THE INFALLIBILITY OF THE SUPREME COURT AND THE CHALLENGES OF DEMOCRATIC CONSOLIDATION IN NIGERIA, 1999 - 2019

Cinjel Nandes Dickson[1]
Oboromeni Weinoh[2]

ABSTRACT

The Supreme Court of Nigeria (SCN) is the highest appellate court in the country. The decision of the court and its actions are not only final but are seen as infallible and sacrosanct. The Supreme Court and its application in various electoral cases have generated mixed feelings and raised questions on the credibility of the Nigerian judiciary and its capability of ensuring sustainable democracy in the country. This study examines the infallibility status of the Supreme Court of Nigeria and the challenges of democratic consolidation in the country, from 1999 to 2019. The study is anchored on the doctrine of absolute political theory. The secondary data used in this study were drawn from documentary facts generated from an array of both published and unpublished materials such as textbooks, journals, magazines, newspapers, conference and seminar papers, internet materials, reports of electoral tribunals of the election, and many more. Primary data was generated using the interview method, which combines key informants' interviews and focused group discussions. In interpreting the data, the relationship was established between the infallible status of the Supreme Court on electoral issues and its implication on Nigerian Democracy. Empirically, the study used a qualitative and historical method that is critical and analytical in providing descriptive and historical details. This was complemented by descriptive quantitative analysis. In doing that, the information gathered was summarized and

[1]Cinjel Nandes Dickson is with the Department of Public Administration, Federal University Wukari. **ncinjel@yahoo.com**

[2] Oboromeni Weinoh are with the Department of Public Administration, Federal University Lokoja,

processed through a statistical package for social science (SPSS). The study found that the infallibility of the Supreme Court verdicts on electoral issues has a significant effect on sustainable democracy in Nigeria. The study recommends among others that there is a need for radical reform and overhaul in the judiciary and judicial process, independence of INEC, and many others.

Keywords: Supreme Court, Democratic consolidation, INEC, Nigeria, and Political Participation

INTRODUCTION

The Supreme Court of Nigeria (SCN) is the highest federal court in the country. It is the highest appellate court consisting of several justices not exceeding 21 and these justices are appointed by the president on the advice and consent of the National Assembly and Nigerian Judicial Council. The Nigerian Supreme Court is headed by a Chief Justice of the Federation (CJF) (Ugochukwu, 2009). The supreme court of Nigeria (SCN) is also known as the court of last resort, Apex Court, and High Court of Appeal. The court is situated in the Central District of Abuja; very proximate to the presidential complex and the National Assembly. It is in line with this, the location is called the Three Arms Zone.

The Supreme Court in any state or society makes decisions solely on constitutional matters and its decisions are not subject to further review by any other court; it is binding and indisputable. It is on this premise that it is seen as infallible and by that, it means that it is incapable of erring or it is unerring in its doctrine as *Justice Robert Jackson* put it more eloquence, "the Supreme Court is not final because it is infallible, it is infallible because it is final" (Ajibewa, 2006: 10). Ascribing the status of infallibility to the court means that it is certainly not to fail; it is perfect, flawless, faultless and unfailing. It may have the power and be the highest court but beautifying it with the mentioned adjectives makes the curious look as if it is not manned by men (Oni, 2014). This utopian view has made the court to be imposing and too overbearing in handling issues in the country. How perfect and pure is the court when it is being administered by mortals? (Oni, 2014)

The influences of the Supreme Court of Nigeria on electoral matters began with the advent and the practices of democracy in the country. Parliamentary democracy started in Nigeria in 1960 but was short-lived due to the military coup that ushered General Johnson Thomas Aguiyi-Ironsi into power. It then re-appeared in 1979 and was toppled by the military in 1983. There was an attempt in 1993 but the election was declared null and void (Oni, 2014). It then re-emerged in 1999 and since then, the country has been practicing democracy to this present dispensation (Nwagboso, 2011). The court has resolved a lot of cases and has well-made errors in some of its resolutions; this thus points out the human element among its justices and its capability of making mistakes in matters of doctrine and dogma (Onapajo & Uzodike, 2014).

Notable cases that point out the frail and mortal aspect of the court are Awolowo Obafemi versus INEC in 1983, Peter Obi versus Andy Uba in 2007, Rotimi Amaechi versus Omehia in 2007, Adams Oshomhole versus Oserheimn Osurbor in 2008, Hope Uzodinma versus Emeka Ihedioha in 2019, David Lyon versus Diri Douye in 2020, INEC versus APC (Zamfara chapter) in 2020 and many others. The Supreme Court of Nigeria uses its unerring power to make a pronouncement on these cases and the errors made were too conspicuous but the backing and the status of an unerring (infallible) made such decisions firm and unchallengeable. Attempts to challenge some of their pronouncements were rebutted and several professional colleagues who attempted to petition the action of the court were penalized. A common example is what happened on November 2, 2009, when the Apex Court dismissed Omehia's application; seeking the view of its judgment. The seven (7) man panel led by Justice Aloysius Katsina – Alu described the suit as frivolous and an act of judicial rascality. They accordingly dismissed the case with the cost of ₦100, 000, saying that even if it was a mistake; the Apex Court has a right to make a mistake. They insisted that Amaechi remained the legitimate governor and that the decision was final regardless of whether it was rightly or wrongly entered (Cinjel, Ugwoke, Danjuma & Samaila, 2022).

