

THE RECALL OF LEGISLATORS AND QUEST FOR SUSTAINABLE DEMOCRACY IN NIGERIA

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Abstract

Section 14(2)(a) of the Constitution of the Federal Republic of Nigeria 1999 declares unequivocally that sovereignty belongs to the people from whom the government through the Constitution derives all its powers and authority. The sovereign authority of the people includes the power of the people to freely choose their representatives in the legislative arm of government; the people make this crucial choice through periodic elections and sometimes through by-elections. Recall is the democratic device or process through which the people revoke the mandate of an elected legislator if they (the people particularly the registered voters of the legislator's constituency) become dissatisfied with his (the legislator's) performance. This research is an inquiry into the recall of legislators and the quest for sustainable democracy in Nigeria. It is noted that there is a nexus between the people's power to recall their legislators/lawmakers and the quest for sustainable democracy; accordingly, an efficient and effective legislature is one of the bastions of true democracy. The question now is how can the electorates in Nigeria be effectively protected from the inefficiencies, misdeeds and frailties of their lawmakers? In the course of this inquiry, it is the researchers' finding that enthroning and sustaining/nurturing true democracy in Nigeria requires inter alia, strengthening and improving the legal structure for the recall of legislators in Nigeria. It is recommended, among other things, that the recall process should be made achievable for the people and that the Court of Law being one of the strong pillars of democracy should be the appropriate avenue/venue for recall exercises to be challenged/questioned in appropriate circumstances given the principle of judicial review.

Keywords: Recall, Democracy, Legislator, Democracy, Sustainable Democracy, Loss of Confidence.

1.0 Introduction

The foundation of democracy as a form of government is the limitation of power.¹ In every democratic arena, sovereignty belongs to the people from whom the government through the constitution derives all its powers and authority.² The sovereign authority of the people includes the power of the people to decide who represents them in the legislative arm of government; the people make this decision through election.³ The Constitution also provides another powerful tool through which the people can exercise this sovereign power; this tool is the people's authority to recall their representatives from the legislative arm of government.⁴ Simply put, recall is a situation whereby the electorates or registered voters in a particular constituency or district withdraw their elected representative from a legislative house due to loss of confidence.

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¹S Amadi, 'Executive Order and presidential power in the Nigerian constitutional democracy' *The Guardian* 17 October, 2018 <<https://guardian.ng/features/executive-order-and-presidential-power-in-the-nigerian-constitutional-democracy/>> accessed on 15 March 2024.

² See for instance Sections 1 and 14 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) that demonstrate that sovereignty belongs to Nigerians from whom government derives its powers and authority.

³ MI Anushiem and VO Chukwumah 'Recall Process under the Constitution of Federal Republic of Nigeria: a Critique', *African Journal of Constitutional and Administrative Law* (2018) Vol. 2, pp. 120 -132.

⁴ *Ibid.*

Steady experience shows that every man vested with power is liable to abuse it and carry his authority as far as it will go.⁵ Generally, recall is one of the safeguards put in place by the framers of the extant Constitution of Nigeria to promote checks and balances, good governance, legislative accountability, and other essential democratic values in Nigeria. Many scholars have in different platforms advanced reasons for the introduction of recall in the Constitution of Nigeria. Anushiem and Chukwumah⁶ outlined the following as some reasons for the recognition and codification of the power of recall in the Nigeria Constitution:

1. by Section 14 (2) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the sovereign power at all times belongs to the people. In the spirit of this provision, they retain the mandate to vote in or vote out any erring representative.
2. Recall enhances legislative accountability. That is, the recall provision is seen as a device to assure regular and close oversight of elected legislators and to make them more continuously, rather than periodically, responsible and responsive to the will and desires of the electorates.
3. Without the recall provision, the electorates must wait until the next scheduled election to voice their opinions on an incumbent's performance.
4. Just like impeachment, the recall provision is enshrined to strike a just balance between the immunity enjoyed by the legislators and the abuse of powers and offices held by them.

