THEORETICAL FRAMEWORKS ON ELECTIONEERING MATTERS IN NIGERIA AND IMPLICATIONS ON ELECTORAL JUSTICE

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Abstract

Electioneering in Nigeria is regulated by constitutional, statutory, regulatory, and judicial frameworks aimed at ensuring free, fair, and credible elections and effective resolution of electoral disputes. This study examines the theoretical frameworks governing electioneering in Nigeria and their implications for electoral justice, with particular focus on the Constitution, Electoral Act 2026. It evaluates the extent to which these frameworks promote fairness, certainty, accessibility, and timely resolution of electoral disputes. The study adopts a socio-legal approach, combining doctrinal analysis of legislation, regulations and judicial decisions with an assessment of the practical operation of the electoral justice system. It argues that, despite significant developments in Nigeria's electoral law, theoretical framework, challenges including procedural technicalities, delays in electoral litigation, evidential difficulties, institutional limitations and inconsistencies in judicial interpretation continue to affect the effective administration of electoral justice. The study therefore proposes legal and institutional reforms to strengthen the consistency, accessibility and effectiveness of electoral dispute resolution and enhance public confidence in Nigeria's democratic process.

Keywords: Electioneering, Electoral Justice, Electoral Law, and Electoral Disputes.

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1. INTRODUCTION

Nigeria's legal framework on electioneering is largely based on the 1999 Constitution (as amended in 2023) and a series of Electoral Acts designed to improve the conduct of elections and uphold democratic principles.[1] The Constitution sets out the legal foundation for electoral processes, including the powers of the Independent National Electoral Commission (INEC) and the rights of citizens to vote and contest for office.[2] Building on this, the Electoral Act 2002 introduced specific rules for election timelines and candidate nominations.[3] Subsequent reforms in the 2006 and 2010 Electoral Acts focused on improving transparency by regulating how and when candidates could be substituted.[4]

The current electoral law in Nigeria is the Electoral Act 2026 which repealed and replaced Electoral Act 2022,[5] brought substantial changes extending deadlines for election notices and candidate submissions, limiting the role of political appointees in party primaries and setting clear procedures for replacing candidates who die before an election.[6] Together, these legal provisions aim to create a more credible and fair electoral process, with significant impact on ensuring electoral justice in Nigeria.

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[1] CFRN 1999 (as amended) section 153, 176–178, 117–119 and Third Schedule Part I para 15; Electoral Act 2022, Act No 13 of 2022.

[2] section 84(12) of the Electoral Act 2022,

[3] See Electoral Act 2006, section 34(1) – (3). See also *Rt Hon Rotimi Chibuike Amaechi v Independent National Electoral Commission & Ors* (2007) SC 252/2007

[4] Section 77, 117, 131–137, 176–182 and 153 of the CFRN 1999 (as amended); Third Schedule Part I para 15. Section 153 establishes INEC, while paragraph 15 of Part I of the Third Schedule sets out its principal electoral functions, including the organisation and conduct of elections.

[5] See Section 28(1) and 29 (1) of the Electoral Act 2022, section 28(1) and 29(1).

[6] See section 15, 20–26 of the Electoral Act 2002.

Within the context of this study, it examine the theoretical frameworks governing the electioneering which are essential for regulating political conduct, protecting electoral rights and promoting accountability. Its effectiveness has significant implications for electoral justice, particularly in ensuring political participation, free fair competition and respect for the will of the electorates. This study examine these frameworks and their implication for electoral justice in Nigeria, with a view to identifying challenges affecting credible electioneering and the measure necessary to strengthen democratic governances.

1.1. Constitution of the Federal Republic of Nigeria, 1999

Nigeria's electoral framework is primarily governed by the 1999 Constitution (as amended), with Sections 65, 106, 131, and 177 detailing the qualifications required for candidates to hold various political offices.[7] Meeting these qualifications is a necessary step for anyone seeking to participate in elections.[8] In Nigeria, citizenship is a requirement for contesting elective offices, meaning only citizens have the right to run for office and participate in general elections as candidates. Sections 25, 26, and 27 outline that Nigerian citizenship can be acquired through birth, registration, or naturalization.[9] While all citizens, regardless of their citizenship acquisition method, can contest for National Assembly and State Assembly seats, only birthright citizens are eligible for top offices like President, Vice-President, Governor, and Deputy Governor.[10] In Nigeria, the Constitution specifies distinct age thresholds for different elective positions.

[7] Constitution of the Federal Republic of Nigeria 1999 (as amended)
[8] Ibid.
[9] Sections 25, 26, and 27 of the CFRN 1999 (as amended)
[10] See section 65, 177, 137, 131, of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

Candidates must meet the age requirement for the specific office they're contesting at the time of the election to be considered eligible.

The Constitution outlines varying age requirements for different offices: 40 years for President and Vice-President, 35 years for Governor, Deputy Governor, and Senate seats, and 30 years for House of Representatives and State House of Assembly membership.[11] The Not Too Young to Run Act amended the age requirements, lowering them to 25 years for the House of Assembly and House of Representatives, 30 years for Senate and Governorship, and 35 years for the Presidency. If a candidate's age eligibility is challenged and a competent court or tribunal finds that they were underage at the time of the election, their victory will be rendered null and void.[12]

The 1999 Nigerian Constitution (as amended) previously set age requirements for elective offices before the Not Too Young to Run Act of 2018 was passed, with minimum ages of 40 for President, 35 for Governors and Senators, and 30 for House of Representatives and State Assembly members.[13] The Not Too Young to Run Act has modified the Constitution, enabling younger individuals to run for office. The new age requirements allow 35-year-olds to contest for President, 30 years for Governor and Senate, and 25 years for the House of Representatives and the House of Assembly.[14] The Not Too Young to Run Act aims to broaden the pool of potential candidates, foster democratic growth, and enhance youth development and empowerment, as pledged by the 8th National Assembly. This Act is meant to empower youth to shape the country's future and drive

[11] Section 65(1) (b) and 106 (b) 1999 Constitution (as amended) Cap C23 LFN, 2004.
[12] See the Not Too Young Act, 2018
[13] Section 65(1), 106, 131 and 177(b) of the CFRN 1999 (as amended).
[14] See section 65, 106 and 131 of the CFRN 1999 (as amended).

transformative change by introducing qualified young Nigerians into leadership and governance roles, ultimately enabling them to contribute to nation-building through public service.