The overwhelming power of the Supreme Court of Nigeria concerning its pronouncement has a serious effect on democratic practices in Nigeria. This study attempts to look at its impact on an aspect of democratic governance such as political participation, public acceptability (Legitimacy), and the pseudo role of the INEC. The work is structured into five sections. The first section is the introduction and it provides a clear picture of the study. The second section is the statement of the problem; it is defined along with research questions, objectives, and the hypotheses of the study. The third section is the conceptual clarification and theoretical framework. The fourth section contains the method and results. The last and concluding chapter focused on the conclusion and recommendations.

STATEMENT OF THE PROBLEM

The infallibility of the Supreme Court of Nigeria (SCN) and its erroneous decisions have weakened political participation in the country. It has made its own decisions more powerful than the will of the people. This development does not mean well for the practice of democracy that is built from the will and the determination of the people. This has led to high incidences of political apathy; the attitude of the people toward elections is weak and highly discouraging. It is only a few people do come out to vote from the populations of persons that are qualified to vote. Nigeria is a country with over 200,000,000 population but the statistics of the last election revealed that the winner emerged with 15,191,847 votes from a total vote cast of 29,364,204. This clearly shows that the level of participation is poor (Cinjel, Ugwoke, Danjuma & Samaila, 2022).

Another problem that motivated the study is the infallibility status of the Supreme Court of Nigeria and the poor acceptability of the leaders who were chosen by the court or by the decision of the court. Society has alienated itself with the fact that its votes no longer count; as a result of this, it does not have regard for those that were imposed on them by the pronouncement of the court. Legitimacy is thrown in the mud and society has no respect and regard for this type of leader who gained access to power through the verdict of the court. They are

tagged with different names such as Supreme Court Governors, the infallible products, the product of court myography, and many others. Democracy does not strive in societies where the decision of the people is not respected and is upturned. Leaders in such a society will lack legitimacy and the society is bound to face challenges such as instability and many other conflicts.

Another problem that led to this study is the impact of the erroneous court decision on the power of the INEC. The INEC has been rendered powerless. It is the electoral umpire that is constitutionally empowered to determine the winner of an election but the Supreme Court has taken over the power. The INEC establishes the law that governs its practice but it is the court that interprets it. There were several instances in Nigeria that the Supreme Court ordered the INEC to retrieve the certificate of return from the candidate they have issued a certificate of return and to re-issue it to the person they consider as the winner. This and many other actions have made the INEC look like a toothless bulldog; the constitution has given it the power but the court has overbearing power over it and its activities. It is against this backdrop that the following research questions were posited.

a. How does the infallibility status of the Supreme Court of Nigeria on electoral issues affect the level of political participation in the country?
b. In what ways do the infallible decisions of the Nigerian Supreme Court affect the public acceptability of the affected leaders in the country?
c. What is the relationship between the infallible status of SCN and the role of INEC in discharging its assigned functions?
d. What mechanism can be put in place to effectively help the Supreme Court in consolidating democracy in Nigeria?

The core objective of the study is to examine the infallibility of the Supreme Court of Nigeria (SCN) and the challenges of democratic consolidation in the country.

The specific objectives the study seeks to achieve are to:

a. Examine the infallible status of SCN and its effects on the level of political participation in the country.
b. Assess how the infallible decision of SCN affects the public acceptability of leaders in the country.
c. Examine the relationship between the infallible status of SCN and the role of INEC in carrying out its functions.
d. Provide a mechanism that will help the SCN in strengthening and consolidating democratic practice in Nigeria.

The study hypothesized that:

a. The higher the infallible status of SCN on electoral issues, the lower the level of political participation in the country.
b. The higher the infallible decision of SCN on electoral matters, the lower the rate of public acceptability of leaders in the country.
c. The infallible power of SCN has made INEC to be weak in discharging its constitutionally assigned functions.

CONCEPTUAL CLARIFICATION

Democratic Consolidation

Democratic consolidation otherwise known as consolidated democracy is a nascent concept. It is the maturity of the democratic institutions and the society; it looks at the soundness and stability of the democratic practices and the little possibility of a return of an authoritarian regime. Democratic consolidation is the process by which a newly established democratic regime becomes sufficiently durable that a return to non-democratic rule is no longer likely (Agarwa, 2006).

Beetham (2014) sees democratic consolidation as the expectations of regime continuity and the process by which a newly established democratic regime becomes sufficiently durable that a return to non-democratic rule is weakened. It also demands upholding democratic values of popular participation, good governance, inclusive governance, periodic election, legitimacy, and many others. It is the process by which a new democracy matures in a way that it becomes unlikely to revert to authoritarianism without an external shock and is regarded as the only available system of government within a country.

A democracy becomes consolidated if it is expected to endure; when political actors accept the legitimacy of democracy and no actor seeks to redress.

Gunther, Diamandurous, and Puhle (1995) outlined the stages involved for a nation to achieve consolidated democracy. The fall of the authoritarian regime, good governance, upholding democratic values of popular participation, legitimacy, upholding, sound judicial practice, viable political parties, periodic elections, political accountability and transparency, free civil society, and the existence of the functional state.

