

The Judiciary and Democratic Gatekeeping: Local Government Autonomy in Nigeria Revisited

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doi: <https://doi.org/10.37745/gjpsa.2013/vol14n2121>

Published: April 15, 2026

Citation: Kalagbor S.B. (2026) The Judiciary and Democratic Gatekeeping: Local Government Autonomy in Nigeria Revisited, *Global Journal of Political Science and Administration*, 14 (2),1-21

Abstract: *The question and challenge of local government autonomy remain one of the most contested and debated issues in Nigeria's democratic governance and experience. Despite constitutional safeguards, local governments have continued to face administrative and fiscal subordination to state governments and legislative suffocation by state Houses of Assembly, undermining grassroots democracy and development. This paper interrogates the role of the judiciary as a gatekeeper of democracy in protecting and enforcing the autonomy of local governments within Nigeria's federal system. The paper aims to assess the extent to which judicial interpretations and interventions have strengthened or constrained local government autonomy, especially in the face of executive encroachments and political manipulations at the state level. Methodologically, the study adopts a qualitative method anchored on doctrinal legal analysis and content review of relevant case law, constitutional provisions and secondary literature. The analysis is situated within the judicial institution. The paper argues that while the judiciary has, whenever it is invited, acted as a bulwark against executive and legislative overreach, rascality and impunity, its weak enforcement mechanisms have limited its effectiveness as a genuine guardian of democracy. This is reinforced by certain constitutional constraints and power dynamics. It concludes that a more assertive, independent judiciary, federal and state governments' commitment to the enforcement and implementation of judicial decisions are indispensable for the realisation of a true federalism, promotion of local self-governance and deepening of democratic governance in Nigeria.*

Keywords: judiciary; democracy; democratic gatekeeping; democratic consolidation; local government autonomy; federalism

INTRODUCTION

The judiciary is universally acknowledged as the constitutional arbiter of disputes, protector of the rule of law, and pillar of constitutional democracy. Its role in providing checks and balances among the three tiers and arms of government, respectively, including the exercise of discretionary powers and authorities, and as an indispensable democratic gatekeeper in protecting local government autonomy in Nigeria's

federal system, remains sacrosanct. The judiciary performs this task through interpretation of constitutional provisions, judicial reviews and activism, and preservation of the doctrine and sanctity of the rule of law. To this end, the judiciary constitutes both an institutional buffer and gatekeeper of Nigeria's democracy and local government autonomy. Section 6 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (CFRN) provides for judicial powers and creates various courts, in particular the Supreme Court of Nigeria, being the apex court. Section 7(1) of the same Constitution provides that the system of local government by democratically elected government councils is constitutionally guaranteed.

By this singular provision, the CFRN recognises the local government not only as the third tier of government and guarantees its existence. It also provides the constitutional foundation and central pillar of local government autonomy in Nigeria. This is reinforced by other provisions of the Constitution, namely S.7(5) and the Fourth Schedule, which specify the functions of the local government, implying administrative autonomy within those functions, and S.162(5)-(8), which provide for the maintenance of a special account to be called "The Federation Account" for financial allocation and disbursement to the states for the benefit of the local governments, and for the maintenance of the "State Joint Local Government Account" (SJLGA) by each state for the purpose of distribution to the local governments, reflecting relative and limited fiscal autonomy of the local governments.

Despite these laudable constitutional provisions and the interventions of the judiciary through various judicial actions, including interpretations, reviews, and judgments to preserve and protect local government autonomy, genuine and sustainable local government autonomy under Nigeria's federalism and democracy remains a challenge and has been under serious threat. Consequently, this paper examines the role of the judiciary as a gatekeeper of democracy in the context of protecting and enforcing local government autonomy in Nigeria. The study focuses primarily on Nigeria's Fourth Republic, considered the longest period in Nigeria's political history, marked by constitutional democracy and recurrent legal disputes over local government autonomy.

Statement of the Problem

Despite the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which grant autonomy to local governments, local governments have continued to face interference by state governments. Many state governments, until recently, brazenly run local government councils through either sole administrators, caretakers, or interim management committees by appointing "hand-picked political stewards", proteges, or minions. For political or other subjective considerations, some state governments unconstitutionally suspend or remove democratically elected local government chairmen or councillors from office, or dissolve councils, treating local governments as "colonies", administrative extensions or parastatals of the state governments.

Section 162(6) of the CFRN, which provides for the creation or establishment of the "State Joint Local Government Account" (SJLGA), appears to undermine the fiscal autonomy of local governments because it constitutes a major source of financial control and manipulation of local government funds by the states.

In many instances, states unilaterally and illegally deduct or withhold funds allocated to local governments from the Federation Account, thereby eroding the fiscal autonomy of local governments. For instance, between March and June 2024, the Rivers State Government illegally withheld three months' allocations to twenty-two (22) local government councils and four months' allocations to Emohua Local Government Council, respectively, as a result of a political crisis in the state. There have been similar situations in other states.

Ezeani (2012) calls the SJLGA “a constitutional paradox” (p.120). This is because the provision (S.7(1)) of the CFRN legally recognises local government as a tier of government but, at the same time, subjects it to state interference. Ola and Tonwe (2009) argue that the SJLGA is a “conduit for diversion of local government funds” (p.92). The interference by the states in the administration and management of local government councils raises a fundamental question: to what extent has the judiciary played the role of a gatekeeper and genuine guardian of democratic decentralisation and facilitator of local government autonomy in Nigeria?

Aim and Objectives

The primary aim of this paper is to examine the role of the judiciary as a democratic gatekeeper in safeguarding local government autonomy in Nigeria. Specifically, the paper seeks to:

1. Analyse judicial interventions, especially by the Supreme Court of Nigeria, and their implications for democratic consolidation and local government autonomy; and
2. Evaluate how the judiciary's institutional characteristics—*independence, integrity, accountability, and interpretative authority*—influence its gatekeeping role.

