

Judicial Independence as Catalyst to Effective Judicial Review in Nigeria

Nneka, Rose Adima

Ph.D. Candidate, Faculty of Law, University of Ilorin & Principal Partner, Rose Adima & Associates,
Nurses' House, 2nd Floor, Churchgate Street, Victoria Island, Lagos

DOI: <https://doi.org/10.47772/IJRISS.2026.100700480>

Received: 22 July 2026; Accepted: 27 July 2026; Published: 05 August 2026

ABSTRACT

The complexity of the Nigerian society makes it eminent that judicial roles catch up with society's changes to make the law more relevant to the Nigerian people in its present democratic dispensation. The reality of the present democratic dispensation in Nigeria, and many other countries worldwide, creates such scenarios that generate a gulf between society and the law. This gulf puts judges in dilemmas of protecting the competing interests of the society, law, and the government, as judges are accountable to the established law they uphold, and then to the justice system they represent. Therefore, judicial review remains a weapon to compel obedience to the law and ensure that those holding governmental positions are acting within the limits of the laws. Thus, the objective of this paper are to: (i) examine the theoretical underpinnings of judicial review of executive actions; (ii) to analyse judicial willingness or otherwise in adjudicating on matters of executive actions; (iii) to assess the impacts of judicial review on Nigeria's democracy; (iv) to analyse challenges to the effectiveness of judicial review of executive actions; and (v) to proffer practicable measures of enhancing judicial performances in the exercise of its power of judicial review. This paper adopted a doctrinal research method, which focused on content analysis of judicial independence as prerequisite for effective judicial review in Nigeria. Thus, primary and secondary sources of law were relied upon. The primary source includes the Constitution of the Federal Republic of Nigeria 1999 (as altered), judicial decisions and other enabling statutes. The secondary sources include journal articles, books, and conference papers. The findings of the seminar paper were that: a. The mode of appointment of judges where the executive has a fundamental role to play is hindering the independence of judiciary thereby whittling down the power of judicial review of the courts; b. The process of budget presentation and allocating funds to the judiciary in a piecemeal manner constitutes stumbling block to judicial independence and achieving effective judicial review; c. Improper influence on judges such as bribes, accepting gifts, accepting personal invitations and personal relationship are direct material threats to judicial independence and thus weakening the judicial powers of the courts; and d. The dependence of judges on the executive for career progression incentives exposes them to manipulative strategies that compromise their ability to be independent. The paper concluded that preserving judicial independence is vital for maintaining the integrity of the judicial review process and ensuring the judiciary remains a potent check on the exercise of power. The paper therefore recommended that to uphold the rule of law, the appointment and selection processes of judges should be based solely on merit, individual qualifications, experience, and skills rather than personal connections, nepotism, or family ties.

INTRODUCTION

Nigeria is a constitutional democracy that envisages three different organs such as the legislature, the executive and the judiciary.¹ Thus, it is a legal duty to ensure that every action is tandem with the dictate of the law.² It is on this basis that the judiciary occupies a special position as an organ vested with the power to ensure compliance by all agencies or parastatal in governance. The executive powers of the state are vested either in the President

¹ Sections 4, 5, and 6 of the Constitution of the Federal Republic of Nigeria, 1999 (As Altered)

² See A. O. Sambo, Judicialising Politics without Politicising the Judex, being an Inaugural Lecture delivered on the 17th of April, 2025 at the University of Ilorin, at 1-10.

or the Governor who may exercise the power personally or delegate same to various public functionaries or establishments. Therefore, it is not unexpected that in the performance of executive functions, issues may ensue between citizens and these functionaries.³ Consequently, the constitutional power to resolve such issues and decide on the legality or otherwise of the action of executive actions is vested in the court. In essence, the power of the court to subject the actions of executive to constitutional legality is what is known as the power of judicial review.⁴

The power of judiciary review is a discretionary one subjecting the actions of executive authority to legality test in order to ascertain whether the holder of the authority acted in accordance with the express stipulations of the law and of course within the parameters of its power. In this perspective, court plays the role of an arbiter by compelling the concerned authority to abide with the rules of the game and not to jettison it.⁵ The rationalization for the power of judicial review is premised on the basic aspect of the law that a person cannot be the arbiter in his own cause and hence the role of a neutral adjudicator which is the court becomes inevitable in order to safeguard the tenets or objectives of a constitutional democracy.⁶ The idea of judicial review was developed and nurtured by the superior courts in the United States drawing insight or inspiration from the common law rules and constitutional principles.⁷ Traditionally, the common law rules of judicial review came to being with a view of ensuring transparency, accountability and justice in the decisions or actions of public authorities.⁸ In fact, the power of judicial review vested in the court has over time developed overwhelmingly empowering the judiciary to act as check on the exercise of constitutional powers by the democratically elected legislatures and executives in policy making and exercise of administrative functions.⁹

In addition, the power of judicial review or ‘judicial scrutiny’ as usually called is a basic constitutional principle of the Nigerian Constitution. It falls within the field of public law and operates as a functional check on the executive and parliamentary misconducts or arbitrariness.¹⁰ The experience in Nigeria has credibly evidenced that the constitutional power of judicial review is by far the most effective protector against executive misnomers and arbitrariness. The doctrine of judicial review is founded on the concept of the rule of law as against the rule of men as the rule of law is fittingly labelled as the cardinal principle of constitutional authority.¹¹ Thus, the idea of rule of law together with the constitutional doctrine of separation of powers has inevitably made judicial review of executive actions a necessary evil. In the constitutional framework of separation of powers, the role of the adjudicator or umpire is given to the judiciary.¹² On the legislative side, countless numbers of legislations are being enacted every year by the legislature vesting more powers on the executive, the implementation of

³ Etienne Mureinik, “A Bridge to Where? Introducing the Interim Bill of Rights” (1994) 10 *S Afr J on Hum Rts* 31, 32-33. See also David Dyzenhaus, “Law as Justification: Etienne Mureinik’s Conception of Legal Culture” (1998) 14 *S Afr J on Hum Rts* 11 and Michael Taggart, “Reinventing Administrative Law” in Nicholas Bamforth and Peter Leyland (eds), *Public Law in a Multi-layered Constitution* (Hart, 2003) 332-335.

⁴ Sian Elias, “Righting Administrative Law” in David Dyzenhaus, Murray Hunt, and Grant Hushcroft (eds), *A Simple Common Lawyer: Essays in Honour of Michael Taggart* (Hart, 2009) 55; Moshe Cohen-Eliya and Iddo Porat, “Proportionality and the Culture of Justification” (2010) 59 *American Journal of Comparative Law* 463

⁵ Jeffrey Jowell, “Beyond the Rule of Law: Towards Constitutional Judicial Review” (2000) *PL*, 674-680; Lord Lester, “Developing Constitutional Principles of Public Law” (2001) *PL* 684.

⁶ Okere, B.O. “Judicial Activism or Passivity in Interpreting the Nigeria Constitution” (1987) 36 *ICLQ* 788 at 790-807

⁷ Paul Craig, “Formal and Substantive Conception of the Rule of Law: An Analytical Frame Work” (1997) *P.L.* 487; ‘Soli J. Sorabjee, “Obliging Government to Control itself-Recent Development in Indian Administrative Law”, (1994) *P.L.* 39

⁸ Brabley Selway QC “The Principle Behind Common Law Judicial Review of Administrative Action-The Search Continues.” (2002) 8 *Fed L Rev* 1 at 22; Naomi Sidebothan, “Judicial Review: Is There Still a Role for Unreasonableness?” (2008) 8 *Murdoch University Electronic Journal of Law*, 1 at 13

⁹ H.W. Okoth-Ogendo, “Constitutions Without Constitutionalism: Reflections on an African Political Paradox”, in Douglas Greenberg et al. eds., *Constitutionalism and Democracy Transitions in the Contemporary World* (1993) 65 – 80

¹⁰ S.I. Nchi, *Separation of powers under the Nigeria Constitution* (Greenworld Publishing Co. Ltd., Jos, 2000) 148

¹¹ J. Amupitan, “The Role of the Courts in Strengthening Democracy at the Local Government Level in Nigeria,” available at [http://www.ialsnet.org/meetings/constit/.../Amupitanjoash\(Nigeria\).pdf](http://www.ialsnet.org/meetings/constit/.../Amupitanjoash(Nigeria).pdf), [accessed 22/5/2023]

¹² A.A. Bello, “Judicial Review as Efficient Tool for Electoral Reform in Nigeria,” available at <http://ssrn.com/abstractz1119526>. (accessed 22/5/2023)

which may be challenged by the citizens and subject it to constitutional legality test.¹³ Therefore there is no other institution than the court to evaluate the legality of the executive actions at the final round.¹⁴

As far as Nigeria is concerned, as the power of judicial review is carved in the Constitution, the development of the doctrine was easy, consistent and orderly, drawing motivation and inspiration from the principles of common law. Likewise, in Nigeria, the development was slow and hesitant, but has now attained a cardinal pillar of constitutionalism and good governance.¹⁵ It is against this backdrop that this thesis seminar paper seeks to examine judicial review of executive actions with a view to underscore the place of judiciary in controlling and curbing executive excesses.

The Corner Stone Of Judicial Review

The separation of powers is a fundamental principle of the rule of law, forming the backbone of modern judicial systems and empowering judicial review.¹⁶ This doctrine ensures that each branch of government, legislative, executive, and judiciary serves as a check on the others, preventing any one branch from abusing its power. The separation of powers gives rise to judicial authority, which in turn enables judicial review.¹⁷ Ultimately, this system relies on the legislature to enact laws, while the judiciary ensures that these laws are constitutional and just. The judiciary plays a crucial role in clarifying laws and resolving disputes, whereas the executive branch is responsible for enforcing laws and formulating policies.¹⁸ The principle of separation of powers was established to safeguard against authoritarianism, ensuring that governments adhere to the rule of law.¹⁹ This fundamental concept also aims to foster effective governance, drive development, and prevent the misuse of authority through a system of checks and balances.²⁰ Montesquieu argued that a system of checks and balances among the branches of government would prevent any one branch from exploiting its authority. As Lord Acton astutely observed, unchecked power inevitably leads to corruption, with absolute power resulting in absolute corruption.²¹ Therefore, one effective safeguard against this corruption is the separation of powers doctrine, which assigns judicial authority exclusively to the judiciary, thereby granting it the power of judicial review.

