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THE PROVISIONS FOR CONSENSUS CANDIDATE IN SECTION 84 OF THE NIGERIAN ELECTORAL ACT, 2022, A SET BACK FOR DEMOCRACY*

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Abstract
Nigeria is a fertile ground for the test of all manner of untested political ideas. This is due to the unprecedented elasticity of the tolerance limit of the average Nigerian which elasticity has been bolstered by the wedge of primordial attachment to tribe and religion bedeviling the Nigerian people since the amalgamation of the nation. Successive leadership of the country has made a mockery of our democracy and people at every turn on the road to democratic success. The most shocking abuse of our failed democracy as a country came with the enactment of consensus into the Electoral Act, 2022 amid controversies. Section 84 of the Electoral Act, 2022, provides for consensus as an option in the nomination of candidates for election and congresses of political parties to elect party officers. The author relied on analytical non-doctrinal research method to examine available literature on the problems that has attended the nomination of candidates for elections in Nigeria under the previous Electoral Acts. It was discovered in the course of this work that Nigerians political leaders have penchant for impunity and unbridled tendency to abuse the process of nomination of candidates for elective offices in Nigeria. That tendency was only mitigated by judicial intervention in the process. The provisions for nomination by consensus in section 84 of the Electoral Act, 2022 is considered by many actors in the political process as a poisoned arrow shot on the body politic that will eventually lead to its death.

1. Introduction

A discussion of election and the Electoral process would of necessity start with a discussion, even if briefly, of the concept of Democracy. Democracy, according to Read could mean:

1. A theory of government which in its purest form, holds that the state should be controlled by all the people, each sharing equally in privileges, duties and responsibilities and each participating in person in the government, as in the city-states of ancient Greece. In practice, control is vested in elected officers as representatives who may be upheld or removed by the people.

2. Political, legal or social equality.[1]

According to A.B Garner, democracy is government by the people, either directly or through representatives elected by the people.[2] H.J Laski, sees democracy as one of the cardinal duties of government. Apart from the provision of order is the provision of the technique for peaceful change.[3] The peaceful change of government is only found in democracies as opposed to other forms of government.

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[1] A.W Read et. al (ed.),'*The New International Webster's', Comprehensive Dictionary of the English Language,* Encyclopedic Edition, (2010), p.406.
[2] *A.B Garner, Blacks Law Dictionary*, 9th edition, p.345.
[3] H.J Laski, *A Grammar of Politics* (George Allen and Umwin) 5th edition, 6th Impression, 1980 P.111.

Further, democracy, according to Harold Laski,[4] is a government that allows the people to choose their leaders by way of election, or to reject such leaders and their programmes, when they are no longer serving the interests of the people. Though democracy originated in Greece, it is the best form of government for any country. However, those who do not want to practice democracy will either argue that democracy is for western societies, or advocate for a home grown democracy, so that they can dominate, control, and manipulate democracy to become something else, which will not benefit the people. Democracy may be direct as was postulated by Plato,[5] or indirect as seen in practice today in many nations of the world where representative type of governance is the norm.

Eseoghana Malemi, discusses democracy in terms of indirect or representative democracy as democracy is commonly known today. This is the common form of democracy. With the growth of population and society, indirect or representative democracy has replaced direct democracy. Representative democracy is a government where all persons of voting age are expected to vote to form the government by electing persons into government who will represent and act on their behalf, especially in the executive and legislative arms of government, which elected persons are expected to properly constitute all the other organs and agencies of government, and generally manage the affairs of government for the welfare of the people.[6]

Some of the attributes of democracy or some of the necessary conditions for the existence and growth of democracy includes the existence of a constitution, usually a written constitution which is based on the rule of law, and is the foundation of the rule of civil law. Democracy means the observance of rule of law by all persons and authorities in a country. The holding of regular and periodic free and fair elections. The existence of a party system in the country, usually in the form of a two party system, or a multi-party system. The existence and application of the doctrine of separation of powers and checks and balances in the government. The existence of an upright, active and independent judiciary.[7]

The principles, otherwise known as the universal characteristics of democracy, are listed as: the locus of authority in a democratic polity (which must be the people); democratic polity anchored on the rule of law; a democratic polity that is legitimate: legitimate in two sense (a) the ruler must emerge according to the predetermined rules for accession to power and (b) he/she must live up to the mandate received from the electorate; the people's choice to effect changes in the leadership or government; choice includes all basic freedoms and accountability of the leadership to the electorate at periodic intervals.[8]

With the advantage of hindsight;[9] hindsight gained,[10] from the penchant of political office-holders to indulge in corrupt practices and abuse of office through the manipulation of the affairs of state for selfish ends, other minimal desiderata for responsible or good governance would include "some institutionalized mechanisms for holding leaders accountable to the people; for renewing or withdrawing the mandate of such leaders and for ensuring probity and transparency in public affairs.[11] It becomes our prerogative in this work to consider whether we have had genuine democracy in Nigeria, whether we still have democracy and whether our democracy has come under any form of threat.