Research Questions

To achieve these objectives, the paper addresses the following research questions:

1. How has the judiciary influenced the protection, erosion, or subversion of local government autonomy in Nigeria?
2. How can judicial and constitutional reforms enhance democratic consolidation and local government autonomy in Nigeria?
3. In what ways can the judiciary's effectiveness be strengthened as a democratic gatekeeper in Nigeria?

METHODOLOGY

The paper adopts a qualitative research design that integrates doctrinal legal analysis with political theoretical interpretation, reflecting the dual nature of the research problem, which borders on the intersection between law and politics. The doctrinal legal analysis involves rigorous examination of laws, their interpretations, and application by the judiciary. The paper goes beyond mere explanation of judicial interpretations of constitutional provisions on local government autonomy by incorporating legal findings within political science theories of federalism, democracy, and institutional behaviour.

The political-theoretical dimension provides a framework for understanding how these legal dynamics shape local democratic governance and institutional relationships among the three tiers of government—federal, state, and local governments. This interdisciplinary methodology gives impetus to an in-depth analysis of the constitutional roles of the judiciary as a democratic gatekeeper or watchdog in protecting and enforcing local government autonomy in Nigeria.

The paper relies exclusively on secondary data sources, including the 1999 Constitution of the Federal Republic of Nigeria as amended, case law or judicial decisions, and law reports. Others are secondary academic sources, such as books, peer-reviewed journal articles, policy documents, and online sources. In terms of data analysis procedure, data were analysed using qualitative content analysis. Relevant constitutional provisions, case law, academic texts, and journal articles were consulted vis-à-vis key concepts and terms such as judiciary, democracy, democratic gatekeeping, judicialisation of politics, juristocracy, politicisation of judiciary, and local government autonomy. Textual extractions of relevant constitutional and judicial materials/data that address the topic were carried out. Interpretive synthesis was also applied, integrating legal and political findings to develop a coherent narrative that explains the role of the judiciary as a democratic gatekeeper with respect to local government autonomy in Nigeria's federal system.

Theoretical Framework: Institutional Theory, Decentralisation Theory, and Democratic Consolidation Theory

The paper adopts three theoretical frameworks: institutional theory, decentralisation theory, and democratic consolidation theory. Institutional theory is mainly associated with key scholars such as Douglas North, James March, and Johan P. Olsen. The theory is used to analyse how formal and informal institutions, including the courts, rules, laws, norms, and structures, shape political behaviour, decision-making, and outcomes. Within the ambit of legal institutionalism, it recognises that the judiciary is not only a neutral arbiter of disputes, but also promotes the rule of law. Governments, including the legislature, executive, and judiciary within the Nigerian federal system, as political institutions, one way or the other, influence the degree of local government autonomy.

Decentralisation theory is central in political science and public administration, particularly in research on federalism, democracy, local government, and development studies. Prominent decentralisation theorists include Robert Dahl, Herbert Simon, Amartya Sen and Alexis de Tocqueville. Decentralisation theory is concerned with the distribution of power, decision-making authority, and resources from a central or federal government to subnational units such as state and local governments. Manor (1999) is of the view that, decentralisation entails “the transfer of powers, resources, and responsibilities from higher to lower levels of government, especially to elected bodies which are downwardly accountable to local populations” (p. 4). Decentralisation enhances citizens' civic engagement, democratic participation, and strengthens legitimacy and accountability; fosters efficiency in service delivery, effectiveness, and adaptability of decentralised institutions or structures; and promotes local ownership of policies, projects, and programmes, grassroots governance, and development. Decentralisation may take various forms: deconcentration, delegation of powers, devolution, and privatisation (UNDP, 1999). The theory supports

constitutional balance and sharing of power between the three tiers of government in Nigeria, the federal, state, and the local governments, with the judiciary sustaining and giving life to the decentralisation principle through constitutional adjudication and interventions.

Democratic consolidation theory is concerned with how to entrench, sustain and deepen democracy, stabilise democratic norms, practices and institutions. Linz and Stepan (1996) assert that a democracy can be constitutionally, behaviourally, and attitudinally consolidated. A democratic regime is consolidated constitutionally when all governmental and non-governmental actors operating within the state's borders are exposed to and accustomed to resolving disputes through particular laws, processes, and institutions that the new democratic process has approved. Through democratic gatekeeping—judicial reviews, resolutions of political disputes, interpretation of the constitution and laws, especially those relating to local government autonomy, the judiciary promotes separation of powers and enhancement of governance at the local level. Democratic consolidation theory posits that democracies tend to be strong and stable (consolidation) when all major political actors accept and comply with the procedures and rules of engagement and when institutions operate within constitutional powers and boundaries, ensuring that power is not centralised, abused or usurped, but shared among various tiers and organs of government in accordance with the constitution and democratic principles and practices.

The relevance of the three theoretical frameworks to his paper is to the effect that the role of the judiciary as an institution in protecting local government autonomy is critical to multidimensional understanding and analysis of decentralisation of power to the local governments, promotion of citizens' participation in grassroots governance, development and democratic consolidation. Through judicial pronouncements and judgements, the courts can strengthen local government autonomy, administration and forestall executive overreach by state governments.

Significance of the study

The theoretical and practical significance of this study cannot be gainsaid. First, it positively contributes to the corpus of existing literature on and understanding of the role of the judiciary in democratic gatekeeping and local government autonomy in Nigeria, enriching scholarship on the judicialisation of politics and juristocracy. To this extent, the study fills a gap in existing scholarship that often treats the judiciary as a neutral and constitutional arbiter instead of an active and dominant political institution. Second, the study, through case laws, provides a fresh perspective which brings to an end, through a resolute judicial decision, the contentious issue of local government autonomy in Nigeria and provides pathways for constitutional and judicial reforms to strengthen and make the judiciary truly independent and more effective as a democratic gatekeeper. Third, the paper strengthens interdisciplinary research and collaboration, linking law, politics, and public administration, provides a model for similar research in related areas, and offers comparative insights for other democratic systems.

