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ESTABLISHING LEGAL FRAMEWORK ON INTERNAL DEMOCRACY IN POLITICAL PARTIES IN NIGERIA

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Abstract

It is an axiomatic fact in Nigeria that political parties specifically constitute the only harbinger and/or platform operating as a threshold for harvesting nomination and sponsorship of candidates for elective positions. As a matter of fact, political parties advance the process of recruitment of political elites as well as simultaneously mobilize the electorates for elections. The ultimate role in this chain is that political parties assume the task of providing governance to the people. Consequent on the above, the authors explored the legal framework regulating political parties and the provision of crucial tendencies of inclusivity, intra-party dynamics, leadership structure, external influences, and the judiciary as they impact the enthronelement of internal party democracy. The paper therefore, detailed the fundamental nature of political parties and juxtaposed these parties with the routine operation of attendant intricacies of ensuring internal party democracy. The authors therefore maintained the need for a multifaceted landscape with robust legal provisions under the Nigerian electoral laws, notwithstanding the fact that these regulatory provisions suffered insufficient implementation, adherence, and deficit enforcement. The paper concluded that the enthronelement of internal party democracy continues to face various challenges. Significantly, the work identified the inherent lacuna as well as recommended need to reinforce democratic practices in intra-party affairs in order to ensuring stern enforcement of the existing legal provisions by the courts.

Keywords: Political parties, democratisation, internal party democracy, justice, good governance.

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1. Introduction

Political party constitutes a pillar of the modern electoral process and remain a major organ for the sustenance of democracy under the law.¹ This is particularly so in democracies where independent candidacy is not captured under their laws. Citizens who seek to exercise their rights to elect and be elected can only do so through the instrumentality of political parties. Thus, political parties constitute the only platform that bears the responsibility for the nomination and sponsorship of candidates for elective positions.² While advancing the recruitment of political elites, they simultaneously mobilize the electorates for elections.³ Focusing primarily on the formation of government at different levels through popular elections,⁴ political parties assume the task of providing governance to the people.⁵ They are wired towards resolving conflicts by aggregating and articulating various interests, as well as creating effective representation of the populace in the nation's electoral process.⁶ The current political configuration in the country embraces a multi-party-political system whereby parties are involved in contestation for power, influence, and authority at the national as well as sub-national levels. Political parties when outside government are saddled with the task of contributing to the formation of public opinion, organizing the opposition, and constructively criticizing the government.⁷ They are thereby serving as veritable machinery of constructive scrutiny on the party in government towards ensuring good governance.⁸

Given the imperativeness of political parties, the promotion of internal democracy within the parties becomes pivotal. Internal party democracy encompasses the principles of political participation, transparency, and accountability, without which the nation's electoral process will not thrive. Therefore, it has occupied a prime place in the nation's electoral process and has become a

¹ A.A. Akubo and A.U. Yakubu, "Political Parties and Democratic Consolidation in Nigeria's Fourth Republic" in *Global Journal of Political Science and Administration* 2014 p. 79.

² R. Gunther and L. Diamond, "Types and Functions of Parties" in L. Diamond and R. Gunther, (ed.), *Political Parties and Democracy*, John Hopkins University Press, 2001 pp 7-8.

³ A. Ufen, "Political Party and Party System Institutionalization in Southeast Asia: Lessons for Democratic Consolidation in Indonesia, The Philippines, and Thailand" in *The Pacific Review* 21(3) 2008 p.328

⁴ P. Norris, "Political Parties and Democracy in Theoretical and Practical Perspectives: Developments in Party Communications" in *National Democratic Institute for International Affairs* 2005 pp.3-4.

⁵ Ibid.

⁶ S. Bartolini and P. Mair, "Challenges to Contemporary Political Parties" in L. Diamond, and R. Gunther, (eds) *Political Parties and Democracy* John Hopkins University Press 2001 p.327

⁷ William Gumede "The Role of Opposition Parties in Developing Democracies" in *Democracy Works Foundation*, Policy Brief 45, 2023 p.1.

⁸ W.C. Muller, "Political Parties in Parliamentary Democracies: Making Delegation and Accountability Work" in *European Journal of Political Research* 37(3) 2000 p.309.

desideratum to be strengthened. Equally, the regulatory framework governing political parties significantly determines the parties' level of internal democracy. The legal framework lays the foundation for political parties' existence, operations and organization. Thus, where the internal party democracy is challenged, the legal framework responds accordingly.

2. Nature of political parties and internal party democracy

The nature of political parties is ordinarily conceptualized from the perspective of being a group of citizens under the unanimity of agreement, based upon some principles, to pursue their personal and national interests.⁹ They are effectual as collective platforms for members, irrespective of individual differences, to achieve an overall beneficial goal in the nation's general interest, much as discordant musical notes get merged to produce an overall harmonious output. Significantly, by section 77(1) of the Electoral Act 2022, the nature of a political party is juristic, having different personalities distinct from its members.¹⁰ Following their nature as legal entities, they are accorded such rights as participating in the electoral process and public discourse. Concomitantly, these rights are attached to corresponding obligations, such as adherence to constitutional principles, transparency, and internal democracy.

The nature of political parties is further conceptualized from different perspectives of functional, structural, and legal dimensions relating particularly to the universal concept of democracy.¹¹ Each of these perspectives provides unique insights, with all three perspectives interrelated, providing a comprehensive understanding of the nature of political parties. The importance of these conceptualizations to liberal democracy is that political parties have the mandate of providing choices, under the conditions of competitive party and electoral politics, to the citizens. This includes the setting of agendas for citizens in determining which candidate governs them, how they are governed and under which policy they wish to be governed.¹²

⁹ P. F. Adebayo, "Political Party Formation, Development, Performance and Prospect" in Emmanuel Ojo (ed.) *Challenges of Sustainable Democracy in Nigeria*, John Archers Publishers, 2006 p.64.

¹⁰ *Rimi and Anor v Kano* (1982) 3 NCLRP 478; *Akas v Manager and Receiver of Estate of Anwadike* (2001) 8 NWLR (Pt. 715) 436

¹¹ Leon D. Epstein. *Political Parties in Western Democracies* New York, Praeger, 1967 Pp. 14, 15

¹² N. K. Dogra., 'Democracy and Political Parties,' in *The Indian Journal of Political Science* vol. LXXV (1) 2014 p.17.