Linz and Stepan (1996) popularize the phrase. They provide a good introduction to the different components of consolidation, which they refer to as the five reinforcing areas of consolidation. These are; political institutions, the economy, rule of law, a usable bureaucracy, and civil society. Schedler (1998) also conceptualizes democratic consolidation as a process influenced by prior conditions and argues that the tasks and goals of consolidation will be affected by each country's unique starting point.

Diamond (1999) rejects theories that privileged preconditions for the success of consolidation. He also suggests that consolidation may take many different paths. Schmitter and Karl (2001) echo this view and further stress that consolidated democracies will not be able, nor should be expected to solve all socio-political problems. Huntington (2003) does not only demarcate the end of a transition using the two-turnover test but also posits that economic prosperity, peaceful transition, and previous experience with democracy are all preconditions for successful consolidations.

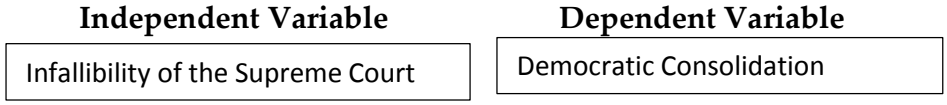
O'Donnell (1996) also challenges the view that consolidation can only take one path. He pushes this argument further by proposing that imperfect democracies that are not fully and formally institutionalized can also endure. This view is critiqued in Gunther, et al (1996) which argues that certain socio-political practices can prevent and undo consolidation. Moving away from arguments on preconditions, Alexander (2002) presents a theory of consolidation based on the strategic choices of political elites. From the foregoing, it can be deduced

that democratic consolidation is the stabilization of the democratic process in such a way that non-democratic rule is enfeebled.

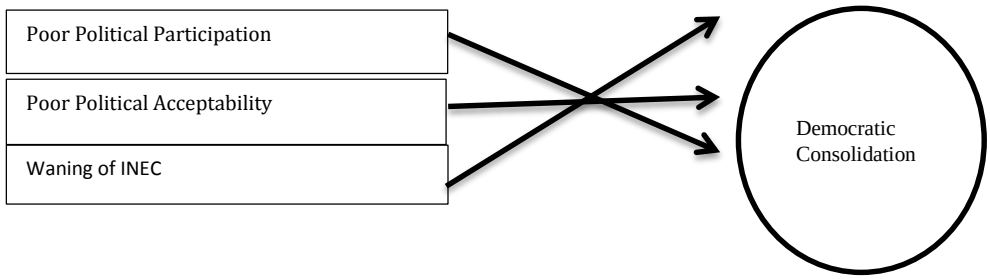
CONCEPTUAL RESEARCH MODEL

To implement the study effectively, there are two variables; one independent and one dependent variable at the conceptual level. This is shown in figure 1 below:

Figure1: Conceptual Framework



In the hypotheses, we have 3 independent variables on one dependent variable. The variables stated in the hypotheses are defined below:



INFALLIBILITY OF THE SUPREME COURT

It is a coinage of two words, infallibility and Supreme Court. The Oxford Advanced Learner's Dictionary of Current English stressed that the word infallibility evolved from the Latin word *infallibilis* and it denotes non-deceiving, not erring, incapable of failing, and unerring in doctrine. Supreme Court, on the other hand, is the highest appellate court in a country and it consists of justices appointed by the president with the advice and consent of congress and it makes decisions solely on constitutional matters (Oni, 2014).

The addition of the adjective *infallible* to the Supreme Court means the according and possession of perfect, flawless, unfailing, and

unerring status to the Supreme Court. It is the granting and bestowing of absolute, impeccable, and unlawful power and eminence to the Supreme Court (Oni, 2014). The status is mostly confusing; is it on the structure, function, and or the personae who pronounce the act? The three interplays and known cannot work without their use. The actors or the personae are the justices; the structure is the name while the functions are the laws. It is the actors that occupied the structure and it's their pronouncement that is exemplified as the function (Oni, 2014).

What often raised an eyebrow is that the justices that form the structure and pronounced the functions are men and probing further do we have men that are immortal and perfect? This is a utopian concept that does not exist; erring and failing are part and parcel of the mortals. Proponents of the infallible status of the supreme court often see it as an act of empowering and making the court to be independence, not controlled by any institution, and able to function by itself (Cinjel et al, 2022). The critiques of the infallibility of the court mocked how men could be flawless and do frown at the pronouncement of the courts that were erroneously done and how they affect society. According to Jackson (2021), the structure and the functions are the creation of humans and it is wrong to accede to the fact that erroneous, incorrect, and flawed decisions are right or correct when in truth, they are not. Moving in the same direction, Ahmed (2021) equated the assumption as a costly and mistaken postulation, which has the potential to weaken a nation. From the foregoing, it can be inferred that the infallibility of the Supreme Court means:

a. According flawless status or power to the Supreme Court
b. The unchallengeable and absolute power of the court
c. The inalienable power of the pronouncement of the Supreme Court.
d. Even an error made by the court is not seen as something wrong
e. The activity of the court and its actions mean more that the act of mortal beings

INFALLIBILITY OF SCN, DISPUTATIOUS CASES, AND DEMOCRATIC CONSOLIDATION IN NIGERIA

The Nigerian Supreme Court is the custodian of the constitution of the country. It is the duty of the Supreme Court of Nigeria to interpret the provision of the constitution and other enacted statutes for the proper conduct of affairs in the country and to foster ground where democratic governance will be predicated and sustained on the rule of law (Ahmed, 2021). The existence of the Supreme Court of Nigeria is a strong boon to democratic governance in the country but the act of over-empowering the court with overbearing and heavy-handed adjectives such as infallible, unfailing, flawless, and many others have done more harm than good in sustenance of democratic practices in Nigeria (Ahmed, 2021). The appointed justices of the court are human beings and are capable of erring just like any other mortals. Accepting this obvious truth and making amends for some of its actions will be a strong plus to democratic governance in the country. Is it the structure or the decision that is exalted with such status? The structure is just the edifice and the pronouncement is the decision of the justices who are mortals and are liable to be wrong or liable to make mistakes (Jackson, 2021).