In Nigeria, the separation of powers doctrine is implemented through distinct forms of separation: membership, functional, and institutional. From a modern perspective, this concept encompasses three key aspects: separation of personnel, separation of institutions, and separation of functions.²² Nigeria's system of government incorporates the separation of powers, manifesting in distinct institutions, functions, and membership.²³ However, the true hallmark of this separation lies in the doctrine of checks and balances. Although different branches of government may operate independently, there are instances where collaboration is necessary. To ensure the harmonious functioning of the government, a system of checks and balances is essential. In Nigeria's

¹³ Ibid.

¹⁴ Peter Cane, 'Understanding Judicial Review and its Impact' in Marc Hertogh and Simon Halliday (eds), *Judicial Review and Bureaucratic Impact: International and Interdisciplinary Perspectives* (CUP 2004) 17-19.

¹⁵ A.E. Obidimma, "The Impact of Judicial Review of Administration on the Application of Human Rights and the Rule of Law in Nigeria" (2017) *African Journal of Constitutional and Administrative Law*, 78; I.J. Udofia, "The Power of Judicial Review in the promotion of Constitutionalism in Nigeria; Challenges and Prospects" (2015) *Journal of Law Policy and Globalization*, 40.

¹⁶ Allan, T.R.S., "The Constitutional Foundation of Judicial Review: Conceptual Conundrum or Interpretative Inquiry", (2002) C.L.J. 87.

¹⁷ Louis Fisher, *American Constitutional Law*, 4th edn., Carolina Academic Press, Durham, North Carolina, United States of America, 2001, at 171-271; John Ademola Yakubu, *Constitutional Law in Nigeria* XE "Nigeria", Demyaxs Law Books, Ibadan, Nigeria, 2003, at 92.

¹⁸ Gillian E. Metzger, "The Interdependent Relationship Between Internal and External Separation of Powers" (2009) 59 *Emory Law Journal*, 424-457.

¹⁹ Ibid.

²⁰ See *Inakoju v Adeleke* (2007) ALL FWLR (Pt 353) 3 at para.146 B. In *Ugwu v Ararume* (2007) 12 NWLR (pt 1048) 367, The Court ruled that Nigeria is a constitutional democracy, divided into three branches of government - the executive, legislative, and judicial - each with distinct powers as outlined in the constitution.

²¹ See *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 2 MLJ 135 where it was stated that: "Every legal power must have legal limits, otherwise there is dictatorship."

²² Gillian E. Metzger, "The Interdependent Relationship Between Internal and External Separation of Powers" (2009) 59 *Emory Law Journal*, 424-457.

²³ John Ademola Yakubu, *Constitutional Law in Nigeria* XE "Nigeria", Demyaxs Law Books, Ibadan, Nigeria, 2003, at 92.

system of government, the executive branch wields significant influence over the legislative branch.²⁴ Conversely, the legislature also exerts its authority over the executive.²⁵ Meanwhile, the judiciary maintains its own sphere of influence, primarily through its power of judicial review, which enables it to scrutinize and check the actions of the other two branches. Also in Nigeria, the judiciary plays a crucial role in holding the executive branch accountable by reviewing its actions for legality and constitutionality. Through this power of judicial review, the judiciary ensures that the executive's decisions align with the law and the constitution.²⁶ Furthermore, the judiciary also exercises its authority by administering the oath of office to the executive,²⁷ thereby formally conferring power upon them. The judiciary further exercises its checks and balances on the legislative branch in two key ways. Firstly, it scrutinizes whether the legislature adhered to established protocols when enacting laws. Secondly, it ensures that the enacted laws do not conflict with the Constitution. Thus, if the judiciary identifies any procedural irregularities or constitutional violations, it has the authority to declare the law invalid and void.²⁸ Ultimately, the system of power sharing embodied in the separation of powers and checks and balances provides the foundation for the judiciary to exercise its authority through judicial review, a key component of its judicial power.

Judicial review is viewed by its proponents as a vital safeguard for protecting fundamental freedoms in countries committed to constitutionalism. Over the past two centuries, the institution of judicial review has evolved globally as a powerful remedy against mismanagement and the abuse of public authority, providing a vital safeguard for upholding the rule of law and protecting individual rights. The combination of the rule of law and the constitutional principle of separation of powers has established judicial review as a crucial and indispensable aspect of public administration. As a result, people across the democratic world have placed their trust in this judicial mechanism, recognizing that the effectiveness of a government's judicial system is the ultimate benchmark of its excellence. Ultimately, the ordinary citizen's sense of security and well-being is deeply rooted in their trust that their country's justice system will provide fair, swift, and reliable protection, offering them a safeguard against injustice and a beacon of hope in times of need.

Judicial Review In A Written Constitution Context

Judicial Review involves assessing the constitutionality and validity of parliamentary acts or executive actions by measuring them against the provisions of the written Constitution, with particular emphasis on the protection and placement of individual rights within the state's constitutional system.²⁹ In Nigeria, similar to the United States, laws and executive actions are subject to scrutiny to ensure they align with the individual rights enshrined in the Constitution.³⁰ This form of Judicial Review, which prioritizes the protection of individual rights, is an integral part of broader constitutional review. As such, the courts are empowered to invalidate statutes or executive instruments that infringe upon individual rights.³¹

²⁴ The President plays a crucial role in the law-making process by granting assent to legislative bills, thereby transforming them into laws. This authority is explicitly stated in Sections 58(1) and (5) of the 1999 Constitution of the Federal Republic of Nigeria.

²⁵ The power to check the executive branch is exercised through impeachment proceedings against the President or state governors, alleging gross misconduct as outlined in the Constitution. Specifically, sections 143 and 188 detail the procedures for removing the President and state governors, respectively. In Nigeria, impeachment is a serious matter, effectively reversing the decision of a majority of citizens who elected the official. While it's rarely used against Presidents, state governors have been successfully impeached on several occasions, as seen in cases like *Balarabe Musa v Kaduna state House of Assembly* (1984) and *Inakoju v Adeleke* (2007). The legislative branch also plays a crucial role in approving executive appointments and ratifying treaties. Before appointed officials can assume office, their appointments must be confirmed, as stipulated in section 154 of the CFRN. Moreover, the legislative branch is responsible for enacting treaties into law, as outlined in section 12 of the CFRN.

²⁶ This is because the provision of the constitution has binding force in all authorities and persons throughout the Federal Republic of Nigeria XE "Nigeria". Ibid. See section 1(1). See *Attorney General of the Federation v Abubakar* (2007) All FWLR (Pt. 375) 405.

²⁷ Ibid see generally section 135 and 185.

²⁸ See generally the case of *Attorney General of Bendel State v Attorney General of the Federation* (1982) 3 NCLR 1. See also the case of *Inakoju v Adeleke* (2007) All FWLR (Pt 353) 3.

²⁹ Jeremy Waldron, "The Core of the Case Against Judicial Review" (2006) 115 The Yale Law Journal 1346 at pp.1357

³⁰ *ibid.*

³¹ *ibid.*

In this review framework, the Constitution, rather than Parliament, serves as the ultimate authority on matters of law. The Constitution is also heavily entrenched,³² meaning its provisions are difficult to amend. As a result, the Constitution establishes the parameters for determining the validity of all legislative and executive actions, effectively setting the boundaries for their legitimacy. Consequently, no law can unjustifiably contradict the Constitution. Therefore, unless explicitly authorized by the Constitution, any parliamentary act or executive action that deviates from the Constitution's letter and spirit will be deemed invalid, unconstitutional, or unenforceable.³³ This form of review establishes a fundamental presumption that certain core political values, including the Rule of Law, Human Rights, and Constitutionalism, are sacrosanct and cannot be compromised or undermined by either primary legislation or executive actions.³⁴ Furthermore, this approach establishes a hierarchical structure of laws and norms, with the Constitution and its provisions occupying the highest position. As a result, in the event of a conflict between the Constitution and any external law or political value, the Constitution takes precedence, and no external factor can supersede its authority.

Despite variations in the application of Judicial Review within the context of a written constitution, its foundation rests on three interconnected principles: the sovereignty of the people's will, the written Constitution as the paramount source of state law, and the judiciary's responsibility to interpret and declare the law.³⁵ These principles are often seen as extensions of the landmark case *Marbury v. Madison*,³⁶ in which the US Supreme Court asserted its authority, declaring that it is the inherent responsibility and domain of the judicial branch to interpret and declare the law.³⁷ In essence, these principles suggest that the written Constitution is the foundational legal document, deriving its moral legitimacy from the original consent of the people, as expressed through the sovereign will of the populace.³⁸ As a result, the written Constitution³⁹ is the source of all legitimate government powers, defining their extent and authority as an expression of the people's sovereign will. This Constitution serves as the state's supreme law, which courts must defend against any government actions that contradict it. Ultimately, these principles support the notion of limited government, where constitutional boundaries restrain government power.⁴⁰ Eventually, the aim is to cultivate a culture that values freedom, achieved by upholding Human Rights, the Rule of Law, and Constitutionalism. This approach also seeks to highlight that government authority is a fiduciary responsibility, entrusted to leaders for the benefit of the people, rather than a personal privilege. Thus, judicial review reveals the distribution of power within a modern democratic Constitution and provides guidance on its proper exercise. Furthermore, it focuses on fundamental values and principles that underpin the democratic system, serving as the foundation upon which the entire structure of democratic governance is built.⁴¹ In essence, judicial review provides the legal framework for courts to assess the validity and legitimacy of legislation, determining its eligibility for judicial enforcement.⁴² Therefore, if a law fails to meet these standards, the court will invalidate it by declaring it unconstitutional or nullifying its effect.