The functional nature of political parties is centred their roles and responsibilities within a political system, functioning as organized groups that seek to acquire power through the contestation of elections, consequent upon which they could implement their policy plans.¹³ It further revolves around providing a platform for political choices and conducting the business of government as a group or association under the banner or label of a political party. From this viewpoint, they are seen as the nexus between the people and the government. The structural meaning tends to describe political parties along the lines of their organization and internal workings, focusing on their composition, hierarchy, and operational mechanism. This perspective is considerably driven by party rules and statutes with emphasis on registration requirements under the law, particularly their recognition and registration by an Electoral Management Body. It is also driven by the parties' reactions to the actions of public office holders elected under their platforms.¹⁴ Structurally, they form part of a larger polity, including the party system, which eventually influences the political dynamics of power distribution and exercise in the country. In this wise, political parties are protected under the law with a structural framework for the organization of meetings, caucuses, congresses, and conventions to recruit party leaders and potential candidates.¹⁵

Moreover, there is a legal perspective, which underscores the regulations that govern political parties under the law. Commencing from the 1999 constitution which provides meaning for political parties as associations whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice President, Governor, Deputy Governor, or membership of a legislative house or a local government council.¹⁶ The Constitution provides further meaning to political parties as associations that contribute to candidates' election funds or incur expenses for any candidate at an election.¹⁷ In the same vein, the Electoral Act also define a political party to include any association of persons whose activities include canvassing for votes in support of a candidate for election under the act and registered by the commission.¹⁸ It is of note that the registration by INEC is subject to meeting the conditions stipulated under the Constitution, which are that the association's name and address are registered with INEC, with membership open to all

¹³B. Daver, *Introduction to Political Science* Ankara: Siyasal Press, 1993 p.223.

¹⁴G.M. Pomper "Concepts of Political Parties" in *Journal of Theoretical Politics* vol. 4(2) 1992 p.145.

¹⁵W.J. Ekundayo, "Political Parties, Party System and Leadership Recruitment in Nigeria Since Independence in 1960" in *Public Policy and Administration Research* vol.6(5) 2016 p.39.

¹⁶Section 229 of the Constitution 1999 as Amended.

¹⁷*Ibid.* Section 221. See also Section 89 of the Electoral Act 2022.

¹⁸*Ibid.* Section 152. See also section 77 of the Indian Representation of People's Act 1995, which gives a legal meaning to a political party as an association, howsoever called, whose fundamental purpose is to participate in the public affairs of the country by supporting or otherwise endorsing a candidate at an election.

Nigerians. Also, a copy of their Constitution, along with any amendments, must be filed with INEC's principal office. Additionally, the association's name, symbol, or logo must not carry ethnic or religious connotations, and its headquarters must be in the Federal Capital Territory (FCT).¹⁹

The case law provides a robust insight into the legal perspective. In *INEC v Musa*,²⁰ the Supreme Court, whilst proving connotation to political parties, opined that conferring requisite recognition to a political party means acknowledging the existence of an association qualified to operate as a political party, while registration is the process of documenting and certifying that recognition.²¹ This, in effect, means that a political party must attract recognition as an association on the first part and be so registered by INEC on the second part. In *Argus Printing and Publishing Company Ltd v Inkatha Freedom Party*,²² the Appellate Division of the South African Supreme Court offered an interpretation of the meaning of a political party and opined that there is no generally applicable legal definition of a political party. It may, however, be suggested that a fundamental element of a political party is that it presents candidates for election to governmental positions.

Furthermore, the nature of a political party is generally to enjoy autonomy.²³ This principle is founded upon a bundle of rights consisting of, first, the rights of individuals who form political parties in the exercise of their fundamental human right of association and, second, that of the political parties who are equally endowed with distinct rights to freedom of association being distinct legal entities. To this end, any extraneous control that dictates party membership, organization, and selection or nomination procedure of the party would amount to a violation of their rights.²⁴ Similarly, any form of imposition on how the parties conduct their affairs, either in structure or in enforcing the obligation to recognize every member as equal or on any other ground, would constitute an infringement on these constitutional rights.²⁵ However, autonomy cannot be seen as the absolute seclusion of political parties from their environment. For instance, situations where political parties create synergies with the external environment for human resources development and training would ordinarily not amount to erosion of autonomy. Equally, instances

¹⁹ Ibid, at Section 222 (a) – (f).

²⁰ (2003) 3 NWLR (Pt.806) 72.

²¹ Per Ayoola JSC

²² 1992 2 ALL SA 185 (A)

²³ N. Persily and B.E. Cain "The Legal Status of Political Parties: A Reassessment of Competing Paradigms" in *Columbia Law Review* vol. 100 (3) April 2000 p.775.

²⁴ See the United States Case of *Democratic Party of the United States v Wisconsin* 450 U.S. 107 (1981).

²⁵ Council of Europe (Venice Commission), *Report on the Prohibition of Political Parties and Analogous Measures*. available at <<https://www.venice.coe.int>> accessed on 15/09/2024.

where political parties receive constitutionally or statutorily backed funds from the government would also not constitute an erosion of party autonomy.²⁶ Countries like the United Kingdom, Canada, and South Africa offer some form of public funding to political parties.²⁷ This is unlike where the party depends principally on an external sponsor for funds and other logistics.²⁸ Public funding by itself would not amount to erosion of autonomy.²⁹ To underscore the nature of party autonomy, it is argued that democracy is not to be found in the parties but between parties and for political parties to avoid being undermined from within and outside, they require some level of autocracy with no interference.³⁰

The expression internal democracy is a generic term used to describe the level of inclusiveness accorded party members in the parties' decision-making process. This simply means that important decisions, particularly the nomination and selection of party candidates as well as the selection of its officers, are subject to members' votes. It is a major requirement for political parties³¹ and constitutes the barometer through which their adherence to the principles of participation, institutionalization, organization, party structure, and processes are measured.³² The term is also described as a very broad one,³³ widely diverse, with its definition highly contestable.³⁴ However, there is a somewhat general level of consensus on the core elements of internal party democracy, borne out of the key indicators through which its adherence can be measured. In this wise, four essential components have emerged; these are first, the conduct of free, fair, and credible primaries

²⁶ For instance, S.54 Constitution of the Republic of Congo provides that "The state assures the financing of political parties. The law determines the conditions and the modalities of the financing of political parties". A similar provision under s.40 Malawi Constitution provides that "The state shall provide funds to ensure that during the life of any parliament, any political party which has secured more than one-tenth of the national vote in elections to that parliament has sufficient funds to continue to represent its constituency". In a similar vein section 80 of the Nigeria Electoral Act 2002 - for the time being in force - provided that "The National Assembly may approve a grant for disbursement to the Political Parties" contesting an election in the country.