There are several instances that the decision of the Supreme Court of Nigeria was erroneously made either as a result of those facts that were presented to them or the human part of any mortal that is tending to err. But the infallibility clause does not give them room to make amendments; the dogma is that the Supreme Court shall not review any judgment once given or delivered by it (Jackson, 2021). The court will not correct any clerical mistake or some error arising from any accidental slip or omission or to varying judgments or orders to give effect to its meaning or intention. Any application or appeal to revisit any error of action or decision of the Supreme Court is regarded as an abuse of legal process; which the court sees as incompetent and unconstitutional within the community reading of sections 235 and 287 of the 1999 constitution (Jackson, 2021).

The election that brought *Alhaji* Shehu Shagari to power and as the executive president of Nigeria on 11th August 1979 was contested at the Supreme Court of Nigeria. The Supreme Court of Nigeria sat on the

case on 6th September 1979 and the contention laid before the court was the interpretation of section 34 C (i) and C (ii) of the electoral act which provides that for a candidate to be declared a winner; he or she must win one-quarter of the votes in third of all the states of the federation. The Appellant uses the provision to appeal but the Supreme Court of Nigeria affirmed the decision of the electoral tribunal and demised the appeal on the ground of incompetence and lack of merit. Chike Obi; an erudite mathematician did all he could to inform the court of the mathematical expression of 1/3 of 2/3 of the vote in the federation but all to the contrary. It is noticeably clear that the provision of the electoral act requires 1/3 of 2/3 but what was put to use was the simple majority system (Cinjel et al, 2022).

Another case that also reveals the frailty of the Supreme Court of Nigeria was the case of *Amaechi* versus *Omehia* in December 2006. *Rotimi Amaechi* contested and won the Governorship's primary election of the People Democratic Party but he was deprived of the ticket by the party on the group of alleged corruption and the cases between him and the Economic Financial Crime Commission (EFCC). The party substituted his name with Celestine *Omehia* before the election and *Omehia* contested the election and won. *Amaechi* filed a petition in 2007, challenging what he see as gross injustice; the matter went all the way from the lower court to the Supreme Court and on 25th October 2007, the Supreme Court of Nigeria held that *Amaechi* was wrongly substituted with *Omehia* by PDP and that in the eyes of the law, *Amaechi* who did not contest the election at the general election was at all time the legal candidate of PDP at the election and the court proceeded to declare him as the substantive and undisputable Governor of River State (Cinjel et al,2021). Omehia appealed and insisted the Supreme Court of Nigeria contradicted some provisions of the law. The apex court sat on 2nd November 2009 and dismissed the application. The seven-man panel led by Justice Alloysius Kastina-Alu described the suit as frivolous and an act of judicial rascality. The court accordingly dismissed the case with the fine of ₦100, 000 and stressed that even if it was a mistake the court has a right to make a mistake (Cinjel et al, 2022).

Uba versus INEC is also another case where the Supreme Court of Nigeria showcased the fallible part of its human. *Andy Uba* contested the general election of Anambra State under the platform of the People Democratic Party. He won and was inaugurated as the substantive Governor of Anambra State. Uba stayed in office for the period of seventeen (17) days and hereafter, was sacked by the Supreme Court of Nigeria following the petition filed by Peter Obi; who seeks the interpretation of his tenure at the court. Uba made several efforts to re-emerge as the Governor of Anambra in 2010 but was rejected by the court. The Supreme Court even made it clear that his election ought not to have taken place in the first place and as a result, it is null and void (Cinjel et al, 2022). The court equally made it clear that hearing an application for the reversal of the decision would amount to chasing or embarking on a wild goose chase. "Ought not to have taken place and has taken place" are two sides of a coin and the court narrowed itself on what it sees as an error committed by INEC (Ought not to have taken place) to let ride of the mandate bestowed by the electorate and ignored the other side (Has taken place) (Cinjel et al, 2022)

On 24th May 2019, the Supreme Court of Nigeria in a unanimous judgment of five–man panel led by the then Acting CJN, Justice Tanko Mohammed, declared the first runner-up in the 2019 general election in Zamfara State as the winner of all positions earlier declared to have been won by the All Progressive Congress (APC) and its candidates in the state. With that decision, APC lost the 36 elective positions in the state comprising the governorship, deputy governorship, 3 senators, seven House of Representatives, and the 24 House of Assembly to the PDP (Maduekwe, 2021). In an attempt to appeal, the Supreme Court made it clear that it does not seat on appeal over its own decision. A lot of legal luminaries and spectators cast doubt on the decision; stressing that the Supreme Court ought not to have declared the runners-up as winners but should have canceled the election and ordered a new one (Madukwe, 2021).

