Nnamdi Azikiwe University Journal of Private and Property Law Volume 2(2) Sept., 2025

PRE-ELECTION LITIGATION AND THE CRISIS OF INTERNAL PARTY DEMOCRACY IN NIGERIA'S FOURTH REPUBLIC (1999–2023)[1]

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ABSTRACT

Pre-election litigation has become a defining feature of Nigeria's electoral process, largely driven by weak internal party democracy. Internal party conflicts and issues have continued to plague the Nigerian political party system, resulting in increased internal problems within the parties and a surge in court cases. This has significantly affected the Nigerian democratic system, threatening its continued existence. It is against this background that this article critically examines how intra-party conflicts, ranging from flawed primaries to wrongful substitutions, have flooded the judiciary with disputes and destabilized Nigeria's democratic consolidation. This work considered the existing legislation on the subject to identify the prospects of the existing legal structure, the challenges inherent in the legal structure, and also infused a comparative analysis of the pre-election litigation and internal party conflicts in Nigeria with that of other countries. In carrying out this research, the doctrinal method of data collection was adopted. This method involved the reliance on primary and secondary sources of law. The researcher found that the extant legal structure in Nigeria presented significant issues for pre-election litigation and internal party conflicts, including insufficient regulatory frameworks and the various claw-backs in the law. It was recommended that reforms in party structures, INEC's oversight, and judicial approaches to pre-election matters should be employed in order to ensure that the Nigerian political system is effective, thereby ensuring wider voter trust in the system and the development of democracy in Nigeria.

Keywords: Democracy, Internal Party, Pre-election, Litigation.

1.0 Introduction

The centrality of political parties in Nigeria's constitutional democracy makes the regulation of their internal affairs a matter of significant public interest. Since the return to civil rule in 1999, disputes arising from party primaries and candidate selection have dominated the electoral process. These disputes, often framed as pre-election litigation, reflect both the weaknesses of internal party democracy and the increasing judicialization of politics in Nigeria.

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Pre-election litigation refers to disputes that arise before the conduct of general elections, particularly those concerning the nomination of candidates, the conduct of primaries, and the substitution of candidates. Such cases are typically filed by aspirants challenging the processes within their parties or the decisions of the Independent National Electoral Commission (INEC). The volume of these cases has grown exponentially since 1999, raising concerns about the institutionalisation of political parties, the role of the judiciary, and the legitimacy of Nigeria's democratic process.

At the heart of the issue lies the tension between party autonomy—the right of political parties to govern their internal affairs, and the enforcement of constitutional and statutory norms. While political parties are voluntary associations, the Constitution of the Federal Republic of Nigeria[2] and the Electoral Act 2022 impose obligations on them to practise internal democracy, conduct credible primaries, and adhere to their constitutions.[3] When parties fail to comply, aggrieved aspirants often turn to the courts, leading to an explosion of pre-election litigation.

The purpose of this paper is to interrogate the role of pre-election litigation in Nigeria's Fourth Republic, with particular emphasis on how it exposes and exacerbates the crisis of internal party democracy. By examining statutory frameworks, judicial decisions, and comparative experiences, the paper seeks to demonstrate that while the judiciary has provided crucial safeguards against illegality, over-reliance on litigation undermines the long-term consolidation of democracy.

2.0 Theoretical Analysis

Beyond doctrine and comparative practice, pre-election litigation in Nigeria can be analysed through theoretical lenses such as judicialisation of politics, democratic consolidation, and party institutionalisation.

2.1 Judicialisation of Politics

The concept of judicialisation of politics describes the increasing role of courts in resolving political questions.[4] In Nigeria, the explosion of pre-election litigation exemplifies this phenomenon. Courts are not only enforcing legality but also indirectly shaping electoral outcomes, as in *Amaechi v INEC.* [5]and *Uzodinma v Ihedioha*.[6] While judicialisation may serve as a check on elite impunity, it risks politicising the judiciary and eroding democratic legitimacy.

[2] 1999 (As Amended) (hereinafter referred to as 'The Constitution')

[3] Constitution of the Federal Republic of Nigeria 1999 (As Amended), ss 221–229.