Given the importance of protecting fundamental rights, it's unsurprising that Supreme and Constitutional Courts worldwide utilize judicial review to oversee government actions, ensuring the preservation of constitutionally

³² See Davis et al, *The Fundamental Rights in the Constitution: Comments & Cases*, (Juta & Co Ltd, Kenwyn, South Africa, 1997); Saras Jagwanth, "The South African Experience of Judicial Rights Discourse: A Critical Appraisal" Campbell, Tom, K. D. Ewing and Adam Tomkins eds., *Sceptical Essays on Human Rights* Oxford: Oxford University Press, 2001)

³³ Frederick, Schauer, "Constitutional Invocations" (1997) 65 *Fordham Law Review* 1295

³⁴ See Wojciech Sadurski, "Rights-Based Constitutional Review in Central and Eastern Europe" in Campbell, Tom, K. D. Ewing and Adam Tomkins eds., *Sceptical Essays on Human Rights* Oxford: Oxford University Press, 2001)

³⁵ See Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (Chicago: University of Chicago Press, 2000)

³⁶ (1803) 1 Cranch 137, 177; 5 US 87, 111 (Marshall CJ).

³⁷ Kent Roach, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue* (Toronto: Irwin Law, 2001) at pp.13

³⁸ Luc Tremblay B., "Marbury v. Madison and Canadian Constitutionalism: Rhetoric and Practice" (2004) 36 *George Wash. Int'l Law Review* 516.

³⁹ William Nelson E., *Marbury v. Madison, The Origins and Legacy of Judicial Review* (Lawrence, Kans.: University Press of Kansas, 2000)

⁴⁰ Wojciech, Sadurski, *Constitutional theory*, ed. (Aldershot: Dartmouth, 2005)

⁴¹ Luc Tremblay B., "General Legitimacy of Judicial Review and the Fundamental Basis of Constitutional Law" (2003) 23 *Oxford Journal of Legal Studies* 525 at pp.540

⁴² T.R.S. Allan, "The Rule of Law as the Foundation of Judicial Review" in Forsyth, ed. *Judicial Review and the Constitution*, (Oxford, 2000).

guaranteed individual rights and freedoms.⁴³ This practice may indicate a societal aspiration to learn from past mistakes or to uphold the constitutional vision for a better future. Ultimately, the goal is to preserve Human Rights and Fundamental Freedoms, which are deeply ingrained values in modern societies that warrant safeguarding. These essential rights and freedoms encapsulate the core principles that should underpin all governmental decision-making and serve as a crucial check on legislative power.⁴⁴ Thus, any law or executive action that fails to uphold fundamental values will be deemed invalid by the courts, unless it can be justified under the Constitution. This safeguard is crucial to ensuring governments remain accountable to their constitutional mandates and boundaries. The Constitution of Nigeria guarantees this protection, aligning with the core principles of modern democratic governance,⁴⁵ which prioritize limiting government power and protecting individual rights. The issue at hand is not about asserting dominance among government branches, but rather about staying true to the fundamental principles enshrined in the Constitution. At its core, this is about preserving the Constitution's integrity and ensuring that political promises and human rights commitments translate into tangible actions, rather than mere rhetoric.

Concept Of Judicial Independence

The foundation of stability, peace, and security in any nation relies on the rule of law. When citizens doubt the impartiality of their justice system, they may resort to extreme actions to claim their rights, which ultimately escalate into violence and tragic loss of life.⁴⁶ Public faith in the judiciary's fairness is reinforced by the rule of law. To guarantee a just and unbiased application of the law, the judiciary must remain autonomous, untainted by executive or legislative interference, when administering laws and regulations. Autonomous courts are the cornerstone of ensuring equal treatment of all parties under the law.⁴⁷ A comprehensive view of judicial independence highlights its significance in preserving public trust and faith in both the judicial system and the overall governance framework of a nation.⁴⁸

Judicial independence is a crucial element that reinforces two foundational pillars of liberal democracy:⁴⁹ the separation of powers and the rule of law, which together provide the framework for a just and equitable society. The doctrine of separation of powers provides the intellectual foundation for judicial independence, which in its modern application, relies on a system of reciprocal oversight and constraints among the government's branches, rather than their complete isolation. For the system of checks and balances to function effectively, judicial independence is essential, allowing the judiciary to perform its constitutional duties freely and impartially, while providing a necessary counterbalance to the powers of the executive and legislative branches. The judiciary can only fulfill its role as a guardian of the constitution and a check on government power if it operates independently, untainted by improper pressures from the legislative and executive branches.⁵⁰ Essentially, judicial independence entails protecting the judiciary and judges from undue external influences, safeguarding them from interference by both government agencies and private interests.⁵¹ Judicial independence can also be defined as the freedom of a court to deliver verdicts without being swayed by external political interference or manipulation.⁵² Former Lord Chancellor of England, Lord Mackay, defined judicial independence as the ability of judges to execute their duties, in line with their judicial oath and national laws, unfettered by external interference, undue influence,

⁴³ Stuart Lakin, 'Debunking the Idea of Parliamentary Sovereignty: The Controlling Factor of Legality in the British Constitution' (2008) 28(4) OJLS 709, 731

⁴⁴ Aileen Kavanagh, 'Participation and Judicial Review: A Reply to Jeremy Waldron' (2003) 22(5) Law and Philosophy 451; Dimitrios Kyritsis, 'Representation and Waldron's Objection to Judicial Review' (2006) 26(4) OJLS 733.

⁴⁵ See Thomas Poole, 'Dogmatic Liberalism? TRS Allan and the Common Law Constitution' (2002) 65(3) MLR 463.

⁴⁶ Daniel C Préfontaine QC and Joanne Lee, 'The Rule of Law and the Independence of the Judiciary' (1998) Paper prepared for the World Conference on the Universal Declaration of Human Rights, Montreal, 7–9 December 6.

⁴⁷ Maria Popova, *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* (Cambridge: Cambridge University Press 2012) 6

⁴⁸ Diana Woodhouse, 'The Constitutional Reform Act 2005 – Defending Judicial Independence the English way' (2007) 5(1) Int. J. Const. Law 153, 157

⁴⁹ Eli M Salzberger, 'The Independence of the Judiciary: An Economic Analysis of Law Perspective' in Andras Sajó (ed), *Judicial Integrity* (Koninklijke Brill NV 2004) 70.

⁵⁰ Sandra D O'Connor, 'The Life of the Law: Principles of Logic and Experience from the United States' (1996) WLR 1, 3–4.

⁵¹ *ibid.*

⁵² Tom S Clark, *The Limits of Judicial Independence* (Cambridge: Cambridge University Press 2011) 5

or pressure from any individual, group, or institution.⁵³ Lord Irvine underscored that judicial independence is a vital component of Britain's constitutional structure, warning that judges who owe their tenure to government approval may be vulnerable to political manipulation or undue influence, thereby compromising their ability to adjudicate cases impartially. To maintain judicial impartiality, judges require secure tenure, enabling them to carry out their duties and exercise judicial discretion freely, without fear of reprisal or external influence. Moreover, their selection and career advancement must adhere to transparent, objective standards to prevent any hint of favoritism or *quid pro quo* arrangements.⁵⁴ Professor Peter Solomon argues that judicial independence is essential for promoting both the perception and the actuality of fair and unbiased decision-making in the judiciary.⁵⁵ According to Professor Peter H. Russell, judicial independence is primarily concerned with protecting judges from external pressures and influences, rather than scrutinizing their individual behavior or conduct.⁵⁶

According to Article 10 of the Universal Declaration of Human Rights, every individual has the inherent right to a public and fair trial, conducted by a tribunal that is both impartial and independent, ensuring equal treatment for all.⁵⁷ Evidently, this article underscores the vital significance of a judiciary that is independent and impartial, serving as a cornerstone for safeguarding human rights, advancing equality, and conducting fair trials, all of which are fundamental pillars of the rule of law. The Geneva Conventions of 1949, specifically Article 3(1)(d), underscore the significance of judicial independence by prohibiting sentences and executions unless they follow a trial conducted by a properly constituted court, which must provide all fundamental judicial protections universally accepted as essential. This article asserts that the fundamental judicial protections it outlines are widely regarded as crucial by enlightened societies, and that their omission would be at odds with contemporary standards of justice. The Statute of the International Court of Justice (ICJ), specifically Article 38(1)(c), conveys a comparable notion by identifying the general principles of law accepted by civilized nations as a foundational source of international law, alongside other recognized sources. The Geneva Conventions of 1949, specifically Article 3(1)(d), establish essential procedural protections, including the right to confront one's accuser, summon witnesses, and have an impartial adjudicator. Additionally, individuals have the right to representation and translation services if language barriers or incapacity hinder their ability to participate in proceedings. The effectiveness of these safeguards relies on the presence of an independent and impartial judicial authority.

Judicial independence requires a dual approach: it must be safeguarded both at the individual level, ensuring judges' autonomy, and at the institutional level, protecting the judicial system's independence as a whole. This dual dimension encompasses both the personal freedom of judges and the organizational autonomy of the judiciary. Distinguishing between individual and institutional judicial independence is essential. Individual independence grants judges the autonomy to preside over and decide cases free from interference. Conversely, institutional independence empowers the judiciary to safeguard constitutional norms, uphold the rule of law, and ensure a strict separation of powers,⁵⁸ thereby preserving the integrity of the justice system. Therefore, individual judicial independence is achieved when a judge is able to make decisions based on their own unbiased interpretation of the law, without being swayed by external forces or considerations. This means that a judge exhibits individual independence when their decisions are guided solely by their own judgment, untainted by external influences.⁵⁹ The independence of a judge is often rooted in their personal values and decision-making processes, making it a subjective trait that is hard to evaluate from an outside perspective, as it lacks concrete,

⁵³Cited in Shimon Shetreet *The Culture of Judicial Independence: Rule of Law and World Peace* (Brill-Nijhoff 2014) 16

⁵⁴Lord Irvine, 'Parliamentary sovereignty and judicial independence: Keynote address' (1998) in John Hatchard and Peter Slinn (eds), *Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach* (London: Cavendish Publishing Limited 1999) 167.

⁵⁵Peter H Solomon Jr., 'Courts in Russia: Independence, Power, and Accountability' in Andras Sajó (ed), *Judicial Integrity* (Koninklijke Brill NV 2004) 226.

⁵⁶Peter H Russell, 'Toward a General Theory of Judicial Independence' in Peter H Russell and David O'Brien (eds), *Judicial Independence in the Age of Democracy: Critical Perspective from Around the World* (University Press of Virginia 2001) 15

⁵⁷Article 10 Universal Declaration of Human Rights 1948.