2. THEORETICAL FRAMEWORK AND INFLUENCE ON ELECTION PETITION

The study is strengthened by theory, which enables the assessment of approaches and detection of potential improvements.[15] By integrating frameworks and rules, theory sheds light on the subject matter, clarifying complex ideas through a structured analysis of their origins and development. [16] A well-chosen theoretical framework helps researchers pinpoint their investigation's core. This study's analytical framework is multifaceted, blending insights from elite theory, state fragility theory, and separation of powers theory to provide a nuanced understanding.[17] These theories work together seamlessly, providing a comprehensive understanding of the issue. Elite theory illuminates the actions of politicians who manipulate elections, state fragility theory reveals the underlying weaknesses that facilitate this manipulation, and separation of powers theory, with a focus on judicial independence,

[15] See generally Andrew Abbott, *Methods of Discovery: Heuristics for the Social Sciences* (WW Norton 2004); Wayne C Booth, Gregory G Colomb and Joseph M Williams, *The Craft of Research* (3rd edn, University of Chicago Press 2008).

[16] Robert I Rotberg (ed), *When States Fail: Causes and Consequences* (Princeton University Press 2004); Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (Transaction Publishers 1999); Charles de Secondat, Baron de Montesquieu, *The Spirit of the Laws* (Anne M Cohler, Basia Carolyn Miller and Harold Samuel Stone trs, Cambridge University Press 1989).

[17] See Gaetano Mosca, *The Ruling Class* (Hannah D Kahn tr, McGraw-Hill 1939); Vilfredo Pareto, *The Mind and Society: A Treatise on General Sociology* (Andrew Bongiorno and Arthur Livingston trs, Harcourt Brace 1935); Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (Transaction Publishers 1999).

shows how these dynamics are vulnerable to political coercion, forming a cohesive whole.

1. Elite Theory

It is the view of classical elite theory that a small elite group governs all societies.[18] Contemporary elite theorists agree with this premise but emphasize the need for continuous recruitment to ensure the elite's enduring influence.[19] This concept is grounded in the research of prominent sociologists, including Weber, Michels, Pareto, and Mosca, who characterise the elite as a unique group with exclusive access to valuable resources. Higley and Burton offer a different perspective, viewing elites as a select group of high-achieving individuals within a society or organization.[20] Despite their small numbers, they hold disproportionate power and influence. Their widespread access and control across various sectors enable them to dominate and shape the system. As a result, the power wielded by elites in politics and other areas stems from multiple origins. The literature on political elites is characterised by two main perspectives. Liberal pluralists tend to focus on the elite's efforts to maintain power, while acknowledging the potential for gradual shifts over time.

In contrast, proponents of the critical elite perspective emphasise the concentration of power among elites, which leads to a cohesive and resistant group that is slow to adapt and often exclusive.[21] While various elite theory perspectives in political science have distinct

[18] Lopez-Pintor, R *Mass and Elite Perspectives in the Process of Transition to Democracy*. In *Comparing New Democracies* (Boulder, CO: Westview Press, 1987)
[19] Lucky, O. 'Money Politics and Vote Buying in Nigeria' [2013] 4(4) *Afro Asian Journal of Social Sciences* 19
[20] Higley, J. and Burton, M. G. 'The Elite Variable in Democratic Transitions and Breakdowns' [1989] 54(1) *American Sociological Review*, 17-32.
[21] Ibid.

views, they converge on one key point: understanding how elite behavior influences state outcomes. At its core, elite theory posits that the actions of powerful individuals or groups directly shape the direction and results of state policies and decisions.

The elite theory has its share of critics, who argue that its emphasis on elite behavior as the primary driver of state outcomes oversimplifies the issue. By suggesting that elites have complete agency, the theory neglects the impact of broader structural forces that shape outcomes.[22] However, scholars like De Swaan have pushed back against this criticism, arguing that elite theory is firmly grounded in classical sociology and, in fact, places significant emphasis on structural factors, particularly those related to authority.[23] Despite the criticisms, the theory remains valuable for understanding power dynamics, control, and leadership formation within a polity.[24]

2. State Fragility Theory

The concept of fragility lacks a universally accepted definition, but it generally refers to situations where governments struggle to provide essential services and functions to their citizens due to weak capacity.[25] Fragility is a complex and dynamic phenomenon that can manifest differently across various contexts and timeframes. Despite these variations, common underlying factors often contribute to and sustain fragility, including weak political institutions, economic

[22]Ibid.

[23] De Swaan, A. *Elite Perceptions of the Poor: Reflections for a Comparative Research Project*. In *Elite Perceptions of Poverty and Inequality* (London: Zed Books, 2005)

[24]Ibid.

[25] Vallings, C and Moreno-Torres, M *Drivers of Fragility: What Makes States Fragile* (Department for International Development Working Paper No. 7, 2005)

instability, poverty, and violent conflict.[26] These pressures and risk factors can intersect and compound each other, further exacerbating the fragility of a state. From a different perspective, fragility can be seen as a sign of a state's inability to provide security and facilitate development, resulting in a lack of basic human security and conditions for growth.