2.0 Interrogating the Procedure for Recall of Federal and State Legislators

Sections 69 and 110 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) allow registered voters in a constituency or district to recall their lawmaker/legislator for loss of confidence⁷. Sections 68(1)(h)(2), 69,109(1)(h)(2), and 110 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) succinctly provide the procedures that can be deployed to sack an elected lawmaker in the National Assembly and the State Houses of Assembly. While Section 69 of the Constitution addressed the recall of Senators and members of the House of Representatives only, Section 110 of the Constitution regulates the recall of State House of Assembly members. It is important to remark that Section 69 of the Constitution is analogous to Section 110 of the Constitution. Consequently, all discussions on the recall of National Assembly members in this study will apply *mutatis mutandis* to the recall of State House of Assembly members. Section 69 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) states thus:

A member of the Senate or the House Representatives may be recalled as such a member if—(a) there is presented to the Chairman of the Independent National Electoral Commission a petition on that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member

⁵ *Gadi v. Male* (2010) 7 NWLR (PT. 1193) 225.

⁶ MI Anushiem and VO Chukwumah 'Recall Process under the Constitution of Federal Republic of Nigeria: a Critique', *African Journal of Constitutional and Administrative Law* (2018) Vol. 2, pp. 120 -132.

⁷ Independent National Electoral Commission, 'Frequently Asked Questions on Recall of a Member of the National Assembly, House of Assembly of a State and Area Council of the Federal Capital Territory' <<http://wp1.inecnigeria.org/news-all/frequently-asked-questions-on-recall-of-a-member-of-the-national-assembly-house-of-assembly-of-a-state-and-area-council-of-the-federal-capital-territory/>> accessed on 17 March 2024.

and which signatures are duly verified by the Commission; and (b) the petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

The above reproduced constitutional provision will now be interrogated to discern or elicit the compulsory and cumulative steps that must be followed to successfully recall a member of the National Assembly under the extant Nigerian Constitution.

From the above-quoted constitutional provision, there are three major stages in the recall of members of the National Assembly under the extant Nigerian Constitution. These stages are:

1. Lodging of a petition to the Independent National Electoral Commission by the registered voters of the Legislator's constituency,
2. Verification of signatures by the Independent National Electoral Commission, and
3. Referendum stage.

These stages will be discussed simultaneously.

Section 69(a) of the Constitution stipulates that to trigger the process of recalling a member of the National Assembly a petition signed by more than half of the registered voters in the lawmaker's constituency or district has to be lodged with the Chairman of the Independent National Electoral Commission (INEC) alleging their loss of confidence in the lawmaker sought to be removed⁸. Unavoidably, more than 50% of registered voters in the lawmaker's constituency must sign the recall petition before it is submitted to the chairman of the Independent National Electoral Commission (INEC)⁹. For instance, if a constituency has a total of 1000 voters, at least 501 of the registered voters in the constituency must sign the petition to activate the recall process. It is immaterial that less than 501 of the 1000 registered voters participated in the election that earned the lawmaker his parliamentary seat in the first place. The petition must be signed and arranged according to polling units, wards, and Local Government Areas in the constituency to make the verification process less cumbersome. Logically, it follows that electorates wishing to recall their lawmaker are expected to first apply for a Certified True Copy (CTC) of registered voters in their constituency from INEC to confirm the number of registered voters in the constituency. After submission of the petition to the INEC, the next step will be verification by the Commission. The recall petition can be withdrawn at any time before the conduct of verification provided that the withdrawal is endorsed by the representatives of the petitioners.¹⁰

Upon the receipt of the petition, INEC will review the petition and issue a public notice or announcement stating the date, time, and location(s) of the verification of signatures in the petition. In other words, the Commission must release a timetable of events clearly outlining how the

⁸ C Ndujihe, '10 Steps to Recall a Senator in Nigeria' <<https://www.vanguardngr.com/2016/07/10-steps-recall-senator-nigeria/>> accessed on 11 February 2024.

⁹ S Toromade, 'How to Sack Nigerian Lawmakers with Constitutional Recall (Explainer)' <<https://www.pulse.ng/news/politics/recall-how-to-sack-a-nigerian-lawmaker/67e7mg0>> accessed on 11 February 2024.

¹⁰ *Ibid.*

verification process will be conducted. Curiously, the court in *Dino v INEC*¹¹ held that INEC had no legal obligation to notify the affected lawmaker of the petition against him. The researchers herein verily believe and humbly opine that in line with the ancient doctrine of fair hearing, INEC should always notify the affected lawmaker about the petition pending against him before embarking on verification. A verification exercise will then be conducted at polling units in the affected lawmaker's constituency. The verification applies only to all those registered voters who signed the petition as they will be required to appear physically to confirm that they signed the recall register themselves. If the signatures of more than 50% of registered voters who signed the petition are verified, the recall process proceeds to the next crucial stage called the referendum. For a recall process to proceed to the level of the referendum, the number of signatories to the petition verified must reach at least 51 per cent of the total number of registered voters in the constituency. INEC must publicly declare the result at the end of the verification exercise.