[4] R Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press 2004) 71–74.

[5] [2008] 5 NWLR (Pt 1080) 227 (SC);

[6] [2020] 5 NWLR (Pt 1716) 247 (SC).

2.2 Democratic Consolidation

Democratic consolidation requires stable institutions, respect for rules, and credible elections.[7] Persistent pre-election litigation undermines consolidation by exposing institutional weaknesses. When disputes are routinely resolved by courts rather than party structures, democratic accountability shifts from voters to judges. Moreover, inconsistent jurisprudence creates uncertainty, weakening faith in both parties and the judiciary.

2.3 Party Institutionalisation

Party institutionalisation refers to the degree to which parties become stable, autonomous, and embedded in society.[8] In Nigeria, weak institutionalisation manifests in the dominance of party elites, lack of credible membership registers, and frequent factionalisation. Pre-election litigation is both a symptom and a cause of this weakness: aspirants litigate because parties are untrustworthy, and litigation further delegitimises party institutions.

2.4 Balancing Autonomy and Accountability

The challenge for Nigeria is to strike a balance between party autonomy and accountability. Excessive judicial intervention undermines party autonomy, while unregulated party practices erode democracy. Theories of regulated party autonomy suggest that parties should enjoy freedom in decision-making, but be subject to clear constitutional and statutory safeguards.[9] This balance is essential for reducing litigation and promoting democratic consolidation.

3.0 Legal Framework for Pre-Election Litigation in Nigeria

Nigeria's legal framework for pre-election litigation is primarily anchored in the Constitution and the Electoral Act (as amended). These instruments establish the rights of aspirants, the powers of INEC, and the jurisdiction of the courts.

3.1. **Constitutional Foundations**

The Constitution provides that only political parties may sponsor candidates for elections.[10] It also stipulates the requirements for party registration, including the need

[7] L Diamond, *Developing Democracy: Toward Consolidation* (Johns Hopkins University Press 1999) 65–72.

[8] S Mainwaring and T Scully, *Building Democratic Institutions: Party Systems in Latin America* (Stanford University Press 1995) 1–4.

[9] R Katz and P Mair, 'Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party', *Party Politics* [1995] (1) (5), 15.

[10] Ibid, s221.

for parties to have a constitution that conforms with democratic principles.[11] More directly, the Constitution mandates that party constitutions must provide for the periodic election of party executives at national and state levels.[12] These provisions affirm the constitutional requirement of internal party democracy.

In terms of judicial power, the Constitution vests judicial authority in the courts,[13] while it expressly defines pre-election matters to include disputes relating to the nomination of candidates by political parties.[14] This constitutional basis ensures that disputes over party primaries are justiciable and fall within the competence of the courts.

3.2. **Electoral Act 2022**

The Electoral Act[15] further elaborates the framework for party primaries and candidate nomination. The Act outlines the procedure for direct, indirect, and consensus primaries,[16] while it grants locus standi to an aspirant who participated in a primary to challenge its conduct in court.[17] The Act also requires parties to give INEC at least 21 days' notice before holding primaries, empowering the Commission to monitor but not to conduct such primaries.[18]

The provisions of *Section 84(12)* of the Act generated significant controversy, as it bars political appointees from voting or being voted for in party primaries unless they resigned prior to the exercise.[19] The Court of Appeal has upheld the validity of this provision, reinforcing the emphasis on fairness and the separation of political and administrative roles.

The Act also regulates candidate substitution, prohibiting substitution of candidates except in cases of death or voluntary withdrawal, subject to validly conducted primaries.[20] This provision was designed to curb the widespread abuse of substitution witnessed in earlier electoral cycles.

[11] Ibid, s222.
[12] Ibid, s223.
[13] Ibid, s6.
[14] Ibid, s285(14).
[15] 2022 (hereinafter referred to as 'The Act')
[16] Electoral Act 2022, s84.
[17] Ibid, s84(14).
[18] Ibid, s82.
[19] Electoral Act 2022, s84(12); *All Progressives Congress v Karfi* [2022] Court of Appeal, Kano Division, CA/KN/146/2022.
[20] Electoral Act 2022, s33.