On 14th January 2010, Emeka Ihedioha was sacked by the Supreme Court of Nigeria as the substantive Governor of Anambra state. The court ordered INEC to give a new certificate of return to the

candidate of the All Progressive Congress (APC), Hope Uzodimma who was the fourth in the general election. The decision was greeted with a lot of mixed reactions; there were a series of pro and anti-protest with calls on the apex court to revisit its decision. When the apex court sat on the appeal, it threw the appeal out as lacking merit; stressing that the court had earlier pronounced upon. Justice Chima Nweze, one of the seven-man justice and the only Justice that voted against the decision dissented:

> This decision of the Supreme Court will continue to haunt over electoral jurisprudence for a long time to come. In my intimate reading of the January 14th judgment, the substance of Ihedioha's matter was lost to the time frame. This court once set aside its own earlier judgment cannot use a time frame to extinguish the right of a person.

He went further to stress that the court has the power to overrule itself and revisit any decision that is not in accordance with Justice. He further said that "The court has a duty of redeeming its image. I am of the view that this application should succeed". There were several outcries and calls to the apex court to revisit its decision but all to the contrary (Cinjel, et al, 2020). The court warned that the case should not be brought before it again; stressing that it is an abuse of court processes and it cannot reverse itself in a case it had determined even if it is a mistake (Madukwe, 2021).

Besides the cases discussed above, there were several cases that the decision of the Supreme Court of Nigeria was disputed. Notable among some of these cases are David Lyon versus Douyi Diri, INEC versus Falake, Oshomohole versus Osunbor Oserheimen, Aliyu Wamako versus Dinyadi Maigari, Ogboru versus Uduaghan, Johnson versus Lawanson, Olorunfemi versus Asho, among many others (Maduekwe, 2021).

SUPREME COURT RULING AND POLITICAL PARTICIPATION IN NIGERIA

The consequence of the actions of the SCN is detrimental to democratic governance; it has weakened the level of political participation and political legitimacy in the country. The attitude of the electorate toward voting has declined. A lot of the electorates have taken consolation in embracing political apathy; stressing that it is needless since, after the whole exercise, it is the court that will determine the winner in place of their vote. Statistical records culled from National Population Commission (NPC), INE, and IFES Election guide point out that there is a huge gap between the country's population and the number of eligible persons who have registered to vote (Maduekwe, 2021).

In 1999, the country's population was estimated at 130 million; 80% falls within the age bracket 18 to 75 (qualified age to vote), 12% were within the age bracket of 0 – 17 and 8% are comprised of persons between the age bracket 76 and above. Out of the 120 million populations that were eligible to vote, it was 57,938,945 persons that registered to vote and this is 52% of the qualified age that is entitled to vote. The implication is that 42.8% of eligible persons that were qualified to vote refused to participate (Cinjel et al, 2022).

In 2003, the estimated population of the country was projected at 140 million and this comprises 78% of persons who fall within the age bracket of 18 to 75, 14 % of the population persons within the age bracket 1 to 17, and 8% of the population falls between the age bracket 76 and above. The total number of registered voters in 2003 was 60,823,022 and the eligible persons who could vote were 109,200,000. The registered voters were 55% of the population of those persons who could vote and this indicates that 44% of the qualified person who could vote did not participate (Cinjel et al, 2022).

In 2007, the population of the country was estimated at 150 million. 75% constitutes the age bracket 18 to 75, 15% constitutes the age bracket 1 to 17, and 10% were persons who fall within the age bracket 76 and above. The total number of registered voters (TV) in 2007 was 61,567,036 and 112,500,000 people were qualified to vote. The number of qualified persons who registered to vote was 54.9% of the population

that was eligible to participate and this indicates that there was a decline in the level of political participation in 2007 than in 2003(Cinjel et al, 2022).

In 2011, the population estimate of the country was 170 million and this encompasses 74% from the age bracket 18 to 75, 16% from the age bracket 1 to 17, and 10% were persons from the age bracket 76 and above. The population of qualified persons that were suitable to vote was 12,500,000 and the population of persons who registered to vote from the eligible population was 73,000,000. This is 58.02% of the population of persons that are qualified to vote. This indicates that 42.08% of the population that is qualified to vote did not participate in the electoral process (Jackson, 2021). The figures above indicate that the participation of the citizen in the electoral process was still weak and discouraging.

Table1: Voting and Rate of Participation in Nigeria

Election years	Eligible persons	Registered Voters	Non-participant
1999	120,000,000	57,938,945	45,938,945
2003	109,200,000	60,823,022	48,376,978
2007	112,500,000	61,567,036	50,932,964
2011	125,800,000	73,000,000	52,800,000
2015	136,800,000	67,422,005	69,377,995
2019	146,000,000	82,344,107	63,655,893

Source: Culled from INEC's reports and newspapers, 2022.

In 2015, the country's population was estimated at 150 million. Out of the population, 75% falls within the age bracket 18 to 75, 14% comprises the age bracket 1 to 17 and 11% constitutes the age bracket 76 and above. The total number of qualified persons who could vote was 1,368,000,000 and those that registered to vote was 67,422,000; this is 37.5% of the qualified persons that were eligible to vote and thus shows that 63% of the population that qualified to vote refused to participate (Cinjel et al, 2022).