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[4]Ibid.
[5]*The Republic, Jowett Translation, Aimont Publishing Co. (1968), New York.*
[6]E.O.Malemi: *The Nigerian Constitutional Law*, (2006), Princeton Publishing Co. Ik.
[7]Ibid.
[8]J.I Elaigwu and S. B. Oluwole, cited in UF Masajuwa, 'Electoral Corruption and the Court in Nigeria': *Implication for National Security* in S.A.M Ekwenze et. Al. (eds.) *Demand for Justice, Essays in Honour of Hon. Justice O.J. Okeke*. Snap Press Nigeria Ltd., Enugu (2013).
[9]*A.G. Ondo v. A.G. Federation* (2002) 9 NWLR (pt. 972) 222.
[10]*Per* Uwaifo J.S.C in *A.G. Ondo v. A.G. Federation* (2002) 9 NWLR (pt. 972) 222.
[11] S.A. Nkom, *"Culture, Empowerment and Local Government with Reference to North Western Nigeria*", in A. Adedeji and B. Ayo (eds) People Centred Democracy in Nigeria: The Search for Alternative Systems of Governance at the Grassroots (Ibandan: Heinemann Educational Books, 2002) 75, cited in F.I. Agudosy.

Nomination and sponsorship of candidates for election are concepts that are kindred to and comprised in the process of election. The issue of election goes beyond merely voting, as it is a process inclusive of delimitation of constituency, nomination, accreditation, voting itself, counting, collation and return or declaration of result[12] Henry Campbell Black[13] defines election variously as the act of choosing or selecting one or more from a greater number of persons, things courses, rights. The choice of an alternative. The internal, free and spontaneous separation of one thing from another; without compulsion, consisting in intention and will. The selection of one person from a specified class to discharge certain duties in a state, corporation, or society. An expression of choice by the voters of a public body politic, or as a means by which a choice is made by the electors.

Since the purpose of holding an election in a democratic set up is to determine the wishes of the people as to who should represent them in their legislative and executive set up, it is therefore necessary to ensure that any election conducted is done in a way that would substantially ensure that that main objective is substantially met.[14]

Elections in Nigeria

It has been stated that election is the process through which a particular group of people choose their rulers and assign them to positions of rulership [15]. Through elections, people dissatisfied with the performance of their elected representatives can effect a change of such representatives. Elections help gauge how peaceful and effective democratic transitional processes are, in addition to being a reflection of the level of political development and systemic stability.[16] It is a process which can be divided into three major phases, namely pre-poling, polling and post-election.[17] The expected end in an electoral process is free and fair election. Through free and fair elections, citizens in a democratic society are able to vote for the political party and politicians of their choice based on their coherently articulated policies.[18] The equality of citizens in a democratic society is given concrete expression and political significance through free, fair and credible elections based on 'one citizen (person), one vote'.

2. The Provision for Consensus in the Nomination Process, a Problem or a Solution?

The provisions of the Electoral Act, 2022 were tested at the recently concluded National Convention of the All Progressives Congress (APC) to elect its officers. If the application of the provisions as regards the emergence of consensus candidates is what we have seen at the said convention then democracy is at its lowest ebb in Nigeria.[19] The pedestal for contesting election into the offices provided for by the successive Electoral Acts in Nigeria is the political parties registered in accordance with the provisions of the Electoral Acts. There is no provision in any law related to elections in Nigeria which allows any person to contest election into any office as an independent candidate. Section 221 of the 1999