4.0. **Jurisdiction over Pre-election Cases**

Jurisdiction over pre-election matters lies primarily with the Federal High Court, as stipulated by the Constitution[21] and the Electoral Act.[22] Appeals lie to the Court of Appeal and, ultimately, the Supreme Court. Strict timelines are also applicable, as the Constitution mandates that pre-election cases must be filed within 14 days of the occurrence of the event, decision, or action complained of.[23]These timelines are intended to prevent prolonged uncertainty in the electoral process. However, in practice, they have also contributed to an overwhelming number of expedited cases that strain judicial capacity.

4.0 Pre-Election Litigation Since 1999

The jurisprudence of Nigeria's appellate courts since 1999 has shaped the trajectory of pre-election litigation. Judicial interventions have alternately reinforced internal party democracy, expanded judicial oversight, and at times generated controversy about the limits of judicial power.

4.1. **Early Fourth Republic: Establishing Judicial Competence**

Initially, Nigerian courts were reluctant to intervene in the internal affairs of political parties, often invoking the doctrine of non-justiciability. In *Onuoha v Okafor*,[24] the Supreme Court held that the choice of a candidate by a political party was a political question not amenable to judicial review. This decision, though delivered under the 1979 Constitution, continued to influence early Fourth Republic jurisprudence.

The tide shifted with *Ugwu v Ararume*,[25] where the Supreme Court nullified the substitution of a validly nominated candidate by the Peoples Democratic Party (PDP). The Court held that while parties have autonomy, such autonomy must be exercised in

accordance with their Constitution and the Electoral Act. This marked a decisive move towards judicial protection of aspirants' rights.

4.2 **Expansion of Judicial Oversight**

The case of *Amaechi v INEC*[26] represents a watershed. The PDP had unlawfully substituted Rotimi Amaechi, who won the primary, with Celestine Omehia. The Supreme Court held that votes cast for a political party belong to the candidate validly

[21] Constitution of the Federal Republic of Nigeria 1999 (As Amended), s285(9).
[22] Electoral Act 2022, s84(14).
[23] Constitution of the Federal Republic of Nigeria 1999 (As Amended). S285(9).
[24] [1983] 2 SCNLR 244.
[25] [2007] 12 NWLR (Pt 1048) 367 (SC).
[26] [2008] 5 NWLR (Pt 1080) 227 (SC).

nominated at the primary. Consequently, it declared Amaechi the Governor of Rivers State, notwithstanding that Omehia had already been sworn in.

This decision underscored the supremacy of party primaries and provided a deterrent against arbitrary substitution. However, it also sparked debate about whether the Court had usurped the role of voters, since Amaechi's name was not on the ballot.

Further reinforcement came in *Lado v CPC*,[27] where the Supreme Court held that aspirants who participated in primaries had locus standi to challenge their outcome, even if the party attempted to shield the process from judicial scrutiny.

4.3 **Conflicting Jurisprudence and Abuse of Process**

Despite these advances, inconsistencies have emerged. In *PDP v Sylva*,[28] the Supreme Court barred the then-Governor of Bayelsa State, Timipre Sylva, from contesting the 2012 governorship election, on the basis that his tenure had already expired. Critics argued that the Court ventured into political questions beyond the proper scope of pre-election disputes.

Similarly, in *Uzodinma v Ihedioha*,[29] the Supreme Court declared Hope Uzodinma Governor of Imo State after recalculating results excluded from the collation. The decision, though framed as an enforcement of electoral law, was viewed by many as judicial imposition, fuelling perceptions of partisanship.

These cases illustrate the delicate balance courts must strike between enforcing legality and preserving democratic legitimacy. While judicial activism has strengthened internal party democracy, it has also raised concerns about overreach and inconsistency.