LITERATURE REVIEW AND CONCEPTUAL CLARIFICATIONS

Judiciary

The term judiciary is said to have probably originated from the Latin word “judiciarium” (belonging to the court of justice), or “judicium” (judgment). The judiciary is also known as the judicature and referred to as the third arm of government in a democracy. Generally, it consists of various courts as provided by the constitution or any other law. The primary and core functions of the judiciary are interpretation of the constitution and application of laws, settlement of disputes, administration or dispensing of justice and judicial administration, promotion of the rule of law, including protecting the rights of juristic persons, and judicial review. Others are judicial activism, conduct of judicial inquiries, provision of legal opinions and advisory services to government, guardian of the constitution and democracy, and enforcement of judicial decisions (Kalagbor, 2011; Yusuf, 2006).

Further, the judiciary also makes laws, especially where statutes or precedents are undetermined, indeterminate, or ambiguous through judicial decisions. According to the legal realist school of jurisprudence, law does not have an independent existence. Aside from judicial pronouncement and decisions, it becomes law only when the courts discover, interpret, and apply it. The life of the law has always been “experience” rather than “reasoning,” according to Justice Oliver Wendell Holmes, Jr. (1897); predictions about what the courts will do are actually no more pretentious than what we understand by the law (pp. 461, 469). Section 6(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) vest the judicial powers of the Federation in the courts established for the Federation and vest judicial powers of a State in the courts established, subject as provided by the Constitution, for a State, respectively.

The importance of safeguarding the independence and integrity of the judiciary is critical to the exercise of its functions, including in democratic gatekeeping, safeguarding, promoting, and enforcing local government autonomy in Nigeria. According to Rhodes, Binder, and Rockman (2008), disputes over the appointment and retention of judges invariably touch on theories of judicial independence and accountability, and judicial independence is the state in which judges are completely immune from unfavourable outcomes resulting from their decisions while serving on the bench. The degree of such freedom is the degree of the independence of the judiciary. As one of the most critical, priceless, and indispensable institutions, the judiciary must jealously guard and protect its independence and integrity and insulate itself from the vagaries and vicissitudes of politics. This is because if the judiciary loses its independence and integrity, everything is lost. It can no longer effectively mediate in political disputes, safeguard the constitution, or promote the rule of law. Its status as an impartial arbiter would have been compromised.

Judicialisation of Politics, Juristocracy and Politicisation of Judiciary

The judiciary dispenses the role of democratic gatekeeping through judicialisation of politics or what Nwabueze (2009) refers to as judicialism— “The Role of the Courts in Government, or in popular usage, judicial review of legislative and executive/administrative acts of government, to determine their conformity with the law. The concept of judicialism concerns, therefore, the role of the courts in ensuring

that the business of governance is conducted according to law—Rule of Law as it is otherwise called” (p. 84). Judicialism stresses the supremacy of the judiciary in deciding political matters or disputes.

Judicialisation of politics implies the courts’ interventions in electoral disputes (pre-election, election, or post-election matters), fiscal federalism, executive disputes, impeachment, and defections. Others are intergovernmental relations/conflicts, constitutional interpretations, judicial reviews, and other politically related matters (Ojo, 2019). These interventions are more essential in fledgling and unstable democracies where there is a plurality of contentious political issues, especially in developing democracies like Nigeria. Virtually all political questions are easily converted into legal or judicial questions. Judicialisation, according to Rhodes, Binder, and Rockman (2018), is the process by which political conflicts are moved from the political sphere to the courts and other legal institutions. Due to the fact that courts worldwide are being asked to rule on explosive political and legal matters, these institutions have attained a level of visibility and controversy that may have never been witnessed before.

They argue that the heart of research on courts lies in judicial decision-making, which can be explained from the lens of three models: the attitudinal model, focusing on what judges prefer to do; the legal model, concerned with what judges ought to do by reliably applying the law without external influence, as passive interpreters of the law; and the strategic model, emphasising feasibility (Rhodes, Binder, & Rockman, 2018). The strategic model sees judges as rational judicial actors who not only weigh legal arguments but consider how their decisions will be accepted or challenged by political actors, the effect of precedence on constitutional legitimacy, public trust, and compliance (public policy). Therefore, the courts are interested not only in the correct legal answer through delivering rulings and judgments but also in how the courts can achieve stable, workable, or practical decisions and maintain their integrity, power, and legitimacy.

Judicialisation of politics has become increasingly popular in both developed and developing democracies, involving the process and instances where courts and judges frequently assume jurisdiction over interpretations of political questions or settlement of political disputes and issues brought before them for determination. This has also led to widening or enlarging the powers of the judiciary into political and policy domains or arenas, as political questions and issues are now easily translated into judicial issues or “judicialised.” Judiciaries nowadays are preoccupied with an avalanche of political or politically related cases. For instance, electoral statistics in Nigeria show that 776 election petitions were filed in 1999 across the country; 574 in 2003; 1,291 in 2007; 731 in 2011; 560 in 2015; 766 in 2019; and the Court of Appeal reported 1,209 petitions for 2023—making a total of 5,897 petitions in six election cycles in 24 years (1999 to 2023) (Omenma, 2019).

Judicialisation of politics can either strengthen or undermine constitutional democracy and local government autonomy, depending on whether or not the judiciary acts, refuses, neglects, or fails to act as a neutral arbiter, which can result in obvious judicial overreach with far-reaching political and policy implications. The increasing judicial role in political decision-making is synonymous or can be equated with what Ran Hirschl refers to as “juristocracy” (Hirschl, 2004; Ferejohn, 2002).

