

# Dialectics on the Constitutional Implications of Party Supremacy in Nigeria

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**Abstract** –This paper interrogates the doctrinal conception and practice of party supremacy in Nigeria. It buttresses the argument that the doctrine of party supremacy has been negatively conceived and practised by Nigerian political elite. This is evident in charismatic-based party as opposed to value-oriented party. Party supremacy in Nigeria is not demonstrative and reflective of the popular will of party members but merely the predominance of party cabals, Chiefs and secretive bodies that constitute themselves into party leadership. Using a constitutional approach, this paper advocates the supremacy of the constitution and sovereignty of the people over party supremacy. It is also submitted that party structure and decision-making must foster democratic doctrine of inclusiveness, a core element of intra party democracy. It is further contended that party supremacy in Nigeria must be practically constitutionally checked and controlled, otherwise the abuse of it will implicitly and explicitly metamorphosed into one party system and the violation of citizens right to freedom of political association, assembly and expression. Most importantly, this paper establishes that hegemonic political party system and the arbitrary rule of godfatherism characterized the last sixteen years of Nigerian constitutional democratic rule which has given rise to the tendency of breeding executive tyranny, lawlessness and negation of the constitutional principle of separation of powers. Therefore, it is acknowledged that party autonomy is an indispensable instrumentality of party institutionalization but a further contention is that it must be subject to practices accustomed to constitutional democracy for the sole ends of good governance and nation building.

**Keywords** – Party supremacy, executive tyranny, internal party democracy, Nigerian Politics, constitutional democracy.

## I. INTRODUCTION

The evolution of party supremacy in Nigeria is not a nascent concept and is almost as old as the origin of political parties in Nigeria in 1923 pursuant to the bid by Nigerian politicians to consummate the elective principle introduced by the Clifford constitution for the first time in Nigerian political history. Party supremacy was rampant during the First and Second Republics. It was said that Sir Ahmadu Bello, the Sardauna of Sokoto, was more willing to hold, and indeed retained, his leadership of the Northern People's Congress (NPC) and Premier of Northern Region, rather than ascending the position of Prime Minister of the Federal Republic of Nigeria. Under the parliamentary system of government practised by Nigeria during the First Republic, the party with the majority seats in the parliament produces the Prime minister. To this end, the Sardauna, Bello, ought to

have become the prime minister ipso facto. Instead of ascending the position, Bello allocated it to Alhaji Abubakar Tafawa Balewa, deputy leader of the party. In the 1979 general elections, during the Second Republic, Chief Obafemi Awolowo held the positions of leader of the Unity Party of Nigeria (UPN) and the party's presidential candidate.

These two political frontliners clung to party supremacy owing to the fact that in that era, no one could question and challenge party directives. For instance, the Action Group crisis of 1963 was said to be the consequences of Akintola's perceived disloyalty to party directives from Awolowo. It must be noted that at the time party directives were not distinguishable from directives of party godfathers. The momentum of politics and its processes were dictated by charismatic party warlords in the disguise of collective party directives. Thus, to have a place in national relevance one must inevitably appease party demigods.

The need to address and put into right perspective the subject of party supremacy becomes even more necessary giving the skyrocketing effects of party switching, double loyalty, lack of value-oriented parties, corruption within and outside the parties, leadership insubordination, and the recent rancor in the National Assembly over who gets what post and how such post is gotten. While the APC leadership held that all cardinal posts in its party members, the question is who gets what post occupies the National Assembly? It seemed at the time that such posts were only going to be gotten by favorites of party cabals. Those who perceived that they were not political god sons enough to merit those cardinal posts had to devise their own mechanism outside the party and resorted to affiliation with members of the opposition party (PDP). Dogara, the speaker of the House of Representatives and Saraki, the Senate President, attained their respective positions by strategically allying with opposition members to vote for them in chamber leaders election. As a result, the opposition PDP was able to cling to the seat of Deputy Senate president and other strategic positions in the lawmaking chambers. The APC leadership sees this development as a mortgage of party loyalty and therefore crosscurrent to the doctrine of the party supremacy.

Since definitions and terminologies are not fixed in the fields of Law and Politics, the starting point in this work is to substantiate and clarify the concept of party supremacy. As a result, the concept is viewed from two perspectives---the absolute and democratic perspectives. The goal is to

substantiate these perspectives in order to situate what version of party supremacy is obtained in Nigeria, what is obtainable in other political climates and what ought the doctrine to be in ideal democratic sense. Part 3 inquires into the concept of party autonomy and the non-justiciability of intra party actions. However, there are some exceptions to the non-justiciability rule of intra party matters. Part 4 questions the constitutionality of party supremacy. While stressing the supremacy of the constitution, the submission is that party supremacy is constitutional only to the extent that it fosters constitutional dictates. The crux of part 5 is internal party democracy and the constitutional role of the legislature in regulating intra party matters. Part 6 is centred on the sovereignty of the people as the notional foundation of constitutional democracy. It further emphasizes the role of political party and that the structure of political party should be that which is inclusive of all factions and levels of party members. Part 7 views party supremacy in relation to the legislature and the consequences that may accompany such relationships. In part 8, it is established that by implication or expression party supremacy infringes on certain fundamental human rights. The concluding section proffers some recommendations.

## II. CONCEPTUALIZING THE DOCTRINE OF PARTY SUPREMACY

The concept of party supremacy is subject to varying notional perspectives. The meaning given to the concept at any time will depend, to a great extent, on the notional background from which one chooses to view it. Thus, it is a concept, which may be seen from at least two perspectives. This paper will focus on these two perspectives from which the concept of party supremacy can be defined, namely;

- (a) Absolute party supremacy i.e. party supremacy in its absolute sense, and
- (b) Constitutional/democratic party supremacy i.e. Party supremacy in its constitutional/democratic sense.

The advocacy of party supremacy in its absolute sense is entrenched in the notion that the party is the supreme, superior and greatest institution in the state. The implication being that the party is said to be greater than the institution of the state (government). The party is elevated to the rank of an “uncommanded commander” in the state. Any other institution, which runs crosscurrent to, the party is to be abolished. The party has powers to dictate the guidelines and outcomes of national life, control state policies, determine and regulate the framework of government and its different institutions, execute party’s policies and regulate the private life of the people and their activities.<sup>1</sup>

The absolute sense of party supremacy fosters unipartism or one party state. It encourages extreme party monopoly. In fact, policies of the party are more predominant where they

conflict with constitutional provisions. The constitution makes provisions for one party. Even the constitution recognizes the supremacy of the party. The statement by Nyerere of Tanzania in 1974 is instructive to the meaning of absolute party supremacy:

“... under our one party constitution, TANU is supreme. It is able to give directions to government about the general policy which must be adopted for national development, and it has power to give specific instructions about priorities of action in any aspect of our national life. Further, TANU can call the cabinet, any minister, or any government officials, to account for their activities and any failures in the execution of their duty. That is at national level, the same is true at local level. In the localities, the branch, district, or regional TANU committees are people’s representatives. It is their task to guide and supervise the actions of all government officials in the areas, and to ensure that our policies are implanted in such a way that they bring benefit to the people as whole”<sup>2</sup>