5.0 The Crisis of Internal Party Democracy

The prevalence of pre-election litigation is symptomatic of a deeper malaise: the absence of robust internal democracy within Nigeria's political parties. Causes of internal party crisis include:

5.1. **Subversion of Party Constitutions**

Although the Constitution requires parties to operate in accordance with democratic principles,[30] Party constitutions are frequently flouted. Candidate lists are manipulated, primaries are conducted without credible membership registers, and consensus candidacies are imposed without genuine consent. For instance, during the 2019 general elections, parallel primaries within the APC and PDP produced multiple claimants to

[27] [2011] 18 NWLR (Pt 1279) 689 (SC).
[28] [2012] 13 NWLR (Pt 1316) 85 (SC).
[29] [2020] 5 NWLR (Pt 1716) 247 (SC).
[30] Constitution of the Federal Republic of Nigeria 1999 (As Amended), s223.

candidacy, many of which ended up in court.[31] This disregard for party constitutions reflects the dominance of party elites, often described as godfathers, who exercise disproportionate influence over nominations. Such practices erode trust in party institutions and incentivise litigation as the only avenue for redress.

5.2. **Factionalisation and Parallel Primaries**

Factionalisation has become endemic in Nigeria's party system. Competing party factions frequently conduct parallel primaries, leading to multiple candidates claiming the same ticket. In *Sheriff v PDP*,[32] The Supreme Court resolved a leadership tussle within the PDP that had paralysed the party for over a year. While the Court eventually restored order, the case illustrates how factional disputes destabilise parties and clog the judiciary.

5.3 **Weak Internal Dispute Resolution**

Most party constitutions provide for internal dispute resolution mechanisms, but these are often ineffective or manipulated by party leaders. Aspirants perceive internal mechanisms as biased, prompting them to seek judicial intervention. Unlike Ghana, where courts insist on exhausting internal remedies, Nigerian courts entertain pre-election suits almost immediately, reflecting the weakness of intra-party structures.

5.4. **Consequences of Internal Party Crisis to Democratic Consolidation**

The crisis of internal party democracy has several consequences. First, it undermines the credibility of political parties as vehicles of representation. Second, it shifts accountability from party members to the judiciary, reinforcing the judicialisation of politics. Finally, it weakens the broader democratic process by making litigation, rather than consensus, the dominant mode of conflict resolution.

6.0 Comparative Perspectives

Nigeria is not unique in grappling with disputes over party nominations and internal democracy. Comparative analysis demonstrates how other jurisdictions balance party autonomy, internal democracy, and judicial intervention.

6.1. **South Africa**

South Africa has developed a relatively strong framework for regulating internal party democracy. The South African 1996 Constitution 1996 guarantees every citizen the right to participate in the activities of a political party, including standing for office

[31] Independent National Electoral Commission, 'Report on the 2019 General Elections', (INEC 2020) 54–57.
[32] [2017] 15 NWLR (Pt 1588) 219 (SC).

within the party.[33] The Electoral Act 1998 further requires that party lists for proportional representation elections be compiled in accordance with party rules, subject to constitutional principles.

The Constitutional Court in *Ramakatsa v Magashule*[34] Affirmed that members of a political party have the right to challenge party leadership elections that violate democratic principles. The Court held that the provisions of the South African Constitution 1996 protect not only the right to join a party but also to participate meaningfully in its internal processes. This case underscores the South African judiciary's willingness to enforce constitutional guarantees of internal democracy, while still recognising party autonomy.

6.2 **Ghana**

Ghana shares similarities with Nigeria but has developed a more restrained judicial approach. The Constitution of Ghana 1992 recognises political parties as essential to democratic governance and requires them to conform to democratic principles.[35] However, Ghanaian courts generally insist that aspirants exhaust internal remedies before approaching the courts.[36] This doctrine, reinforced by the Supreme Court in cases such as *Abu Ramadan v Electoral Commission*,[37] Reduces frivolous litigation and incentivises parties to strengthen internal mechanisms.

6.3 **India**

India's experience highlights the tension between party autonomy and judicial oversight. The Representation of the People Act 1951 regulates candidate nomination and party registration but leaves internal party democracy largely to party constitutions. Judicial intervention is limited, with the Supreme Court of India often deferring to party autonomy, except in cases of manifest illegality.[38] However, the Election Commission of India exercises significant supervisory authority, including powers to de-recognise parties or invalidate primaries that violate party constitutions.[39] This regulatory model reduces the burden on courts while enhancing electoral integrity.