[12] see Balonwu v Ikpeazu, see also Salami, JCA in Chief C. Odumegwu Ojukwu v. Chief Olusegun Obasnajo & Ors. (2004) 1 EPR 626 at 653 stated.
[13] Henry Campbell Black, Black's Law Dictionary, 6th ed. (US: west Group, 1990), 517-518.
[14] Na-Gambo v INEC(1993)1NWLR(Pt.267) 94 at 106, see also Akintan, JCA (as he then was) in Kennedu Eruotor v Ughumiakpor & Ors. (1999) 9 NWLR (Pt.) 619, 460 at 482.
[15] A. Ikelegbe, Issue and Problems in Nigerian Politics. (Benin-City, Nigeria: Imprint Services, 2004) P. 120.
[16] *Ibid.*
[17] Institute of Human Rights and Humanitarian Law, (IHRHL) "Nigeria: Report Exposes Electoral Fraud". Online, Scoop World from, http://www.scoop.co.nz/stories/Woo704/S00445.htm.(assessed, 7th July, 2011).
[18] E. Alemika "Post Election Violence in Nigeria: Emerging Trends and Lesson". Huhuonline, Online: www.huhuonline.com (accessed, 24th August, 2011).
[19]According to A.W Read et. al (ed.): *The New International Webster's Comprehensive Dictionary of the English Language*, 2010 edition, p. 278 Consensus means collective opinion, general arrangement etc. by the various persons that have interest in a particular thing. The National Convention of the APC, 2022 has come under so much criticism as one that has come short of democratic ideals. It has become obvious from what was aired on National Television that the so called consensus candidates at the convention emerged from the coercion of the aspirants to the various positions by quarters close the Presidency. It got to a point where some of the aspirants took up all avenues open to them to tell the whole world that they did not consent to step down for the so called consensus candidates.

Constitution (as amended) provides that no association other than a political party shall canvass for votes at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election. Accordingly, Section 29 (1) of the Electoral Act, 2002 provides:

> *Every political party shall, not later than 180 days before the date appointed for a general election under this act, submit to the Commission, in the prescribed Forms, the list of the candidates the party proposes to sponsor at the elections, who must have emerged from valid primaries conducted by the political party.*

Several parts of the Electoral Act, 2022 were devoted to the procedure in which the political parties shall nominate candidates for the elections to which the Act relates. It is instructive to note that going by the clear provisions of section 87 (1) and (2), the coast was very clear for political parties in Nigeria to conduct hitch-free primary elections to nominate candidates for the elections. Unfortunately, the country witnessed the most rancorous season of primary elections within the said period culminating in indeterminate nomination exercises that produced two or more candidates.
Nigeria witnessed several pre-election disputes that started from the High Courts to the Supreme Court of Nigeria. The struggles for party nomination were so grim that the Judiciary which was invited to intervene and adjudicate in the multiplicity of pre-election matters found itself emasculated by the daunting task of resolving the said intractable problems.

It is against the backdrop of near-total failure by leaders of political parties in Nigeria to hold a balance between the candidates that were seeking to be nominated for elections in Nigeria under the Electoral Act, 2010 (as amended) that one becomes worried about the much-maligned provision for Consensus candidates in section 84 (9)-(11) of the 2022 Electoral Act. Presently, Section 84 (9), (10) and (11) of the Electoral Act, 2022 provides:

> (9) A political party that adopts a consensus candidate shall secure the written consent of all cleared aspirants for the position, indicating their voluntary withdrawal from the race and their endorsement of the consensus candidate.
>
> (10) Where a political party is unable to secure the written consent of all cleared aspirants for the purpose of a consensus candidate, it shall revert to the choice of direct or indirect primaries for the nomination of candidates for the aforesaid elective positions.
>
> (11) A Special Convention or nomination Congress shall be held to ratify the choice of consensus candidates at designated centres at the National, State, Senatorial, Federal and State Constituencies, as the case may be

3. Nomination of Candidates for Elections before the Electoral Act, 2022.

It is an issue of common knowledge, as already discussed, that the 1999 Constitution (as amended) does not make provisions for independent candidates in elections conducted under the constitution and the Electoral Act, 2010 (as amended). Any person who would contest election into any elective office in Nigeria must be sponsored by a political party.[20] The powers vested on political parties in Nigeria to sponsor candidates for elections have witnessed changes in their scope and content with the enactment of successive Electoral Acts. From the days of no control at all in respect of the powers of political parties to nominate and substitute their candidates for elections[21] to the days limited control that was witnessed under the Electoral Act, 2002 in respect of substitution of candidates nominated by the political parties.[22]

[20] s 221 of the 1999 Constitution (as amended).
[21] *Onuoha v. Okafor (1983) 2 SCNLR 244*
[22] *Dalhatuv.Turaki&Ors* (2003) 4 NWLR (pt 843)310.