²⁷ R.E. Gyampo, "Public Funding of Political Parties in Ghana: An Out modelled Conception" *Ufahamu: A Journal of African Studies* vol. 38(2) 2015 p.9.

²⁸ O. Otelem and O. Etyang., "Party Institutionalization in Africa: Kenya's 2013 Elections in Comparative Perspective" in *African Review* 2015 p.30.

²⁹ S. 80 (1) Electoral Act 2002 (repealed) provided for public funding to political parties in Nigeria.

³⁰ European Commission for Democracy through Law (Venice Commission) *Guidelines on Political Party Regulation*, 2nd Edition, 2020 p.9.

³¹ C.C. Ojukwu and T. Olaifa, "Challenges of Internal Democracy in Nigeria's Fourth Republic: The Bane of Intra-Party Conflicts in the People's Democratic Party of Nigeria" in *Global Journal of Human and Social Sciences* vol. 11(3) 2011 p.27.

³² Olugbenga Olatunji "Political Parties Internal Democracy and the Challenge of Electoral Credibility in Nigeria's Fourth Republic" in E.A. Durotoye, (ed.) *Elections in Nigeria* Lap Lambert Academic Publishing 2016 p189.

³³ S. Scarrow, *Political Parties and Democracy in Theoretical and Practical Perspectives: Implementing Intra-Party Democracy*, National Democratic Institute for International Affairs, 2005 p.3.

³⁴ F. Van, Nostitz, *The Merits and Perils of Intra-Party Democracy: Assessing the effects of Party Reforms in Germany, France, and the United Kingdom*, University of Exeter, 2016 p. 16.

to elect party officials and candidates for elections; second, the provision of equal, inclusive, and open opportunities for all party members; and third, ensuring transparency and accountability to party members, the electorate, and the citizenry at large.³⁵ The fourth component requires strict compliance with the internal and external legal requirements for the abovementioned three components.³⁶ Of all these elements, the conduct of party primaries, including the selection, nomination and sponsorship of candidates for elections, have been elevated to the leading issue of internal party democracy. This is explainable on the ground that it transcends every other element, and it is predicated upon those laws that govern political parties and the electoral process generally.

The general nature of political parties as entities that enjoy autonomy, as discussed, would ordinarily suggest that the enforcement of internal party democracy is in contest with party autonomy. However, a resultant convergence in resolving this contest is that party autonomy would not be absolute when it comes to the enforcement of internal party democracy. Thus, the enforcement of internal democracy within political parties is justified on the following grounds. Importantly, internal democracy reduces various domineering tendencies within political parties. Its absence fosters excessive powers on party leadership, which eventually leads to political oligarchy and authoritarianism. It prevents not only the party members from being subjected to oppression and domination but also the general citizenry in case the party subsequently gets to power.³⁷ Also, collective action remains a viable route through which political parties impact the electoral process. It is an avenue through which individuals influence politics and access information at minimal risk and cost. However, it is susceptible to failure where internal democracy is not in place as there would be no incentive for members to monitor the party leadership. Internal party democracy, therefore, helps mitigate instances of collective action failure.³⁸

It is further argued that the constitutional and statutory recognition of political parties characterizes them as public institutions as well as incorporates them into the public domain.³⁹ Hence, as required of every public institution, they are bound to be transparent, respect human rights, and justify the

³⁵ Z. Grimwood, *Intra-Party Democracy: An Intervention to Deepen Democracy and Accountability in South African Politics*, My Vote Counts (2019) p.5.

³⁶ I.P. Okhaede, "Quest for Internal Party Democracy in Nigeria: Amendment of Electoral Act 2010 as an Albatross" in *International Journal of Peace and Development Studies* vol. 3(3) 2012 p.61.

³⁷ Roberto Michaels. *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy*, Batoche Books, 2001 p.67.

³⁸ Yigal Mersel "The Dissolution of Political Parties: The Problem of Internal Democracy" in *International Journal of Constitutional Law* vol. 4(1) 2006 p.90.

³⁹ Van Bieze. "Political Parties as Public Utilities" in *Party Politics* vol. 10(6) 2004 p.705.

exercise of their powers by the principles that govern the exercise of public powers.⁴⁰ To this end, internal democracy becomes pertinent. Again, political parties, by their representative and participatory functions, together with their responsibility to articulate and aggregate society's interests and demands, make them integral to the electoral process in a democracy.⁴¹ Therefore, for the rights of individuals to be protected under the Constitution, those rights must also be protected within the political parties as they are the platform through which individuals are enabled to participate in democracy. In other words, if citizens have rights under democracy, such rights must also be conferred on them within the political parties.

Furthermore, political parties, being the platform through which legitimacy and credibility are conferred on governments, underscore the postulation that "political parties created democracy, and the modern democracy is unthinkable save in terms of parties."⁴² This aptly relates to Nigeria, as the Constitution makes it impossible for the electoral process to exist without political parties. Section 65(2) (b) of the Constitution makes membership and sponsorship of a political party a mandatory condition precedent for any citizen to be elected to the National Assembly and other elective positions in the country.⁴³ Given that political parties operate within a democracy; therefore, can a nondemocratic party operate within a democratic nation? The answer is negative, it is not plausible that a democracy would accommodate a nondemocratic political party.⁴⁴ Moreover, "power corrupts, and absolute power corrupts absolutely"⁴⁵ The conferment of unquestioned powers in the hands of a few will result in abuse of power; therefore, for a political party to operate absolutely without some degree of regulations will create absolutism of power which is bound to be corrupted.