In 2019, the population of the country was projected at 2000000000, and out of the estimate, 73% of the population falls within the age bracket 18-75, 16% falls within the age bracket 1 to 17 and 11% constitutes persons between the age bracket 76 and above. The total number of registered voters in 2019 was 84, 0024 084 and this is 57.5% of the 146000000 population that is qualified to vote (Ahmed, 2021).

Table2: Register's Voters and Nigeria Population

Election year	Nature		Estimated Population
1999	**Votes**	**Registered vote**	130,000,000
President	30,380,052	57,938,945	
Senate	24,386,247		
House of Representative	23,573,407		
2003			140,000,000
President	42,018,735	60,823,022	140,000,000
Senate	29,999,171		
House of Representative	30,386,270		
2007			150,000,000
President	35,397,517	61,567.36	150,000,000
Senate			
House of Representative			
2011			170,000,000
President	39,469,404	73,000,000	
Senate			
House of Representative			
2015			180,000,000
President	29,432,083	67,422,005	
Senate	26,432,083		

House of Representative				
2019				20,000,000
President	28,614,100	82,344,107		
Senate				
House of Representative				

Source: Culled from INEC's reports and newspapers, 2022.

Most of the states in the country that were led or are still under the leadership of political actors that emerged as a result of the pronouncement of the Supreme Court do not only lack charisma but the legitimacy and the acceptability of the people. Society has labeled them with names such as the governor by the SCN, the chosen one of the infallible hands, Supreme Court governors, the stolen mandate, and many others. Society makes displeased expressions about them and they find it very difficult to win the heart of the people. This ugly reception and many other factors constitute a serious stumbling block to them in carrying out their responsibilities. Notable examples are what is happening in some of the states (Imo, Zamfara, etc.) where their governors emerged as a result of the verdict of the court; kidnapping, banditry, civil disobedience, and many other uprisings are recurrent decimal. In these mentioned or affected states, a lot of persons were killed and properties worth billions of naira were lost (Ahmed, 2021).

THEORETICAL FRAMEWORK

This study is anchored on the doctrine of absolute or absolute political theory. The theory originated from a theological concept referring to God's total power to decide about salvation. It is extended to politics to indicate a regime in which the ruler might legitimately decide anything. It is usually applied to monarchical regimes of the early modern period, chiefly that of Louis *vix* of France, although the term was not used politically until towards the end of the eighteenth century when many such regimes were about to disappear (Diamond, 1990).

The doctrine of absolutism gave birth to the concept of might make a right, the will of the king, the will of the state, the supremacy of the state, sovereignty, and many others. The supremacy of the constitution and the infallibility of the court evolved from the theory (Diamond, 1990). Absolutism emphasizes the power of unlimited and centralized authority and absolute sovereignty as vested especially in a particular person. Absolutism means prosperity because rulers were considered gods (or God's power on earth), they change countries for the better and could be liked by the people for not harshly doing everything.

The infallibility of the Supreme Court is a new variance of the doctrine of absolute political theory. It is a concept that advocates that the Supreme Court is the final court and is flawless in its decision. *Justice Chukwudi Oputa* speaks volumes about the power of the Supreme Court. He said: Supreme Court is not only infallible but when it errs its decision remains final, except it reverses itself. The court has power and all its utterances are right. It has been forgotten that the justices are human and are capable of the erring; it will be short-sighted to accept that the judges and their decision are flawless (Alexander, 2002).

The concept of infallibility has made the court not be criticized and made a lot of decisions that were not correct. The Supreme Court and the doctrine of infallibility have caused more harm than good. It has led to the arrogation of power and has made a lot of wrong decisions unchallenged. The doctrine negates the practice of separation of power and check and balance. The practice of infallibility has an enormous effect on democratic practice in Nigeria. The Supreme Court has erred in several ways and their erroneous decisions were bound to the people because it is considered flawless (Alexander, 2002). This ugly situation has continued to impede the country's drive for political development. The theory as applicable to this paper is supportive of Valenzuela's (1992) argument which states that when a particular political institution has overwhelming power over others, the choices of democratic consolidation are slim. It is within the above context that this paper examines the infallible power of the court and its implication for democratic consolidation in Nigeria.

METHODOLOGY

Research Design

A mixed-method design was adopted in the study. According to Howell (2007), this design examines the degree of relationship between two variables. The study was conducted in the North-Central Geo-Political Zone of Nigeria. The purpose of the adoption of this design is that it enables the researcher to generalize from a sampled population so that interference can be made. The use of mixed method design can be justified based on economy, reliability, and the rapid turnaround in data collection. The data collected focused on the infallible status of the Supreme Court and the challenges of democratic consolidation in Nigeria. The response of the respondents was measured on a five-point scale of Strongly Agree (SA), Agree (A), Undecided (U), Disagree (D), and Strongly Disagree (SD)

SOURCES OF DATA

Primary and secondary sources were utilized. The primary data is collected by using first-hand information from interviews, physical observation, and questionnaires which were distributed and administered to the sampled population of the study area with the definite aim of obtaining certain information about the background of the study.