The Electoral Act of 2006 posed a major hurdle in the way of political parties seeking to substitute their candidates already nominated for election. Under the Electoral Act, 2006, a political party seeking to substitute its nominated candidate was required to apply to the Electoral Commission in writing not later than sixty days before the date of the election, offering a cogent and verifiable reason why it was making the substitution. This requirement of the Electoral Act became the albatross of unscrupulous political party leaderships who, before then, enjoyed the habit of substituting nominated candidates even on the eve of an election. It is worthy of note that in all the attempts at placing a check on the activities of political parties, what was being restrained was the illegal substitution of nominated candidates.[23] The courts have never attempted nor pretended to interfere in the process of nomination of candidates for election by their political parties save as is allowed to check arbitrariness. It has been considered that the issue of who should be nominated for election by political parties is an internal affair of a political party and is, therefore, a political issue which the court should leave for the political parties to determine, being that a court of law lacks the competence to determine such questions or to run the affairs of the political parties.[24] The Electoral Act, 2010 (as amended) does not in any manner provide for substitution of candidates already nominated and forwarded to the Electoral Commission. In fact, Section 33 of the Electoral Act, 2010 (as amended) did provide that a political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to Section 31 of this Act, except in the case of death or withdrawal by the candidate.

It was not envisaged that under the Electoral Act, 2010 as amended, problems would arise as to who were the duly nominated candidates of political parties since the identifiable source of such problems in the past is usually the attempt to substitute candidates have been removed. It was the requirement of the Electoral Act, 2010 (as amended) that all political parties should comply with its provisions in dealing with the aspirants. As to whom an aspirant is. In the case of *PDP v. Sylva*,[25] the Supreme Court defined an aspirant in these words:

> The word "aspirant" has been defined by section 156 of the Electoral Act, 2010 (as amended) to mean a person who aspires or seeks or strives to contest an election to a political office. An aspirant is a person with a strong desire to achieve a position of importance or to win a competition. From section 187 (1) of the Electoral Act, 2010 (as amended), an aspirant is a person who contested the primaries of a political party, thus an aspirant is a candidate in the primaries.

The requirement of section 87 of the Electoral Act, 2010 (as amended) that a political party wishing to sponsor candidates at election shall hold primaries to nominate such candidates seems to be mandatory since the use of the word shall in statutes connotes imperativeness.[26] The Act requirement that such primaries shall be held among all the aspirants to the various elective offices. The Electoral Act went ahead to state that the candidate that scores the highest number of votes shall be declared the winner of such primary election and have his name submitted to the Commission as the candidate of the party for that election.

In view of the developments that have been witnessed in respect of nomination and sponsorship of candidates for election in Nigeria under the 1999 Constitution (as amended), some issues arise for consideration and they include:

[23]The case of *Amaechi v. INEC*; *Odedo v. INEC*; *Ugwu v. Ararume*) etc.
[24]cited at footnote 15.
[25](2012) 13 NWLR (pt. 1316) 85 at p. 126 Paras. A-B.
[26]*Ilobi v. Uzoegwu* (2005) All FWLR (pt. 288)595.

4. The Issue of Political Question Revisited

In *Onuoha v Okafor*, the proper and dominant view was that the powers conferred on political parties to nominate the candidates they will sponsor at elections were absolute and unassailable from a judicial platform. In the said case of *Onuoha v Okafor*[27] Irikefe, JSC (as he then was) in his concurring judgment held that:

> The matter in controversy in the appeal is whether a court has jurisdiction to entertain a claim whereby it can compel a political party to sponsor one candidate in preference to another candidate of the self-same political party. If a court could do this, it would in effect be managing the political party for the members thereof. The issue of who should be a candidate of a political party at any election is clearly a political one to be determined by the rules and constitution of the said party. It is thus a domestic issue and not such as would be justiciable in a court of law.

Any doubt as to whether the discretion of political parties as to the candidates to nominate/sponsor in an election is fettered in any way was cleared in the case of *Dalhatu v. Turaki*.[28] Where it was held that:

> From the decision of this court in *Onuoha v Okafor*, it is clear that the right to sponsor a candidate by a political party is not a legal right but a domestic right of the party which cannot be questioned in a court of law. The political party qua political organization has discretion in the matter, a discretion which is unfettered; in the sense that a court of law has no jurisdiction to question its exercise, one way or the other.

It must be pointed out that the Electoral Act, 1982 under which the case of *Onuoha v. Okafor*[29] arose and even the Electoral Act, 2002 under which *Dalhatu v. Turaki*[30] arose are all different from the provisions of the Electoral Act, 2010 (as amended) under which cases like the case of *P.D.P v Sylva*[31] and *Emeka v. Okadigbo*[32] arose. In section 87 (9), the Electoral Act 2010 (as amended) provides:

> Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State, for redress.