Juristocracy is a derivative of both law and politics. It is derived from the Latin word “juris” (law) and “kratos” (power or rule), portraying a form of governance by legal professionals, judicial officers (justices, judges, and magistrates), and indeed the dominant role that courts play in decision-making. Juristocracy has emerged as a response to real, perceived, or imaginary deficiencies in procedural democracy or electoral processes, democratic governance, and widespread political scepticism and cynicism, leading to several electoral disputes. Juristocracy has become a key term in contemporary political science. It is mostly associated with Israeli-Canadian political scientist and professor of law and political science at the University of Toronto, Ran Hirschl, who popularised it in 2004.

Juristocracy emphasises legal positivism—applying the law as it is, even when it conflicts with moral or political considerations—and separates law as it is (*lex lata*) from law as it ought to be (*lex ferenda*), supremacy of the constitution or constitutionalism, judicial review, and activism. Essentially, it is used to generally explain the increasing, dominant, and decisive role of the judiciary in the determination or resolution of political disputes brought before it by political actors. Such actors include political parties, candidates, electoral umpires, tiers or organs of government, and other critical political stakeholders or interested parties who may or may not have *locus standi* or capacity to sue or be sued but desire to ventilate their political grievances using the judicial mechanism. It is common in constitutional democracies.

Juristocracy also denotes the settlement of contentious political controversies or disputes and the interpretation of constitutional provisions on political matters by the judiciary using legal instruments and mechanisms rather than by elected representatives, officials, or electorate (Ferejohn, 2002; Hirschl, 2004; Fombad, 2010). Despite its benefits of ensuring or promoting democratic peace, consolidation, stability, and order, and promoting the political rights of political actors, juristocracy has been criticised for judicial overreach, (exceeding constitutional authority, and making political and policy decisions) democratic deficit—transfer of decision-making power, and choice of politically elected representatives from the people (electorate) to the judiciary, especially in election petitions, thereby subverting the will of the people. It has also been accused of lack of political accountability and politicisation of the judiciary, questioning the political neutrality, integrity, and true independence of the judiciary.

In sum, judicialisation of politics, judicialism, and juristocracy are distinct but related political concepts. They describe varying or different degrees and dimensions of judicial powers in politics involving judicial influence, judicial dominance, and judicial rule. While judicialisation of politics is emphatic on judicial bodies or courts becoming central actors and arbiters by taking over political disputes, judicialism highlights the indispensability and institutional belief in the supremacy of judicial authority in nearly all political, social, and administrative disputes, justifying judicial activism or judicial intervention, rather than belief in political and democratic processes (Malleon, 2003).

Juristocracy focuses on the rule or dominant role of the judiciary in a political system and democracy. Courts do not only interpret the constitution and the law, but also decide who governs by validating or invalidating elections, occasionally overruling or directing how legislative or executive powers should be exercised. This is common in countries where constitutional courts exist and are active, such as Israel, South Korea, and South Africa. Nigeria is gradually moving in a similar direction. Thus, when

judicialisation becomes an established feature of the political system (institutionalised), courts move beyond merely influencing politics—they assume and begin to play a governing role (rule) in shaping it and in determination of governance and policy outcomes (Barak, 2006; Nwabueze, 1982; Stone, 2000).

Democracy and Democratic Gatekeeping

Democracy as a key term in political science has been subjected to a plurality of conceptualisations and operational interpretations by various political scientists and scholars. Democracy is progressively emerging as a worldwide goal, vision, and style of government for a large number of nations. The people run the government in a representative manner. Power is supposedly wielded by the people in a democracy (Grugel, 2002; Kalagbor, Sam-Kalagbor & Okere, 2024; Kalagbor & Harry, 2023). The United Nations Development Programme defines democracy as a system of governance that upholds the rule of law, ensures inclusive citizens' participation in decision-making, protects human rights, and promotes transparent and accountability of leadership (UNDP, 2002).

Nwabueze (2009) distinguishes between a constitutional democracy and a democratic constitution. While a constitutional democracy must be operated in line with the strict provisions of the constitution, a democratic constitution requires “that the state, the form of government, the choice of rulers, as well as the process by which the constitution is adopted, must conform to democratic principles, i.e., must rest on the approval or consent of the people” (Ajibola, 1999, p. 53). Constitutional democracy and a democratic government are distinguishable from the more limited concept of democratic government. Notable characteristics of democracy include popular participation in politics, popular sovereignty, popular consent, and political equality. Others are a multi-party system, rule of law, and independence of the judiciary (Kalagbor, 2001; Nwabueze, 2009).

According to Macpherson (1972), democracy in its purest form is when the government or people rule in accordance with the will of the majority of the populace. He identified three dimensions of democracy: liberal or Western democracy, non-liberal democracy—the communist variant, and non-liberal democracy—the underdeveloped variant. Democracy can also be direct or indirect (representative democracy), popular democracy, social democracy, or e-democracy. On his part, Ake (1996) contends that, “democracy is part of the very meaning of political development” (p. 127). He emphasises that Africa requires a democracy with four features: a democracy in which the people have some actual decision-making authority; a social democracy that prioritises tangible political, social, and economic rights rather than abstract political rights; a democracy that prioritises collective rights just as much as individual rights; and a democracy of inclusion or inclusivity (Ake, 1996).

The judiciary is regarded as a gatekeeper of democracy, constitutional powers, and principles; a watchdog of the actions of state and non-state actors and institutions; as well as a bulwark against abuse or usurpation of power, especially in democracies. Within the context of political science and institutional theory, gatekeeping refers to the process of surveillance, monitoring, filtering (or sifting), or controlling access to power, legitimacy, and decision-making authority. Judicial gatekeeping involves the courts' responsibility to exercise oversight, judicial review of cases brought before them, check and prevent violation of constitutional norms, and protect established democratic procedures and practices in order to uphold and

safeguard institutional integrity and credibility necessary for political order, stability, and sustainable development of society.