3. Legal Framework for the enthronement of internal party democracy

The legal frameworks regulating political parties are both internal and external. The internal framework includes the Party Constitution, which generally provides for the party's identity,

⁴⁰ I. R. Ogwola, and B.U. Iwarimie, "Public Sector Management in Nigeria: Setting an Effective and Efficient Pace amid Challenges and Prognosis" in *Journal of Lexicography and Terminology* vol. 6(2) 2022 p.19.

⁴¹ R. Gunther, *Supra*, note 2.

⁴² E.E. Schattschneider, *Party Government* 1942 p.1 cited in Russell Muirhead and Nancy L. Rosenblum, "The Political Theory of Parties and Partisanship: Catching Up" in *Annual Review of Political Science* vol.23, 2020 pp. 95 and 110.

⁴³ Sections 106, 131, and 176 of the Constitution (As Amended) equally apply to the Offices of State Assemblies, President, and State Governors, respectively.

⁴⁴ E.E. Schattschneider, *Supra* Note 42.

⁴⁵ Lord Acton, *Letter to Bishop Mandell Creighton* (1887) available at <https://www.oxfordreference.com> accessed on 20/02/2024.

structure, composition, and activities. It also consists of the rules and regulations made in pursuance of the Party Constitution, particularly concerning party meetings, congresses, and conventions. The external laws, on the other hand, include the country's Constitution, statutes of national and state legislatures, and decisions of courts.

As a foundational framework, Constitutional backing is accorded to political parties in Nigeria, mandating that they embrace democratic tenets and principles in their internal processes.⁴⁶ The Constitution equally guarantees citizens' freedom to participate in the electoral process and their involvement in governance, which is further underpinned by the fundamental human right to assemble.⁴⁷ Critical also are provisions of sections 221-229 of the Constitution, which regulate political parties. Section 228 particularly empowers the National Assembly to legislate guidelines and rules that will ensure the practice of internal democracy within political parties, including making laws for the conduct of party primaries, congresses, and conventions. These powers are further enlarged by section 228(d), which provides that the National Assembly may delegate the powers to the Independent National Electoral Commission (INEC). To this extent, powers considered by the National Assembly to be necessary or desirable to effectively ensure the observance of internal party democracy, including the fair and transparent conduct of party primaries, congresses, and conventions, are further conferred on INEC. The operative word in this section is "May" and has been generally interpreted to mean "May" as it were. It is a settled position of the law that the word "May" is a permissive or enabling expression,⁴⁸ giving discretionary power.⁴⁹

Furthermore, sections 65, 66, 106, 107, 131, 137, 177, and 187 of the Constitution are equally pivotal. These sections provide grounds for the qualification and disqualification of candidates seeking elective positions. Accordingly, political parties are precluded from imposing any condition outside those prescribed under the aforesaid sections in their internal affairs process of sponsorship and nomination of candidates for elections. These provisions, geared towards the enthronement of internal democracy within the parties, empower the National Assembly to make laws regulating party primaries, congresses, and conventions, which ordinarily are domiciled within the realm of political parties' internal affairs. A major control mechanism under the legal framework is the

⁴⁶ See Sections 65, 106, 131 & 176 of the Constitution 1999 As Amended.

⁴⁷ Ibid. Section 40.

⁴⁸ *Bakare v AG of Federation & Ors.* (1990) LPELR-707 (SC) 47.

⁴⁹ *Mokelu v Federal Commissioner for Works and Housing.* (1976) LPELR-1009 (SC) 9.

provision for the deregistration of political parties by the INEC. The body has relied on this power as conferred under section 225A of the Constitution to regulate political parties and impact some decorum into the party system in the country.⁵⁰ The Supreme Court established the right of the INEC to exercise this power in *INEC v Advanced Congress of Democrats ACD and Ors.*⁵¹ A position further affirmed in *People's Democratic Movement v Independent National Electoral Commission and Anor.*⁵²

Besides the Constitution, the Electoral Act constitutes a significant part of the legal framework for regulating political parties and internal party democracy. In Pursuance of Constitutional provisions, the Electoral Act 2022 by section 84 provides that a political party seeking to nominate candidates for elections under the Act shall hold primaries for aspirants to all elective positions. The section enumerates the qualifications for being a candidate and the procedure for such a candidate to emerge. By a combined reading of sections 29(1), 84(1), and (2) of the Electoral Act, a political party that seeks to nominate candidates for election under the Electoral Act shall hold a valid primary and shall submit the list of its candidates to INEC in a prescribed form not later than 180 days before the date of elections. A valid primary is expected to be in one of the manners mandated in the Act. This could be by direct primary, involving individual members participating personally in the process.⁵³ Alternatively, an indirect primary could be adopted, relying on the delegates' approach.⁵⁴ It could also be by consensus arrangements.⁵⁵ In a situation where the party resolves to have a consensus arrangement but is unable to secure the written consent of all cleared aspirants to arrive at a consensus candidate, it shall revert to either the direct or indirect mode of primaries for the nomination of a candidate to the concerned elective position.⁵⁶ The section further creates a remedy by expressly providing that without prejudice to the provisions of the Act or the rules of a political party, an aspirant who is aggrieved on the ground that his political party has failed to comply with any provision of the Act and the guidelines of a political party in the selection and nomination of a candidate for elections may apply to the Federal High Court for redress. A careful evaluation of the foregoing reveals that these provisions are geared towards the enthronelement of internal party democracy.

⁵⁰ INEC Nigeria. *Registered Political Parties in Nigeria and the Presidential Candidates* available at <<https://www.inecnigeria.org>> accessed on 04/03/2024.

⁵¹ (Unreported) Appeal No. JC/CV/456/2020.

⁵² (2022) LPELR-58524(CA).

⁵³ See section 84(4) of the Electoral Act.

⁵⁴ Ibid. Section 84(5).

⁵⁵ Ibid. Section 84(9).

⁵⁶ Ibid. Section 89(10).