It is clear that the intendment of section 87, particularly, section 87(9) of the Electoral Act, 2010 (as amended) is to restrict the unfettered discretion hitherto enjoyed by the political parties as to the nomination and sponsorship of candidates for elections. It is submitted that in addition to the jurisdiction of the courts created by section 87(9) of the Electoral Act, 2010 (as amended) for review of conduct of political party primaries, there is a corresponding duty imposed on the political parties to conduct their primaries in accordance with the provisions of section 87 of the Electoral Act, 2010 (as amended) and their constitution and guidelines for the conduct of primary elections. The law has taken such an exercise beyond unfettered discretion and arbitrariness on the part of the political parties for obvious reasons.

The Electoral Act, 2010 (as amended) without doubt, took the matter beyond question when it stated that "where a political party fails to comply with the provisions of this Act in the conduct of its primaries , its candidate for election shall not be included in the election for the particular position in issue.[33] The provisions of the Electoral Act, 2010 which its breach will make the candidate of a political party

[27](1983) 2 SCNLR 244.
[28] (2003) 15 NWLR (pt. 843) 310 at 347.
[29]*Cited at footnote 21.*
[30]*Cited at footnote 16.*
[31] (2012) 13 NWLR (pt. 1316) 85.
[32] (2012) 18 NWLR (pt. 1331) 55.
[33]Section 87 (9) of the Electoral Act, 2010 (as amended).

unacceptable include the provisions of section 87 (4) of the Electoral Act, 2010 (as amended) to the effect that "a political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

It is submitted that the purport of section 87 (4) of the Electoral Act, 2010 (as amended) is that where a person is a member of a political party up till the time of a party primary election and he becomes one of the aspirants by seeking the nomination of the party to contest an election, the political party does not reserve the right to do any act which would preclude him from the primary election or such as will deprive him of an equal opportunity of being voted for in the primary election by members of the political party in comparison with the other aspirants of the same political party.

Flowing from this, it seems that an aspirant in a primary election of a political party is protected from arbitrary conduct of his political party which will stop him from participating in the primary election or make him to participate from a position of disadvantage thereof. It is against the backdrop of this intendment of our election laws that one gets agitated at the recent project embarked upon by the leadership of Nigerian state as seen in the enactment of section 84(9)-(11) of the Electoral Act, 2022. In the first place, the said provision in section 84 of the Electoral Act, 2022 was forced on the National Assembly by the President of the Nigerian Federation, Mohammadu Buhari. The National Assembly had concluded legislative work on the Electoral Bill and forwarded same to the President for his assent.

The President withheld his assent and insisted that he will not assent to the Bill unless the national Assembly includes in Section 84 thereof Consensus as one of the modes of nominating candidates for the elections provided for by the Electoral Act. In the impasse that followed the Nigerian people became agitated that the entire gains in the form of electoral reform that would flow from the amendment of the Electoral Act would be lost if the National Assembly does not take steps to include the said consensus and have the bill assented to in time enough to be used in the 2023 general Elections.

Immediately the consensus provision was put into the Bill, President Mohammadu Buhari assented to same. The test run of the Electoral Act, 2022 was seen in the recently concluded National Convention of the All Progressives Congress (A.P.C) for the election of the national officers of the party. To the chagrin of the entire world observing proceedings at the convention, all the offices available at the national leadership of the party were filled by consensus. Nigerians, distraught in the face of the unfolding drama have started to realise that the nation has began a gradual descent into another round of full blown dictatorship.

In his commentary on this burning issue, Eze Onyekpere had this to say:

> *Nigeria's current democratic experiment seems to be an exercise in defiance of democratic norms and principles. The idea of democracy imports the notions of freedom of choice, one person one vote, liberty, decisions by the majority, the voluntariness of conduct and the absence of a countervailing power that puts individuals and groups under obligation at the pain of punishment in their choice of leaders. This exercise of arbitrariness under the guise of democracy in the emergence of leadership and candidates of political parties is epitomised in the word "consensus." The recently concluded party convention of the All Progressives Congress has stretched the meaning of the word consensus.*[34]

By Section 84 (9) of the Electoral Act 2022, the major requirement in achieving consensus is the need for the written consent of all cleared aspirants indicating their voluntary withdrawal from the race and their endorsement of the consensus candidate. By S.84 (10), where a party is unable to get the written consent of all the cleared aspirants to withdraw and support the consensus candidate, it shall revert to