If the verification attains the legal requirement stated above, a referendum will be conducted in the constituency within 90 days. The referendum is conducted at polling units in the constituency of the member petitioned against. The referendum requires all registered voters in the constituency to vote 'Yes' or 'No' to determine if the lawmaker should be recalled or not. INEC must equally publicly declare the result at the end of the referendum exercise. If the simple majority of registered voters in the constituency fail to approve the petition, that implies that the referendum ends in a 'No' vote, the lawmaker will continue his term.¹² INEC will write to the petitioners stating that the legal requirements were not met. The petition will therefore be dismissed. The petitioners are allowed to start the process all over again. However, if the simple majority of the registered voters in the constituency approve the petition, it means that the referendum ends in a 'Yes' vote; INEC will send a Certificate of Recall to the head of the lawmaker's legislative house to officially notify him that the lawmaker has been sacked in line with the provisions of Section 68(1) (h) of the Constitution. That is not the end of the matter. The next stage will be approval by the affected legislative house.

By Section 68 (2) of the Constitution, the President of the Senate or the Speaker of the House of Representatives can only give effect to the certificate stating that the provisions of Section 69 of the Constitution have been complied with in respect of the recall of a member of the National Assembly if and only if he first presents evidence satisfactory to the house concerned establishing that the provisions of the Constitution were complied with in the entire recall process. Thus, by Section 68 (2) of the Constitution, a recall process can be vetoed by the concerned legislative house through voting if they are not satisfied with the recall exercise.

If the recall is approved by the legislative house, the lawmaker will vacate his seat. INEC will then conduct a bye-election to fill the vacant seat. The Constitution is silent on whether or not a recalled lawmaker can participate in the bye-election. It is submitted that no law prevents a recalled or ex-lawmaker from re-contesting in the bye-election. After all, Mr. Ayo Fayose who was impeached

¹¹ CA/A/299/M/2018 cited in MI Anushiem and VO Chukwumah 'Recall Process under the Constitution of Federal Republic of Nigeria: a Critique', *African Journal of Constitutional and Administrative Law* (2018) Vol. 2, pp. 120 - 132.

¹² S Toromade, *opcit.*

as the Ekiti State Governor was allowed to partake in a subsequent governorship election.¹³ On record, no member of the National Assembly or State House of Assembly has ever been successfully recalled.

3.0 Procedure for the Recall of Area Council/Local Government Councillors

The provisions of the Constitution apply to the Federal Capital Territory, Abuja as if it were one of the states of the Federation.¹⁴ The Federal Capital Territory, Abuja does not have a legislature analogous to a State House of Assembly. The National Assembly a bicameral legislature occupies the place of the House of Assembly in the Federal Capital Territory, Abuja.¹⁵ However, the Federal Capital Territory, Abuja has six Area Councils.¹⁶ The Area Councils are akin to the regular local government areas envisaged in Section 7 of the Constitution. Area Council is the legislative arm of the Area Council. The Area Council is unicameral in structure. It is made up of elected members who are designated as Councillors, and who are elected to represent their respective wards for three-year terms. The Electoral Act, 2022 mandates INEC to divide each Area Council into electoral wards not being less than 10 and not more than 20 as the circumstance of each Area Council may require.¹⁷ The boundaries of each ward must be such that the number of inhabitants of the electoral ward is as nearly equal to the population quota of the electoral ward as is reasonably practicable. There is a Councillor for each electoral ward in an Area Council of the Federal Capital Territory.¹⁸ A Councillor elected into the Area Council can be recalled by registered voters in his ward. Section 113 of the Electoral Act, 2022 provides that:

A member of an Area Council may be recalled as a member if-(a) there is presented to the Chairman of the Commission a petition on that behalf signed by not less than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member and which signatures are duly verified by the National Electoral Commission, and (b) the petition is thereafter approved in a referendum conducted by the Commission within 90 days of the date of the receipt of the petition by a simple majority of the votes of the persons registered to vote in that member's constituency.

The above provisions of Section 113 of the Electoral Act, 2022 are similar to Sections 69 and 110 of the Constitution. Thus, the procedures for the recall of a member of the National Assembly already discussed in the preceding segment of this chapter must be complied with before a Councillor in the Area Council can be recalled. The only peculiarity is that Section 68(2) of the Constitution does not apply when a Councillor in the Area Council is recalled. No legislation gives the Area Council power to approve or veto a recall exercise.