The concept of party supremacy as seen in states like Zambia and Tanzania, breeds a power-drunk executive (one that is tyrannical). It is totalitarian in nature and this can neither be gainsaid nor over emphasized. In fact, a lot of political analysts have opined that party supremacy in this sense is executive supremacy. It invests in the presidency utmost supremacy.<sup>3</sup> It gives room to executive predominance and high-handedness. While commenting separately on the concept of party supremacy, in Tanzania’s early years of independence, Miti and Goulbourne submitted that it is a transformed dimension of imperialism, centralism and presidentialism. Behind its mere façade of populism lies the rule and dictatorship of presidentialism.<sup>4</sup>

Absolute party supremacy does not foster the democratic tenets of freedom of association. The people are compelled to associate under one political umbrella. It must be noted that freedom of (political) association is a fundamental pillar of democratic rule<sup>5</sup>. Except constitutionally and legally justified any law or practice that limits fundamental human rights will be quashed.<sup>6</sup>

In its constitutional sense, party supremacy may mean that party interests are superior to the interests of an individual member or a few members of the party. Party interest shall prevail when it conflicts with the personal interest of its members or its candidates. It is the exclusive power that a party has to control, regulate and determine its activities. This is usually spelt out in the constitution of the party. It fosters the ascendancy of party manifesto. The party ideology as spelt out in its constitution is binding on its numbers. Any action taken contrary to party interest is anti-

<sup>2</sup> Daily News, 23 Feb. 1974.

<sup>3</sup> H Goulbourne, *The Role of Political Party in Tanzania since the Arusha Declaration* in Miti, K, “The Party and Politics in Tanzania” p. 194

<sup>4</sup> Miti, K “The Party and Politics in Tanzania” Pp195-197.

<sup>5</sup> ANPP V. IGP (2008) 12 WRN 65.

<sup>6</sup> Section 45, 1999 Constitution.

<sup>1</sup> Miti, K “The Party and Politics in Tanzania” p. 194.

party. Simply put, “members of a political party are bound by the provisions of its constitution.”<sup>7</sup>

In its democratic sense, party supremacy may be inferred as the autonomy and independence of the political party from external controls. It is the predominance of collective party decision as opposed to individual ambition of party members. It fosters the supremacy of party ideology instead of charismatic personality. The ideal sense of party supremacy is the superiority of party based values, objectives, aims and programmes over the will of “informal and secretive bodies” in the party.

The programmes of a party are its constancy<sup>8</sup> and any form of variable by any faction is rightly termed anti party. Party institution must maintain internal coherence and unity that fosters its autonomy<sup>9</sup>. Thus, the party is a unified body and its policies as such are superior to any individual interest. When viewed from the above position, party supremacy is an inevitable ingredient of democracy and internal party matters.

Furthermore, party supremacy in its democratic sense connotes the unfettered power that a political party has within its jurisdiction. Every party maintains a form of ideological autonomy – another regulates no party and its members are precluded from double loyalty. The party can determine whom it nominates and sponsors for election. For example, a person shall be qualified for election if, among other things, he is a member of a political party and is sponsored by the party.<sup>10</sup> This is prerequisite for election into the Presidency, National Assembly, Governorship, etc<sup>11</sup>. It follows that the Constitution and the Electoral Act do not subscribe to individual candidature. A person is, therefore, disqualified for election if he does not have the investiture of a political party.

Per Katsina – Alu J. S.C. held that “the issue of who should be a candidate of a given party at any election is a political one to be determined by the rules and constitution of the said party.”<sup>12</sup> It is a domestic issue and not justiciable.<sup>13</sup> The implication is that party supremacy prevails in issues of nomination and sponsorship of candidates for election.

Also, a person is precluded from defecting from the party under whose platform he is elected provided his defection is not as a result of a division in the political party of which he was previously a member or of a merger of two

or more political parties or factions by one of which he was previously sponsored.<sup>14</sup>

Unfettered party power used to be the position under the Electoral Act, 2002. However, with the emergence of the Electoral Act, 2006, the position is no longer the same. Party supremacy cannot be absolute in Nigeria. Judicial and statutory interventions are major checks on the constitutionality and legality of party actions. The decision in *A. G. Federation V. Abubakar*<sup>15</sup> is instructive in this area. The synopsis of the case is that the vice president resigned from the People’s Democratic Party and joined another political party known as Action Congress. Consequently, the president declared the office of the vice president vacant. The position of the court was that the defection is constitutionally right. A person who resigns from a political party on whose platform he was elected cannot be said to have “constructively or by implication resigned” from the office of which he has been previously elected. Thus party control over such a person is limited to the extent that it does not preclude him from defecting (i.e. exercising his freedom of association) and his defection cannot be said to make his political office vacant. His defection may be morally reprehensible; at least to the party from where he had defected, the defection is not illegal and unconstitutional.

It is further submitted that every person has the right to associate by virtue of Section 40, 1999 Constitution. In like manner, a person may also choose not to associate<sup>16</sup>. Therefore, a person has the right to associate or not to associate with a political party.

The fetters of absolute party supremacy were shattered by the decision in *Abubakar’s* case. As pointed out earlier, party supremacy has been used as a tool to foster executive supremacy and a substance for fueling the excesses of presidentialism. As held by the court in the instant case (and rightly in the view of this writer), the president has no constitutional and legal backbone to declare the office of the vice president vacant on ground that the latter defected to another political party. The outcome of party supremacy, if allowed to prevail in this scenario, would have amounted to conferment of excessive and unconstitutional powers on the president. It is not within his constitutional jurisdiction to impeach the vice president. The appellant contended that by resigning from PDP, the vice president has shown bad faith, lack of mutual confidence, disloyalty and distrust to the party. The court ensured the supremacy of the constitution and prevented the president from using the insinuation of party supremacy to foster arbitrary rule.

<sup>7</sup>PDP V. Abubakar (2007) 3 NWLR (Pt 1022) P.527 C. A

<sup>8</sup>Weissenback, K, “Political Parties and Party Types – Conceptual Approaches to the Institutional of Political Parties in Transitional States: The case of the Philippines” 2010 p. 35 .

<sup>9</sup>Ibid at p. 36.

<sup>10</sup>Section 106 (e), Electoral Act, 2006

<sup>11</sup>Ss. 131c, 65(2)(b), 177(c) of the 1999 Constitution

<sup>12</sup>*Dalhatu V. Turaki* (2003) 15 NWLR (Pt. 843) 310]. But see *Ararume V. PDP*

<sup>13</sup>*Dalhatu V. Turaki* (2003) 15 NWLR (Pt. 843) 310] . But see *Ararume V. PDP*

<sup>14</sup>Section 68(1) (g), 1999 Constitution. Note: this provision applies to disqualifications for membership of National Assembly and any position equivalent to it.

<sup>15</sup>(2007) 3 NWLR (Pt 1022) P.527 C. A.

<sup>16</sup>*Agbai V. Okagbue* (1991) 7 NWLR (pt. 204) 391

This is also obtained at the state level. Thus, ‘when the PDP, prodded by Obasanjo, in 2003, made State Governors the party leaders in their states, they made states’ party executives redundant. All the other parties followed that example. Thus, in every state “Governors Supremacy” reigned – it is civilian autocracy masquerading as democratic politics...’<sup>17</sup>

### 1) Charismatic Party Leadership

In modern times, one problem of “new democracies” is the attachment to charismatic party instead of the development and sustenance of value-oriented party institution.<sup>18</sup> The institutionalization of political parties in Nigeria is no exception. Political parties in Nigeria (since their origin) are fashioned along the personal image of certain persons. For instance, Action Group was fashioned after the charisma of Awolowo, the same was Azikwe to NCNC, etc. In such occasions, when the individual defects from the party, the party crumbles. As a result of the overwhelming nature of these charismatic leaders on the party, the party is bound to subject to their whims and caprices. Thereby fostering the ascendancy and supremacy of the will of these individuals over the will of the party. In fact what is so called party supremacy is the rule of the big wigs in the party.