Levitsky and Ziblatt (2018) have described democratic gatekeepers as institutional actors, such as political parties and courts, which prevent the subversion of democracy, and refuse the legitimisation of authoritarian and unconstitutional practices by ensuring compliance with procedural due process, accountability, political and democratic order and stability. Indeed, they contend that democratic gatekeeping is essential as elected leaders who undermine the very system that gave them power, rather than generals, may end up destroying democracy (Levitsky & Ziblatt, 2018). They refer to such leaders as, “democracy assassins” or “elected autocrats” (p. 7).

In contrast to judicialisation of politics, judicialism, and juristocracy, politicisation of the judiciary transforms the courts into political tools, partisan arbiters, and instruments of political control, manipulation of democracy, and constitutionalism. In short, politicisation of the judiciary is making the courts partisan rather than insulating them from partisan politics; using judicial powers or means to remove, retain, or extend the power of political office holders and control political appointments and activities. This can be achieved through budgetary control and funding, informal and strategic pressures, lobbying, monetary inducements, and appointments. Others are withholding the exercise of disciplinary power against erring judges or justices, threats, blackmail, promotion; raising ethnic, religious, or geopolitical sentiments; soft coercion such as withholding official vehicles, security support or court facilities and other logistics; manipulation of judicial salaries and welfare; use of oversight by the legislature to intimidate or threaten the judiciary; or use of security agencies to monitor or influence the judiciary. Where these happen, the integrity and independence of the judiciary are threatened and may be compromised (Fombad, 2010; Nwabueze, 1982).

Politicisation of the judiciary tends to make the courts partisan and judicially responsive to the whims and caprices, political choices, preferences, and dictates of the political party in control of the machinery of government. This reveals the power of incumbency in politicisation of the judiciary. Drawing a relationship between judicialisation of politics and politicisation of the judiciary, Ferejohn (2002) strongly argues that when courts have the authority to make decisions that are more or less final and politically significant, anyone interested in those decisions has a motivation to try to influence them. There is good reason for those who are interested in judicial outcomes to want to control and influence who gets appointed to the courts and other legal institutions. In this way, judicialization of politics often leads to politicisation of the courts. Decision-making and court rulings, therefore, frequently turn into politics that are perpetuated through various channels.

Local Government and Local Government Autonomy

Local government is recognised as the third tier of government in Nigeria’s federal structure. It provides the platform for grassroots democracy, governance, and development. No doubt, there have been several efforts at defining local government. However, the Nigerian 1976 Guidelines on Local Government Reforms offer a comprehensive definition of local government, as representative councils created by law

to carry out particular functions within designated regions. Through the devolution of responsibilities to these councils and the active participation of the people and their traditional establishments, it should be possible to foster local initiative and response to local needs and conditions. Also, the councils should have significant control over local affairs, as well as the staff, institutional, and financial powers to set up and direct the delivery of services and to plan and carry out projects in order to support the activities of the state and federal governments in the areas they govern (FGN, 1976).

Aransi (2017) has defined local government as a decentralised unit of government. Ola (2016) posits that there are three institutional imperatives or characteristics of local government, namely legal corporate personality, governmental character, and substantial autonomy. The adoption of a unified local government system in Nigeria in 1976 was accompanied by some measure of autonomy. This was consolidated by both the 1979 and 1999 Constitutions respectively. S.7(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), in particular, provides for the establishment of democratically elected local government councils in Nigeria. The functions of the local government are provided in the Fourth Schedule to the Constitution. There are 774 constitutionally recognised local governments in Nigeria.

The importance of local government autonomy in a federation and democracy cannot be overemphasised. Prior to the conceptualisation of Local Government Autonomy, it is important to first define the term “autonomy”. Autonomy owes its origin to two Greek words: “autos” (self) and “nomos” (law or rule), meaning self-rule or self-governance. The term autonomy is used in several ways and contexts. Politically, autonomy implies independence, self-governance, or self-rule, and in broad and state-centric terms, it is synonymous with sovereignty. Thus, from a generic perspective, autonomy refers to the freedom, power, or authority of an individual, group, or institution to act or make and implement independent decisions devoid of undue external control, influence, or interference. Autonomy embodies legal capacity, right and capability. Held (1996) is of the view that “autonomy is the condition in which the members of a political community participate directly or indirectly in the formation of the rules that govern them.” This means that autonomy has to do with the capacity for self-rule, notably with respect to independent exercise of power and authority, lawmaking, policymaking, and management of resources.

With reference to Lapidoth, Osaghae (2018) has classified autonomy into four categories, namely: autonomy as individual rights to self-determination; autonomy as independence, including secession; autonomy as decentralisation; and autonomy as the reservation of exclusive powers of legislation, administration and adjudication (p. 167). Autonomy can also be contextualised or used in several contexts, including political autonomy, legal autonomy, administrative autonomy, and fiscal autonomy. Others are regional autonomy, religious autonomy, institutional autonomy, indigenous or minority group autonomy, and university autonomy and academic freedom.

Above all, autonomy is also operational and practically functional, and may be relative or limited, and not absolute. Nwabueze (1983) views autonomy within the ambit of the federal system in Nigeria to mean the legal and constitutional independence of each level of government within its own sphere of competence, reflecting the division of governmental powers in such a way that each level of government—federal,

state, and local—is coordinate and independent. He argues that autonomy has three core characteristics, namely constitutional provision for entrenchment, financial independence, and institutional protection or safeguard, and that the judiciary must at all times rise up to the occasion to protect the powers and boundaries of each level of government through judicial interventions and actions. Accordingly, Nwabueze defines autonomy as “the degree of self-government enjoyed by component units of the federation, guaranteed by the constitution, irrespective of matters within their legislative and administrative competence, free from external control or interference” (p. 52).