The Anambra State Local Government Law 1999 established the legislative arm of all the local government in Anambra State. In Section 51 it provides as follows: i. There is established for each

¹³ C Gabriel, 'Questions on indictment, impeachment and eligibility', The Vanguard (20 October 2014) <<https://www.vanguardngr.com/2014/10/questions-indictment-impeachment-eligibility/>> accessed on 24 March 2024.

¹⁴ See Section 299 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹⁵ See Section 299(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹⁶ See Part II of First Schedule to the Constitution of Federal Republic of Nigeria 1999 (as amended).

¹⁷ See Section 100 of the Electoral Act, 2022

¹⁸ *Ibid.* Section 99(2).

local government in the State, a local government council; ii. The council shall be comprised of all the democratically elected Councillors from the wards in the local government area; iii. A local government council shall stand dissolved at the expiration of a period of three years commencing from the date of inauguration of the council. The local government council is unicameral. It comprises elected members who are designated as councillors, and who are elected to represent their respective wards for three-year terms.¹⁹ The local government area is divided by the State Electoral Commission into such number of wards not more than twenty in such a way as to reflect as far as possible, a nearly equal population.²⁰ Every ward in the local government area must have a democratically elected councillor representing it in the council.²¹ The local government council is the legislature of the local government area.²² A Councillor elected into the local government Council in Anambra State can be recalled according to Section 47 of the Anambra State Local Government Law, 1999. Section 47 of the Anambra State Local Government Law, 1999 provides as follows:

A member of a council may be recalled as such a member if—(a) there is presented to the Chairman of the Independent National Electoral Commission a petition on that behalf signed by more than one-half of the persons registered to vote in that member’s constituency alleging their loss of confidence in that member; and (b) the petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member’s constituency.

The provisions of Section 47 of the Anambra State Local Government Law, 1999 are similar to Section 113 of the Electoral Act, 2022. Thus, the procedures for recall of a Councillor in the Area Council already discussed in the preceding part of this chapter must be complied with before a Councillor in Anambra State can be recalled. The only difference is that in Anambra State once INEC receives the petition it will proceed to conduct a referendum without verifying the signatures in the petition. Simply put, there is no ministerial duty placed on INEC to verify a petition before a referendum.

4.0 Recall Attempts in Nigeria

Recall is viewed as one of the strong political tools in a democratic society. It is one of the insignia that demonstrates that sovereignty belongs to the people through whom the lawmakers derive their political powers. No wonder Section 129 of the Electoral Act, 2022 classified manipulation of recall processes as an electoral offence punishable with imprisonment and fine. On record, no member of the National Assembly or State House of Assembly has ever been successfully recalled in Nigeria. While there have been a few recall attempts and/or efforts in the past, no member of the parliament at the state or federal level has ever been recalled. The challenges witnessed in the application of the power of recall are very upsetting and do not give the electorates hope to embark on future recall. Historically, there were failed attempts to recall Ibrahim Mantu, Jibril Aminu,

¹⁹ Section 55 of Anambra State Local Government Law 1999.

²⁰ *Ibid.* Section 58 (1).

²¹ *Ibid.* Section 54.

²² *Ibid.* Section 37 (1).

Arthur Nzeribe, Solomon Lalong, and recently Dino Melaye. These failed attempts to recall some lawmakers in Nigeria are hereunder briefly discussed.²³

4.1 The Attempt to recall Solomon Lalung

This happened in 2005 when the governor of Plateau State, Joshua Dariye was arrested in London for alleged money laundering but he managed to escape to Nigeria where he has immunity against prosecution. To get rid of this immunity, agitations were made for him to be impeached, a process which is the responsibility of the Plateau State legislature, chaired by Solomon Lalung (the then speaker of the House). The latter, however, refused to impeach the governor. For this, the move to recall him kicked off with a petition in that regard to INEC. No sooner had he received the petition than he ran to court and successfully obtained an order restraining INEC from continuing with the recall exercise. Ignoring the decision of the court, INEC went ahead to conduct the referendum which however ended in favour of the embattled speaker as only 27% of the total votes were recorded against him.²⁴