“I worked closely with the Buhari campaign in 2011; and Prince Tony Momoh, who was Chariman of CPC is my witness. There too, “Party Supremacy” amounted to what three or four people decide. The biggest voice was, of course, that of Buhari. Let me finish where I started – with the PDP. When the PDP, prodded by Obasanjo, in 2003, made State Governors the party leaders in their states, they made states’ party executives redundant. All the other parties followed that example. Thus, in every state “Governors Supremacy” reigned – it is civilian autocracy masquerading as democratic politics...”<sup>19</sup>

In addition, these charismatic leaders can defect any time and form alliance with other parties. This poses a great threat to the instant party as it is solely founded on Charismatic leadership and not value oriented leadership. However, such charismatic leaders are resentful of internal opposition. Thus, any one who questions “party” decisions is termed anti-party. The Action Group Crisis of 1962 is instructive in this regard. The conflict was that of leadership between Awolowo and Akintola.

In like manner, many have attributed the fall of PDP in recent time to the defection of its big wigs like Chief Obasanjo, etc. Where a party is built around personal image of an individual, the party suffers destruction when such an individual defects. This is a negative effect of party based on

personality rather than ideology. Also in Charisma based party the funding of the party depends on certain individual(s). This creates dependency on such person(s).

### 2) Hegemonic Party System

Party Supremacy, in the long run, will culminate in what some political analysts have called “Hegemonic Party.” The so-called party supremacy entrenches the predominance of this party not just because it has the financial prowess and other wherewithal, it dominates the party system, electoral process and the (Nigerian) body politics at large. The driving force of party supremacy is to enthrone the party as a supreme institution while sending other parties to their graveyards. As a result, the party enthrones its supreme status by “hook and crook” means. This has led to incessant electoral malpractices, inability to conduct free and fair elections, “do or die” politicking, among others. Political and electoral malpractices and the subsequent military interventions are not new to Nigerian Politics<sup>20</sup>. In the First and Second Republic this was the picture. Both NPC and NPN were quintessential of the tendency of hegemony. The NPN amidst its unpopularity still went ahead to rig the 1983 elections. It was these anomalies that aided the forceful entrenchment into power of NPN and eventually led to the military coup of 1983 spearheaded by General Buhari.

Since the inception of constitutional democracy in Nigeria in 1999, PDP had entrenched itself has the supreme party. In fact, through its big wigs, it has forced almost every other party to silence in the last sixteen years (counting from 1999). It must be established that it is not the party that is entrenched as Supreme, rather the supremacy of the party is the supremacy of the big wigs like Obasanjo. It was the supremacy of party leaders disguised as party supremacy. Obasanjo, through his party, PDP, held other political parties hostage for about sixteen years. No party had the strength to stand in opposition against PDP at the time. One begins to wonder whether there could be ideal democracy without strong competition from opposition parties. Obasanjo with his astute political prowess entrenched the supremacy of PDP and that of himself. In the long run, he began to suppress defection to other parties and sanctioned anyone who raised any observation as to the decision of the party. As said earlier, party supremacy is another dimension of entrenching executive supremacy, hence executive tyranny. This has been discussed while analyzing the case of Abubakar above.

The hegemony and supremacy of PDP was brought to book and given a deathblow in the last election (2015). Since no single party could stand a war against the democratic tyranny of PDP, an alliance of different parties (APC) was inevitable for the defeat of PDP. However, the ruling party (APC) must avoid the temptation of entrenching itself as an “hegemonic party”. It must avoid the pitfalls of PDP and learn to foster democratic values. APC cannot be another PDP that

<sup>17</sup>Sobowale, D The Myth of Party Supremacy in Nigerian Politics. Vanguard newspaper, October 25,2015

<sup>18</sup> Weissenback, K , Political Parties and Party Types – Conceptual Approaches to the Institutional of Political Parties in Transitional States: The case of the Philippines 2010 p. 40

<sup>19</sup>Ibid.

<sup>20</sup>Oyewo. O .“Constitutions, Good Governance and Corruption: Challenges and Prospects for Nigeria” p. 5

will cease power for another sixteen years by crooked means. It must give room for healthy political competition. It must not play the politics of using power to foster party supremacy that weakens other parties. Democracy is founded on competitions from strong parties. Any attempt to weaken other parties is undemocratic in nature.

Furthermore, when 'party became king, the quality of men entering public life declined'.<sup>21</sup> Politics becomes disreputable. Supremacy of the party transforms the party into a deity. The worship of party eventually gulps the very essence for which the party is created. Parties will become their own gravediggers if this vicious cycle of party supremacy plaguing our political life, since the inception of political parties, is allowed to continue. The experience of the defeated PDP is a ready example of how party supremacists destroy parties. Party cabals cannot continue to foist their decisions on the majority on ground of party supremacy. Until the will of the majority prevails, party institutions will continue to wane, weaken and decompose. Parties must cast off the veils, illusion and myth of party supremacy.

Political parties in Nigeria have lost their bearings on national goals. The pursuit of national goals is the very historic duty of party institutions. The ripples of misplaced political goal are evident in our national life and may account for problems like political instability, electoral malpractices, among others.

### III. IS PARTY SUPREMACY CONSTITUTIONAL?

In the light of Nigerian constitutional democracy, the constitution is the *grundnorm*; the mother of other norms. It is supreme and binding on all persons and authorities throughout the Federal Republic of Nigeria<sup>22</sup>. By virtue of the Supremacy Clause, "The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this constitution."<sup>23</sup> From the above, "group of persons" includes political party. It therefore follows that political party cannot attain control of government except in manners prescribed by the constitution. Furthermore, if any law is inconsistent with the provisions of the constitution that law shall be void to the extent of its inconsistency.<sup>24</sup> "Any law" includes constitution of political party. Thus, where the constitution of a political party is inconsistent with any provisions of the constitution, that party constitution shall be void.

Without prejudice to the constitution of a political party, the constitution has the final say on any issue in our constitutional democracy. The constitution of a political party and its operational doctrine must be rooted in constitutional

precepts; otherwise the former will be quashed. Wherever and whenever party supremacy does not engender constitutional supremacy the latter will prevail and the former set aside. In other words, in exercising control over its candidates, members and general intra party activities, political party must be seen to have manifestly pursued constitutional aims in consonance with its own aims. Its objectives must not be cross-current to constitutional objectives. Therefore, constitutional democracy becomes more politically viable when party ideology is a product of constitutional provisions.

In addition, party practices must not in any way violate the constitutionally guaranteed rights of the citizens. Thus where the control of a party over its members constituted, will constitute or is likely to constitute the violation of the fundamental rights<sup>25</sup> of such member the party will be curtailed. This is exemplified in the case of *A. G. Federation v. AtikuAbubakar*. It was held that the so-called actions taken by PDP against its defected member amounts to a violation of his right to association.