POPULATION AND SAMPLE SIZE

The population size of the study is the population of the capital of the six (6) states that comprise the North Central Zone. These are:

a.	Jos	900,000
b.	Minna	304,113
c.	Lafia	330,712
d.	Lokoja	692,050
e.	Ilorin	775,667
f.	Makurdi	365,000
		6,106,542

The choice of this population can be justified by the fact of their acquaintance with electoral issues that sprung from the infallibility of the Supreme Court. The total population size is 6,106,542. The sample size is determined by using Taro Yamane (1967) formula as defined below:

$$n = \frac{N}{1 + N(e)^2}$$

Where;

n = sample size

N = population

e = error margin

I = constant value

$$n = \frac{6{,}106{,}542}{1 + 6{,}106{,}542(0.1)^2}$$

$$n = \frac{6{,}106{,}542}{1 + 6{,}106{,}542(0.01)}$$

$$n = \frac{6{,}106{,}542}{1 + 61{,}065}$$

$$n = \frac{6{,}106{,}542}{61{,}066}$$

$n = 99.9$ i.e., 0.001 of the total population

SAMPLE TECHNIQUE

Structure questionnaires were used in the collection of primary data. Questionnaires were administered according to the various states' capital in the area studied. This was randomly done. The essence was to make sure that all areas were adequately represented. 15 questionnaires were administered in Minna, 15 were administered in Lafia, 20 in Jos, 15 in Lokoja, 15 in Makurdi, and 20 in Ilorin. This was done proportionately and variation in the administration of the questionnaire was due to varying population size.

VALIDATION AND RELIABILITY

The instrument has two sections; section A and B. Section A contain the demographic information of the respondents while section B contains 20 items which are 10 items each in cluster I and II respectively. The

instrument was face validated by two experts from the Department of Public Administration (Federal University, Wukari) and one expert from measurement and evaluation. The corrections and inputs formed the basis for the modification of the items of the instrument. The instrument was trial tested using 10 chairpersons of political parties in Plateau State.

To ascertain the internal consistency of the instrument, Cronbach's Alpha technique was used for the analysis and this gave a reliability co-efficient of 0.68 and 0.85 for clusters I and II respectively. This also gave an overall reliability index of 0.77. This shows that the instrument was reliable and appropriate for use. The researchers administered the instrument and the data collected were analyzed using descriptive statistical tools (table, percentage, frequency, and many others) while Chi-Square and ANOVA were used to test the hypotheses at 0.05 level of significance

DATA ANALYSIS AND RESULTS

One hundred (100) copies of the questionnaires were administered to the respondents, but ninety-five questionnaires were returned. This implies a 95% rate of return. In the study, the data was run using a statistical package for social science (SPSS). Inferential statistical tools such as Chi-square and ANOVA were used to test the formulated hypotheses of the study.

The elicited information from the respondents was run using SPSS and the results were presented in Tables one (3) and two (4).

Table 3: Weak Political Participation and Democratic Consolidation in Nigeria

	Political Apathy	Poor Turn-out	Stock of Uncollected PVC	Lack of Input	Lack of Political Will
Chi-square	76.316[a]	49.263[a]	24.316[a]	92.263[a]	38.632[a]
DF	4	4	4	4	4

Asymp.Sig	.000	.000	.000
.000	.000		

Source: *Authors' Computation, 2022*

a. O Cells (.0%) have expected frequencies less than 5. The minimum expected cell is 19.0
b. O Cell (.0%) have an expected frequency of less than 5. The minimum expected frequency is 15.8

INTERPRETATION – HYPOTHESIS ONE (1)
H_1: The higher the infallible status of SCN on electoral cases, the lower the level of political participation in the Country.

Decision Rule: If Psig > P value (0.05), the researcher should accept the alternative hypothesis. The computation above shows that Psig > P value (0.05). From this, we accept the *Hi* and conclude that the infallibility of SCN has a significant relationship to poor political participation of electorates in the country. The findings in this study revealed that the infallibility of the Supreme Court of Nigeria has impacted negatively on the participation rate of the electorates in the country. It has led to menaces such as high political apathy, poor turnout, large stocks of uncollected PVC, lack of political input, and weak political will from the electorates.

Table 4: Poor Political Acceptability and Democratic Consolidation in Nigeria

	Weak Political Charisma	Weak Legitimacy
Poor Political Deference	Civil Disobedience	
Chi-square	34.632[a]	45.368[a]
97.263[a]	107.158[a]	
DF	4	4
4	4	
Asymp.Sig	.000	.000
.000	.000	

Source: *Authors' Computation, 2022*

a. O cells (.0%) have expected frequencies less than 5. The minimum expected cell frequency is 19.0

b. O cells (.0%) have expected frequencies less than 5. The minimum expected cell frequency is 15.0

INTERPRETATION – HYPOTHESIS TWO (2)

H_2: The higher the infallible decision of the SCN on electoral cases, the lower the rate of political acceptability of leaders in the country.

Decision Rule: If Psig >P value (0.05), the researchers should accept the alternative hypothesis. In the computation above, the Psig > P value (0.05). With this, we conclude that poor acceptability has a significant relationship to the challenges of democratic consolidation in Nigeria. The findings of this study revealed that the infallibility of the Supreme Court concerning political issues has led to a poor rate of political acceptability. This is manifested in the form of weak political charisma, legitimacy, deference, and civil disobedience.

Table 5: ANOVA Test Statistics of Hypothesis Three

Model	Sum of Squares	DF	Mean Square	F	Sig
Regression	37.213	2	18.607	86.508	.000[b]
Residual	14.841	69	215		
Total	52.054	71			
A. Dependable Value					
b. Predictors (Constant)					

Source: Authors' Computation, 2022

INTERPRETATION – HYPOTHESIS THREE (3)

H_3: The infallibility of SCN has weakened INEC in discharging its constitutionally assigned functions.