[34] See Eze Onyekpere *Consensus without consent: APC Convention infocus, published in The* Punch Newspaper, online on March 28, 2022 visited on 03/04/2022.

either direct or indirect primaries to elect its leadership or candidates. By the same Section 84 and in subsection (11), a special convention is to be held to ratify the consensus candidate. Given the benefit of hindsight and from our experience in the not too distant past when the late Head of Nigerian state, Lt. Gen. Sanni Abacha wanted to succeed himself as civilian President, he started on the part of wooing the whole active political parties in Nigeria to adopt him as their Presidential Candidates[35] what we shall soon witness is a scenario where genuine aspirants to the elective positions are forced behind the scene to drop their aspirations at the risk of negative consequences only for the leadership of the political parties to appear in the public domain to announce to us emergence of candidates by consensus.

Ideologically, the term Consensus connotes anti-democratic arrangement in terms of mass participation in governance. Therefore, the provisions of Electoral Act, 2022 on the emergence of party leadership or nomination of candidates for election by consensus in a democratic arrangement is a contradiction likely to produce an explosive result that would be difficult for the country to manage. Democracy and elections are about contestation of ideas and the electorate being given the opportunity to choose between contesting ideas. Consensus as presently provided short circuits the process of choice and leaves the power of choice in the hands of a few[36].

It would be absurd to find a democrat who afraid of an election and would rather prefer to be imposed on the masses. The argument that the result of aspirants submitting their fate to the entire members of their political party as electorates would bring rancour, division and disaffection within the party is unfounded. Rather, it will convince the losers that they have tried their best and, in as much as the voting process was free and fair, that they were rejected at the polls by the majority. This brings some form of consolation and closure after the race and losers can decide to learn from the campaign strategy of the winner. On the contrary, the consensus arrangement seeks to suppress the rights of the aspirants who did not find favour with the anointing authorities.

Consensus does not bring closure to unfavoured aspirants as they will still be in a position to think that they would have won but for the intervention of the godfathers of the party. In a consensus arrangement, the qualities that would lead to the emergence or selection of the consensus candidate is not in the public domain. It is simply based on the whims and caprices of the godfathers and mothers of the party. It is not based on any empirical evidence which can be tested by the electorate. This is not the way of democracy and democratic consolidation. It is simply autocratic and dictatorial.[37]

The place of primary elections conducted by the parties to nominate candidates is one of paramount importance in the country's electoral system. If democratic culture is to take root in the country, we should not only be interested in having free and fair elections but also in having free and fair political party primaries[38]. A situation where aspirants to elective positions are arbitrarily removed from the process of election because the powers that be would not want them to be elected to that office robs the system of its core features and leaves the polity with a caricature of democracy[39]

[35] Starting with the UNCP, the CNC and others followed suit, organizing affable one million-man march in Abuja to adopt Abacha as their Presidential Candidate. The whole frenzy reached a crescendo when there was no Nigerian with enough courage to stand for election for the Office of the federal republic of Nigeria and where there are such courageous aspirant, the leadership of the political parties have become so intimidated that none of them was ready to take the risk of producing another Presidential candidate. It was only the retired IGP Umaru Dikko Yusuf of the GDM that had the courage to offer himself to run against the Military Dictator. It took divine intervention to put paid to that expensive adventure with the destiny of over 150 million Nigerians. Nigeria is getting to that familiar fearful point again in this present dictatorship, clothed in the garb of a democratic experiment. How it end is yet indeterminate.

[36] Eze Onyekpere, cited at footnote 28.

[37] *Ibid.*

[38] S.C Unachukwu, *The Power of Judicial Intervention in the Nomination of Candidates for Elections under the Nigerian Electoral Act, 2010 (as amended)*: A Critique, The Confluence Journal of Jurisprudence and International Law (2014) Vol. 7, issue 1 page 39.

[39] *Enemuo v Duru & Ors*,(2004)9NWLR (pt.871)75

Prominent among such cases that ought to attract attention is the case of *Peoples Democratic Party (P.D.P) v Timipre Sylva &Ors.*[40] The facts of which is summarized as follows:
The 1st respondent who was the sitting Governor of Bayelsa State aspired to recontest the position for a second term under the banner of the Peoples Democratic Party, (PDP). In the Primary election conducted by the party and monitored by the Electoral Commission, the party declared the 1st respondent as the winner and person returned at the Primary election as the candidate of the party. However, by a twist of faith, the election for which primary election has been conducted could not hold as the Supreme Court, following the decision in Peter Obi's case[41] declared that the office of the Governor of Bayelsa State was not vacant. Unfortunately for the 1st respondent, by the time the election was due to hold, he has lost favour with his party following from his rift with the incumbent President of the Nigerian Federation.