The following are other areas of constitutional control of political party under 1999 constitution:

#### 1) Requirements For Its Formation And Its Modus Operandi

Section 222 provides that

- a. Political party is required to register the names and addresses of its national officers with the Independent National Electoral Commission (INEC);
- b. The membership of any political party is open to every Nigerian. Membership of political party is not to be on the basis of circumstances of birth, sex, religion, place of origin etc. In fact this provision prohibits political discrimination.
- c. A copy of its constitution is required to be registered in the principal office of INEC;
- d. Where there is any alteration in its registered constitution, the party is required to register such alteration in the principal office of INEC within thirty (30) days of making such alteration.
- e. Political party must have national colouration and out fit. To this end, its name, symbol or log should not be expressive or evocative of any ethnic or religious connotation of sectionalism.
- f. Its headquarters must be situated in the Federal Capital Territory, Abuja.

In addition, Section 223 provides that the constitution and rules of political party shall

- a. Provide for the periodical election on the democratic basis of the principal officers and members of the executive committee or other governing body of the political party; and

<sup>21</sup> Schlesinger. A, "The Cycles of American History", First Mariner Book, 1999. P.26

<sup>22</sup>Section 11999 constitution (as amended)

<sup>23</sup>Section 1(1), 1999 constitution (as amended)

<sup>24</sup>Section 4(5), 1999 constitution (as amended)

<sup>25</sup>Such the right to association

- b. *Ensure that the members of the executive committee or other governing body of the political party reflect the federal character of Nigeria.*

For the purpose of 223 (a) and (b) periodic election means election conducted at regular intervals not exceeding four years. A party shall be deemed to reflect federal character if its governing body consists of members from different states of Nigeria not less than two-thirds of all the state in the federation and Federal Capital Territory.

## 2) *Ideology Of Political Parties*

The role of political party, among others, is to consolidate democratic virtue and good governance. One of the numerous ways to attain this is by presenting credible and vibrant candidates for elective posts. In addition, the party must align its ideology to the provisions of chapter 2, 1999 constitution<sup>26</sup>. Section 224 of the 1999 constitution provides that the programmes as well as the aims and objectives of a political party shall conform with the provisions of chapter 2 of the constitution. This chapter contains the fundamental objectives and directive principles of state policy. These objectives are fundamental pillars of democratic rule<sup>27</sup>. It therefore, suffices to say that a political party can compel its candidates to align to these objectives. By so doing, it is exercising a form of constitutional party supremacy. In other words, it will be constitutional for a political party to exercise some forms of control over its candidates and members especially where it is in the bid of the party to pursue the actualization of section 224.<sup>28</sup>

Although there is one thing to have the objectives of political party couched in accordance with chapter 2 of the constitution and there is another thing to comply with these objectives. This objectives are non-justiciable as a result politicians seems to use this as defence against any action brought against them to enforce the objectives of the party and sections 13-23 of the 1999 Constitution. However, these provisions can be enforced through other means like judicial activism and constructive interpretation of the constitution, by legislative enactment, through the regional or international court, etc.<sup>29</sup> Also, political parties are precluded from using physical force or recruiting militia personnel for promoting political objectives or interests<sup>30</sup>.

## 3) *Financial And Asset Control Of Political Parties*

By virtue of Section 225, political parties are required to submit to INEC and publish a statement of their assets and liabilities. In addition, it is required to submit to INEC its annual statement and analysis of its sources of funds, assets and expenditure. A party is prohibited from possessing funds

or assets outside Nigeria and shall not retain funds sent to it from outside Nigeria. INEC has control over funds or assets received by political party from outside Nigeria. The financial transaction of a political party is subject to the directives of INEC. Annually, INEC is required to prepare and submit to the National Assembly a report on the accounts and balance sheet of every political party<sup>31</sup>. It has power to investigate whether or not an party has submitted proper books of accounts and records<sup>32</sup>.

## IV. INTRA PARTY ACTIONS AND POLITICAL QUESTIONS: NON-JUSTICIABILITY AND EXCEPTIONS

“An action is said to be justiciable when it is proper to be examined by the courts of justice or subject to the scrutiny of courts of justice. Therefore, a case is not justiciable when it is one upon which a court or judge cannot adjudicate.”<sup>33</sup> Political questions and intra party matters are issues which borders on domestic affairs of a political party and are not justiciable. They are left for the political party, the Executive and the National and State House of Assembly<sup>34</sup>. For example, the issue of who should be a candidate of a given party is a political one. Party sponsorship is also a domestic affair of the party to be determined by the provisions of party constitution. Political questions and domestic affairs are to be handled politically and domestically within the party<sup>35</sup>. The court expressed the rationale for non-justiciability of domestic affairs of political parties thus:

*“Since a person has freely given his consent to be bound by the rules and regulations of a political party, he should be left alone to be governed by such rules and regulations. Once a persons freely mortgaged his conscience to a situation, courts of law should not interfere.”*<sup>36</sup>

The above statement clearly establishes party control. Party control is legal. Party control is mostly pronounced in the areas of nomination and sponsorship of candidates for elections and the process of arriving at who becomes a member of party leadership. In all these processes, party control must embrace the concept of structural institutionalization, inclusiveness and decentralization. Per Katsina – Alu J. S.Cheld that “the issue of who should be a candidate of a given party at any election is a political one to be determined by the rules and constitution of the said party.”<sup>37</sup> It is a domestic issue and not justiciable.<sup>38</sup> The

<sup>31</sup> Section 226, 1999 Constitution (as amended)

<sup>32</sup> *ibid*

<sup>33</sup> Ozigbo V. PDP (2010) 9 NWLR (Pt 1200) Pp 607, 649 CA.

<sup>34</sup> *Ibid* pp. 608, 649

<sup>35</sup> A. G. Federation V. Abubakar cited above

<sup>36</sup> Ozigbo’s Case pp 611, 680, *supra*

<sup>37</sup> Dalhatu V. Turaki (2003) 15 NWLR (Pt. 843) 310. But see Ararume V. PDP

<sup>38</sup> *ibid*.

<sup>26</sup> For example see the outline of the Manifesto of People’s Democratic Party.

<sup>27</sup> 1979 Constitution Drafting Committee Report

<sup>28</sup> A. G. Federation V. Abubakar (2007) 10 NWLR (Pt 1041) Pp 55-52, 100 SC

<sup>29</sup> Okogie V. A. G. of Lagos State; Section 15(5), item 60, 1999 constitution, SERAP V. Nigeria

<sup>30</sup> Section 227, 1999 Constitution (as amended)

implication is that party supremacy prevails in issues of nomination and sponsorship of candidates for election.

However, it is submitted that party control is not equal to party supremacy. The control that a party has over its members especially its candidates for elections is not tantamount to absolute party supremacy. Party control is subject to certain constitutional checks or legal controls. Thus intra party matters will be justiciable where they are reached *ultra vires* the party constitution.<sup>39</sup> It is the position in *Olofu v. Itodo*<sup>40</sup> that nomination either by the original act of a political party or by way of substitution due process of law must be followed. The political party is stripped of absolute decision in this regard. It cannot take any decision in this regard except such a decision is legally justified. For instance, under *Section 34 of the Electoral Act, 2006*, where a political party wants to change or substitute any of its candidates, it must inform INEC of the change or substitution of candidate sixty (60) days before the election and must give verifiable reasons for the change or substitution.<sup>41</sup> A breach of the conditions stated in Section 34 (1) and (2) of the Electoral Act is justiciable<sup>42</sup>. Thus, where a political party changes or substitutes a candidate without due process of law the court will not hesitate to intervene. The time limit makes the provision justiciable<sup>43</sup>. The power of a political party to substitute or change its candidates is also subject to post election period.<sup>44</sup> The Law will not allow a party to change its candidate after election or to deprive a winning candidate the certificate of return. Such an act is undemocratic.