While weak governance can contribute to fragility, poverty is often considered a primary driver of this condition. Some researchers argue that poverty plays a more significant role in fragility than poor governance, while others contend that internal conflicts within a state are the main catalyst for fragility.[27] Ultimately, the root causes of fragility can vary, but they often involve a complex interplay of factors.[28] The structure of political institutions can be a key factor in determining the type of government a state has. When state institutions are consistent and well-established, they can provide a foundation for political stability. Robust institutional frameworks enable societal entities to mitigate internal disruptions and maintain order. Conversely, weak institutional structures can create vulnerabilities that powerful groups may exploit, leading to instability and potential abuse of power.[29] Effective institutional arrangements are essential for preventing such abuses and ensuring the overall stability of the political system. It's crucial to recognize that change itself is not the primary cause of fragility, but rather the balance and resilience of a state's institutions that determine its ability to withstand challenges.[30]

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[26]Ibid.
[27]Ibid.
[28] Wang, C and C Kurzman. 'Dilemmas of Electoral Clientelism: Taiwan, 1993' [2007] 28(2) *International Political Science Review* 34
[29]Ibid.
[30]Ibid.

The stability of a state depends on the strength and effectiveness of its institutions. As noted by Yagboyaju, Nigeria's faltering democratisation process in the Fourth Republic can be attributed to the incapacitation of state institutions by corrupt officials and their powerful backers, often referred to as "godfathers".[31] This highlights the importance of robust and independent institutions in maintaining stability and promoting democratic progress. According to Yagboyaju, the fragility of the state allows elites, both within and outside the political sphere, to manipulate state institutions for their own benefit.[32]

He argued that key state institutions, including the legislative, executive, and judicial branches, as well as regulatory agencies, are often controlled by private interests, political leaders, and other special interest groups. This capture of state institutions by powerful elites leads to intense negotiations and power struggles among them, particularly in Nigeria's democracy since 1999,[33] where the structure of political power is often a subject of high-stakes bargaining. The analysis highlights a significant link between elite theory and state fragility in understanding electoral politics in Nigeria. While various factors, such as prolonged military rule, political violence, and poverty, have contributed to the country's fragility, the actions and influence of political elites play a crucial role in exacerbating this condition. The role of elites in shaping the trajectory of state fragility cannot be overlooked, and their impact on Nigeria's electoral politics is particularly noteworthy. The shortcomings of democratic practice in Nigeria can be attributed to state fragility, which often becomes apparent during elections. However, the primary culprits behind these

[31] Yagboyaju, D.A 'Nigeria and the Challenge of Democratic Consolidation: The Fourth Republic Experience' [2008]12(1&2) *African Journal of International Affairs and Development*, 88.
[32]Ibid.
[33]Ibid.

failures are the political elites. The democratisation process in Nigeria is hindered by electoral manipulation, which is often carried out by political elites in collusion with electoral authorities and security agencies, including the Nigeria Police.[34] This suggests that the actions of these elites are a significant obstacle to the development of a robust democracy in the country.

3. Legal Formalism Theory

Fundamentally, formalism is the idea that judging is governed by strict adherence to legal rules. External, non-legal factors are seen as having little to no impact on the results of cases.[35] Consequently, terms such as formalism, mechanical jurisprudence, legalism, and classical legal thought are often used synonymously. Certain commentators also use terms like legal science or positivism in relation to formalism. The expression "new formalism" is occasionally applied to describe the perspective that judicial decision-making, though not necessarily entirely logical or deductive, is still governed by rules and remains largely predictable. Fundamentally, this view maintains that judging is a systematic and logical process, relying mainly or at least sufficiently on the deductive application of legal rules, doctrines, and principles to case facts.[36] In the United States, this approach has never been particularly influential and has frequently been used by realists as a straw man argument. However, outside the U.S., especially in Europe, legal formalism has long been a leading theory of judicial decision-making, though not always in its most rigid form.

The foundation of legal formalism is closely tied to the idea of law as a science. This approach perceives the legal system as a coherent,

[34]Ibid.
[35]Grey, T. C. 'Judicial Review and Legal Pragmatism' [2003]38 *Wake Forest Law Review* 478.
[36]*Ibid*.

complete, and logically structured whole resembling a geometric model. It is seen as self-sufficient, in that all necessary solutions and principles are believed to exist within the framework of established legal rules.[37] The influence of Cartesian thought, which emphasized deductive reasoning, gradually shaped legal reasoning to align with deductive logic. In the Anglo-Saxon legal tradition, Blackstone was one of the pioneers who introduced the idea of law as a rational and scientific system. This understanding became dominant in the 19th century. By the 20th century, the development of analytical positivism in both philosophy and the social sciences further reinforced the conception of law as a rational science.[38]

This notion was especially prominent in the legal traditions of continental Europe. Grant Gilmore, a prominent American legal historian, described formalism as based on the idea that law is a complete and logically consistent system. Within this framework, judges are not seen as creators of law but as discoverers who reveal legal principles that, in a Platonic sense, already exist.[39] The judicial role does not involve altering legal rules to suit changing conditions; its purpose is to uncover the true principles of law, which are believed to have always been in place.[40] In the end, Max Weber provided the most influential and widely accepted definition of legal science.[41] Weber identified five key assumptions underlying legal science: First, each individual legal case involves applying legal rules to a specific factual scenario; second, decisions in any case can be logically derived from legal rules; third, the law must form a complete and "gapless"

[37] Boorstin, D. J. *The Mysterious Science of Law: An Essay on Blackstone's Commentaries* (University of Chicago Press, 1996) 20.
[38]Ibid.
[39]Gilmore, G. *The Ages of American Law* (Yale University Press, 1977) 62.
[40]Ibid.
[41]Weber, M. *Economy and Society* (University of California Press, 1978) 657−58.