Sections 84(1) and (2) of the Electoral Act further underscore the crucial role of the INEC in enforcing political parties' internal democracy. Even when INEC is not empowered to conduct party primaries directly, it is saddled with the responsibility to monitor the primaries for compliance with legal requirements. The section requires that at least a 21-day notice of any party convention, congress, conference, or meeting for party primaries shall be given to INEC, upon which INEC may, with or without prior notice to the political party, monitor the event. The word "Shall," as used in the section, is intended to denote compulsory compulsion,⁵⁷ and obligation.⁵⁸ Thus making it mandatory for INEC to be given a 21-day notice to monitor the primaries. Any form of noncompliance with this section bears grave consequences.⁵⁹

Again, parties and their internal affairs are regulated by the INEC and SIEC Guidelines and Schedule of Activities for the conduct of elections as they carry the force of law being subsidiary legislation, in so far as such guidelines and schedule are not in conflict with provisions of the Electoral Act.⁶⁰ In *APP v INEC and Ors*.⁶¹ It was held that the approved guidelines, having been made by INEC according to the powers vested on it by the Electoral Act, form part of the Electoral Act, a noncompliance with it equates to noncompliance with the Electoral Act itself.

Political party constitutions are also relevant within the legal framework regulating political parties and internal party democracy. By sections 222(c) and (d) of the Constitution, political parties are required to have their Constitutions aligned with the nation's Constitution and the Electoral Act. The party Constitution, which binds the parties and their members, typically forms a primary basis for the party's existence and constitutes a veritable platform for internal party democracy. However, the commitment to upholding the party Constitution is often undermined by the dominance of party elites, political and financial patronage, as well as the absence of political will to ensure genuine internal democracy, particularly from political leaders who benefit from undemocratic practices.

Significantly, the courts provide an underlying legal framework for regulating political parties and internal party democracy in Nigeria. Several issues on this have been subjected to the court's scrutiny, undergone judicial review, and various judicial interpretations have been proffered in

⁵⁷ See *Chindo and Ors v Lamalang Sanda* (2016) LPELR 40340 (CA).

⁵⁸ *Amokeodo v Inspector General of Police and Ors*. (1999) LPELR 468 (SC).

⁵⁹ See *Labor Party v Wike and Ors* (2015) LPELR 2599 (CA); *CPC v Ombugadu* LPELR 21007 (SC).

⁶⁰ See *Action Alliance and Ors v INEC* (2019) LPELR (CA).

⁶¹ (2021) LPELR 53529 (CA).

respect thereof. In *Onuoha v Okafor*,⁶² the Supreme Court defined the doctrine of political question and held that the issue of who should be the candidate for a given political party at any election is a political one governed by the rules and constitution of the party. In other words, this is an internal issue and not one justiciable in a court of law. This is because the powers and rights to nominate and sponsor a candidate to an election are vested in a political party, an exercise considered solely as a domestic affair of the party. The Supreme Court considered sections 6 (6)(b) of the 1979 Constitution which is in a like manner to section 6 (6)(b) of the 1999 Constitution and held that the right to nominate and sponsor candidates for an election was not a legal right vested in the appellant either under the Constitution or the Electoral Act or any other statute. It was also not a right under the common law or customary law. Since the appellant possessed no such right, he lacked *locus standi*, with the court lacking jurisdiction. The court noted further that even where a candidate had been nominated, the party still retained the power to withdraw such nomination and added that whilst the party's right to sponsor a candidate ousts the court's jurisdiction, the candidate does not enjoy the right to compel his sponsorship even after nomination. This remained the position of the law, and the decision was applied in many subsequent cases.⁶³

This stand, as altruistic as it appeared in fostering party autonomy, discipline, and cohesion, paved the way for what could be referred to as political authoritarianism, uncertainty, and a death blow against internal democracy in political parties. An illuminating case in point is *Osakwe v INEC*.⁶⁴ Here, the Peoples' Democratic Party PDP on 10th February 2003 presented a list of its nominated and sponsored candidates for the Anambra State House of Assembly elections to INEC. By another letter dated 6th March 2003, the appellant's name was replaced with that of the 5th respondent by the party. Within twenty-four hours, the party, in another letter dated the same date, wrote to restore the effect of its earlier letter dated 10th of February 2003. However, the 5th respondent was returned at the general election. The appellant brought a petition before the tribunal challenging the election of the 5th respondent, claiming that he was entitled to the party's sponsorship. The petition was dismissed by the tribunal, and the decision was further affirmed by the Court of Appeal on the ground that the courts lack jurisdiction to inquire into the internal affairs of political parties.

⁶² (1983) 10 SC 118.

⁶³ See *Jang v INEC* 2004 12 NWLR (Pt. 886) 46.

⁶⁴ (2005) 13 NWLR (Pt.1942) p.442.

However, in *Ararume v Ugwu*,⁶⁵ The Supreme Court departed from its earlier decision in *Onuoha's* case. *Ararume's* case marked a new era in the position of law regarding the justiciability or otherwise of internal democracy in political parties. The Supreme Court held that.

If the political parties on their own had written in their constitution that their candidates for election would emerge from their party primaries, it becomes unacceptable that the court should run away from its duty to enforce compliance with the parties' Constitution. An observer of the Nigerian political scene today easily discovers that the failure of the parties to ensure intra-party democracy and live by the provisions of their constitution as to the emergence of candidates for election is one of the major causes of the serious problems hindering the entrenchment of a representative government in the country.⁶⁶

The court disagreed with the argument that matters of internal party democracy are not justiciable and noted that the argument could no longer be grounded on any law under the present dispensation in the country. The court relied on the provisions of section 34(2) of the 2006 Electoral Act, which provides that a political party must adduce cogent and verifiable reasons before it can replace a candidate. By this provision, a right has been created for the person whose name is replaced; thus, such a person possesses the *locus standi* to seek redress in a competent law court with jurisdiction conferred by section 6 of the Constitution.

