inc.
- Susan, S. (1990). Resolve the remedial dilemma: Strategies of judicial intervention in prison. *Columbia Journal of European Law*, 13.
- Today, M. J. (2008). *Comparative politics: A global introduction*, New York. McGraw-Hill companies Inc.
- Uche, N. (Eds.) (2007). History of election in Attahiru Jega. *Elections and the future of democracy in Nigeria*. Abuja : Political Science Association of Nigeria
- Uwais, M. L. (2006). The evolution of constitutionalism in Nigeria: The role of the supreme court under the 1979 and 1999 constitutions. Nigerian Institute of Advanced Legal Studies Inaugural Distinguished Fellows' Lecture.
- Zeisel, H., et al. (1959). *Delay in the Court*. Westport: Published by Greenwood Press.