system of legal propositions, either actually or at least in theory; fourth, anything that cannot be rationally interpreted within the legal framework is legally irrelevant; and fifth, all human social actions should be understood as either the application or enforcement of legal rules, or as their violation, because the seamless nature of the legal system requires a consistent legal regulation of all social behavior.[42]

This theory holds that if law is a rational discipline, then in a complete and flawless legal system, judges have no need to consult rules outside the system; every case can be resolved internally using logical methods, mainly deduction.[43] In this framework, judges do not legislate, as the legal system is already fully developed and contains no gaps. Therefore, judges are tasked with revealing and proclaiming the law that has always existed. It's no surprise that this perspective led to seeing judges as the ultimate interpreters of the law.[44] Merryman clearly described legal formalism by comparing judges to expert clerks who, when given a set of facts, can usually find a direct legislative answer except in exceptional situations.[45] His job is to identify the applicable laws, match them to the specific facts, and confirm the outcome that logically follows from their combination. Thus, judicial decisions are structured to follow the formal syllogism used in scholastic logic: the statute forms the major premise, the facts of the case supply the minor premise, and the conclusion follows inevitably.[46] Legal formalism maintains that there is an organized system of rules, with basic principles and specific laws guiding

[42]Ibid.
[43]Leiter, B. 'Positivism, Formalism, Realism' [1999] *Columbia Law Review* 1145.
[44]Ibid.
[45]Merryman, J. H. *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford University Press, 1985) 3
[46] Ibid.

judicial decision-making. Judges refer to these legal frameworks to determine the rule that supports reaching a correct judgment.[47]

According to the formalism theory, judges should meticulously analyze prior cases, identifying both parallels and distinctions, to inform their decisions and ensure accuracy. This approach relies on inductive reasoning, where fundamental legal principles are derived from established rules and precedents.[48] Thus, the theory assumes judges derive guiding principles to inform their rulings.[49] Theories on this topic broadly categorize into two: institutional theory, emphasizing precedent's inherent value as a judicial norm, and strategic theory, focusing on precedent's utility in advancing judges' individual agendas within the judiciary.[50] The institutional theory posits that judges adhere to precedent due to the inherent value of upholding the rule of law, which provides societal stability and consistency.[51] Judges may adhere to higher court decisions, even if unpersuasive, to protect the judiciary's reputation for neutrality and maintain the courts' legitimacy, thereby safeguarding their future authority.[52] The institutional theory essentially holds that judges adhere to precedent due to its role in maintaining societal stability and upholding the legitimacy of the judiciary.[53] The reputational impact of following is that deviating from precedent influences judges' decisions,

[47]Geerling W, Magee G, Raschky P, 'Legally Irrelevant Factors in Judicial Decision-Making: Battle Deaths and the Imposition of the Death Penalty in Nazi Germany' [2017] 7(3), *Am. Econ. J. Econ. Pol.* 58–85.

[48]Gravett W.H 'The Myth of Rationality: Cognitive Biases and Heuristics in Judicial Decision-Making' [2017]134(1) *South African Law Journal* 79.

[49]Ibid.

[50]Ibid.

[51]Sidney A. Shapiro & Richard E. Levy, 'Judicial Incentives and Indeterminacy in Substantive Review of Administrative Decisions' [1995] *DUKE L.J.* 1051

[52]Ibid.

[53]Ibid.

particularly when their actions are highly visible to peers and the public,[54] prompting them to adhere to higher court rulings. Strategic theory suggests judges follow precedent because it helps them achieve their goals more efficiently, providing a shortcut by leveraging prior court decisions and established reasoning.[55] Following precedent can help promote general respect for stare decisis (SD), making a judge's rulings more authoritative.[56]

Relying on widely accepted legal principles may prevent controversial opinions from attracting criticism.[57] Furthermore, as Volokh suggests, a continuous line of precedent can enrich a judge's decision with more meaningful context, aiding in communicating their intentions to lower courts.[58] By relying on a series of previous cases, appellate judges can provide trial courts with a clearer and more detailed interpretation of a legal rule through multiple examples of its enforcement.[59] On the other hand, if a judge abandons precedent, they have only the current case to illustrate how the new rule applies.

4. Separation of Power Theory

The concept of separation of powers has been inherent to human societies since time immemorial, manifesting in every community. Therefore, democratic nations governed by the rule of law inevitably adopt this principle, often referred to as a division of responsibilities, where distinct branches of government maintain distinct roles.

[54]Frank B. Cross & Emerson H. Tiller, Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeal, [1998] *YALE L.J.* 2155
[55]Ibid.
[56]Ibid.
[57]Ibid.
[58]Alexander Volokh, 'Choosing Interpretive Methods: A Positive Theory of Judges and Everyone' [2008] 1(2) Else'*N.Y.U. L. REV.* 769
[59]Ibid.

Similarly, authoritarian regimes have come to recognize the importance of separating powers for efficient governance. A notable example is the ancient Oyo Empire in Yorubaland, Nigeria, where the establishment of the Ogboni council served as a check on the powers of the Alaafin, illustrating the practical benefits of this principle.[60] In essence, the principle of separation of powers transcends time and geography, applying universally across cultures and nations.[61] While its implementation may vary, adapting to local contexts and cultural nuances, the fundamental concept remains a constant. When trust is lacking, it's unwise to vest unchecked power in one individual or entity to oversee the entire government. Instead, a separation of powers approach empowers each branch of government with specific authority and the ability to check potential abuses by other branches, promoting balance and accountability.[62]