The judicial power to enforce internal party democracy was further established in *Amaechi v INEC*.⁶⁷ In that case, the appellant contested alongside seven other aspirants during the PDP primaries for the Rivers State 2007 Gubernatorial Elections. At the end of the primaries, the appellant scored the highest number of votes and was declared the winner, with his name sent to INEC as the party's candidate. Shortly thereafter, the party replaced the appellant's name with that of the second respondent, who did not even participate in the primaries. No cogent or verifiable reason was adduced by the party for that decision. The appellant approached the court, praying the court to nullify the substitution. The High Court granted the prayer, though not based on a review of the internal party democracy but on the ground that the substitution took place during the pendency of the suit in court. On appeal, the Court of Appeal upheld the lower court's decision on the grounds that the substitution was within the powers of the political party to make and that it was done in compliance with the law. On further appeal to the Supreme Court, the court voided the substitution of the appellant's name, held that he was the proper candidate for PDP, and ordered that

⁶⁵ (2007) 12 NWLR (Pt.1048) p.367.

⁶⁶ Per Oguntade JSC.

⁶⁷ (2007) 9 NWLR (Pt.104) p.504.

he be sworn in as governor. The Supreme Court, in reaching this verdict, relied on section 221 of the Constitution, which forbids independent candidacy, meaning that no candidate could contest an election without a political party and that only political parties canvass for votes. Therefore, it follows that it is a political party that wins or loses an election as any vote for the party goes to the candidate sponsored by the party.

The courts' attitude had henceforth been in line with the Supreme Court's position in the above cases. See the cases of *Saidu v Abubakar*.⁶⁸ *Uzodinma v Izunaso*.⁶⁹ *Ahuaibu v PDP and Ors*.⁷⁰ In *John Emeka v Margery Okadigbo*,⁷¹ the apex court held that not only could an aggrieved party properly institute a suit to seek redress where there is controversy in a primary, but the court can indeed investigate the actual winner of a primary. The court further made it lucidly clear that even where a political party has conducted two conflicting primaries, the court would decide which of the conflicting primaries is valid. In this case, the party, the Peoples Democratic Party (PDP), held two parallel congresses; the court upheld the primary election conducted by the National Executive Committee of the party as the legally recognized primary of a political party. However, the court would take into cognizance the party's Constitution in reaching a verdict in such a situation. This ratio was also followed in *Ogara v Asadu*.⁷²

Flowing from *Ararume's* case it is significant that the coming into effect of section 34(2) of the Electoral Act 2006 requiring "cogent and verifiable" reason from any political party before it could change its candidate has galvanized a paradigm shift in the courts' attitudes towards the regulation of political parties and internal democracy. However, what constitutes "cogent and verifiable" reason tended to create mischief in interpretation. This mischief has, however, been interestingly cured by section 33 of the Electoral Act 2022. This section expressly provides that a political party shall only be allowed to change or substitute its candidate whose name has been submitted under section 29 of the Electoral Act only in the case of death or personal withdrawal of the candidate. This makes the conditions for the change and substitution of a candidate under the Electoral Act 2022 clear and certain. Section 31 of the Act enumerates how a candidate may withdraw, whilst section 34 provides for the procedure to apply in case of death.

⁶⁸ *Saidu v Abubakar* (2008) 12 NWLR (Pt.100) p.60.

⁶⁹ (2012) 2WRN 1.

⁷⁰ (2017) 6-7SC (PT. II) 18

⁷¹ (2012) ALL FWLR (Pt. 651) p. 1426.

⁷² (2014) LPELR 22862 (CA).

The courts will only assume jurisdiction in situations where the aggrieved party, who can only be either an aspirant or a political party, falls within one of the categories created under Section 285(14) Paragraphs (a)-(c) of the Constitution. In the case of an aspirant, his complaint must be against either the political party or the INEC or both, contending that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of political parties' primaries, and, or participation in elections in Nigeria have not been complied with. In the case of a political party, the political party must be challenging the actions, decisions, or activities of the INEC disqualifying its candidate from participating in an election or a complaint that the provision of the Electoral Act or any other applicable law has not been complied with by the INEC in respect of the nomination of candidates for an election, timetable for an election, registration of voters, and other activities of the commission in for an election. In any of these circumstances, no aggrieved party can be inhibited from seeking redress in court, irrespective of any provision to the contrary in the party's Constitution. The implication of this is that a remedy has been specifically provided for an aggrieved aspirant who participated in the party primaries that produced him as the winner by the highest number of votes.⁷³ By these provisions, parties to pre-election matters have been consigned into a "class" thereby rectifying the previous situation where there used to be a cacophony of parties to pre-election cases. Undoubtedly, the "class" consists of two parties, the "Aspirant" and the "Political Party."⁷⁴

Whilst the determination of a political party has raised little or no issue, however, issues have arisen as to who is an aspirant and at what point does a person assume the toga of an aspirant? These were addressed in the case of *PDP v Sylva*.⁷⁵ The Supreme Court noted that an aspirant is a person who contested the primaries. Therefore, an aspirant is a candidate in the primaries, and a person does not become an aspirant as contemplated under section 285(14) Paragraphs (a)-(c) of the Constitution except he contested in the party primaries. The import of this is that no person can enjoy the coverage except he has participated in the primaries organized by the political party. However, participation alone would not make the matter justiciable. Besides participation, the aspirant must equally show that he had emerged winner of the primary coming under the purview of sections 84

⁷³ See Section 87 of the Electoral Act 2010 and Section 84 Electoral Act 2022.

⁷⁴ See *Lado v CPC* (2014) ALL FWLR (Pt.607) p. 598 at 627.

⁷⁵ (2012) 13 NWLR (Part 1316) 85.