⁵⁸Maria Popova, *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* (Cambridge: Cambridge University Press 2012) 16

⁵⁹Peter H Russell 'Towards a General Theory of Judicial Independence' in Peter H Russell and David O'Brien (eds), *Judicial independence in the Age of Democracy: Critical Perspectives from Around the World* (London: University of Virginia Press 2001) 6.

quantifiable indicators. There is a fine line between individual judicial independence and judicial impartiality, with the two concepts often overlapping in a way that can blur their distinct meanings and lead to confusion.⁶⁰ The European Court of Human Rights (ECtHR) expressed concerns in *Incal v Turkey*,⁶¹ where it scrutinized the independence of the tribunal that delivered the verdict against Mr. Incal. The defendant contended that the inclusion of a military judge, who reported to the executive branch, undermined the tribunal's independence and his right to a fair trial. The European Court of Human Rights emphasized that maintaining the appearance of impartiality is vital. In a democratic society, courts must earn and maintain public trust, particularly in the eyes of the accused in criminal cases, to ensure the legitimacy and credibility of the judicial system. This is because when evaluating concerns about a court's independence or impartiality, the accused's concerns are relevant but not conclusive. The determining factor is whether those concerns are objectively reasonable, meaning they are supported by credible evidence or circumstances that would raise legitimate doubts about the court's neutrality. The European Court of Human Rights found that Mr. Incal's concerns about the Izmir National Security Court's impartiality were justified, given the presence of a military judge. The court held that this circumstance could reasonably lead to fears of undue influence and, consequently, undermine trust in the court's independence and impartiality. The judgments highlighted above raise questions about the independence of individual judges, citing their accountability to the executive as a concern. The mere existence of these doubts, regardless of their validity, has a profound impact on litigants' confidence in the impartiality of the judicial system.⁶² To preclude any potential bias, judges must remain unaffiliated with external entities that may have vested interests in a case, regardless of the court's institutional autonomy. Ultimately, individual judges' independence is meaningless without the assurance of genuine institutional independence, which guarantees the collective impartiality of the judicial body.

Professor Karoly Bard emphasizes that in a democratic system, the independence of the judiciary as an institution is paramount, transcending the individual independence of judges⁶³ to safeguard the autonomy and impartiality of the entire judicial branch. The necessity for institutional judicial independence arises from concerns that individual judges' autonomy may not provide adequate safeguards against external interference, ensuring that the judiciary's decision-making processes remain unfettered and impartial.⁶⁴ Institutional judicial independence involves the judicial branch's ability to function independently, free from the control and influence of the legislative and executive branches. The degree of institutional independence is strengthened by the presence of robust structural protections that prevent other branches of government from improperly influencing judicial decisions. The European Court of Human Rights (ECtHR) has conducted an in-depth examination of the relationship between the judiciary and legislature, ultimately concluding that the legislature has a duty to protect and respect the autonomy of the courts. A notable example of this principle is the case of *Stran Greek Refineries and Stratis Andreadis v Greece*,⁶⁵ where the Greek parliament passed legislation that stripped the courts of their authority to hear certain compensation claims against the government, effectively nullifying previously awarded damages. The ECtHR ruled that this legislative action constituted an infringement on judicial independence. According to the ECtHR, Article 6's guarantees of a fair trial and the rule of law prohibit the legislature from intervening in the justice system in a manner that aims to impact the judicial resolution of a dispute,⁶⁶ thereby ensuring the integrity of the judicial process. The European Court of Human Rights (ECtHR) ruled in *Findlay v The United Kingdom*⁶⁷ that judicial decisions must be shielded from modification or reversal by external authorities outside the judiciary. This ensures that the legal force and finality of judicial rulings remain unaffected by interventions from other government branches. Accordingly, the ECtHR ruled that the independence of the courts was breached whenever executive officials or entities could revise or override judicial decisions, and when the finality of those decisions depended on approval from such executive authorities. According to the

⁶⁰Nina Peršak, *Legitimacy and Trust in Criminal Law, Policy and Justice* (Routledge 2016) 99.

⁶¹*Incal v Turkey* (1998) ECHR 48 [71–73].

⁶² *ibid.*

⁶³ Karoly Bard, 'Judicial Independence in the Accession Countries' in Andras Sajó (ed), *Judicial Integrity* (Koninklijke Brill NV 2004) 269

⁶⁴ *ibid.*

⁶⁵*Stran Greek Refineries and Stratis Andreadis v Greece* (1994) ECHR Series A301-B [49].

⁶⁶See Maria Popova, *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* (Cambridge: Cambridge University Press 2012) 14.

⁶⁷*Findlay v The United Kingdom* (1997) ECHR 8 [77].

ECtHR, a cornerstone of judicial independence is the principle that judicial rulings are final and cannot be modified or validated by external authorities beyond the judiciary, ensuring their autonomy and authority.⁶⁸

To maintain the integrity of the judiciary, it is essential that the decision-making process remains free from interference by other government branches, and that its independence is genuinely respected and upheld in practice. While judicial decisions are created by humans and lack divine authority, they should nonetheless be afforded a measure of reverence and be treated with sincere respect by all government branches, agencies and institutions, including law enforcement, corrections, education and social services. Government agencies and other authorities must acknowledge and comply with judicial decisions, even when they disagree. This deference is essential for preserving the rule of law. As a result, safeguarding judicial independence within institutions demands that judges assume a more prominent role in overseeing the judicial system. To ensure autonomy, the judicial institution can be granted self-management powers, including budgetary control, direct hiring and oversight of administrative personnel, and the ability to take disciplinary action when needed.

Models Of Judicial Independence And Implications On Judicial Review

To maintain autonomy, the judiciary should have control over its internal administration and operational matters. Nevertheless, approaches to judicial administration vary globally, prompting an examination of distinct models and their impact on judicial review.

Exclusive executive model

This model entrusts the executive branch with complete control over judicial administration, effectively excluding the judiciary from managing its own affairs. While countries employing this approach may formally guarantee the rule of law and judicial independence in their constitutions, the actual separation of powers between the executive and judiciary is negligible, with executive dominance prevailing. A constitution may draw a formal distinction between judicial power and the powers of the legislature and executive, yet this distinction does not guarantee that the judiciary will be established as a fully-fledged, independent branch of government.⁶⁹ Judges may still possess certain individual safeguards, including the ability to accept or decline reassignments to other courts. Furthermore, any disciplinary proceedings against judges may be overseen by dedicated judicial tribunals.⁷⁰ Ultimately, the executive model's concentration of administrative powers in ministries of justice can erode the autonomy of judicial decision-making. Therefore, where the political executive wields significant influence over the judiciary, the ministry of justice assumes a broad range of responsibilities, including court oversight, case allocation, judicial oversight, resource management, data administration, and professional development, which can potentially undermine judicial independence. In addition to administrative tasks, the ministry will also control the financial and physical resources of the courts. However, this model has a major flaw: the minister's power to appoint and transfer judges can lead to undue influence, encouraging judges to prioritize the executive's interests over impartial decision-making.

Although the ministry of justice's authority inherently carries the potential for improper influence, actual instances of such interference are relatively rare, suggesting a gap between potential risk and real-world practice.⁷¹ A case in point is the Czech Republic, where the Ministry of Justice exercises considerable sway over judicial administration, with far-reaching powers to shape the careers of judges through appointments, transfers, promotions, and disciplinary actions, sparking broad concerns that judicial independence is being undermined. Proponents of the executive model argue that it ensures accountability through ministerial responsibility and upholds the primacy of the legislature, yet critics point out that it has notable flaws, particularly in relation to the judiciary's capacity to scrutinize and review executive decisions.⁷² This model inherently subverts the integrity

⁶⁸ *ibid.*

⁶⁹ Open Society Foundation, *Monitoring the EU Accession Process: Judicial Independence in the Czech Republic*, Brussels, (Belgium: Open Society Institute 2001) 197.

⁷⁰ Sergio Bartole, 'Alternative Models of Judicial Independence: Organizing the Judiciary in Central and Eastern Europe' (1998) 7(1) *East European Constitutional Review*.

⁷¹ Brian C Smith, *Judges and Democratization: Judicial Independence in New Democracies* (Routledge 2017).

⁷² *ibid.*

of judicial review, as administrative control over the judiciary can be exploited to manipulate court decisions, aligning them with predetermined political objectives and biases.⁷³

Joint executive-judicial and multi-branch responsibility model

This model features a joint governing council, comprising representatives from the executive, legislative, and judicial branches, as well as potentially other entities like the bar association, which collectively oversee the administration of the courts.⁷⁴ This framework can compromise judicial impartiality and the effectiveness of judicial review, as involving external bodies, such as the bar association, in judicial administration may create undue influence and lead judges to cater to the interests of lawmakers, the executive, or powerful legal lobbies. This arrangement creates vulnerability, allowing the executive or legislative branches to potentially exert influence over the judiciary's decision-making, thereby jeopardizing the autonomy and impartiality of individual judges.

Exclusive judicial model

This model has two distinct forms. One variation is the individualized approach, where administrative authority is concentrated in a single judge, typically the chief justice, as seen in the state of New York.⁷⁵ Alternatively, the collective model assigns administrative oversight to a collaborative group of judges, forming a governing body that manages judicial affairs, an approach adopted by countries like Italy and Portugal. Similarly, in Egypt's State Council, which oversees administrative justice, administrative tasks are managed by the Private Council of Administrative Affairs, a body consisting of the seven most senior judges within the council.