In essence, separation of powers seeks to prevent tyranny and abuse of authority, recognizing that unchecked power can lead to corruption.[63] This concept is often attributed to Montesquieu, whose ideas drew inspiration from ancient Greek and Roman theories of mixed government and the British constitutional system of the 18th century. This concept is aptly referred to as Montesquieu's Tripartite System (MTS) due to its division of power into three branches. Montesquieu, influenced by Locke's ideas and the English system, argued that separating powers could prevent abuse, particularly in his native France, where absolute power was prevalent. He saw this division as a

[60] Nnadozie, U. *History of Election in Nigeria.* In *Elections and the Future of Democracy in Nigeria* (Nigerian Political Science Association, 2007) 45– 73.
[61]Ibid.
[62] Gillian E. Metzger, 'The Interdependent Relationship between Internal and External Separation of Powers' [2009] 59 *Emory Law Journal*, 424-457.
[63]Ibid.

safeguard against tyranny.[64] The separation of powers doctrine involves dividing authority among three government branches: the executive, legislative, and judicial. This concept relies on two key principles: firstly, each branch has defined responsibilities and limitations, and secondly, the judiciary maintains independence,[65] ensuring a system of checks and balances. The goal of limiting power and functions among government branches is to prevent any one body from dominating the others, which can lead to abuse and potentially tyranny. As Bradley and Ewing succinctly put it, this means maintaining clear boundaries, such as separating executive and legislative roles, keeping the judiciary independent, and preventing ministers from overstepping their authority.[66] According to John Locke, a renowned English philosopher, the concentration of power in a single entity, where one body makes, interprets, and enforces laws, creates a significant risk of corruption.[67] Given the complex nature of governmental roles, overlaps can lead to conflicts, and an independent judiciary plays a crucial role in resolving these disputes and balancing competing interests. Therefore, if the separation of powers among the executive, legislative, and judicial branches is weak, democracy itself is at risk. The way the judiciary is set up, including who becomes a judge and how it's funded, can impact its ability to act independently.[68] When the executive branch has too much influence over judicial appointments, judges may favor certain political views, compromising

[64]Ibid.

[65] See Allan, T.R.S. 'Legislative Supremacy and the Rule of Law' *Democracy and Constitutionalism* (1985) 44

[66] Bradley, A. W. & Ewing, K. D. *Constitutional & Administrative Law* (Pearson, 2011) 83.

[67]Ibid.

[68] Ladinsky, J and Silver, A 'Popular Democracy and Judicial Independence: Electorate and Elite Reactions to Two Wisconsin Supreme Court Elections' [1967] 23(3) *Wisconsin Law Review* 128.

the judiciary's impartiality. This often renders the judiciary vulnerable to political influence.

3. IMPLICATION OF THE THEORIES TO ELECTION MATTERS IN NIGERIA

The relevance of ET, SFT, and SPT to electoral issues in Nigeria is closely interwoven, and they play a notable role in shaping judicial outcomes. Elite Theory, in particular, holds that a limited group of powerful actors exerts control over the political system, often placing their personal or group interests above the welfare of the broader population. The Separation of Powers Theory, on the other hand, emphasizes the need to distribute authority among the executive, legislative, and judicial branches to prevent the abuse of power and ensure effective checks and balances. In Nigeria, electoral disputes and controversies often arise, and these challenges are frequently worsened by state fragility.[69]

State Fragility Theory explains that weak institutions and governance structures tend to generate instability and conflict. In the electoral context, this may lead to disputes and violence, particularly when the judiciary is perceived as biased or ineffective. Additionally, elite influence can further weaken institutional capacity, thereby reinforcing a cycle of instability and undermining the credibility of democratic governance. In Nigeria, the judiciary plays a crucial role in ensuring that the other branches of government do not overstep their authority. However, the elite's influence and state fragility can compromise the judiciary's independence, leading to biased decisions that favor the interests of the powerful few.

The interplay between these theories has significant implications for election matters in Nigeria. The elite's influence can lead to electoral

[69] Ibid

disputes, which can be further complicated by state fragility. The judiciary's decision can either exacerbate or mitigate these issues, depending on its independence and impartiality. If the judiciary is perceived as biased or influenced by the elite, it can undermine the legitimacy of democratic processes and perpetuate state fragility. Ultimately, the implications of these theories highlight the need for strengthening institutions, promoting transparency and accountability, and ensuring the independence of the judiciary. By doing so, Nigeria can work towards more stable and legitimate democratic processes, where the interests of the general population are prioritized over those of the powerful few. The judiciary's role in this process is critical, and its decisions can have a lasting impact on the country's electoral trajectory.

3.1. LITERATURE REVIEW

Babayo S[70] chronicles the evolutionary trajectory of Nigeria's electoral legislation, spanning from colonial times to post-independence amendments. He underscores that initial electoral constructs were largely patterned after British prototypes, yet failed to accommodate indigenous political contexts. He posits that the enactment of the 2002 Electoral Act represented a pivotal transformation, establishing a thorough legal architecture for electoral administration, notwithstanding enduring execution hurdles.

Eghosa [71] scrutinizes Nigeria's shift from military governance to democratic rule, observing how constitutional stipulations such as the 1999 Constitution and later revisions established the basis for electoral

[70] Babayo Sule, *Political Party Financing and Electoral Politics in Nigeria's Fourth Republic* [Nomos Verlagsgesellschaft mbH & Co. KG, 2023] 66

[71] Eghosa Osaghae, Rethinking Elections in Nigeria (2019) <https://npsang.org/publication/uploads/2019/10/Eghosa-Osaghae-Rethinking-Elections-in-Nigeria.pdf > accessed on 25 October, 2026

regulation. He criticizes the vagueness in provisions addressing electoral controversies and the authority of the Independent National Electoral Commission (INEC), contending that these uncertainties have precipitated disparities in judicial decisions.