Per Abba Aji, J. C. A., hit the nail on the head when he said

*“The cases of Amaechi V. INEC; Ugwu V. Ararume; and Ehinlamwo V. Oke (all supra) can not be taken as vesting in the courts a general or limitless power to pry into the domestic or internal affairs of a political party in nominating or appointing a candidate of its choice as its flag bearer at an election. The need to scrutinize how the candidates in the cases under reference emerged and especially whether or not the provisions of the constitution of the affected political party were adhered to in the emergence of the candidates was necessitated because a pronouncement had to be made as to which of the two candidates the political party ended up nominating was so nominated by, due process. And this is because of the justiciability of Section 34 of the Electoral Act, 2006.”*<sup>45</sup>

<sup>39</sup> McKinnon v. Grogan (1974) 1 NSWLR 295, 298-299

<sup>40</sup>(2010) 18 NWLR (Pt 1225) 545 SC

<sup>41</sup>Olofu V. Itodo, Amaechi V. INEC (all Supra).

<sup>42</sup> Ibid

<sup>43</sup> Ibid p.556

<sup>44</sup> Ibid P 556

<sup>45</sup>Olofu v. Itodocited above

## V. INTERNAL PARTY DEMOCRACY AND THE NEED FOR LEGISLATIVE CONTROL OF PARTY POLITICS

Just as political parties are indispensable to democracy so also is democracy indispensable within inner party activities. In other words, the party must manifestly observe democratic principles in its internal politics. As a result, party decisions are to be reached “bottom-up, from the basis to party leadership”<sup>46</sup>. The making of political determinations and general policies of the party must be ideally reflective of the will of every class of persons in the party. Thus, internal party democracy is a negation of political bias, tribalism but fosters fair and transparent conduct by political parties in their primaries, congresses and conventions. Transparency and fairness must not just be done, but must be manifestly seen to have been done by both members and non-members. Konrad (2010) opined that internal party democracy frowns at informal and secretive party bodies making decision for the party<sup>47</sup>. As a result, it is submitted that party decisions should “be made within formally legitimate Committees.”<sup>48</sup>

In Nigeria, political parties almost nearly do not have an iota of recognition for the will of their membership. Party caucuses and secretive bodies within the party are prevalent. Parties only need the people to vote for their candidates and, if the people do not, parties have always had to rig elections to force themselves into the corridors of power. Voters switch from party to party for material needs. Materialistic politics is the order of the political system. Hardly do we have voters who support parties on the basis of ideologies. Also, hardly do parties furnish well-grounded ideologies because they know the majority of voters care less about ideologies.

Party supremacy in Nigeria has negated the principle of internal party democracy. Consequently, secretive bodies within the party in their closets reach party decisions. Party leadership nullifies the will of the membership and foists its decision on the latter. In fact, the manifestos are not the making of the members they were fantastic promises concocted by party leadership to allure the vulnerable Nigerian electorate to get them into corridors of power. Membership participation is thwarted cardinal political role-playing is allocated to persons loyal to party leadership and the indecent politics of god-fatherism. The so-called Board of Trustee is an unholy alliance for fostering the rule and dictates of secretive party bodies and not to foster the will of party members.

Inner party activities are often not transparent and any attempt to challenge them is termed anti-party practice. The processes that lead to the nomination and sponsorship of certain individuals for political offices are questionable. For

<sup>46</sup> Weissenback, K, Political Parties and Party Types – Conceptual Approaches to the Institutional of Political Parties in Transitional States: The case of the Philippines. Philippines p. 34

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

instance the height of internal party malpractice, unfairness and indecency can be seen in the case of *Amaechi v. INEC*. Amaechi who won the PDP gubernatorial primary election was purportedly substituted with that of Omehia by secretive bodies within the party. Such decision could not have been genuine as it was not reflective of the will of the majority of party membership.

By virtue of the recommendations of the Electoral Reform Committee<sup>49</sup>, Section 228 of the 1999 constitution was amended<sup>50</sup> to allow the National Assembly the latitude to legislate for the purpose of ensuring internal democracy within political parties. The National Assembly can make

- a. Guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of party primaries, party congresses and party conventions; and
- b. The conferment on the Independent National Electoral Commission of powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the practice of internal democracy, including the fair and transparent conduct of party primaries, party congresses and party conventions.

From the above administrative, financial, ideological and regulatory checks, absolute party supremacy is a myth. Political party does not have finality of decisions in the areas mentioned above. It must submit to the control of the constitution. Party and party leaders must follow the Supreme principles of the constitution. By so doing, the outcome will be the growth and sustainability of democracy.<sup>51</sup>

Two years after the decision in the case of *Inakoju, Per Gumel, J. C. A.*, reiterated this point thus:

*“For our democracy to grow and for peace, progress and development to manifest in our national life, our politicians must play the game according to the rules as envisaged by the constitution and the laws of this country. It is therefore necessary for politicians at every level to learn to abide by the principle of the rule of law for the sustenance and growth of our democracy”*<sup>52</sup>

## VI. NOTION OF DEMOCRACY: SOVEREIGNTY OF THE PEOPLE

The survival and sustainability of democracy is by and large dependent on viable political institutions with potentials and competence to represent the citizens and devise

plans, which are evocative of public good.<sup>53</sup> It is absolutely impossible to think of democracy in modern times without political parties. However, what seems to be the greatest challenge of political parties and party organization in Nigeria today is the deficiency of ideological foundation and realistic manifestos. Nigerian politicians, in fact, do not have ideological commitment. As a result they criss-cross from one party to another. For instance, the majority of office holders today under the platform of APC were bonafide PDP adherents who backslide, so to speak, from the latter party. The fact has to be established that politicians defect from and affiliate to parties in their personal bid for career advancement<sup>54</sup> and not basically for national good. In addition, parties have failed to develop clear ideology because of the lack of commitment and loyalty to the party by its membership.<sup>55</sup>

Significantly, therefore, there are variations of party operations across the globe in different societies. Party system and political culture differs from country to country. This is largely traceable to the fact that the outcomes of democracy is dependent on how the people concerned decide to practice it. Democracy is no doubt a system/doctrine that fosters popular participation and true representation of the people in the state of their affairs. The concept of democracy stemmed out of the Ancient Greek city-state of Athens<sup>56</sup>. The Greek style of governing themselves gives room for all the citizenry to participate in collective decision making simultaneously. However, this was practically viable by reason of the homogeneity of that society. Consequently, the heterogeneity of modern state cannot give room for the viable practice of direct/classical democracy. Thus, in modern times, Democracy has its consolidation/strength in the following principles and doctrines:

- a. The principle of recognition
- b. The principle of participation
- c. The principle of representation
- d. Doctrine of consultation
- e. Doctrine of selection

The inevitability of political parties in any ideal democratic society is to consolidate these principles and to ensure the smooth practice of democracy in modern state. Every democracy thrives on the strength of the people. Thus, there can be no democracy without people. Hence, democracy as Abraham Lincoln puts it is “the government of

<sup>49</sup> Main Report of the Committee, vol. 1, p. 41

<sup>50</sup> Constitution (First Alteration) Act 2010

<sup>51</sup> *Inakoju V. Adeleke* (2007) 4 NWLR (Pt 1025) 423

<sup>52</sup> *Onyekweh v. INEC* (2009) 6 NWLR (pt 1136) pp, 23, 34-35.