4.2 The Attempt to recall Ibrahim Mantu

In the same 2005, a petition was received by INEC to recall the then Deputy Senate President of Nigeria Ibrahim Mantu. This was in reaction to his questionable role in the futile effort to amend the 1999 constitution to enable the then President, Olusegun Obasanjo, to prolong his tenure by another four years. After much prevarication, however, INEC was heard in April 2006, announcing its discontinuation of the exercise because the 90-day period prescribed for the exercise by the constitution had expired. Note that the expiration of the time had occurred while Senator Mantu went to court to seek an injunction to restrain INEC from commencing the verification of signatures as a necessary step toward a referendum. One of the vexatious issues that bogged the minds of educated people in Nigeria then was why INEC decided to obey the decision of the court and not continue with the recall exercise pending the determination of the suit unlike its reaction in a similar recall experience with Solomon Lalung earlier the same year.²⁵

4.3 The Attempt to recall Senator Dino Melaye

Dino Melaye was a senator representing Kogi West Senatorial District. The petition to recall him was received by INEC on 21st June 2017. Some of the reasons that informed the recall petition include his alleged insults to leaders, elders and personalities. Without much ado, just like other attempts to recall some legislators in the past, this attempt failed. This time around the reason for the failure was that the total number of signatures verified fell below the constitutional requirement. One notable feature of Dino's recall was the response of the court to the delay tactics employed by the senator to frustrate the recall exercise. His efforts to prevent the recall exercise proved abortive as the court held that the 90 days provided in the constitution do not include the time spent in litigation.

5.0 The Shortcomings of the Legal Framework for Recall of Legislators in Nigeria

One of the key drawbacks of the current legal framework for the recall of legislators in Nigeria is that the recall procedures are cumbersome, complicated, and generally unachievable.

²³ This study wholly adopts and relies on MI Anushiem and VO Chukwumah 'Recall Process under the Constitution of Federal Republic of Nigeria: a Critique', *African Journal of Constitutional and Administrative Law* (2018) Vol. 2, pp. 120 -132 in discussing failed attempts to recall some law makers in Nigeria.

²⁴ *Ibid.*

²⁵ *Ibid.*

Unfortunately, these stringent and near-impossible constitutional requirements have made it impossible for the electorates to hold their legislators accountable through the instrument of recall in Nigeria.²⁶ For instance, Section 69(a) of the Constitution provides that more than half of the registered voters in a legislator's constituency must sign the petition for his or her recall and that such signatures must be verified by INEC before a referendum can be held. The signature threshold is too high and likely unachievable. No Nigerian is oblivious to the high level of voter apathy, ethnic bigotry, and religious chauvinism in Nigerian politics. The Nigerian legislators deliberately entrenched this requirement in the Constitution to render the right to recall impracticable.²⁷ An attempt to recall a legislator under the current legal regime is an exercise in futility or akin to shooting the moon or boxing the wind. The reality is that legislators in Nigeria are virtually unanswerable presently. This state of affairs is not unconnected to the fact that the recall process going by the constitutional requirement is usually dead upon arrival.

Another shortcoming inherent in the laws that regulate recall in Nigeria is the lack of specification of grounds that could trigger and sustain recall. The Constitution did not clearly state the grounds upon which the electorates can commence recalling their representative from the legislative house. Going by the provisions of the Constitution, it is sufficient to instigate a recall process once there is an allegation of "Loss of Confidence" in the legislator irrespective of the motive. The phrase loss of confidence is not only large; it is generic, vague, and nebulous. This particular loophole makes the legislators vulnerable to unnecessary harassment by unscrupulous constituencies or political enemies.²⁸ This happened in *Dino Melaye's* recall saga which was a purely political witch hunt.

Admirably, Section 129 of the Electoral Act, 2022 classified manipulation of recall processes as an electoral offence punishable with imprisonment and a fine. However, there is no specific penal legislation designed to deter people from lodging malicious or frivolous petitions against a lawmaker. In *Dino Melaye's case*, the petition to INEC was fiendish, vindictive, hollow, empty, baseless, unsubstantiated, frivolous, and bereft of any substance and was hatched to compel Dino to submit himself to the political dominance of some political gladiators in Kogi State. The petitioners and their sponsors were not held accountable for lodging frivolous petitions and forgery. This is more so, as the Constitution is silent because may inform a recall petition neither does it provide a punishment for any petitioner who knowingly rests a recall campaign on false allegations.²⁹

When a lawmaker is successfully recalled, INEC will conduct a bye-election to fill the vacant seat. The Constitution is silent on whether or not a recalled lawmaker can participate in the bye-election. It has been submitted that no law prevents a recalled member from re-contesting in the bye-election. Put differently, on the strength of the current state of law, a recalled lawmaker can take part in the bye-election. This gap is an affront to the intended purpose of recalling the lawmaker.