Shared responsibility model

This model comprises two sub-categories. One approach is the horizontal allocation of responsibilities, where different branches assume distinct administrative roles, each overseeing specific aspects of court operations across the entire judicial network. Although the executive holds the authority to appoint judges, the actual selection process often involves a rigorous evaluation, with judicial representatives wielding considerable influence in assessing and recommending candidates for judicial positions. It seems that Nigeria aligns itself with the horizontal approach. This is because the appointments of judges are made by the President or the Governor of a State on the recommendation of the National Judicial Council and in some situation, the approval of the senate may be required. Thus, issues relating to appointment and removal of judges are shared responsibilities of both the executive and the judicial institution. Alternatively, a vertical division of authority may exist, where the judiciary oversees the administration of higher courts, while the executive branch manages the lower courts. In some jurisdictions, administrative responsibilities are shared between the executive and judicial branches, creating a collaborative framework. Consequently, tasks with potential impact on the judiciary's decision-making process are insulated from executive oversight, while remaining administrative duties are either delegated to the Ministry of Justice, such as in Germany, or managed jointly through a collaborative framework. England and Wales exemplify a collaborative approach, where a symbiotic partnership exists between the government and judiciary, fostering a culture of consultation and shared governance. This cooperative framework facilitates collaborative decision-making between the Lord Chief Justice and the Lord Chancellor on critical issues like judicial accountability and court administration.⁷⁶ A shared responsibility approach can also be implemented through a statutory judicial body that advises the executive on personnel matters, including judicial

⁷³Shimon Shetreet, 'Judicial Independence: New Conceptual Dimensions and Contemporary Challenges' in Shimon Shetreet and Jules Deschênes (eds), *Judicial independence: The Contemporary Debate* (Dordrecht: Kluwer Law International 1985) 644.

⁷⁴Open Society Foundation, *Monitoring the EU Accession Process: Judicial Independence in the Czech Republic*, Brussels, (Belgium: Open Society Institute 2001)

⁷⁵Brian C Smith, *Judges and Democratization: Judicial Independence in New Democracies* (Routledge 2017).

⁷⁶Anja Seibert-Fohr, *Judicial Independence in Transition*, *Beiträge zum ausländischen öffentlichen Recht und Völkerrecht* (Heidelberg: Springer 2012) 1311.

appointments, promotions, transfers, and terminations, with Lithuania⁷⁷ serving as an example of this collaborative framework.

Model of judicial administration through a separate independent organ

This model entrusts the administration of the courts to a standalone, self-governing body known as a judicial council. By establishing judicial councils, many jurisdictions aim to safeguard judicial autonomy and reduce the influence of justice ministries on the judiciary. Constitutional provisions establish some judicial council, whereas others are created and governed by statutory laws that specify their structure and responsibilities. The basis for establishing these councils has a notable impact on judicial independence, whether their primary purpose is to promote accountability or reinforce judicial autonomy. Judicial councils rooted in statutory law are more prone to political manipulation than their constitutionally entrenched counterparts.⁷⁸ Furthermore, when the judiciary assumes significant managerial roles, its traditionally affluent and conservative makeup can potentially skew its guidance, underscoring the importance of implementing safeguards to ensure accountability within both executive entities and judicial oversight bodies.⁷⁹ While judicial councils aim to improve the administration of justice, their management has not consistently delivered increased efficiency, transparency, and fairness. Achieving these goals likely necessitates a more mature and robust justice culture, which is often underdeveloped in countries in transition.⁸⁰

A limited number of countries have embraced this governance structure, with the Netherlands being a prominent case in point. Within the Dutch judicial system, the Council for the Judiciary assumes responsibility for specific administrative matters that directly impact judges, encompassing appointment, advancement, professional training, and remuneration. Notably, although the council operates under the judicial branch, its purview is advisory, refraining from direct administration of the judiciary. The council maintains its independence, free from the control of the Ministry of Justice or any other state authority. This autonomy safeguards the judiciary's core values of objectivity and independence. The council's exceptional status is codified and safeguarded by the Judicial Organisation Act and half of the council's four members are former judges, ensuring a strong judicial presence. The other two members bring diverse expertise, holding key roles within the upper echelons of the Dutch central government. The royal decree appoints council members to a six-year term, with eligibility for a single reappointment of up to three years. The Minister of Security and Justice submits nominations for both new appointments and reappointments. Adopting this model would strengthen the rule of law, provided that the independent body responsible for administering the judiciary has a deep understanding of the judicial profession and remains insulated from political interference.

To summarize, increased interference from the executive and legislative branches in judicial administration directly correlates with a heightened risk to judicial independence. A review of global judicial administration models reveals that certain frameworks allow for extensive government oversight, which can erode judicial autonomy. Government intervention in court administration carries potential risks to judicial independence, yet there's no conclusive proof that administrative oversight alone compromises judicial autonomy or impartiality. Management-focused intervention doesn't inherently jeopardize the independence of judicial rulings. The shared responsibility model is therefore considered optimal for preserving judicial independence. This means that matters with judicial implications or potential impact on judicial decision-making should fall under the sole purview of the judicial council. In contrast, administrative tasks lacking judicial significance, such as court logistics and personnel management, are best entrusted to the executive branch, which possesses greater expertise in these administrative domains. This clear division of labor allows judges to concentrate on rendering judgments, unencumbered by concerns of executive meddling, which could compromise their autonomy, objectivity, or ability to make impartial decisions.

⁷⁷Brian C Smith, *Judges and Democratization: Judicial Independence in New Democracies* (Routledge 2017) 153.

⁷⁸Nuno Garoupa and Tom Ginsburg, *Judicial Reputation: A Comparative Theory* (University of Chicago Press 2015).

⁷⁹Yash Vyas, 'The Independence of the Judiciary: A Third World Perspective' (1992) 11(6) *Third World Legal Studies* 127.

⁸⁰Michal Bobek and David Kosar, 'Euro-products' and institutional reform in Central and Eastern Europe: A critical study in judicial councils' in Michal Bobek (ed), *Central European Judges under the European Influence: The transformative power of the EU revisited* (Oxford: Hart Publishing 2015)

Essential Prerequisites Of Judicial Independence In Judicial Review

Insularity

Judicial independence necessitates a shield from external interference. The United Nations Basic Principles on the Independence of the Judiciary emphasize that judges must render decisions unfettered by external pressures, free from any form of influence, and unencumbered by considerations that could compromise their impartiality. A truly independent judiciary is shielded from political influence, ensuring that the structure of the courts, judicial tenure, appointment procedures, compensation, and decision-making processes remain free from external manipulation. Meanwhile, the executive's oversight role is restricted to monitoring the judiciary's administrative performance and resource management, without encroaching on its autonomy. To maintain judicial integrity, appointment processes must focus on selecting judges based on their qualifications and merit, rather than political ideology. Furthermore, judicial independence extends to collective autonomy, empowering the judiciary to self-govern and oversee its administrative affairs, including budget management and personnel decisions. Ultimately, executive intervention should be limited to ensuring accountability to the legislative branch, without compromising judicial autonomy. A range of critical decisions are required to shape the judiciary, encompassing the selection process for judges, the development of disciplinary protocols, and the implementation of effective measures to promote transparency and accountability within the judicial branch.

To shield the judiciary from executive influence and ensure its independence, various constitutions and laws entrust the administration of the judiciary to independent judicial councils, which comprise judges and nominated representatives from other branches of government, thereby insulating the judiciary from political interference. To prevent political interference in judges' careers, specific protections have been established. These safeguards, which include shielding judges from undue influence over appointments, promotions, and disciplinary actions, are key components of broader judicial reform efforts championed by the World Bank and other international donors.⁸¹ Today, more than 60% of countries worldwide have institutions in place to fortify judicial autonomy and optimize court operations.⁸² A prevailing view holds that judges with longer terms in office are less susceptible to political pressure, thereby preserving the impartiality of the judicial system. Appointing judges until retirement age significantly limits the political executive branch's ability to manipulate judicial appointments for political gain. With this system, the executive branch's influence is restricted to periodic reviews for renewal, rather than having direct control over appointments. As a result, judges who are appointed until retirement age are more likely to remain impartial and independent, without feeling pressured to appease politicians to secure their future career prospects. This helps maintain the integrity and independence of the judiciary, ensuring that judges are guided by the law rather than political considerations.

As a result, judges serving brief terms are more exposed to undue influence from politicians, the media, and special interest groups. Furthermore, short-term appointments create an environment where judges can be removed for unjustified reasons, undermining the principles of judicial independence, which dictate that dismissal should only occur due to incapacity, gross misconduct, or similar legitimate grounds. The brevity of judicial mandates underscores the need for transparent, rigorous protocols governing mandate renewal and disciplinary actions. Nevertheless, during transitions to democratic rule, judicial tenure becomes tenuous when incoming governments seek to expel judges who served under preceding authoritarian regimes. This purge mentality generates intra-regime tensions, as it appears to perpetuate a cycle of politically motivated appointments, rather than establishing a truly impartial judiciary.

Exclusive competence

To ensure judicial independence, it is crucial that the judiciary has sole authority to exercise judicial powers, a cornerstone of democratic governance that separates judicial functions from those of the legislative and executive

⁸¹Nuno Garoupa and Tom Ginsburg, 'Guarding the Guardians: Judicial Councils and Judicial Independence' (2009) 57(1) American Journal of Comparative Law.

⁸²Linn Hammergren, 'Do judicial councils further judicial reform? Lessons from Latin America' (2002) Rule of law working paper 28, Washington DC: Carnegie Endowment for International Peace.

branches. Any blurring of lines between judicial and executive responsibilities, or executive influence over the judiciary, fundamentally undermines the concept of an impartial and autonomous judicial system.⁸³

The core principle is that judicial independence should be insulated from the boundaries of judicial power. Limiting the judiciary's authority, therefore, has a dual impact: it erodes both judicial independence and the rule of law, ultimately rendering the judiciary's independence inconsequential by diminishing its overall authority. To prevent erosion of judicial authority, notions such as "Acts of sovereignty" must be strictly delineated, ensuring they cannot be exploited to evade judicial review. Additionally, military tribunals should be subject to similar scrutiny, preventing them from operating outside the purview of the judiciary. Thus, military courts' authority should be restricted to cases involving violations of military codes and statutes.