<sup>53</sup> N.D.I 2005 p.1

<sup>54</sup> Arlegue, C and Coronel, J. Philippines, in Manikas, P and Thornton, L. Political parties in Asia. Promoting Reform and Combating Corruption in Eight Countries. Washington: National Democratic Institute for International Affairs 2003 p218. <http://www.ndi.org/node/13262> (01.04.2010)

<sup>55</sup> (Ibid).

<sup>56</sup> This does not mean that democracy may not have been witnessed in several other parts of the world simultaneously.

the people, by the people and for the people”<sup>57</sup>. Therefore, an ideal democracy gives paramount recognition to the people. In fact, the 1999 Constitution – (in its preamble) recognizes “We the people.” However, the people are recognized under different groups such as pressure groups, political parties, family, church, etc. The most efficient of these groups is the political party. It is an organization for the representation of the people in government irrespective of their religion, family ties and cultural beliefs. It is the only group constitutionally recognized as capable of forming government by canvassing for votes and sponsoring candidates to win election<sup>58</sup>.

The principle of participation is no doubt one of the viable cornerstones of modern democracy because it gives the people the platform to take part in their own government. The state is a product of the social contract. The government is machinery through which the people directly or indirectly participate in determining their own affairs. Through political parties, the people in modern democratic societies choose a representative to participate in the day-to-day governance of the state. The people delegate to their representatives the power to act in government on their behalf. It must therefore be noted that the delegation of function does not divest the donor or delegator of such a function the power to determine how such power is used<sup>59</sup>. It follows that the people are the ultimate donor of powers, authority and functions in the state, they can not be divested of such powers and functions and they ultimately determine how such powers and functions are used. The people cannot participate in modern democratic societies, unless their interests and collective wills are represented. By nominating a representative, the people put in his hand their will and it behooves on him/her to enforce the general will of the people. No other way has the people been effectively represented in government than through the instrumentality of political party. Political party creates the platform for aggregating the general interests of the people.

In addition, political party also creates the platform for competitive and effective governance in modern times. Thus, the activities of shadow cabinet, opposition party, are viable instrument for keeping the incumbent government on its toes. They serve as checks on the monopoly of power and abuse of power by the hegemonic party.

Political party, as consolidation of ideal democracy, is a platform for recruiting political leaders. It is also a label for eligibility of a person for political posts. Thus, the Constitution and Electoral Act provide that for qualification for the candidacy for presidency, House of Representative etc., a person must belong to or must be sponsored by a political party.

What then is political party? Black’s Law Dictionary defines political party as “an organization of voters formed to influence the government’s conduct and policies by *nominating and electing candidates to public office*.”<sup>60</sup> “It is a group of men who have agreed upon a principle by which the national interest might be served”<sup>61</sup>. By virtue of Section 229 of the 1999 constitution, “Political party includes any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice-president, Governor, Deputy Governor or membership of a Legislative House or of a Local Government Council.” Political party is therefore an organized political group with systematic plans( ideologies) and likeminded individuals whose ultimate goal is to sponsor candidates for elections and occupy political office(s). Its efforts are geared towards the competitive strive for political power. In other words, it is a group of like minded individuals who share common political ideology, and the ultimate goal is to furnish candidates to contest for and win elections into available political offices.

Political party is a platform for periodic change of representative. The people retain or recall their representative upon the evaluation of his/her performance.

In Nigeria, for an association to be worthy of the nomenclature “political party” it must have been registered and carved out in manner prescribed by the Constitution and the Electoral Act<sup>62</sup>. It nominates, substitutes and sponsors candidates for elective posts. The above are notably the most evident functions of political party, among others, in a democratic society today.

In modern times , political party can be said to perform a government function. This makes it an organ of government. Kirby believes that the electorate is an arm of government.<sup>63</sup> It follows that the electorate signifies the party, which can be seen as an association of voters. To this end, the party checks the excesses of government and promotes public good. However, Nigeria is currently witnessing a drought of parties of principle. The inclinations and proclivities of the political elites is geared toward personal ambition oriented parties as opposed to the yearning for parties of principles.

Party Supremacy is founded on the notion that the party has final say in party matters and that party decision is binding on all its members and candidates. This position in Nigerian politics today would have been positive but for the fact that what constitute party supremacy is the hegemony of some party leaders with tyrannical proclivities trying to “lord” their wills over party ideology and the decision of the majority of party members. These sets of individuals have constituted themselves into party “demi gods” and believe they can dismiss constitutional democracy. They believe that their

<sup>57</sup> An address by former United States President Abraham Lincoln delivered at Gettysburg, Pennsylvania on 19 November 1863, <http://history1800s.about.com/od/abrahamlincoln/a/gettysburgtext.htm> (accessed 11 May 2012);

<sup>58</sup> Sections 221 and 222 of the 1999 Constitution(as amended)

<sup>59</sup> *Anakwenze v. Aneke&ors* (1985)2 NSCC

<sup>60</sup> *Italics mine*

<sup>61</sup> Daniel Eke P. 170.

<sup>62</sup> *Labour Party V. INEC* (2008) 13 NWLR Pt 1103 Pp83-84 CA.

<sup>63</sup> Kirby, J ‘The constitutional right to vote’ (1970) 45 *New York University Law Review* 996.

own personal will is capable of being considered the party will, hence, they push for supremacy of the former..

However, this notion is alien to the concept of constitutional democracy. The meaning of party supremacy in Nigeria should be bound to the dictates of the majority of party members and not those of party caucus. The difference between democracy and tyranny is that in the former the people dictate while in the latter the leader dictates. Thus, tyranny becomes pervasion of democracy (a 'perverted' democracy). Therefore, the absolute entrenchment of the will of a few results in the passivity of the decision of the majority. This poses serious threat to constitutional democracy. The party cannot entrench the supremacy of its actions if those actions are not indeed reflective of popular party will and constitutional norms. Constitutional democracy fosters leadership accountability to the follower-ship. In like manner, intra party democracy fosters the accountability of the party leaders to the party members. Therefore, where there is conflict between the will of the leaders and the majority of the party members and ideology of the party, the will of the latter shall prevail. This is what party supremacy entails. Anything the other way round is undemocratic.

Constitutional democracy situates sovereignty in the people. Thus, Abraham Lincoln's ancient definition of democracy stands till today. It is simply put, "the government of the people, by the people and for the people." In all, "the people" is the focal object in any democracy. It eschews all forms of tyrannical impositions and entrenches in the people the power to enthrone and dethrone those who oversee the institution of the state.

The concept of democracy remains undiluted. Any form of alteration of the original concept of democracy may amount to something else. Per Ogbunbiyi, J. C. A. held:

*"Unlike the existence of a society whose outlook is dynamic in nature for purpose of societal convenience, the same cannot be said of a true democracy where the change must bear allegiance to the true yearnings of the people it seeks to govern. Importing dynamism into Democracy would erase the conservative nature of the definition which had long stood the test of time...the process of Democracy should be seen, by those it seeks to govern, as transparently free and fair from all forms of human manipulations no matter how ingenuously invented."*<sup>64</sup>

It is submitted that the doctrine of party supremacy is a form of dynamic manipulation of constitutional democracy in Nigeria. As noted earlier, the concept of party supremacy is not constitutionally recognized. It is not even mentioned categorically in the constitution. It is a doctrine, which has crept into the Nigerian political scene in, perhaps, the last fifty to seventy years of Nigerian political existence. It has now become a concept that certain politicians with tyrannous proclivities are trying to foist on the Nigerian people. The

concept engenders autocracy, which is crosscurrent to vibrant and constitutional democracy. It fosters the rule of highhandedness. This can never be overemphasized.