Local government autonomy implies democratic decentralisation of powers within a federal arrangement, federation, or federalism. Embedded in local government autonomy are political autonomy, the right and authority for self-government; legal autonomy, capacity to exist and be legally recognised as a distinct tier of government, having rights and duties, capable of making and enforcing legally binding laws, owning property, entering into contracts, having jurisdiction, suing and being sued; administrative autonomy is the ability to independently make and implement decisions and policies without recourse to external authority for approval; and fiscal autonomy is the capacity and freedom to generate and manage its financial and other resources as it may deem appropriate in the performance of its constitutional, statutory and other functions. Local government autonomy does not admit of external interference by either the federal or state government, or both, in the administration, regulation, arrangements, and management of the affairs, activities, and resources of the local government, including initiating and executing development programmes and governance. However, local government remains subject to the constitution and the laws.

Nwabueze (1983) defines local government autonomy as “the legal and administrative independence of a local government council to take decisions and act on matters that are primarily of local concern without interference from the central or state government” (p. 78). Local government autonomy must translate into the practical capacity of the local government to formulate policies, initiate, execute, and implement development projects and programmes capable of enhancing the welfare and well-being of the local population. Local governments must also be able, through the local government legislative councils, to make bye-laws for the regulation, control, and management of commercial, economic, socio-cultural, and environmental activities, including sanitation and waste management in the localities, without encroachment or undue interference by the state or federal government or their representatives, officials, or agencies (Agagu, 2004; Ezeani, 2012; Ola & Tomwe, 2009).

The 1999 Constitution of the Federal Republic of Nigeria (CFRN) establishes the democratic foundation and legal framework for local government autonomy in Nigeria. Accordingly, Section 7(1) of the CFRN states that the constitution guarantees the mechanism of local government by democratically elected local government councils. The government of each state shall, subject to Section 8 of the Constitution, ensure their existence by enacting laws that deal with the formation, composition, structure, funding, and operations of such councils. Similarly, Section 7(5) of the Constitution states that the Fourth Schedule to the Constitution, which lists and grants administrative autonomy to local government councils, must be included in the functions that the law grants them. This is supported by Section 162(5)(8), which provide that:

1. The State shall also receive the funds standing to the credit of Local Government Councils in the Federation Account for the benefit of their Local Government Councils on the conditions and in the way that the National Assembly may specify.
2. Each state shall keep a separate account, known as the State Joint Local Government Account, into which all funds from the Federation Account and the State Government will be sent to the State's Local Government Councils.
3. Every State is required to provide Local Government Councils under its jurisdiction with a certain percentage of its overall revenue on the conditions and in the manner that the National Assembly may specify.
4. A state's local government councils shall divide the amount standing to their credit according to the amount allocated to the local governments.

In the renowned case of *Attorney-General of the Federation v. Attorney General of Abia State and 35 Others* (2024) 17 N.W.L.R (Part 1966), the Supreme Court of Nigeria noted, regarding the definition, significance, and implications of local government autonomy, that local government autonomy can be thought of as a system of local government in which local government units have the means or capability to do so, have the freedom in deciding what they will do without inappropriate constraints from higher levels of government, and have a significant part to play in the economy and intergovernmental system. Both discretion and importance may be important to local government, but if a system lacks the resources to achieve its goals, neither of these factors may matter.

Case laws and local government autonomy

The judiciary in Nigeria performs threefold and intertwined roles, namely: constitutional enforcement—upholding the supremacy of the constitution through judicial interpretations of the constitution, judicial reviews, accountability and oversight by holding government institutions and officials accountable for their actions and inactions—and normative legitimacy—reinforcing democratic norms.

There have been numerous judicial interventions on local government autonomy at various levels of the Nigerian judicial system. In these cases, especially at the apex court, the Supreme Court of Nigeria has always demonstrated the capacity to defend the Nigerian constitution, democracy, and promote local government autonomy. The following five (5) key landmark cases will be examined:

1. *Attorney-General, Lagos State v. Attorney-General, Federation* (2004) NGSC 2; 12 N.W.L.R. (Part 833) 1 (SC)
2. *Eze & Ors v. Governor, Abia State & Ors* (2014) CLR, 7 (C) SC
3. *Governor, Ekiti State & Ors v. Prince Sanmi Olubunwo & 13 Ors* (2016) LLJR-SC
4. *Attorney-General, Ondo State v. Attorney-General of the Federation* (2002) 9 N.W.L.R. (Part 772) 222 (SC)
5. *Attorney-General, Federation v. Attorney-General, Abia State & 35 Ors* (2024) 17 N.W.L.R. (Part 1966)

Attorney-General, Lagos State v. Attorney-General, Federation (2003) N.W.L.R. (Part 883) 1 (SC)

Key Issues Canvassed

The summary of the issues canvassed includes:

1. Whether the President or Federal Government could withhold the statutory allocation due to Lagos State in the context of a dispute about the creation of additional local government areas (i.e., the purported creation of 37 additional local governments called Local Council Development Areas—LCDAs—bringing the number of local government administrative councils to 57).
2. Whether Lagos State had the constitutional power to create additional local government councils without the approval of the National Assembly as required by Section 8(5) of the 1999 Constitution.

Decision and implications for local government autonomy

The Supreme Court held that:

1. The President or the Federal Government had no constitutional power to withhold local government allocations and ordered the Federal Government to release the withheld funds to the 20 recognised LGAs of Lagos State.
2. It struck down the Lagos State laws that purported to create LGAs inconsistent with the constitution and not approved by the National Assembly or recognised by the Constitution.

The decision strengthened fiscal federalism and clarified the constitutional limits of both the powers of the federal and state governments over local government administration; clarified the fiduciary or trust relationship concept—the states hold the funds in trust through the State Joint Local Government Account for the benefit of the local governments; and the decision constituted the jurisprudential foundations of later decisions and judgements that the state cannot lawfully withhold, divert, or misuse funds meant for the local government.

Eze & Ors v. Governor of Abia State & Ors (2014) CLR 7-6 SC

Key Issues Canvassed

1. Whether a state governor has competence to dissolve democratically elected local government councils and appoint caretakers or transition committees.
2. Whether retroactive state laws could alter tenure or validate dissolutions, and whether the tenure of councillors was protected by applicable law.