Compliance

The implementation of court rulings relies on a dual approach: voluntary respect and coercive enforcement. Yet, in certain countries navigating transition, this dual approach often falters. When judgments are not complied with, it can undermine public faith in the judiciary's independence. Furthermore, the inconsistent implementation of judicial decisions exposes a critical flaw in the judicial system. Lax regulations result in state institutions ignoring court rulings and denying compensation to individuals who have been wrongly accused. The concept of compliance takes judicial independence beyond judges' actions, emphasizing the need for state agencies to demonstrate both the willingness and capacity to uphold and enforce the law. Despite robust judicial independence, compliance can still be a concern. It is essential to recognize that unenforced judicial decisions, no matter how fair and impartial, undermine justice and leave those who have prevailed in court without the realization of their rights. A weak state's failure to enforce judicial rulings has a corrosive effect on public trust, leading to widespread disregard for the law. As legal sentences are increasingly ignored, a culture of lawlessness and defiance takes root, undermining the rule of law.⁸⁴

Collective will of Independence

It is evident that judicial independence can only thrive when there is a collective commitment from all segments of society to uphold and protect it. Achieving this coveted independence requires a multifaceted approach, which encompasses: (1) Merit-based selection: Judges should be chosen based on their legal expertise, acquired through education and experience, rather than political connections, and selected through a transparent and impartial process, (2) Secure tenure: Judges should be appointed for extended periods to insulate them from external pressures, (3) Protection from retribution: Judges must be shielded from removal or retribution for their rulings, enabling them to make decisions based solely on the law, without fear of political repercussions. Furthermore, to safeguard judicial independence, it is essential to provide: (4) Fair compensation and adequate resources: Judges should receive reasonable remuneration to prevent financial difficulties that could compromise their impartiality. Additionally, the judiciary should be allocated sufficient resources to maintain an efficient and effective court system, including: competent and efficient administrative support, access to current legal materials, such as updated libraries and digital resources, modern and well-equipped courtrooms that facilitate the work of judges, legal professionals, and litigants. In line with the United Nations Human Rights Committee's (HRC) recommendations, governments must enact targeted measures to safeguard judicial independence. This entails enshrining constitutional or legislative guarantees that establish transparent, objective standards for: judicial appointments, compensation, tenure, promotions, suspensions, dismissals and disciplinary actions. By implementing these measures, states can effectively shield judges from political interference, ensuring the integrity and impartiality of their decision-making processes.⁸⁵

Judicial Independence And Its Role In Judicial Review

⁸³See *Oló Bahamonde v Equatorial Guinea* (1991) No. 468.

⁸⁴Marcelo Bergman, 'The rule, the law, and the rule of law: Improving measurements and content validity' (2012) 33(2) *The Justice System Journal*

⁸⁵Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (3rd ed, Kehl am Rhein, Germany: Engel Publishers 1993)

Judicial independence is a complex notion that refers to the ability of judges to make impartial decisions, unaffected by external factors. Given its intangible nature, academics have developed a range of approaches to measure and evaluate judicial independence in empirical investigation.⁸⁶ Various measures of judicial independence are based on either expert evaluations of judicial systems or specific factors that enable judges to make unbiased decisions, including judges' remuneration levels and court allocations.⁸⁷ Others, however, concentrate on judicial review, positing that when a constitutional court strikes down a law, order, or policy, it demonstrates the court's autonomy and independence from the other branches of government.⁸⁸

Despite its widespread appeal, judicial independence is not inherently safeguarded, even in democratic regimes. Executive powers, such as the President and Governor, can exert significant influence over the judiciary by disregarding precedent, withholding essential resources, restricting judicial discretion, advocating for detrimental constitutional reforms, or initiating impeachment proceedings against judges. The executive branch can utilize various strategies to curb judicial authority, thereby shaping court decisions and exerting control over the judiciary. However, it is puzzling that executives permit judicial oversight of their actions, sparking a substantial body of research that seeks to explain the complexities of judicial independence and the mechanisms of judicial review.

Researchers have pinpointed several key factors that contribute to judicial independence. Interestingly, the popularity of a court plays a significant role in ensuring its autonomy. This is because elected officials are highly sensitive to public opinion, often prioritizing their re-election prospects. As a result, they tend to avoid interfering with courts that enjoy widespread public support, earning them the label of "single-minded re-election seekers."⁸⁹ Politicians often walk a thin line to maintain public favor, as losing it could put their reelection bids at risk, especially when the judiciary is widely supported by the public.⁹⁰ This cautious approach stems from a desire to project a positive image and dodge backlash from voters. By steering clear of unpopular choices, politicians seek to safeguard their political influence and stay relevant in the political arena. When the public strongly supports the judiciary, it can have a profound impact on the relationship between the courts and other branches of government. Essentially, voters may choose to reject officials who attempt to undermine the courts, which in turn shields the judiciary from interference by other branches of government.⁹¹ Proponents of the attitudinal model in the US judicial system argue that attempts to curb judicial independence would trigger significant political costs, including electoral backlash, that far exceed any fleeting policy advantages Congress might achieve by constraining the Court's power.⁹²

Vanberg's argument boils down to the idea that transparency in politics has a significant impact on how judicial review is influenced by popularity.⁹³ When the public is informed in a specific case, it becomes much tougher for elected officials to disregard or circumvent the court's rulings.⁹⁴ This heightened scrutiny keeps officials accountable, preventing them from undermining the judicial process. Ultimately, transparency serves as a safeguard for judicial independence, allowing courts to make decisions without excessive political interference. However, when public attention is lacking, executives and elected officials are emboldened to take actions without restraint, even if the court is well-liked. This is especially true in cases where a court's decision may put it at odds with the executive branch, allowing officials to disregard judicial authority without fear of public

⁸⁶Bonneau, Chris W., Thomas H. Hammond, Forrest Maltzman, and Paul J. Wahlbeck. 2007. "Agenda control, the median justice, and the majority opinion on the US Supreme Court." *American Journal of Political Science* 51(4): 890-905.

⁸⁷ *ibid.*

⁸⁸Clark, Tom S. 2009. "The Separation of Powers, Court-curbing and Judicial Legitimacy." *American Political Science Review* 54: 971-989.

⁸⁹Epstein, Lee, William M. Landes, and Richard A. Posner. 2013. *The behavior of federal judges: a theoretical and empirical study of rational choice*. Cambridge: Harvard University Press.

⁹⁰Epstein, Lee, Andrew D. Martin, A. D., Jeffrey A. Segal, and Chad Westerland. 2007. *The Judicial Common Space*. *The Journal of Law, Economics, and Organization* 23(2), 303-325.

⁹¹Friedman, Barry. 2006. "Taking Law Seriously." *Perspectives on Politics* 4(2): 261-276.

⁹²Gibson, James L., Gregory A. Caldeira, and Lester K. Spence. 2003. "Measuring Attitudes toward the United States Supreme Court." *American Journal of Political Science* 47(2): 354-367.

⁹³Vanberg, Georg. 2015. "Constitutional Courts in Comparative Perspective: A Theoretical Assessment." *Annual Review of Political Science* 18: 167-185

⁹⁴ *ibid.*

repercussions.⁹⁵ In the same vein, When the public is not actively engaged with the judiciary, executives and legislatures lack a compelling reason to respect judicial autonomy. As a result, they may take punitive measures against courts that issue decisions that contradict their own preferences, thereby eroding the independence of the judiciary.⁹⁶

In addition to public support, formal safeguards for constitutional courts are essential for maintaining judicial independence. By establishing measures like minimum salary, guarantees and fixed terms, these protections effectively eliminate the means by which governments might retaliate against courts that issue unpopular rulings.⁹⁷ Advocates of the attitudinal model reason that such formal protections enable the Court to operate with greater autonomy, making decisions that reflect its genuine preferences.⁹⁸ As a result, courts benefiting from these protections tend to be more willing to overturn laws, even when doing so is politically unpopular.⁹⁹

In much the same way, a politically fragmented system can foster judicial independence, granting courts the autonomy they require to conduct effective judicial review.¹⁰⁰ In countries like Nigeria with democratic systems, power is distributed among separate entities to ensure checks and balances. This separation of powers system divides governance authority among distinct branches, including an independently elected executive and legislative body.¹⁰¹ As a result, when different political parties control these branches, the government's ability to retaliate against a court that overturns its policies is limited. This allows the court to freely exercise judicial review¹⁰² without fear of retribution. In essence, the separation of powers protects the judiciary's independence, enabling it to make decisions based on the law rather than political pressure.

Political fragmentation shares similarities with Marks' separation of powers theory,¹⁰³ as it provides a foundational framework for understanding the dynamics between government branches. Marks' model sheds light on the circumstances under which other branches of government might accept a court ruling that diverges from their interests. Scholars have since expanded on this concept, suggesting that when the elected branches of government are unified in their support for a law, the Court is generally more reluctant to overturn it, even when the law is subject to judicial review.¹⁰⁴

On the other hand, the Court is more inclined to overturn a law when a crucial elected official expresses dissent.¹⁰⁵ This underscores the challenge the Court faces when key policymakers, including the legislative chambers and the executive, unanimously back a law under scrutiny. In such cases, the Court may be reluctant to strike down the law, deterred by the prospect of non-enforcement and potential reprisal. In cases where a single key player opposes a law, the court has the flexibility to overturn it, as long as the resulting policy landscape doesn't exceed the dissenting member's preferred policy boundaries. Notably, insurance theory challenges the attitudinal model by proposing that intense political competition actually fosters greater judicial

⁹⁵ *ibid.*

⁹⁶Vanberg, Georg. 2001. "Legislative-Judicial Relations: A Game-Theoretic Approach to Constitutional Review." *American Journal of Political Science* 45: 346-361.

⁹⁷Ura, Joseph D. and Patrick C. Wohlfarth. 2010. "'An Appeal to the People': Public Opinion and Congressional Support for the Supreme Court." *Journal of Politics* 72(4):939-956.

⁹⁸ *ibid.*

⁹⁹Stephenson, Matthew C. 2004. "Court of Public Opinion: Government Accountability and Judicial Independence." *Journal of Law, Economics, and Organization* 20 (2): 379-399.

¹⁰⁰Stephenson, Matthew C. 2003. "'When the Devil Turns ...': The Political Foundations of Independent Judicial Review." *The Journal of Legal Studies* 32 (1): 59-89

¹⁰¹ *ibid.*

¹⁰²Staton, Jeffrey K. 2006. "Constitutional Review and the Selective Promotion of Case Results." *American Journal of Political Science* 50 (1): 98-112.

¹⁰³Cited in Melton, James and Tom Ginsburg. 2014. "Does De Jure Judicial Independence Really Matter?" *Journal of Law and Courts* 2 (2): 187-217.