Okechukwu,[72] delivers a detailed examination of the Electoral Act (as amended), underscoring its contribution to bolstering the legal architecture governing elections. He applauds stipulations such as campaign finance regulation, deadlines for electoral litigation, and sanctions for electoral infractions. Nonetheless, he observes that implementation constitutes a significant hurdle, with INEC frequently encountering difficulties in ensuring accountability among transgressors. In a separate work, Ibeanu[73] concentrates on the 2010 and 2022 revisions to the Electoral Act, which incorporated innovations such as electronic balloting and electronic result transmission. He contends that these stipulations possess the capacity to augment openness and diminish electoral malpractice, yet warns that technical and operational obstacles might compromise their efficacy. Abiola, O[74] examines the electoral clauses within the 1999 Constitution, specifically Sections 76, 116, and 132, overseeing federal election procedures. Ojo faults the absence of comprehensive instructions for settling electoral disagreements, leading to uneven judicial outcomes and courts relying on situational interpretations.

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[72] Okechukwu Ibeanu, *Reforming Nigeria's Independent National Electoral Commission: A Sandwich Approach to Electoral Accountability 2010–2015* (Accountability Research Centre, 2022) 67

[73] Okechukwu Ibeanu**,** *Digital Technologies and Election Management in Africa's Democratisation Process: More Technocratic than Democratic* (CODESRIA, Dakar, 2022)

[74]Abiola Ojo*, Challenges of sustainable democracy in Nigeria* (Ibadan: J. Archers, 2006)

Akande and Mujeeb [75] contend that this deficiency erodes the Constitution's capacity to furnish a consistent structure for regulating electoral processes. Examining INEC's prosecutorial authority regarding electoral malpractice, they deliberate on the constitutional mandate of the Independent National Electoral Commission (INEC) in orchestrating and overseeing elections. They applaud INEC's autonomous status as stipulated in the Constitution, though they point out that political intrusion and inadequate budgetary allocations have commonly hindered its performance. The author urges constitutional modifications to reinforce INEC's self-governance and operational prowess.

Orangeman and Okwudinka [76] examine the judicial system's involvement in settling electoral disagreements pursuant to Nigeria's legislative scaffolding. They emphasize the vital role election tribunals play in settling disputes; however, they fault the variability of court decisions, linking this to unclear aspects of the Electoral Act and constitutional clauses. In conclusion, they push for more transparent legislative frameworks and judicial restructuring to foster coherence and protect the electoral system's trustworthiness.

Emmanuel Olugbade[77] analyses significant electoral court decisions in *Amaechi v. INEC* and *Atiku v. INEC,* showcasing the judiciary's impact on Nigeria's electoral sphere. He posits that courts have been instrumental in addressing electoral irregularities, yet their focus on

[75] Akande I. F. & Mujeeb A. Imran, 'An Appraising of the Legal Framework for Prosecution of Electoral Offences in the Conduct of Elections in Nigeria' [2023] 3(1) *Achievers University Law Journal AULJ* 86

[76]Ikenga K.E. Oraegbunam and Albert Nwabufo O**, '**An Extrapolative Appraisal of the Role of Courts in the Nigerian Electoral Democracy' [2025]12(2) *Nnamdi Azikiwe University Journal of Commercial and Property Law* 112

[77] Emmanuel O.O, **'**Dimensions of Electoral Reforms in Nigeria' [2021] 6(11) Brazilian *Journal of African Studies* 189-210

technical aspects rather than substantive equity often distances voters and diminishes faith in the judicial apparatus. Umar faults the application of Nigeria's electoral statutes, pointing out that enforcement is lax despite having sturdy legal architectures. He singles out deep-seated challenges including corruption, political intrusion, and budgetary shortcomings as principal barriers to successful execution.

Umar[78] asserts that augmenting institutional prowess and cultivating political resolve are vital for reconciling the divergence between legal frameworks and practical application. Chidi Odinkalu[79] probes the hurdles stemming from Nigeria's political milieu to the execution of electoral laws. He maintains that rampant unaccountability for electoral infractions and the politicization of agencies responsible for enforcing laws compromise the trustworthiness of elections. Odinkalu pushes for far-reaching changes, involving the setup of self-governing organs to examine and prosecute electoral transgressions.

Kolawole[80] examines the latest developments embedded in the 2022 Electoral Act updates, such as computerized voting and digital dispatch of results. He commends these stipulations for their ability to heighten clarity and mitigate electoral deception, although he alerts that snags like tech breakdowns and online security perils could constitute considerable hazards. Shaibu, M.T., Lanre, O.L and

[78] Umar K.G, 'Issues in Election Petition Adjudication in Nigeria's Fourth Republic: A Sociological Critique of the Role of the Judiciary' [2017] 5 (11) *GJPL* 75.

[79] Chidi Odinkalu, 'Democracy in Africa and the Dangers of a Judicial Selectorate' Nigeria Vanguard (18May, 2025]

[80] Kolawole, D. 'Democracy, Elections, Majoritarianism and the Nigerian Factor' *the Nation*, Lagos, (13 July 2022).

Owoeye, D.V.,[81] scrutinize the incorporation of technological tools in Nigeria's electoral system, highlighting the utilization of biometric voter sign-up and card readers. They assert that though these technological advances have curtailed voter impersonation occurrences, hurdles including gadget breakdowns and deficient voter awareness still impede their operational success.