Democracy emphasizes sovereignty of the people and not the party. "Sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authorities"<sup>65</sup>. In fact, government relies on the people for the derivation of its powers and authority"<sup>66</sup>. However, the sovereignty of the people cannot be better expressed except by the representation of their interests in government. Democracy functions on the representation, participation and recognition of the people. This is achieved through the cardinal instrumentalities of political party and pressure groups – interest groups.

Political party cannot exist in isolation of the people. Its adherents are the people. Therefore, it cannot but reflect the wishes and needs of the people. The truth is that party supremacy in Nigeria does not, in all its intents and purposes, put the decision of the majority of party members in a position of finality. The effect of so-called party supremacy is the entrenchment of godfatherism and the scenario where certain political bigwigs make final decision in their closets for the party.

A few politicians cannot make final decision without consultation and approval by the majority of people in the party. Anything contrary is an attempt to enthrone the will of the hegemonic despots within the party. The political party cannot be superior to the people. The party is the people and the people are part of the party. In fact, they submit to the party and this places the duty on the party to reflect their objectives. It must aggregate and express the opinions and desires of its divergent members. To this end, the representative of a political party may be recalled or impeached by the people when he fails to deliver to the expectations of the people.

Section 14(3) and (4), 1999 Constitution makes provision for representative government and the necessity of giving the people a sense of belonging. Furthermore, the overriding interest of the people must not be sectional but must be that which is nationally reflective.<sup>67</sup>

#### 1) Party Structure And The People

Party control must embrace the concept of structural institutionalization, inclusiveness and decentralization. Firstly, by party institutionalization (which in some ways may be seen as party Supremacy) what is meant is that party is autonomous from external actors and can singlehandedly decide its own matter and adopt its or functional structure<sup>68</sup>. Party institutionalization advocates that the party is an

<sup>65</sup> Section 14(2)a, 1999 Constitution(as amended)

<sup>66</sup> Section 14(2) a, 1999 constitution( as amended )

<sup>67</sup> Section 15(14), 199 Constitution (as amended)

<sup>68</sup> Randall, V. and Svasand, L, "Party Institutionalization in New Democracies," Party Politic 8(2002) pp. 5--29

<sup>64</sup> Aregbesola V. Oyinlola (2011) 9 NWLR (pt 12053) pp 514-515, 619.

institution that must determine its own affairs. That is, the party determines “who gets what, why, when and how”. It further establishes that intra party matters are to be dealt with within the party. Parties have well defined modalities for determining eligibility for any position.

However, as attractive as the concept of party institutionalization presents itself, precautions are necessary for party institutionalization in any democracy. Otherwise, the excesses of party institution may culminate in the ascendancy of one party as the Supreme Party. Party institutionalization strengthens the party and is a cohesive substance for fastening party unity. However, it takes a gradual process to attain party institutionalization in democratic regimes and party leaders can not attain this instantaneously.<sup>69</sup>

Secondly, party structural organization must promote inclusiveness. To this end, the constitution provides for federal character as prerequisite for the composition of party leadership. Party matters should be open for deliberation by all sectors of the party. A secretive body that constitutes party leadership should not exclusively reach decisions. The notion of inclusiveness is to ensure that all party members are given the privilege to be involved in party decision making processes such as nomination of candidates for election, election of party leaders, etc. In other words, internal democratic values must be manifestly seen to be operative in intra party activities. This presents the party in good light before the public.

Thirdly, decision making should be decentralized in the party so as to engage and involve all levels of the party in the decision making process and determination of party policies. Decisions are not to be singlehandedly made by a factional group. The effect of party decentralization is to discourage the hegemony of individual rule and the politics of god- fatherism but to foster constitutionalism.

## VII. PARTY SUPREMACY AND THE LEGISLATURE

Initially, we have examined the effect of party supremacy on the executive. The submission is that party supremacy engenders executive tyranny as exemplified in the case between *A.G. Of Federation v. Abubakar* analyzed above. Party supremacy not only engenders executive supremacy, it amounts to the conferment of unconstitutional powers on the executive.

In like manner, it is apposite to establish that the doctrine of party supremacy is an attempt by the ruling party to control the key decision-making, if not all decision making, in the parliament. This is unbecoming of democratic rule. The purport of it all is that party deliberates for the parliament. It must be reiterated that in democratic system, “majority rule, minority right” principle cannot be

undermined. It therefore follows that while the party with the majority rules, the minority parties have their rights. Thus, the right to determine what happens in chamber. As a result, matters of parliament should be divested of dictatorial interference by party big wigs. The effect of party supremacy is to subject party members at the executive and legislative arms to the whims and caprices of a few persons saddled with party leadership. It fuses both executive and legislative control in the party. This centralization is nothing but tyranny and is only obtained in one party state, which Nigeria is not a type. Nwabueze observed that in one party states, the legislature is subservient to the party and the executive.<sup>70</sup> Thereby creating a fusion of power. The effect is that whatever the party cabals decide is what the legislature and the executive must follow. Therefore, the party leader becomes implicitly the leader of the parliament and the head of the executive.

One party state is the highest peak of party supremacy. One party state fosters dictatorship. In effect the dictator is invested with powers of the party (party supremacy) and he subsumes every part of the party and the legislature<sup>71</sup>. In fact, most of the ministers are party loyalists. From the recent ministerial appoint of the Buhari Government, it is evident that almost (if not) all the ministers are APC loyalists. This is undemocratic, as party loyalty is seen as criterion for appointment instead of competence. No doubt, the doctrine of party supremacy must have influenced Mr. Buhari in his appointment.

What more is left for Nigeria to be a one party state since 1999? The only criterion missing is that the constitution has not (and will not) enshrined party supremacy or one party state. In one party state, according to Nwabueze, legislative intentions and proposals are initially deliberated upon and determined by the party leaders and when the issues are brought before parliament, there would be nothing much to deliberate upon, while legislative proceedings are reduced to mere formalities.<sup>72</sup> He submitted that such practice prevents fair and public deliberations on issues of national significance in order not to expose the incompetency and weaknesses of government in public light.<sup>73</sup>

It follows that such practices will stultify democratic virtues and foster irresponsible government. Again, the freedom of expression of the people through their representatives will be quashed in the process too, because parliamentarians now represent cabal interest and dare not speak against the decision of party lords even when such decisions are unpopular among the citizens.

What is plaguing Nigerian democratization, according to are (i) infidelity in the violation of the constitution with impurity and immunity, (2) disregard for

<sup>69</sup>Scarrow, S. Political Parties and Democracy in Theoretical and Practical Perspectives: Implementing Intra-Party Democracy. The National Democratic Institute Affairs 2005 <http://www.ndi.org> p. 7.

<sup>70</sup>Presidentialism in Common Wealth Africa, 1974 pp.242-243

<sup>71</sup> Ibid

<sup>72</sup> Supra note 63 (p. 244).

<sup>73</sup> Ibid.

accountability and transparency, (3) “endemic and systemic corruption” (4) infrastructural decadence, (5) lack of inclusive politics, etc. Until these problems are tackled and solved, party supremacy is still not the issue. The ultimate goal of every political party should be the pursuit of good governance and nation-building. It is gruesome to see that party chiefs and politicians in Nigeria only emphasizes democratic values when it comes to their personal interests<sup>74</sup>. Good governance entails the execution of plans and purposes for the utmost good and will of the citizens at large.<sup>75</sup> According to Oyewo and Ojomo (2012) democratic governance entrenches socio-economic equality and opportunities for all citizens<sup>76</sup>. According to them, the lack of good governance is the very bane of Nigerian democratization.