Decision and implications for local government autonomy

The Supreme Court held that the governor lacked the constitutional powers and competence to arbitrarily dissolve democratically elected local government councils and appoint caretaker committees. Where the Constitution and existing local government law protected tenure, it invalidated the dissolution and retroactive laws as null and void, and affirmed the principle that duly elected local government councils enjoy constitutional protection from arbitrary executive dissolution.

The decision strengthened the political and administrative autonomy of local government councils, and by protecting tenure after the fact state legislation; that the executive cannot easily substitute appointed committees for elected local government councils. This decision once again reaffirmed that the judiciary will continue to police attempts by the state executive to undermine or erode local government autonomy guaranteed by the Constitution.

Governor, Ekiti State & Ors v. Prince Sanmi Olubunmo & Ors (2016) LPELR-41142 (SC)

Key Issues Canvassed

1. Whether S.23B(i)&(ii) of the Ekiti State Local Government Administration (Amendment) Law, 2001 (which empowers the governor to dissolve democratically elected local government councils and appoint caretaker committees) was consistent with S.7(1) of the Constitution of the Federal Republic of Nigeria.
2. Whether the dissolution of the local government councils by the governor was valid, and whether the councils' tenure was protected under the law.

Decision and implications for local government autonomy

The Supreme Court nullified the state law that purportedly conferred power on the governor to dissolve democratically elected local government councils for being inconsistent with the Constitution, and therefore void. The ruling achieved the following:

1. Reaffirmed the political and administrative autonomy of local government councils by protecting their tenure and status as democratically-elected bodies; and
2. Prohibited arbitrary dissolution of elected councils by state executives.

Attorney-General, Ondo State v. Attorney-General, Federation (2002) 9 N.W.L.R. (Part 772) 222 (SC)

Key Issue(s) Canvassed

Whether states could receive or manage funds for local governments without due process.

Decision and implications for local government autonomy

The Supreme Court held that states act as trustees of local government funds and are constitutionally obligated to release and faithfully remit allocations to local governments. The decision further portrayed the judiciary's relationship and duty of state governments in handling local government allocations or funds.

Attorney-General, Federation v. Attorney-General, Abia State & 35 Ors (2024) 17 N.W.L.R. (Part 1966)

Key Issues Canvassed

Fifteen (15) issues were formulated and canvassed, the summary for which the principal questions for determination were:

1. Whether the Constitution (particularly S.7(1),162 (5)-(8), the Fourth Schedule and related provisions) permits the Federal Government to pay allocations directly to Local Government Councils, bypassing State governments, where states fail to remit funds.
2. Whether the State Joint Local Government Account (SJLGA) mechanism authorizes states to withhold or divert funds meant for LGCs.
3. Whether state practices of dissolving democratically-elected local councils and operating caretaker committees are constitutional.
4. Whether the National Assembly (or federal organs) has the power to “monitor” or otherwise legislate in a way that interferes with the constitutional allocation scheme (i.e., validity/consistency of the Monitoring Revenue Allocation to Local Government Act).
5. Ancillary questions on remedial powers of the Court and consequences where states lack democratically elected councils.

Decision and implications for local government autonomy

In *Attorney-General, Federation v. Attorney-General, Abia State & 35 Ors* (2024) 17 N.W.L.R. (Part 1966), the Supreme Court noted that the basis of this suit was the States’ egregious violations of sections 1(2), 162, and 7(1) of the Federal Republic of Nigeria 1999 Constitution, which jeopardise the local government’s continuing existence as Nigeria’s third-tier government and, in doing so, dismantle the country’s federal governance structure in defiance of the 1999 Constitution’s intent and tone. The Supreme Court held that:

1. The federal government, state governments, and local governments make up the three levels of the federal governance framework outlined in the 1999 Constitution. Every level of government must be democratically elected, under the Constitution. Section 7(1) of the 1999 Constitution makes particular provisions for local government governance, stating that democratically elected Local Government Councils will be in charge of local government. It cannot be governed by any other body or method because the Constitution stipulates that democratically elected Local Government Councils must be in charge. As a result, no state government, federal government, local government caretaker committee, interim local government council, administrator, head of local government, or any other state agency or body should be in charge of its administration or governance. It is against the 1999 Constitution to rule a local government area in any other way than by a democratically elected councils; as a result, it is unlawful and unconstitutional.
2. A law passed by a state government to guarantee the existence of a local government council in line with section 7(1) of the 1999 Constitution cannot include any clause that diminishes or eliminates the local government councils’ democratic character or reduces them to mere departments or appendices of the state government. Such a legislation must cover their formation, structure, funding, and role as a local government that is separate from the state government. It is unlawful and unconstitutional for the state government or the governor of a state to interfere with the autonomous operation of local government councils, including the term of office of democratically elected local government councils.

3. According to section 7(1) of the 1999 Constitution, only Local Government Councils that have been democratically elected by the people of a local government area have the authority to form, designate, or decide on a local government; neither the State Government nor the Governor of a State should do so. Thus, it is a serious violation of the Constitution to administer local governments via caretaker committees or any other body.
4. Conceptually, local government autonomy is a system of governance where local government units have the means or capacity to act independently, have discretion in deciding what they will do without unwarranted interference from higher levels of government, and play a significant role in the economy and intergovernmental system. Local government is important, but if the system lacks the resources to achieve its goals, it becomes irrelevant.
5. In the circumstances, the Federation may choose to pay Local Government Councils either directly or through States using funds from the Federation Account. The justice of this case requires that the Local Government Councils' allocations from the Federation Account be paid to the Local Government Councils directly going forward because paying them through the states has not been successful.