(4) (c) and 84 (5) (a) (ii) of the Electoral Act, showing that he has amassed the highest number of votes at the end of voting.⁷⁶

It suffices to note that apart from the aspirants and the political parties, the other party recognized under Section 284 of the Constitution is INEC. Since section 84(1) of the Electoral Act mandates the political parties to conduct primaries and equally mandates that INEC be given the required notice to monitor the primaries, both the political party and INEC, by parity of reason, become necessary parties to any suit praying the court to decide on who is the winner of a primary election.⁷⁷ This was established by the Supreme Court in *Nwaogu v Ama*.⁷⁸ Here, the court opined that the only parties envisaged under the provisions of section 87(1) and (9) of the Electoral Act 2010 as amended are the political parties, who are enjoined to conduct or hold primaries for the aspirants, the aspirants themselves, and the INEC to which the names of the successful candidates following the primaries conducted by the political parties are submitted. The law does not confer whatever right on any electorate who is expected to exercise his voting right in an election to join any suit involving disputes arising from primaries conducted by political parties.⁷⁹

Finally, timeliness on the aggrieved party's part to institute his matter is imperative. An aspirant must not have slept on his rights; otherwise, he would not be availed of the redress provided under the relevant provisions of the law.⁸⁰ It is a trite principle that equity does not support the indolent. For an aspirant to be availed of the court's jurisdiction over his matter, he must come within the period provided under section 285(9) of the Constitution that every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision, or action complained of. The implication of this is that pre-election matters are now statutorily time-bound. In *Tofowomo v Ajayi*,⁸¹ the Supreme Court held that where a party has failed to file his matter within the constitutionally allowed period of 14 days, the matter is bound to fail as it would be statute-barred. The interpretation of the court on when time begins to run is that computation doesn't necessarily have to begin from the date of primary; rather, it is the date of occurrence of the event, decision, or action.⁸²

⁷⁶ *Wushishi v Imam* (2017)18 NWLR (Pt.1597) 175.

⁷⁷ See *John Emeka v Margery Okadigbo* Supra Note 71.

⁷⁸ (2013) ALL FWLR (Pt. 669) 1022.

⁷⁹ Ibid. Per Mohammed JSC.

⁸⁰ See *Farouk Salim v Congress for Democratic Change* 2013 ALL FWLR (Pt.677) 614.

⁸¹ SC/CV/1526/2022.

⁸² See *Zailani v Gumau* (2019)5-6 SC I.

The imperativeness of these conditions precedent under the Constitution and the Electoral Act was reinforced in the celebrated case of *People's Democratic Party v INEC and Ors.*⁸³ In the case, the 1st defendant/respondent was INEC, whilst the 3rd defendant/respondent was the 2nd defendant/respondent's nominated candidate for the 2023 presidential elections. The plaintiffs/appellant, a political party, instituted the suit praying for a declaration of the court that by the provisions of section 35 of the Electoral Act 2022, the 4th defendant/respondent is disqualified from participating in the February 25, 2023, presidential election having knowingly allowed himself to be nominated in two constituencies as a senatorial candidate, Borno Central Senatorial District and as the vice presidential candidate of the 2nd defendant/respondent. The trial court dismissed the suit and held that the plaintiff/appellant had no *locus standi* to file the action, not being an aspirant who partook in the primary of the 2nd defendant as required by section 29(5) of the Electoral Act 2022. The court further held that the reliance on section 285(14)(c) of the Constitution would not avail the plaintiff as it is meant for political parties to file actions against INEC concerning its candidates and not another political party's candidate. On appeal, the Court of Appeal upheld the judgment of the lower court. Still not satisfied, the appellant approached the Supreme Court, whereof the apex court upheld the judgment of the two lower courts and held that: 'No political party can hide under the second part of section 285(14) (c) of the Constitution to pry into the domestic affairs of another political party. This court has numerous decisions on this, and it remains the position.'⁸⁴

Though political parties are subject to legal regulations, both legislative and judicial as discussed, and no longer presently enjoy exclusivity and absolute autonomy over their internal affairs given the enforcement of internal democracy; however, the parties still retain the powers of autonomy in matters considered by the Supreme Court as "pre-primary" affairs.⁸⁵ These include matters in the realm of party expression of interest forms, nomination forms, and screening of would-be aspirants with setting out the qualification of becoming an aspirant under the party's banner; they remain not justiciable.⁸⁶

Finally, issues relating to internal party democracy arising from the conduct of ward congress of political parties, unlike party primaries for the election and or nomination of candidates, are purely

⁸³ (2023) LPELR-60457 (SC).

⁸⁴ Per Ogunwumiju JSC.

⁸⁵ See *Sylva v PDP* Supra Note 77.

⁸⁶ *Wushishi v Imam* Supra Note 78.

internal affairs of political parties and hence not justiciable in law.⁸⁷ This was succinctly enunciated in *Ifegwu v PDP*.⁸⁸ The court held that by Section 29(5) and 84(14) Electoral Act, 2022, the Federal High Court's jurisdiction starts from the primary elections. It is only when there is non-compliance that the law provides for redress in court. Anything outside the primary election is entirely the internal affairs of the party.

4. Challenges of Internal party democracy

Unhealthy leadership control and intraparty dynamics constitute a great constraint in building strong democratic practices within the parties. Such unhealthy dynamics often lead to instability, divisiveness, factions, and weak organizational structures that consequently manifest in the lack of transparency, effectiveness, and discipline within the party.⁸⁹ This pattern of political orientation was demonstrated when less than six months after the 2023 general elections, the ruling APC and the major opposition party PDP removed their respective National Chairmen, including the National Secretary in the case of APC.⁹⁰

Following in this direction is the influence of factors of incumbency, “godfatherism” and money politics, which continue to be a bane to the enthronement of internal party democracy.⁹¹ Ordinarily, these factors, when deployed in the positive, would not constitute any impediment, for instance, in the case of mentorship.⁹² Also, incumbency advantages are well-documented as features of the electoral process in the United States.⁹³ At the same time, the funding of political parties is universally recognized as legitimate. However, where these factors are abused and manipulated, as experienced many times in the case of Nigeria, they basically create a negative impact on internal party democracy. Illustratively, it has become conventional for political parties to accord the paraphernalia of national leader and state leader to the president and state governors, respectively. The governors particularly deploy undue advantage over the parties' internal affairs to install their

⁸⁷ See *Akinremi and Anor. v Suleiman and Ors* (2022) LPELR-56903(CA).

⁸⁸ (2023) LPELR-59862(CA).

⁸⁹ D. Godwin. “Internal Party Democracy and The Imperative of Democratic Consolidation in Nigeria's Fourth Republic” in *National Journal of Sociology and Anthropology* vol. 14(2) 2016 pp.60-61.

⁹⁰ M.Bakare, “Kyari Takes Over as Acting APC Chairman, Confirms Adamu, Omisore's Resignation” *Premium Times* of 17/07/2023.

⁹¹ See O. Osuma and A. Ikelegbe, “The People's Democratic Party and Governance in Nigeria 1999-2007” in *Journal of Social Sciences* vol.19(3) 2009 p.198.