²⁶Note the practical difficulty of achieving recall of legislators—notably Ibrahim Mantu, Jibril Aminu, Arthur Nzeribe, Dino Melaye and Solomon Lalong.

²⁷ MI Anushiem and VO Chukwumah 'Recall Process under the Constitution of Federal Republic of Nigeria: a Critique', *African Journal of Constitutional and Administrative Law* (2018) Vol. 2, pp. 120 -132.

²⁸ *Ibid.*

²⁹ *Ibid.*

It is supported by evidential facts that the power of the electorates to recall their representative under the current legal regime is nothing but an illustration of giving someone something with one hand and taking it back with another hand. The researchers consider Section 68(2) of the Constitution an assault on sovereignty vested in the people (voters) in the individual districts or constituencies. First, Section 68 (2) of the Constitution violates the powers vested in the courts of law under Section 6 of the Constitution. Secondly, inviting members of a legislative house who are not members of the constituency of the lawmaker sought to be recalled to partake or vote in the recall process under any guise is prejudicial and undemocratic practice. Sovereignty belongs to the people and the people alone. The concerned legislative house has no business in recalling a lawmaker as you cannot invite outsiders to meddle in a constituency affair. The power to recall a lawmaker purportedly vested in the electorate seems to be an empty shell and unachievable.

6.0 The Impact of the Shortcomings of the Legal Framework for Recall of Legislators on the Quest for Sustainable Democracy in Nigeria

Since the attainment of political sovereignty, Nigeria has practised representative democracy save for periods of military incursion. Nevertheless, Nigeria and its democracy are today still faced with existential threats due lack of functional democratic institutions and instruments. Truly, as demonstrated in the famous case of *Macfoy v. UAC*,³⁰ you cannot put something on nothing and expect it to stand. Unarguably, the legislature is the representative of the people and democracy cannot exist without an effective parliament. Proficient legislature is the oxygen and blood that give life to democracy. A strong and resourceful parliament is a priceless asset in a democracy. By the members of parliament representing people of different constituencies and interests, the parliament constitutes or is expected to constitute, on one hand, an arena for reconciling differences of interest and on the other hand, the main pillar for the attainment and nourishment of democratic ideals. Thus, the legislature is expected to act as the ears and voice of the people as it listens to them and articulates their views, yearnings, and aspirations into good laws and/or government policies. It is in the eyes of the people as it oversees the execution of projects by the executive arm and reviews the utilization of public funds by government agencies and departments.³¹

The Nigeria Constitution recognized the legislature as the most important democratic institution and clothed it with enormous powers.³² True enough, arbitrariness, tyranny, and abuse of power are not restricted to the executive; they extend to the legislature as well. A danger always exists that the moment an elected legislator is sworn in he promptly ignores the manifesto under which he is elected and pursues interests that are at variance with the public expectation.³³ Therefore, the enormous powers assigned to the legislature under the Constitution are susceptible to serious abuse. To keep the legislature faithful to the goals of democracy and shield the public from the peril of legislative tyranny and misdeeds, the extant Nigerian Constitution imbued the electorates with the power to recall a legislator for loss of confidence, corruption, and or unproductiveness. In other words, to check legislative tyranny, and self-interest and ensure accountability to the electorates, the Constitution of the Federal Republic of Nigeria made provision for recall of legislators.³⁴

³⁰ (1962) A.C. 150 at 160.

³¹ Policy and Legal Advocacy Center, Abuja, 'Guide to Effective Representation in National Assembly' <<https://placng.org/i/wp-content/uploads/2019/12/Guide-to-Effective-Representatio-for-Lawmakers.pdf>> accessed on 29 January 2024.

³² KN Nwogu and MO Nwogu, 'The Legislature as the Bastion of the Nigerian Presidential Democracy and Nation Building' (2011) Vol. 4, *Unizik Journal of Public and Private Law* pp.1-162.

³³ O Amucheazu and C Onwuasoanya *op cit* p.187.