Dr. Goodluck Jonathan. The party disqualified the 1st respondent after he had submitted his nomination form and went for screening. His name did not appear among those cleared to contest the election. Then began his journey through the courts in a quest for justice. At the Supreme Court, it was held that, relying on the provisions of section 87(9) of the Electoral Act 2010, that it was only an aspirant who participated at the primary election of the party that can complain about anything done wrong in respect of the primary election. It was held that the 1st respondent (Timipre Sylva) who did not participate at the primary 4lection had no *locus standi* to challenge what happened thereat.

It was held specifically by the apex court, per Chukwuma – Eneh, JSC[42] that:

> *On the facts of this case however, the 1st respondent lacks the locus Standi to challenge the immediate party primaries for the gubernatorial election slated for April 2012 as he has not taken part in the said party primaries as an aspirant as he has been excluded from the said process by the party (underlining, mine for emphasis). In the end, the 1st respondent has challenged his exclusion by the appellant to participate in the April 2012 primary election which in my view constitutes a pre-primary election matter and so not cognizable under the provisions of section 87(9) of the Electoral Act, 2010 (as amended).*

The court found as a fact the right of a political party to exclude its member from contesting its primary election that a political party has the right to bar any of its members from contesting its primaries if it so desires.

With the greatest humility, it is submitted that the decision of the Supreme Court in the instant case raises some pertinent questions to the extent that it was held that the action of a political party that autocratically bared its member who was contesting in its primary election from completing same, cannot be challenged in court as such is a "pre-primary election matter". First of all, just like election itself, conduct of political party primary election involves not only the casting of votes by members of a political party or delegates on their behalf for the aspirants of their choice on the day of party primary election but rather a process which starts with the sale of party nomination forms, filing of completed forms by aspirants, screening of the aspirants by the appropriate party organs and the actual voting at the primaries and declaration of the results of the primaries.[43]

The apex court had declared the meaning of an aspirant in this case as "a person who aspires or seeks or strives to contest an election to a political office…" It is submitted that the pertinent question to be asked in this situation and others like it is "whether the 1st respondent aspired or strived to contest an election, *to wit,* the primary election of the appellant". The obvious answer to this question is in the

[40](2012) 13 NWLR (pt. 1316)85.
[41] 31 NSQR 734
[42]*At pages 149, paras A-E; 150-151, paras G-C.*
[43]The case of *Balonwu v. Ikpeazu* where the court held that election is a process.

affirmative as the 1st respondent, purchased, completed and filed his nomination form preparatory to the primary election of the appellant, just like other aspirants. However, when the names of persons cleared to contest the primaries were released, his name was missing. It was certain that it was not the 1st respondent that withdrew his aspiration to contest in the primaries rather he was stopped by other people.

It is important to state that the conduct of political party primaries such as the one in issue in this case, is regulated by the provisions of the Electoral Act, 2010, the constitution of the political party and the guidelines for the conduct of such primaries. These are documents whose provisions are clear and ascertainable in defining the rights and obligations of members of the party as well as the powers of the political party over its members.

It does not seem, as was held in this case that a political party has got the right to bar its members from participating in party primaries arbitrarily at the whims and caprices of the individual leaders of the political parties outside the provisions of the relevant legal framework governing such exercise[44]. This position is buttressed by another statement of the law by the apex court in the instant matter[45] where the court stated that:

> *The provisions of section 87 of the Electoral Act, 2010 (as amended) is clear and unambiguous. It has given political parties wide powers in the management of questions of nomination and sponsorship of aspirants to all elective positions. The clear object the provision of section 87 is intended to achieve, beside the inculcation of internal democracy in the affairs of political parties in Nigeria, in the conduct of their party primaries, includes making them transparent and providing level playing ground for their contestants in party primaries.*

If the object of section 87 of the Electoral Act, 2010 (as amended) as re-enacted in section 84 of the Electoral Act,2022 is to inculcate internal democracy into the affairs of political parties in Nigeria in the conduct of their party primaries, to ensure that the conduct of such primary elections are made transparent and that level playing ground is provided for contestants in the party primaries, it would seem that the import of section 87 (1) (3) and (9) of the Electoral Act, 2010 (as amended) carries with it a right in the contestants to apply to court to intervene whenever the process is no longer transparent or the playing ground is no longer level. It is submitted that in such a situation, there is jurisdiction in the court to entertain such complaints. It is not jurisdiction to compel the political party to choose and sponsor a particular candidate but to ensure that the conduct of party primary election is transparently done in accordance with the provisions of the law relating to such, so as to remove the process from the realms of arbitrariness and whimsical manipulations.