[33] Constitution of the Republic of South Africa 1996, s19.
[34] [2012] ZACC 31, 2013 (2) BCLR 202 (CC).
[35] Constitution of the Republic of Ghana 1992, Arts55(4)–(5).
[36] K Gyampo, 'Political Parties and Democracy in Ghana', *Journal of African Elections* [2017] (56) (44), 53.
[37] [2015] SC (Ghana).
[38] *Amit Sahni v Union of India* [2020] SCC OnLine SC 583 (India SC).
[39] Representation of the People Act 1951 (India), ss 29A–29C.

6.4 **United States**

The United States exemplifies strong party autonomy, grounded in the First Amendment right to freedom of association.[40] The US Supreme Court has consistently affirmed the right of parties to determine their internal rules, including nomination procedures, subject only to constitutional safeguards. In *Democratic Party v Wisconsin ex rel La Follette*,[41] The Court held that parties cannot be compelled to accept delegates chosen through processes inconsistent with their rules. Similarly, in *California Democratic Party v Jones*,[42] The Court struck down California's blanket primary law as an unconstitutional intrusion on party autonomy.

While this model protects associational freedom, it sometimes permits exclusionary practices and weakens judicial oversight of internal democracy. Nevertheless, the US experience demonstrates the balance between party autonomy and state regulation, with courts playing only a marginal role in pre-election disputes.

7.0 Lessons for Nigeria

The comparative analysis suggests several lessons. First, South Africa illustrates how constitutional rights can be enforced to strengthen internal democracy. Ghana shows the value of requiring exhaustion of internal remedies before judicial intervention. India highlights the utility of empowering electoral commissions to oversee primaries, reducing reliance on courts. The United States underscores the risks of excessive judicial restraint and the importance of balancing party autonomy with democratic safeguards.

For Nigeria, a hybrid approach may be most suitable: strengthening INEC's supervisory role, requiring exhaustion of party remedies, and limiting judicial remedies to cases of manifest illegality. Such reforms would reduce litigation while reinforcing party institutionalisation.

8.0 Systemic Effects on Nigeria's Democracy

The rise of pre-election litigation has had far-reaching systemic effects on Nigeria's democratic process. While judicial intervention has curbed elite impunity, it has also generated unintended consequences that undermine political stability, electoral legitimacy, and public trust.

[40] US Constitution, amend I.
[41] 450 US 107 (1981).
[42] 530 US 567 (2000).

8.1 **Judicial Credibility and Perceptions of Partisanship**

One of the most significant effects has been the strain on judicial credibility. High-profile judgments such as *Amaechi v INEC* [43] and *Uzodinma v Ihedioha*[44] have attracted widespread criticism, with sections of the public perceiving the judiciary as determining elections rather than interpreting the law. This perception of judicialisation of elections risks delegitimising both the judiciary and the democratic process.

Moreover, the volume of pre-election cases places immense pressure on the courts, leading to rushed judgments and inconsistent jurisprudence. The timelines imposed by the Constitution require pre-election cases to be filed within 14 days and concluded swiftly, but this often sacrifices depth of reasoning for expediency.[45]

8.2. **Impact on INEC and Electoral Administration**

Pre-election litigation also undermines INEC's authority. While the Electoral Act 2022 empowers INEC to monitor primaries,[46] its reports are frequently disregarded in litigation, with courts relying instead on conflicting evidence presented by parties. This creates uncertainty for the Commission and weakens its regulatory role.

In addition, court orders often compel INEC to recognise one candidate over another at the last minute, sometimes on the eve of elections. Such judicial interventions complicate ballot printing, voter education, and election logistics, increasing the likelihood of disenfranchisement and confusion.

8.3. **Erosion of Voter Trust**

Perhaps the most damaging systemic effect is the erosion of voter trust. When candidates who were not on the ballot are declared winners by the courts, as in *Amaechi v INEC,*[47] voters perceive that their choices have been overturned. This perception discourages participation and fuels cynicism about the democratic process.

Furthermore, repeated litigation over primaries conveys the impression that elections are decided in the courtroom rather than the polling booth. This undermines the principle of popular sovereignty, which is foundational to democracy.