### VIII. PARTY SUPREMACY AND FUNDAMENTAL HUMAN RIGHTS

Human right is a concept with divergent debates and opinions on its definitions<sup>77</sup>. However, it is safe to submit here that human rights are inalienable and natural privileges and claims enjoyed by all persons. These rights are inherent in the nature of humanity. All humans enjoy them. According to Professor Mowoe, these rights are intrinsic to man and precede the origin of the constitution<sup>78</sup>. They are not creations of the constitution. The constitution is preservative of them. The concept of human rights encompasses all forms of political, social, economic, civil, cultural and personal rights. They are inevitable for the sustenance and continuous existence of humanity. The 1999 constitution provides for these rights in both chapter 2 and 4 of the constitution. However, the rights in chapter 2 are third generation and socio-economic rights which are not justiciable in Nigeria by virtue of section 6(6)c.<sup>79</sup> The rights in chapter 4 are fundamental and justiciable in Nigeria by virtue of section 46 of the 1999 constitution and the Fundamental Human Right (Enforcement Procedure) Rules, 2009.

To Dahl, liberal democracy is founded on three inevitable preconditions, which must be available to all

1. Freedom of information
2. Freedom of association
3. Freedom of expression

Party supremacy in practice is a negation of the attainments of certain human rights. In the absolute sense party supremacy will amount to violations of human right without reasons

<sup>74</sup> Atake, O.J and Dodo W.A, Democracy, Good Governance and Nation Building: A Multi-Dimensional Approach, IJALSG, vol.1, No.1, April 2010) p. 16.

<sup>75</sup> Ibid. p. 8

<sup>76</sup> Ibid. p. 12

<sup>77</sup> Ogbu, O. N Human rights Law and Practice in Nigeria, vol. 1, Enugu: Snap Press Ltd. 2013 pp.1-5.

<sup>78</sup> Mowoe, Constitutional Law in Nigeria, pp. 267-269.

<sup>79</sup> Okogie v. A.G of Lagos State (1981) 1 NCLR 105.

justifiable in a democratic society. Some of the eight that the purport of party supremacy will violate include the following :

1. Freedom of association,
2. Freedom of assembly ,etc

The decision in *A. G., Federation V. Abubakar*<sup>80</sup> is instructive in this area. The synopsis of the case is that the vice president resigned from the People’s Democratic Party and joined another political party known as Action Congress. Consequently, the president declared the office of the vice president vacant. The position of the court was that a person who resigns from a political party on whose platform he was elected can not be said to have “constructively or by implication resigned” from the office of which he has been previously elected. Thus party control over such a person is limited to the extent that it does not preclude him from defecting (i.e. exercising his freedom of association) and his defection cannot be said to make his political office vacant. His defection may be morally reprehensible; at least to the party from where he had defected, the defection is not illegal and unconstitutional. The defection is constitutionally right.

It is further submitted that every person has the right to associate by virtue of *section 40, 1999 Constitution*. In like manner, a person may also choose not to associate<sup>81</sup>. Therefore, a person has the right to associate or not to associate with a political party. As stated before, absolute party supremacy does not foster the democratic tenets of freedom of association. The people are compelled to associate under one political umbrella. It must be noted that freedom of (political) association is a fundamental pillar of democratic rule<sup>82</sup>. Except constitutionally and legally justified any law or practice that limits fundamental human rights will be quashed.<sup>83</sup> Again, the freedom of expression of the people through their representatives will be quashed in the process too , because parliamentarians now represent cabal interest and dare not speak against the decision of party lords even when such decisions are unpopular.

### IX. CONCLUSION AND RECOMMENDATIONS

However, this paper has viewed party supremacy from two dimensions i.e in the absolute sense and the democratic sense. While the former tilts towards the entrenchment of one party state and totalitarianism, the latter emphasizes that the finality of party decisions within Constitutional and legal bounds, as opposed to the interest of individualism and the oligarchy of party demigods. The position of this paper is in favour of party supremacy in its democratic or constitutional sense.

So far, this paper has buttressed the argument that the doctrine of party supremacy has been negatively conceived and practiced by Nigerian political elites. This is evident in

<sup>80</sup> Ibid.

<sup>81</sup> Agbai V. Okagbue (1991) 7 NWLR (pt. 204) 391

<sup>82</sup> ANPP V. IGP (2008) 12 WRN 65

<sup>83</sup> Section 45, 1999 Constitution;

charismatic-based party as opposed to value-oriented party. It is the assertion here that party supremacy in Nigeria is not demonstrative of the popular will of party members but merely the predominance of party cabal and secretive bodies, which constitute themselves into, party leadership. Using a constitutional, approach the paper advocates the supremacy of the constitution and sovereignty of the people over party supremacy. It is also submitted that party structure and decision-making must foster constitutional doctrine of inclusiveness as a core element of intra party democracy. It is contended that party supremacy in Nigeria must be practically constitutionally checked and controlled, otherwise the abuse of it will implicitly and explicitly metamorphosed into one party system and the violation of citizens right to freedom of political association, assembly and expression. In addition, this paper establishes that hegemonic political party system and the arbitrary rules of godfatherism have characterized the last sixteen years of Nigerian constitutional democratic rule. Most importantly, party supremacy gives rise to the tendency of breeding executive tyranny and lawlessness and a negation of the constitutional principle of separation of powers. This is evident in the light of *A.G., of Federation v. AtikuAbubakar*.<sup>84</sup>

The ultimate goal of every political party should be the pursuit of good governance and nation building. The lack of good governance is the very bane of Nigerian democratization. In its totality good governance is the means to effective nation-building. According to Eleazu, “Nation building is the process of politically socializing the people into becoming good citizens of the political order and making the citizens feel they have a stake in the community worth fighting for”.<sup>85</sup> Good governance and nation building most definitely starts from the party platform. Instead of wasting years to exert their supremacy and charisma on their candidate, parties and party chiefs should invest in creating platforms for inculcating into their candidates the virtues of governance and nation building. It is only in this pursuit can intra party democracy be said to be an ideal one.

The enforcement of party supremacy is not the solution to Nigerian problem. As noted by one public commentator “...as a nation in dire need of serious business from her managers, keep fanning the ember coined party supremacy will continue to undermine benefits of governance to entire populace. Let us place national interest above personal interest...”<sup>86</sup> The so-called party chiefs who profess this doctrine are themselves not ‘politically purified’. What is plaguing Nigerian democratization, as stated above, are infidelity in the violation of the constitution with impurity and immunity, disregard for accountability and transparency, “endemic and systemic corruption”, infrastructural decadence, lack of inclusive politics, etc. Until these problems are tackled and solved, party supremacy is still not

the issue. The fact remains that Nigerian democratic practices negates popular democratic norms. This is an issue all stakeholders in the Nigerian politics must rise to address. Party chiefs and political elite must, therefore, refocus and aim at democratic virtues that culminate in social transformation and not selfish inclinations.

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<sup>84</sup> ibid.

<sup>85</sup> Cited in Ndolo, I.S, Understanding National Integration and Nation Building. IJC No. 3 April 2005.

<sup>86</sup> Obi .S “Party Supremacy Or Dictatorship?” in Daily News on July 20, 2015