Decision Rule: If the F ratio is greater than the P *value*, accept H_1 and reject H_0. Table 3 shows that the F ratio is 86.500 and is greater than the

P *value* which is .000. Hence the regression model is significant. This means that there is a strong relationship between the infallibility of SCN and the waning of the power of INEC.

CONCLUSION AND RECOMMENDATIONS

The task of this paper was to examine the infallibility of the Supreme Court and its impact on democratic consolidation in Nigeria. The objectives of the paper were set to ascertain whether democracy can be consolidated when the Supreme Court is seen as flawless concerning some of its decision on the electoral issue as well as find out whether it affects political participation, public acceptability, and power of INEC. The study found that the infallibility status of the court concerning political decisions has been less than satisfactory. Put differently, the way and manner the Supreme Court has been regarded and the status granted to it is not reassuring in terms of the growth and development of the country's democracy. Thus, Nigeria's democracy cannot be said to be consolidated so long as the erroneous decisions of the Supreme Court remain unchallenged. This in effect means that democracy cannot be consolidated in a situation where the Supreme Court remains unerring and unfailing even if its pronouncement engenders stability in the practice of democracy. The electorate would have confidence in the ballot box if the court revisits its erroneous pronouncements. It is not a misnomer to conclude that the infallible nature of the court and its erroneous pronouncement is the greatest challenge or perhaps threat to democratic practice in Nigeria.

On a final note, many analysts and major parts of our findings insist that political participation of the electorate and public acceptability of leaders will continue to be a mirage as long as the erroneous decision of the court is still seen as infallible and flawless.

The following suggestions as derived from this work are proffered toward enhancing political participation and public acceptability of leaders:

a. The judiciary should provide rigorous training, and orientation and produce judges who would not err in their pronouncements which tend to defeat the cause of justice and political participation.

b. The Supreme Court and its status of being infallible should be revisited. Its affairs are run by men and mortals who can err and fail. The erroneous decision of the court should be revisited
c. The pronouncement of the court should reflect the will and interest of the people. For democracy to be consolidated in Nigeria, democratic values must be based on the will of the people. Voters would always turn out in large numbers to vote if their will is cherished and respected.
d. The Supreme Court should be made to understand that in political matters, the erroneous decision could prove very costly and this is a challenge to public peace and social equilibrium.

REFERENCES

Agarwa, R.C. (2006). *Political Theory.* Chand and Company Ltd.

Ahmed, K. (2021). *Imperialism in the 21st Century*. Fourth Dimension Publishers

Ajibewa, A. (2006). *Democracy and Corruption in Nigeria. In E.O. Ojo (Ed), Challenges of Sustainable Democracy in Nigeria.* John Archers Publishers

Alexander, G. (2002). *The Sources of Democratic Consolidation*. Cornell University Press

Bryle, M.O. (2005). *Modern Democracies.* Macmillan.

Cinjel, N.D.,Ugwoke C.J., Danjuma J & Simaila, A.S.(2022). Who should determine the Outcome of an Election: The Court or the Electoral Umpire? *FUDMA Journal of Politics and International Affairs*, Vol. 4(2), 23-37

Diamond, L. (1990). Introduction: Roots of failure, seeds of hope, in L. Diamond, J. JLinz and S.M, Lipset, *Developing countries*. Boulder Co

Guther, S., Richard, Q., Diamandorous, N. & Hans-Jurgen, P. (1996). O'Donnell's Illusions: A Rejoinder. *Journal of Democracy*, 7(4), 151-159.

Heater, D.B. (1964). *Political Ideas in the Modern World.* George Harrop.

Huntington, S. (1993). *The Third Wave: Democratization in the Case Twentieth Century*. University of Oklahoma Press.

Jackson, M. (2021). *State building and conflicts*. Hall and Prentice.

Linz, M., Jnan, L. & Stepan, A. (1996). *Problems of Democratic Transition and Consolidation: Southern Europe South America and Post-Communist Europe*. John Hopkins University Press.

Maduekwe, C.V. (2021). The infallibility of the Supreme Court and sustainable democracy in Nigeria. *International Journal of social science and Human Research*, Vol.4(1), 2142-2152

Nwangbosa, C.I. (2011). Election and electoral tribunal in Nigeria. *African Research Review,* 5(2), 42-55.

O'Donnel, Guillerm (1996). Illusion about Consolidation. *Journal of Democracy,* 7(2), 34-51.

Onapajo, H. & Uzodike, U.O. (2014). Rigging through the Courts: The Judiciary and Electoral Fraud in Nigeria. *Journal of African Election,* 13(2), 137-166.

Oni, E.O. (2014). The challenge of democratic consolidation in Nigeria, 1999-2007. *Journal of Politics and Governance,* 5(5), 1-29.

Schedler, A. (1998). What is Democratic Consolidation? *Journal of Democracy,* 9(2), 91-107.

Schedler, A. (2001). Measuring democratic consolidation. *Studies in Comparative International Development,* 36(1), 60-92.

Schmitter, P.C. & Karl, T. (1991). What Democracy is and not. *Journal of Democracy,* 2(3), 75-88.

Ugochukwu, B. (2009). *Democracy by court order: An Analytical Evaluation of the 2007 Election Petition Tribunals in Nigeria*. Legal Defence Centre.