Osaghae [82] probes the nexus between Nigeria's electoral law architecture and the entrenchment of democratic governance. He maintains that strong electoral legislation is crucial, yet its efficacy is contingent upon political stakeholders' adherence to democratic standards and ideals. Osaghae stresses the necessity of public enlightenment and local-level involvement to nurture an ethos of responsibility and candor. Festus, O [83] scrutinizes INEC's statutory remit as outlined in the Electoral Act and the Constitution, underscoring its function in orchestrating, overseeing, and governing elections. He commends INEC's uptake of technological advancements like biometric voter enrolment and card readers, which have curtailed electoral malpractice. Nonetheless, he points out that INEC's capability is often impeded by scarce budgetary provisions, political intrusion, and difficulties with electoral operations. The author challenges INEC's autonomy, asserting that notwithstanding the Constitution's guarantee of self-governance, political manipulation compromises its objectivity. He highlights the requirement for structural adjustments to shield INEC from unwarranted influence

[81] Shaibu, M. T., Lanre Olu-Adeyemi, and Owoeye, D.V, 'Making Votes count in Election Technology Era: A Proposed Framework for Nigeria's Future Elections to Enhance Global Standing' [2024]8(1) *Wukari International Studies Journal* 243-251

[82] Eghosa O, Rethinking Elections in Nigeria (2019) <https://npsang.org/publication/uploads/2019/10/Eghosa-Osaghae-Rethinking-Elections-in-Nigeria.pdf > accessed on 25 October, 2026

[83] Okoye, F. *Restorative Justice & The Defence of People's Mandate: The Judiciary in the Aftermath of the 2007 Elections, in Nigeria.* In Direct *Capture: The 2007 Nigerian Elections and Subversion of Popular Sovereignty* (CDD, OSIWA 2007) 34

wielded by political stakeholders, particularly the government's executive arm.

Ovwasa[84] hones in on INEC's reliability, noting that its ability to implement electoral rules is subverted by ingrained malfeasance and unbridled infractions. He presses for enhanced transparency in INEC's activities, covering public accountability for decisions such as announcing electoral verdicts and excluding contestants. Political parties hold a crucial place in Nigeria's electoral system structure, but researchers have pointed out their inadequacies in advancing democratic tenets. Fawehinmi[85] for instance, examined the trajectory of Nigeria's political parties, remarking that they've been perennially beset by deficient internal democratic governance. He asserts that fragile party organizations and non-transparent processes for selecting candidates exacerbate electoral conflicts and deprive voters of their rights.

Omotola[86] assesses how political parties contribute to inclusiveness, drawing attention to the peripheral position of women, youths, and other underserved cohorts in party organizations. He remarks that such exclusion impedes democratic entrenchment. He pushes for overhauls to ensure political parties abide by legislative mandates on affirmative action and representative diversity. Alayinde,[87] investigates the ways political parties capitalize on vulnerabilities in the legislative structure to subvert the electoral process. He underscores problems like vote purchasing, imposed candidacies, and deploying hoodlums to coerce

[84] Ovwasa O. 'Money Politics and Vote Buying in Nigeria: The Bane of Good Governance' [2014] 5(7) *Mediterranean Journal of Social Sciences* 99

[85] Fawehinmi, G. *The Role of Election Tribunals*, The Guardian (2 May, 2007)

[86] Omotola, J. S. 'Elections and democratic transition in Nigeria under the Fourth Republic' [2010] 10 (2) *African Journal Affairs* 553.

[87] Alayinde Z. O. 'An Analysis of the Legal Regime of Election Administration in Nigeria' [2016] 46(1) *Journal of Law, Policy and Globalization* 12.

voters, contending that such tactics compromise electoral credibility and diminish citizen confidence in democratic governance. He urges tougher implementation of statutes governing political party conduct and the setup of autonomous oversight systems to enforce adherence.

Ayika [88] recognized the significance of electoral contestations in democratic governance, yet placed greater emphasis on the difficulties associated with the application of judicial discretion in election petitions. The writer held the perspective that the manner in which lower courts and the apex court wield discretion in electoral disputes has eroded the legal principles underlying election petitions. The author proceeded to assert that the Supreme Court has failed to insulate itself from partisan interference, attributing this to the inappropriate exercise of discretion in matters pertaining to elections. Umar[89] notes that Nigeria's judicial system has frequently faced harsh censure for its approach to managing election dispute cases. He contended that judicial officers are accountable for sluggishness causing unwarranted postponements, collusion aimed at thwarting litigants, corrupt practices involving the sale of verdicts to the most lucrative offeror, and excessive politicization of electoral litigation. According to the author, these elements have led to a thorough travesty of the entire justice system, a situation palpable even to the international community. The writer inferred that such conduct on the part of judicial bodies represents a substantial obstacle to the pursuit of electoral justice by aggrieved parties, as well as to democratic

[88] Ayika V.O *An Analysis of the Discretionary Powers of the Court: A Case of Election Petition Tribunal Decisions* (LL.M Dissertation, Institute of Legislative Studies, Abuja 2022).

[89] Umar K.G, 'Issues in Election Petition Adjudication in Nigeria's Fourth Republic: A Sociological Critique of the Role of the Judiciary' [2017] (5) *GJPL* 75.

development and stabilization. Obinne,[90] in assessing the significance of election petitions, focused predominantly on the hurdles viewed through the lens of legal and policy complexities tied to the implementation of electronic voting (e-voting) systems within Nigeria's electoral framework. He maintains that electronic elections, when suitably deployed and sufficiently resourced, harbor significant prospects and capacity as a solution to voting irregularities in Nigeria's electoral apparatus. He probes the conceptual, legislative, and constitutional underpinnings of electronic voting. Deriving examples from various domains, he explored the tangible difficulties linked to inaugurating and embedding an electronic voting structure in Nigeria. Such hurdles encompass potential breaches of electronic voting apparatus via viruses or other malevolent software; manipulation by individuals possessing privileged system access, including developers, administrators, or rogue hackers; denial-of-service assaults rendering the e-voting infrastructure inoperable or inaccessible to voters; insufficiency of robust oversight mechanisms; and the complexities of substantiating electronic assaults within judicial forums, amongst other considerations. He additionally asserts that numerous of these difficulties fall outside the purview of, and are consequently unaddressed by, Nigeria's Electoral Act 2022, rendering the legislation presently inadequate and ill-suited to effectively tackle digital complications arising during electoral disputes.