The implications for Local Government Autonomy are as follows:

1. The judgement reasserts and practically strengthened functional fiscal autonomy for the 774 local government councils in the country. Practically, federal allocations can now be delivered directly to the states.
2. Enhanced the political and administrative autonomy of local government councils and bolstered the political existence and security of tenure of democratically elected councils.
3. The judgement gives the apex court robust remedial role in enforcing the constitution's decentralisation scheme, including remedial declarations that can change fiscal practice and compel compliance.
4. In terms of operational and political implications, implementation will require administrative redesign (e.g., payment mechanisms, Federal Ministry of Finance, Revenue Mobilisation Allocation and Fiscal Commission (RMAFC)/Federation Account Allocation Committee (FAAC) processes) and it is likely to occasion political resistance and delay from states, thereby shifting political contestation to compliance and enforcement.
5. Requires legislative review and amendment of Section 162 (5)-(8), particularly on the establishment of the "State Joint Local Government Account".

The decision fundamentally contributes to and differs from earlier Supreme Court authorities in various respects. Previous authorities merely clarified and declared the rights of local government to autonomy and to be operated by democratically elected councils. But the instant decision adopted purposive and liberal interpretations of the relevant provisions of the Constitution and moved further to practically enforce or implement the autonomy of the local governments, especially fiscal autonomy, through direct allocation to the councils. The decision, in unmistakable terms, declared that the local government is the third tier of government under the 1999 Constitution of the Federal Republic of Nigeria. It represents the *locus classicus* (definitive judicial precedent and most authoritative source and standard reference) and ultimate transformative decision on local government autonomy in Nigeria.

CONCLUSION

This paper has explored the judiciary's role as a democracy gatekeeper in Nigeria, focusing on its influence in safeguarding local government autonomy. The analysis reveals that the judiciary occupies a central position in maintaining constitutional balance and ensuring that no arm of government exceeds its mandate. However, institutional weaknesses—such as executive interference, ambiguous constitutional provisions, and lack of enforcement—continue to limit judicial effectiveness in promoting local governance and accountability.

The findings reaffirm the argument that judicial independence is not merely an institutional ideal but a democratic necessity (Dudley, 2020). For Nigeria's democracy to thrive, the judiciary must act not as a passive interpreter of laws but as an active defender of constitutionalism and federal integrity. Similarly, local governments must be recognised as genuine third tiers of government, empowered to deliver services and foster grassroots participation and development. By upholding decentralisation and local government autonomy through its interpretive intervention and role, the judiciary significantly contributes to democratic consolidation and illuminates its duty as a guardian of democratic distribution of power, fostering a bottom-up democratic order in consonance with the principles of federalism in Nigeria.

In the final analysis, a strong and independent judiciary, supported by constitutional clarity, civic awareness, and institutional legitimacy and accountability, remains the cornerstone of democratic resilience. The judiciary must, therefore, continue to serve as a gatekeeper of Nigeria's democracy, ensuring that the ideals of justice, equity, and the rule of law prevail across all levels of governance.

Recommendations

Drawing from the findings and discussions of this paper, it is evident that Nigeria's democratic consolidation depends heavily on a judiciary that is both independent and effective in safeguarding the constitutional framework. The following recommendations are, therefore, proposed to strengthen the judiciary's role as a democracy gatekeeper and to enhance genuine local government autonomy in Nigeria:

1. Strengthening Judicial Independence

To maintain the integrity of judicial decisions, the financial and administrative autonomy of the judiciary must be guaranteed at both federal and state levels. Sections 81(3) and 121(3) of the 1999 Constitution (as amended) already provide for judicial financial autonomy, but weak implementation has undermined its spirit (Aguda, 2020). Ensuring full compliance through legislative oversight and transparent budgetary transfers will help insulate judges from political interference.

2. Constitutional and Institutional Reforms

The ambiguities surrounding the powers and functions of local governments should be clarified through constitutional amendment. The State Joint Local Government Account (SJLGA), which has become a tool for state-level control over local government finances, should be abolished or restructured. Direct allocation from the Federation Account to local governments, as decided by

the Supreme Court, must be strictly implemented to enhance fiscal autonomy and local governance.

3. Judicial Capacity Building and Ethics

The National Judicial Institute (NJI) should expand its training programmes for judicial officers to include modules on constitutional adjudication, local governance, and democratic accountability. Regular workshops and exchange programmes with judiciaries in other democratic countries can improve professional competence and ethical standards. As Ayoade (2017) argues, a competent and morally upright judiciary is a prerequisite for a credible democracy.

4. Enforcement of Judicial Decisions

A persistent challenge in Nigeria's governance is the poor implementation of court rulings and judgements. The Nigerian Bar Association (NBA), civil society groups, and the media should form coalitions to monitor and advocate for compliance with judicial decisions, particularly those affirming local government rights. The National Assembly should also legislate penalties for public officials who disregard or disobey court orders.

5. Civic Education and Public Engagement

Public enlightenment campaigns should be intensified to increase citizens' understanding of judicial decisions and their implications for local governance. According to Ojo (2021), a politically conscious citizenry is more likely to demand accountability and respect for the rule of law. Enhancing public legal awareness can, therefore, reinforce judicial legitimacy and democratic participation.

6. Mechanisms for Appointment of Judicial Officers

Finally, in order to eliminate vulnerability to executive influences and politicisation of judicial appointments, appointment of judges and justices should be transformed from political privilege into a constitutional process of merit and transparency. An independent multi-stakeholder Joint Appointment Commission (JAC) should be constituted. The Commission should conduct open, competitive, and merit-based recruitment. The Senate and State Houses of Assembly should have limited confirmatory oversight roles in the process. The President or Governor should only ratify appointments recommended by the Commission without power to reject or alter the list, except on proven grounds of misconduct or national security, subject to review by the Senate or House of Assembly. This model is practised in the United Kingdom, South Africa, and Kenya and has substantially strengthened independence and integrity of the judiciaries in these countries.

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Funding

The research was funded by the researcher.

Transparency on the use of generative Artificial intelligence

Quillbot was used for language refinement to improve readability and clarity.

Acknowledgements

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