8.4. **Entrenchment of Political Elites**

Ironically, pre-election litigation may reinforce elite dominance. Because litigation is expensive and time-sensitive, only wealthy aspirants or those backed by powerful

[43] [2008] 5 NWLR (Pt 1080) 227 (SC).
[44] [2020] 5 NWLR (Pt 1716) 247 (SC).
[45] Constitution of the Federal Republic of Nigeria 1999 (As Amended), s258(9).
[46] Electoral Act 2022, s82.
[47] [2008] 5 NWLR (Pt 1080) 227 (SC).

patrons can sustain prolonged legal battles. This dynamic marginalises grassroots politicians and entrenches the control of established elites over party processes.

8.5. **Democratic Fatigue**

The cumulative effect of these dynamics is democratic fatigue: a public weary of endless litigation, elite manipulation, and judicial controversies. Democratic consolidation requires not only credible elections but also resilient institutions. Pre-election litigation, in its current form, undermines both.

9.0 Conclusion

Pre-election litigation in Nigeria's Fourth Republic has become both a safeguard of legality and a symptom of democratic fragility. Since 1999, the courts have played an indispensable role in curbing the excesses of political elites, enforcing party constitutions, and ensuring compliance with the 1999 Constitution and the Electoral Act. Landmark cases such as *Ugwu v Ararume*[48] and *Amaechi v INEC*[49] underscore the judiciary's willingness to check arbitrary substitution and protect aspirants' rights.

Yet, the very prominence of the judiciary in resolving intra-party disputes reveals deeper weaknesses in Nigeria's democratic architecture. Political parties, the cornerstone of representative democracy, have consistently failed to institutionalise credible internal processes. Instead, they are dominated by factional struggles, godfatherism, and disregard for their constitutions. The inevitable result is recourse to the courts, transforming pre-election litigation into a central feature of the political process.

This over-reliance on judicial intervention carries systemic costs. It burdens the judiciary with inherently political disputes, risks perceptions of partisanship, and undermines voter sovereignty when courts displace candidates who were not on the ballot. It also weakens INEC by sidelining its reports and complicates election administration through last-minute judicial interventions. Ultimately, it erodes public trust, fuelling cynicism about whether democracy in Nigeria reflects the will of the people or the decisions of judges.

Comparative perspectives demonstrate that Nigeria's experience is neither unique nor insurmountable. South Africa shows how constitutional rights can be invoked to strengthen internal democracy. Ghana illustrates the value of requiring exhaustion of internal remedies before litigation. India highlights the regulatory role of electoral commissions, while the United States underscores the importance of balancing party

[48] [2007] 12 NWLR (Pt 1048) 367 (SC)
[49] [2008] 5 NWLR (Pt 1080) 227 (SC).

utonomy with democratic safeguards.[50] These experiences suggest that Nigeria can reduce litigation by strengthening institutions rather than relying solely on judicial activism.

The way forward lies in a multi-dimensional reform agenda. Legislatively, INEC's supervisory powers over primaries must be reinforced, and its monitoring reports given evidentiary weight. Judicially, clearer guidelines should limit remedies that displace voter choice, and the doctrine of substantial compliance should be extended to pre-election matters. Institutionally, parties must be compelled to maintain credible registers and internal dispute resolution mechanisms, certified by INEC. Culturally, Nigeria's political elite must embrace democratic norms and abandon the view of parties as private fiefdoms.

Pre-election litigation, in its current form, reflects the crisis of internal party democracy rather than its solution. To consolidate Nigeria's democracy, litigation must be repositioned as a last resort, not the primary mechanism of conflict resolution. Strengthening parties, empowering INEC, and fostering democratic culture are essential if Nigeria is to transform its electoral process from one dominated by courtrooms to one grounded in genuine popular sovereignty.

[50] *Ramakatsa v Magashule* [2012] ZACC 31, 2013 (2) BCLR 202 (CC) (South Africa); *Abu Ramadan v Electoral Commission* [2015] SC (Ghana); Representation of the People Act 1951 (India), ss 29A–29C; *California Democratic Party v Jones* 530 US 567 (2000).