⁹² Otherwise referred to as “Godfatherism” in Nigeria

⁹³ See J.L. Carson et al. “Nationalization and The Incumbency Advantage” in *Political Research Quarterly* vol.73(1) 2020 p.156

favoured aspirants as the party's candidates. Furthermore, they are, in most cases, the greatest fundraisers for the parties in their states. The intendment section 84(12) of the Electoral Act 2022 refraining political office holders from being automatic delegates to the primaries of political parties to mitigate these challenges has been achieved to some extent, the problems however persist.

Inclusion, representation with equal opportunities for diverse groups constitute a hallmark of inter-party democracy; however, the disproportionality in this area constitutes another major challenge.⁹⁴ While all the political parties appear to be inclusive in theory, particularly regarding processes, provisions, and opportunities for women, young people, and persons with disabilities, the reality often contradicts this.⁹⁵ Although some of the political parties have well-articulated and crafted provisions for these underrepresented groups in their constitutions and manifestos, there is limited evidence to suggest that these policies are effectively and intentionally put into practice.⁹⁶ The totality of this is a pointer that true inclusivity remains a mirage among political parties. It is instructive that none of the major political parties of APC, PDP, LP, APGA, and NNPP parade the minimum thirty percent affirmation action requirements in their national working committee membership.⁹⁷ Women and youths sparingly occupy working committee positions apart from the positions of women and youth leaders. Even these positions are no longer guaranteed, not when a 52-year-old man in the recent past became the youth leader of APC.⁹⁸

Finally, of critical concern is the irresoluteness of the courts to enforce internal party democracy to the letters. It is submitted that this portends a most worrisome challenge in recent times. This was evident in *All Progressives Congress (APC) & Others v Bashir Sheriff Machina*.⁹⁹ The Supreme Court had the opportunity to make a profound pronouncement on internal party democracy in the case but regrettably lost the opportunity to technicalities of law. In the case, Ahmed Lawan, the 2nd Appellant who was the incumbent senate president had contested for the presidential primary of the 1st Appellant, however on his unsuccessful bid to emerge as the 1st Appellant's presidential candidate, he resorted back to seeking the party's nomination as its senatorial candidate for Yobe

⁹⁴ International Republican Institute (IRI), *Bringing Politics to Marginalized Groups In Nigeria*, 2021, available at <<https://www.iri.org>> accessed on 02/10/2023.

⁹⁵ Policy and Legal Advocacy Centre (PLAC) *Advancing Inclusion Through Legislative Action: A Primer for the National Assembly*, 2023 p.1

⁹⁶ Westminster Foundation for Democracy, *A Study on Inclusive Practices of Nigeria's Political Parties* 2023 p.3.

⁹⁷ Samuel Akpan, "Matters Arising: Women Marginalized in PDP, APC Leadership- Any Hope for Gender Inclusion in Politics" in *Cable Newspaper* of 30/03/2022.

⁹⁸ I. Nnenna "Nigerians Condemn APC for Electing 52-Year-Old Youth Leader" *Premium Times* of 17/06/2014.

⁹⁹ (2023) LPELR-59953 (SC).

North Senatorial District after the senatorial primary has been conducted and the respondent emerged winner on 28th May 2022. In a bid to placate the 2nd Appellant, the party organized another primary on 9th June 2022, which saw the emergence of the 2nd Appellant as the winner. The Respondent's name, which had already been submitted to INEC, was thereafter withdrawn and substituted with the name of the 2nd Appellant.

Aggrieved, the Respondent instituted an action in the High Court challenging the substitution. The High Court held in his favour that the substitution was not under the tenets of internal party democracy and, as such, illegal. The Court of Appeal upheld the decision of the lower court. However, on a further appeal to the Supreme Court, the apex court did not go into the merits of the matter; rather, decisions of the lower courts were upturned on the ground that the matter was commenced by way of originating summons instead of a writ of summons. Looking at the facts of the case, it is submitted that the primary of 28th May 2022 was a concluded exercise upon which the party had acted by sending the respondent's name to INEC and this process can only be reversed by section 84(14) of the Electoral Act as well as Section 285 of the Constitution. Therefore, the conduct of a fresh primary on 9th June 2022 runs contrary to the relevant provisions of the law. It is further submitted that the absence of the mandatory notice to INEC, which resulted in the commission's absence at the subsequent primary, constitutes an affront to internal party democracy. The Supreme Court should have considered the case on its merit rather than on technicalities to make further contributions in developing the nation's electoral process.

5. Conclusion and recommendation

Political parties have evolved to become of critical importance in the country's electoral process. Juxtaposing the nature of political parties as autonomous institutions with the core elements of internal party democracy, the legal frameworks regulating political parties have been pivotal in shaping the nation's intra-party democracy, garnering commendable progress under the 1999 Constitution (as amended) and the Electoral Act 2022. However, the application and enforcement of relevant provisions often remain inconsistent, leaving significant gaps. Despite the progress so far experienced under the legal frameworks, the enthronement of internal party democracy continues to be confronted with challenges, thereby creating some drawbacks.

To address this, the legal framework and practices must evolve for improvement in regulating the internal party processes. The political leadership must imbibe and inculcate democratic culture,

practice, and principles. Provisions should be put in place to ensure a commendable level of inclusion for diverse groups in society, particularly women, youths as well as people living with disabilities both in terms of quantitative and qualitative representation and participation. Affirmative action must be embraced by the political parties.¹⁰⁰ Also, the courts must attach the highest applicable weight to the role of INEC under the Act. Finally, and very importantly, whereas political parties bear the burden for the enthronement of internal party democracy, where they fail to do so, the courts must call them to order under the law. Substantial justice instead of technical justice must be sustained by the courts.¹⁰¹



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¹⁰⁰ Nigeria is a signatory to international protocols like CEDAW and has also instituted national policies on affirmative action.

¹⁰¹ *State v Gwonto* (1983) S.C.N.L.R 142. "The court has for some time now laid it down as a guiding principle that it is more interested in substance than in mere form. Justice can only be done if the substance of the matter is examined. Reliance on technicalities leads to injustice"- Per Kayode Eso, JSC.