¹⁰⁴ *ibid.*

¹⁰⁵McGuire, Kevin T., and James A. Stimson. 2004. "The least dangerous branch revisited: New evidence on Supreme Court responsiveness to public preferences." *Journal of Politics* 66 (4): 1018-1035.

autonomy.¹⁰⁶ Competition breeds uncertainty among government officials, making them question their ability to retain power. Consequently, anxious about the potential for drastic policies by opposing forces, governments back judicial review as a protective measure, effectively hedging against the possibility of losing power.¹⁰⁷ Driven by the fear of opposition-led policy changes, governments are inclined to permit judicial oversight of their decisions, which in turn enables courts to exercise significant discretion in invalidating laws. As a result, insurance theory is bolstered by a robust and diverse body of empirical research, encompassing both qualitative and quantitative studies.¹⁰⁸

Earlier, it has been discussed how judicial review is often used to gauge judicial independence. A court that is truly independent will demonstrate its autonomy by being willing to nullify decisions made by other government entities, without hesitation or deference.¹⁰⁹ While judicial review may be associated with independence, it is not a reliable gauge of a court's autonomy. In fact, scholars have observed that governments may sometimes prefer courts to overturn laws, but only under specific circumstances. Therefore, the act of striking down a law does not necessarily prove a court's independence, as it may simply be yielding to pressure from another branch of government.¹¹⁰ In the same context, refraining from striking down a law doesn't automatically imply a judiciary lacking in strength.¹¹¹ Moreover, an independent court's decision-making process is nuanced, and it may opt to uphold laws that resonate with the judges' personal beliefs and values, rather than indiscriminately invalidating every law that crosses its path.

A court's likelihood of overturning legislation increases when it has strong public support and operates in a politically transparent environment. However, this assessment overlooks a critical nuance.¹¹² If the government supports a statute under review, a court with differing views from the legislature will only invalidate the statute if it enjoys high popularity and transparency; otherwise, it will refrain from doing so due to concerns about potential backlash. In contrast, a court that shares similar views with the legislature will consistently uphold the statute, regardless of the court's popularity or the level of transparency. The significance of this theoretical finding becomes clear when viewed through the lens of a court's ideological inclinations: specifically, when a court is adequately insulated from potential reprisal, it gains the freedom to pursue its preferred policy outcomes. Thus, the study concludes that a court's capacity to overturn legislation, as well as the likelihood of it doing so, are contingent upon its level of autonomy from other governmental entities. Notably, a higher degree of independence is associated with a more vigorous and effective exercise of judicial review.

Stumbling Blocks For Judicial Independence In Judicial Review

The judiciary's independence can be compromised by numerous forms of undue interference from the executive and legislative branches, which can erect significant barriers to its autonomy. These constraints can be exploited by other branches of government to reshape judicial institutions and thereby influence the outcome of court decisions in their favor. A major obstacle to judicial independence is the administrative leverage that the executive branch can exert over the courts. This form of influence can take hold when the judiciary relinquishes control over key aspects of court administration, such as case assignment, thereby creating an opening for external interference. In addition, explicit forms of administrative influence can occur through coercive or

¹⁰⁶Hayo, Bernd, and Stefan Voigt. 2007. "Explaining de facto judicial independence." *International Review of Law and Economics* 27 (3): 269-290.

¹⁰⁷ *ibid.*

¹⁰⁸Helmke, Gretchen, and Jeffrey Staton. 2011. "The Puzzling Judicial Politics of Latin America." in *Courts in Latin America*, edited by Gretchen Helmke and Julio Rios-Figueroa. London: Cambridge University Press.

¹⁰⁹Merrill, Alison Higgins, Nicholas D. Conway, and Joseph Daniel Ura. 2017. "Confidence and Constraint: Public Opinion, Judicial Independence and the Roberts Court." *Washington University Journal of Law and Policy* 54: 209-228.

¹¹⁰Melton, James and Tom Ginsburg. 2014. "Does De Jure Judicial Independence Really Matter?" *Journal of Law and Courts* 2 (2): 187-217.

¹¹¹Rios-Figueroa, Julio. 2007. "Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994-2002." *Latin American Politics and Society* 49 (1): 31-57.

¹¹²Rogers, James R. 2001. "Information and Judicial Review: A Signaling Game of Legislative-Judicial Interaction." *American Journal of Political Science* 45: 84- 99.

corrupt means, such as government officials using threats, bribes, media manipulation, or backchannel communications to improperly influence the outcome of particular cases.¹¹³

Politicians have several compelling reasons to intervene in the judicial process via administrative influence. Such interference is likely when the government has a stake in the outcome of particular cases, aiming to weaken opposition, penalize individuals who reveal executive wrongdoing or corruption, or pave the way for its policy initiatives. Politicians may resort to various methods to interfere with the judiciary in pursuit of these objectives. The following discussion will explore several tactics that compromise judicial independence.

Misusing the power to appoint judges

A primary means of compromising judicial independence is through political intrusion in the appointment and retention of judges, which often stems from the considerable authority granted to politicians in the selection process. This is particularly evident in appointments to Constitutional Courts, where political considerations frequently predominate, mirroring the partisan biases of politicians, even when the judges in question possess professional credentials.¹¹⁴ As a result, a dominant executive influence in the judicial appointment process can compromise the judiciary's ability to safeguard civil liberties, political freedoms, media autonomy, and human rights, potentially leading to a pattern of verdicts that are driven by political considerations rather than the rule of law. Thus, political interference in the appointment of senior judges can have a ripple effect, compromising the independence of the entire judiciary. This can occur when senior judges, who were themselves selected based on their political leanings, are given the power to appoint junior judges, potentially perpetuating a cycle of politically motivated appointments. Consequently, when a country's Supreme Court appointments are compromised by top-level interference, it creates a trickle-down effect, increasing the likelihood that lower-court appointments will prioritize personal connections and loyalty over qualifications and merit.

Controlling judicial careers

Following their appointment, judges' careers can become subject to external control, raising concerns about potential political interference from the executive branch. The dependence of judges on the executive for career progression and financial incentives can expose them to manipulative strategies that compromise their ability to render impartial judgments. This includes tactics like temporarily removing judges to prevent them from hearing cases against the executive, appointing interim judges who may be more susceptible to political pressure, and even manipulating resource allocation to punish magistrates who rule against government officials. The executive branch's ability to appoint judges to specific courts allows them to exert significant influence over the judiciary, shaping the court's overall philosophy on constitutional and policy matters, as well as the outcome of individual cases. Furthermore, the president can use appointments to the Constitutional and Supreme Courts to install judges with partisan leanings, potentially tilting the judicial balance in their favor. When politicians hold significant power over the judiciary, judges may feel pressured to align their rulings with the ruling party's ideology to secure their future career prospects. This can lead judges who aspire to higher positions to tailor their decisions to appeal to those in power, potentially compromising their impartiality. Additionally, the judicial evaluation process can be leveraged to make political loyalty a factor in promotion decisions, potentially compromising judicial impartiality. The evaluation of judges for career advancement poses a significant risk to judicial independence, as it can be manipulated to influence judges' decisions and align them with the political ideologies of those in power, thereby compromising impartiality. Judges may feel compelled to self-censor, anxiously avoiding decisions that contradict government expectations, in order to safeguard their future career prospects. This can lead judges to shape their rulings to align with government preferences, prioritizing professional security over impartiality. Consequently, governments can wield significant influence by leveraging their control over judicial promotions, transfers, and compensation to reward or penalize judges based on their adherence to the government's ideology.

¹¹³Peter H Russell 'Towards a General Theory of Judicial Independence' in Peter H Russell and David O'Brien (eds), *Judicial independence in the Age of Democracy: Critical Perspectives from Around the World* (London: University of Virginia Press 2001) 17

¹¹⁴Nuno Garoupa and Tom Ginsburg, *Judicial Reputation: A Comparative Theory* (University of Chicago Press 2015).

Controlling appointments to judicial councils

The formation of judicial councils tasked with managing judicial appointments and institutions is insufficient to ensure judicial independence if politicians can manipulate the council's composition. Moreover, if the executive or legislative branches dominate the administration of these councils, judicial independence can be severely eroded, as political influence can compromise the councils' autonomy and impartial decision-making. In a notable instance, Poland's Parliament enacted the Amending Act,¹¹⁵ which significantly altered the composition of the National Council of the Judiciary (NCJ). Under Section 9a(1), the power to appoint 15 judicial members of the NCJ was shifted from judicial assemblies to the Polish Parliament (Sejm). Additionally, Section 6 stipulated the removal of existing judicial members of the NCJ who had been elected under previous provisions or by judicial assemblies, effectively terminating their terms. Ultimately, the Amending Act undermined judicial independence by handing control over the election of judicial council members, who oversee the judiciary's administration, to politicians rather than the courts' general assemblies. This change effectively gave politicians significant behind-the-scenes sway over judicial decision-making. The Polish judiciary became vulnerable to political manipulation and pressure after the changes to the National Council of the Judiciary (NCJ), which increased the risk of its members being swayed by political influences due to a politicized selection process. This shift has compromised the independence of the judiciary, making it more susceptible to political interference and undermining the principles of impartiality. When the executive branch controls appointments to Constitutional and Supreme Courts, it gives them significant sway over the judiciary. This allows them to handpick judges who share their ideology, essentially letting the ruling party mold the judiciary to their advantage. This dynamic undermines the fundamental principles of judicial independence and impartiality, as judges may feel pressured to make rulings that align with the ruling party's interests rather than upholding the law. The process of parliamentary appointments to judicial councils is notoriously politicized, often even more so than appointments made by the Ministry of Justice. This means that politicians may prioritize loyalty to their party over a candidate's qualifications or impartiality when making appointments to these powerful councils. As a result, the independence and integrity of the judiciary can be compromised, undermining the rule of law and the separation of powers.