John[91] underscored the prominence of judicial precedents, observing that they constitute a defining feature of English legal tradition. The author posits that English law is predominantly shaped by rulings from

[90] Obinne O.O 'Advancing Electronic Voting Systems in Nigeria's Electoral Process: Legal Challenges and Future Directions' [2018] 9 (1) *ABUJSDLP* 5

[91] John W.S 'The Theory of Judicial Precedents' (1998) <https://www.taylorfrancis.com/chapters/edit/10.4324/9781315051833-10/theory-judicial-precedents-john-salmond> accessed on 25 October, 2026

past cases. It was the writer's perspective that precedents established by judges contribute to stability in legal progression. In alignment with this standpoint, Idahosa[92] posited that judicial precedent stems from case law, representing the aggregate of legal tenets and rules articulated by courts through the years to address particular legal scenarios. He additionally remarked that notwithstanding the conventional notion that judges don't enact laws, they do participate in law creation to some extent. He shared this viewpoint, suggesting judicial precedent derives from case law, which encompasses the corpus of legal doctrines and regulations pronounced by courts over the years for governing distinct legal situations. The author also observed that despite the prevalent understanding that judges aren't law-makers, their role isn't completely divorced from the process of shaping legislation. The author's perspective indicates the focus is limited to the 2006 and 2010 Electoral Acts, whereas the present research encompasses a wider range. Remi O.[93] points out that the Supreme Court's decisions under the Electoral Act of 2006 reflected a strong adherence to the principle of stare decisis. In contrast, such consistency was lacking when the Court's rulings were examined under the Electoral Act of 2010. From the author's perspective, the analysis is confined to the 2006 and 2010 Electoral Acts, whereas the present research extends well beyond those frameworks.

4. **CONCLUSION**

The theoretical framework governing electioneering matters in Nigeria provides an important foundation for credible elections and the protection of electoral rights. The Constitution, the Electoral Act 2022

[92]Idahosa C.O., The Doctrine of Stare -Decisis and Judicial Precedent: The Need For Lower Courts To Be Bound by Decisions of the Superior Courts of Record' Conference of all Nigeria Judges of the Lower Courts (2016)

[93] Remi P.O, 'Stare Decisis and Judicial Outcomes in Pre-Election Matters, Redeemer's University Nigeria [2022] 1(3) *RUNJJIL* 2.

now repealed and replaced Electoral Act 2026, the regulation of the independent National Electoral Commission (INEC), and judicial decisions collectively establish rules for voters' participation, political party activity, electoral conduct, dispute resolution, and determination of election petitions. However, the effectiveness of this framework depends not merely on the existence of laws but on their consistent, impartial, and timely enforcement. The implication for electoral justice is therefore significant. Where electoral laws are clearly applied, and electoral dispute are resolved promptly and fairly, public confidence in the democratic process is strengthened.

5. RECOMMENDATIONS

The following recommendations are made:

i. **Establishing Stronger Internal Mechanisms for Resolving Jurisprudential Conflicts.** The Supreme Court and Court of Appeal should strengthen their internal mechanisms for identifying and resolving conflicting authorities. Where two or more decisions of the same court appear to be irreconcilable, the Court should expressly determine which authority represents the correct statement of law and provide reasons for that conclusion.

In appropriate cases, an enlarged panel or full-court consideration of an important question of electoral law could provide a mechanism for resolving uncertainty and establishing authoritative guidance for subsequent cases. This would be particularly useful where conflicting decisions have emerged within a short period or where different panels have adopted substantially different interpretations of the same constitutional or statutory provision. The purpose should be to produce a clear and authoritative statement of the law without unnecessarily expanding the duration or cost of electoral litigation.

ii. **Strengthening the Regulation of Frivolous and Abusive Electoral Litigation.**

There is also a need to strengthen mechanisms for discouraging frivolous, vexatious and abusive electoral litigation. Electoral litigation is an essential component of democratic accountability, and access to judicial review of electoral conduct must not be restricted merely because a claim is politically inconvenient or unsuccessful. Nevertheless, litigation that lacks a reasonable legal or evidential foundation can impose substantial costs on opposing parties, burden the courts and delay the final resolution of electoral disputes.

The courts should therefore make fuller and more consistent use of existing procedural and costs mechanisms against litigants who institute proceedings for improper purposes or without a reasonable basis. Clearer judicial guidance on the evidential and legal thresholds applicable to election petitions would also help litigants and their counsel determine whether a proposed claim is genuinely sustainable. Such measures would promote judicial efficiency while preserving candidates' and voters' fundamental right to challenge unlawful electoral conduct.

iii. **Overall Institutional Reform**.

The recommendations proposed above should not be viewed as isolated interventions. They form part of a broader institutional strategy for improving the coherence and legitimacy of Nigeria's electoral jurisprudence. The principal objective should be to establish an electoral justice system in which legal rules are sufficiently clear, judicial decisions are adequately reasoned, precedent is consistently respected, legitimate departures from precedent are transparently justified, and electoral disputes are determined within constitutionally prescribed timelines.

Ultimately, consistency in electoral jurisprudence is not merely a technical requirement of judicial administration. It is an important component of the rule of law and democratic legitimacy. Political

parties, candidates, electoral institutions and citizens must be able to reasonably anticipate the legal consequences of electoral conduct. Where similar electoral disputes produce unexplained and materially different judicial outcomes, confidence in the judiciary and the electoral process may be weakened. Conversely, a coherent, transparent and independent system of electoral adjudication can strengthen public confidence, promote compliance with electoral rules and contribute substantially to the consolidation of constitutional democracy in Nigeria.