³⁴ See Sections 69 and 110 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Under the doctrine of separation of powers presently practised in Nigeria, the three organs or arms of government stand shoulder to shoulder.³⁵ Regrettably, there are frantic and undemocratic efforts by the executive branch of government in Nigeria to subdue, dominate, and hijack the apparatus of the legislature. Influenced by the belief that there is a need to guard and protect the legislators from unnecessary political bullying, pointless recall threats, and most importantly executive infiltration, the provision on recall under the Constitution of the Federal Republic of Nigeria 1999 was hurriedly amended by the legislature in 2010 to toughen the procedures for recall. Verification of the signatures of the voters who signed a recall petition by INEC was introduced. For emphasis, this radical innovation was introduced or midwived by the Nigerian lawmakers who mischievously asserted that the recall provision like the impeachment clause is susceptible to abuse if it is not rigid. The truth is that the erosion or stifling of the power to recall an unproductive lawmaker granted to the electorates by the Constitution is one of the causalities of the supremacy battle and power play between the executive and legislative arms of the government.

One of the major effects of the introduction of verification of signatures in the Nigerian recall procedure in 2010 is the abysmal integrity deficit in the Nigerian legislature. The Nigerian lawmakers are now practically untouchable and unanswerable. The amendment marked the final dismantling or dislodgement of the electorates from holding their lawmakers accountable in Nigeria. These days, it is saddening to state that abuse of legislative power for private gain and plundering of national resources are regrettably no longer an aberration or isolated conduct in Nigeria. Incurably, it is disturbingly a dominant and recurrent feature of the Nigerian parliament despite the provisions of various criminal laws that demand that lawmakers refrain from engaging in unethical and corrupt behaviour.

Tom and Attai³⁶ observed that it is common knowledge that a good number of members of the legislative houses at both federal and state levels pursue pure selfish interests that often inhibit them from combating the challenges of law-making. Members pursue contracts from the leadership of the houses and even from the executive such that they easily compromise when it comes to contributing meaningfully to debates on the floor of the house. At times, some members resort to absenteeism from the floor of the house and do not participate at all in the proceedings. Again, many of the legislators have ambitions to contest for leadership positions in the house, membership and chairman of juicy committees as well as retain seats in the next election. Apart from wasting a lot of valuable legislative time, such ambitions make the legislators stooges in the hands of the executive.

A well-implemented sound and practical recall legal framework will certainly reduce political bullying, undemocratic culture, and abuse of power, engender good governance, efficiency, transparency, and legislative accountability, and generally promote sustainable democracy in Nigeria. There is an urgent need to amend the Constitution to grant the electorate a practical and achievable method of recalling their lawmakers if Nigeria's nascent democracy must be sustained. This is one of the important ways through which democracy can be sustained and strengthened in Nigeria.

³⁵ Ogunleye v. Aina (2011) 3 NWRL (pt. 1235) 479 at 580 – 581, paras. F-A.

³⁶ EJ Tom and AJ Attai, 'The Legislature and National Development: The Nigerian Experience' (2014) Vol.2, No.9, *Global Journal of Arts Humanities and Social Sciences* pp. 63-78 <<https://www.eajournals.org/wp-content/uploads/The-Legislature-and-National-Development-The-Nigerian-Experience.pdf>> accessed on 19 February, 2024.

7.0 Conclusion

The inability of the electorates to successfully recall a legislator in Nigeria speaks volumes of the shortcomings of the legal framework for the recall of legislators in Nigeria. The legal framework for recalling legislators in Nigeria is fraught with needless requirements and obvious shortcomings some of which have been noted in this Paper; we noted the several weaknesses that leave the system of recall of legislators to abuse and manipulation in Nigeria to help us discern how to rework and strengthen the legal framework for recall of legislators to enthrone sustainable and true democracy in Nigeria.

8.0 Recommendations

It is therefore recommended that there is a need to urgently amend the Constitution to provide a practical, democratic, and achievable mode of recalling a lawmaker in Nigeria. The Constitution of Nigeria should be amended to clearly state what constitutes “Loss of Confidence” as the ground for the recall of a legislator in Nigeria. The power to remove a lawmaker by way of recall should be completely insulated from politicians and vested in the electorates in the constituency involved for the survival of our emerging democracy.

The Court of Law being one of the strong pillars of democracy should be the appropriate avenue/venue for recall exercises to be challenged/questioned through the principle of judicial review. Also, it is recommended that the law should be amended to prohibit the recalled lawmaker from participating in the bye-election so that the essence of the recall will not be defeated.