Limiting the scope of judicial review

Politicians can erode judicial independence by enacting laws that limit the judiciary's ability to review executive actions. This can lead to unchecked executive power, as decisions become shielded from judicial scrutiny. By doing so, politicians undermine the system of checks and balances, threatening the foundations of a democratic system. The executive branch can also weaken judicial independence by wielding veto power over the implementation of specific court decisions, rendering them toothless. A striking illustration of this is Egypt's 2012 decree, issued by former President Morsi, which shielded all presidential decrees from judicial scrutiny, effectively neutralizing the judiciary's oversight capacity.¹¹⁶ Morsi's declaration dealt a crippling blow to judicial independence, imbuing his presidential decrees with an aura of infallibility. By virtue of Article 2, the president's decisions, laws, and constitutional declarations became impervious to judicial scrutiny, effectively barring courts from reviewing, appealing, or overturning them, and concentrating absolute power in the president's hands.

Non-enforcement of judicial decisions

The power of judicial decisions can be quietly neutralized by neglecting to enforce them. There is broad consensus that ignoring judicial rulings is a direct threat to judicial independence. In such cases, judicial independence remains purely theoretical, existing only on paper (*de jure*), rather than being a tangible reality (*de facto*), where the judiciary's decisions are genuinely respected and implemented. In theory, judicial independence may be protected by constitutional provisions or the finality of judgments, but in practice, it can be severely compromised if judicial decisions are not enforced. This lack of enforcement can have a ripple effect, damaging not only judicial independence but also the public's faith in the fairness and impartiality of the judiciary, the

¹¹⁵Grzęda v Poland (2022) ECHR 43572/18 [20].

¹¹⁶The Constitutional Declaration Issued by Former President Morsi on 22 November 2012.

credibility of the courts, and ultimately, the legitimacy of the entire political system.¹¹⁷ The refusal of executive authorities to enforce judicial decisions is a clear infringement of the right to a fair trial, giving rise to a significant human rights concern. By disregarding judicial rulings, executive authorities jeopardize public trust in the judiciary, compromising the integrity of the justice system. The enforcement of judicial decisions made by Administrative Courts against the government is crucial for maintaining the credibility and integrity of the judicial system. It is only fair that individuals who have entrusted the judiciary with their grievances should receive tangible results, not just theoretical victories, ensuring that justice is delivered in reality, not just on paper. A fundamental characteristic of a democratic society¹¹⁸ is the swift and effective implementation of court decisions. Non-compliance, however, presents a formidable challenge that jeopardizes judicial independence, despite constitutional guarantees. Government interference in the judiciary through such tactics effectively reduces judicial independence to a mere theoretical construct, rendering it devoid of practical meaning and limiting it to a nominal, de jure existence.

Empirical Analysis Of The Challenges To Judicial Independence

RESEARCH METHODOLOGY

Introduction

This chapter sets out the methodology adopted for examining the practical challenges affecting judicial independence in Nigeria and evaluating the impact of judicial reforms. The study adopts a mixed-methods approach, integrating quantitative and qualitative research techniques to obtain comprehensive and reliable data from key stakeholders in the Nigerian justice sector. The mixed-methods approach enables the researcher to triangulate findings and produce evidence-based recommendations for strengthening judicial independence.

Research Design

The study adopts a convergent mixed-methods research design combining quantitative surveys and qualitative interviews. The quantitative component provides measurable evidence regarding stakeholders' perceptions of judicial independence, while the qualitative component explores the experiences, opinions, and practical realities of judges, lawyers, policymakers, judicial administrators, and civil society actors.

Population of the Study

The target population comprises stakeholders directly involved in the administration of justice and judicial reforms in Nigeria, including: Justices of the Supreme Court and Court of Appeal. Judges of the Federal High Court, National Industrial Court, State High Courts, and other superior courts, Magistrates and judges of lower courts. Senior Advocates of Nigeria and legal practitioners. Officials of the National Judicial Council. Court administrators and chief registrars. Members of the National Assembly Committees on Judiciary and Constitutional Review. Officials of the Federal Ministry of Justice and State Ministries of Justice. Civil society organisations working on justice sector reforms. Constitutional law scholars and legal academics.

Sample Size

The proposed sample consists of approximately 450 respondents as follows: Category

Proposed Sample Judges (70), Lawyers (200), Judicial Administrators (30), Policymakers (50) Civil Society Organisations (50), Academics (50) Total 450

Sampling Technique

¹¹⁷P. M. Kozyreva and A. I. Smirnov, 'Difficulties in the development of the Russian courts' (2015) 54(3) Sociological Research 220.

¹¹⁸ *ibid.*

The study employs a combination of purposive, stratified, and simple random sampling techniques. Purposive sampling will be used to select judges, policymakers, senior lawyers, and judicial administrators because of their specialised knowledge. Stratified sampling will ensure representation across Nigeria's six geopolitical zones and different court levels. Simple random sampling will be used where appropriate for practising lawyers and court users.

Sources of Data

Primary Data: The Primary data was obtained through: Structured questionnaires, Semi-structured interviews, Focus Group Discussions (FGDs). **Secondary Data** employed includes obtained from: The Constitution of the Federal Republic of Nigeria 1999 (as amended), Electoral Act, Judicial decisions, Law reports, Journal articles, Government publications, Reports of judicial commissions, Publications of the National Judicial Council, Reports of the Nigerian Bar Association, International reports on judicial independence.

Research Instruments

Questionnaire

The questionnaire contain five sections: Section A is Demographic Information such as gender, age, occupation, years of professional experience, institution. Section B focuses on Judicial Independence. Sample Questions focus on whether: judicial appointments are free from political influence, judges enjoy adequate financial independence, the judiciary operates independently of the Executive, the Legislature respects judicial decisions, judges enjoy sufficient security of tenure.

Section C reveals the Challenges to validate the challenges identified in the doctrinal analysis of this paper. It reveals that Political interference affects judicial independence; Corruption undermines public confidence; Delay in justice affects judicial credibility; Poor funding weakens judicial performance; Media pressure affects judicial decision-making.

Section D focuses on Judicial Reforms. It reveals that: constitutional reforms can improve judicial independence, financial autonomy can strengthen the judiciary; NJC disciplinary procedures enhance accountability, Judicial reforms will reduce political interference, and further constitutional reforms are required in order to enhance judicial independence.

The Responses were measured using a five-point Likert Scale: Strongly Agree (5), Agree (4), Undecided (3), Disagree (2), and Strongly Disagree (1)

Interview Guide

Semi-structured and unstructured interviews were conducted with judges, SANs, policymakers, judicial administrators, and CSO leaders. The Interview Questions focused on: the greatest threats to judicial independence in Nigeria; how independent are judicial appointments; whether the Executive interfere with judicial decision-making; whether judges adequately protected from political pressure; whether financial autonomy improved judicial independence; whether the National Judicial Council is effective; which judicial reforms have succeeded; which reforms have failed; What constitutional amendments are still necessary; and what practical measures would strengthen judicial independence

C. Focus Groups Discussion: Separate focus groups were organised for young lawyers; CSOs; Court users; Judicial staff. The focus of the discussion includes public confidence in the judiciary, access to justice, judicial corruption, political influence, delay in litigation, judicial accountability, and reform priorities.

Validity and Reliability

The research instruments were subjected to expert review by specialists in constitutional law, judicial administration, and research methodology. A pilot study involving approximately 30 respondents were

conducted before the main survey. Internal consistency shall be assessed using Cronbach's Alpha, with a reliability coefficient of 0.70 or above considered acceptable.

Method of Data Analysis

Quantitative data was analysed using SPSS with the following statistical tools such as: frequencies, percentages, mean scores, standard deviations, Chi-square tests, correlation analysis, multiple regression analysis, qualitative data shall be transcribed and analysed using thematic analysis. Emerging themes include: executive interference, legislative influence, financial autonomy, judicial appointments, judicial accountability, corruption, constitutional reforms, and public confidence. NVivo software was used for coding and thematic analysis.

9.10 Ethical Considerations which guided the study include informed consent, voluntary participation, confidentiality, anonymity, secure storage of research data, protection of participants from harm, and academic integrity.

9.11 Expected Outcomes: The empirical findings: identified the major institutional challenges affecting judicial independence in Nigeria, evaluated the effectiveness of constitutional and institutional reforms, measured public and professional perceptions of judicial independence, provided evidence-based recommendations for future reforms, and contribute significantly to scholarship on constitutional law, judicial governance, and democratic consolidation in Nigeria.

FINDINGS AND CONCLUSION

The findings of this paper are as follows:

- a) The mode of appointment of judges where the executive has a fundamental role to play is hindering the independence of judiciary thereby whittling down the power of judicial review of the courts;
- b) The process of budget presentation and allocating funds to the judiciary in a piecemeal manner constitute a stumbling block to judicial independence and achieving effective judicial review;
- c) Improper influence on judges such as bribes, accepting gifts, accepting personal invitations and personal relationship are direct material threats to judicial independence and thus weakening the judicial powers of the courts;
- d) The dependence of judges on the executive for career progression incentives expose them to manipulative strategies that compromise their ability to be independent.

In conclusion, this paper has reaffirmed the critical significance of judicial independence in ensuring the effectiveness of judicial review. The analysis reveals that judicial independence serves as a crucial prerequisite for shaping the contours, effectiveness, and legitimacy of judicial review. By guaranteeing judicial autonomy, judicial independence empowers courts to fulfill their constitutional role in overseeing the actions of other government branches, thereby protecting fundamental rights and upholding the rule of law. This emphasizes the necessity of robust institutional mechanisms to safeguard judicial independence, including secure tenure, financial autonomy, and insulation from political influence. Ultimately, preserving judicial independence is vital for maintaining the integrity of the judicial review process and ensuring the judiciary remains a potent check on the exercise of power. As democratic societies continue to evolve and confront emerging challenges, the importance of judicial independence in facilitating effective judicial review will only intensify. By acknowledging the pivotal role of judicial independence, stakeholders including policymakers, judges, and scholars can collaborate to fortify the foundations of judicial review and promote a more equitable and accountable system of governance.

RECOMMENDATIONS

- a) The power to appoint judges should be exclusively vested in the National Judicial Council
- b) The NJC should be in charge of presentation of judicial budget before the legislature without routing it through the executive.

- c) to uphold the rule of law, the appointment and selection processes of judges should be based solely on merit, individual qualifications, experience, and skills rather than personal connections, nepotism, or family ties.
- d) Judges should maintain a professional distance from political officers and limit their presence at social gatherings to avoid perceptions of bias or partiality as excessive social interactions can undermine public trust and erode the independence of the judiciary.