It is submitted that in accordance with the judgment of court in the instant case, relying on *Onuoha v. Okafor*,[46] the discretion of a political party in determining which candidate to sponsor in an election is an internal affair of the political party which remains intact, provided that such a discretion is exercised within the confines of the legal framework laid down for regulating same. It is gratifying that by deliberate legislative action, the National Assembly has whittled down the discretion so vested on the political parties, in that Section 87 (1) of the Electoral Act, 2010 (as amended) imposes a duty on the political parties to conduct primary elections for the purpose of selecting the candidates to be sponsored in the election proper. It is submitted that the entire process of political party primaries and not just only the actual voting at the election proper is a statutory matter subject to judicial review. Section 87(9) of the Electoral Act, 2010 which is re-enacted as Section 84 of the Electoral Act, 2022, merely stated the obvious and is all encompassing. The said section relates to any act done by a political party in the

[44]See S.C Unachukwu cited at footnote 32.
[45] At pages 147-148 paras H-B.
[46](1983) 2 SCNLR 244.

conduct of its primaries which is alleged to contradict the provisions of the Electoral Act, party constitution and the guidelines of the political parties as to the conduct of such primaries.

The whole process rather than a part of same is made subject to judicial review under section 87(9) of the Electoral Act, 2010 (as amended), now section 84 of the Electoral Act, 2922. There is no gainsaying the fact that the enactment of Section 87(9) of the Electoral Act 2010 (as amended) drastically curtailed whimsical shortchanging of aspirants to political offices in Nigeria at primary elections[47]. However, there is little or no doubt that the system continues to produce more people like Timipre Sylva whom it was commanded by the 'almighty' President and he was stopped from participating in a primary election in which he was the front-runner. The fear of what our ingenious political class would do to aspirants to political offices with the obnoxious 'Consensus' provisions in section 84 (9)-(11) of the Electoral Act, 2022 is alarming. There is indeed great concern across the entire nation for such people and indeed for our democracy, good governance and national development, which is dependent on a stable polity.

5. Conclusion

Free and fair election is a requisite minimum condition for the continued existence of democracy in any nation. A free and fair election starts with a free and fair primary election by the political parties to select the candidates to be sponsored by the political parties. A situation where the electorates are limited in their choice of candidates from among the aspirants at primary election has compromised the integrity of the election and makes that democracy a mockery. With the antecedents of Nigerian political leaders, what we are planting today in the name of consensus as seen in Section 84 (9)-(11) of the Electoral Act, 2022 will certainly culminate in such arbitrariness that was not seen even in the days of Onuoha v Okafor.[48]It is a truism that where winners emerge from an unwholesome process of election, they would certainly be lacking in full commitment to the cause of the people. If candidates emerge from forced consensus, their allegiance would certainly be to the powers that imposed them on the people rather than the people.

It is genuinely feared by not a few Nigerians, which fear derives its conviction from the high-handedness manifested by leaders of political parties in Nigeria over the nomination of candidates for election under the provisions of the Electoral Act, 2010 that the importation of the said consensus clause is to pave way for arbitrary imposition of candidates after other aspirants have been intimidated out of their aspirations. It seems desirable to enjoin the political parties to desist from using the consensus arrangement especially in the choice of candidates for elections in 2023 as it will throw up candidates who will not be loyal or dedicated to the welfare of Nigerians and end drawing our courts into intractable litigations that would arise from the nomination of such candidates.

6. Recommendation

It is recommended that in the interest of democracy and continued peace in Nigeria, also discourage dictatorship, the consensus option provided for in section 84 (9)-(11) of the Electoral Act, 2022 should be applied with cautiously by political parties to know when a candidate emerges from genuine consensus or is being imposed on the electorates. The courts should be prepared, more than ever before to protect the rights of the people of Nigeria to choose their leaders. This right is gradually coming under assault from the present leadership of the country and it would take an activist and courageous judiciary to checkmate the planned attack on our collective freedom of choice.

[47] See the case of *Emeka v. Okadigbo (2012) 18 NWLR (pt. 1331)55*; see also *Lado v. CPC (2011) 18 NWLR (pt. 1279) 689*.
[48](1983) 2 SCNLR 244; see also *Dalhatu v. Turaki (2003) 4 NWLR (pt. 843) 310*.