

THE DOCTRINE OF POLITICAL QUESTION IN HISTORICAL PERSPECTIVES IN NIGERIA

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Abstract

The principle that certain issues are more appropriately addressed by the executive or legislative branches of government, rather than by the judiciary has come to stay in the Nigerian electoral process. This doctrine emphasizes the boundaries of judicial intervention in politically sensitive matters, particularly regarding elections and related controversies. Nigeria gained her independence in 1960 and this doctrine has resurfaced in Nigeria's political landscape. This doctrine has a lot to do in the survival of our democratic journey. This paper examines the doctrine of political question in historical perspectives to wit: colonial period and early post-independence era (1960s), military era (1966–1999), post-military era and democratic transition era (1999–2000s), electoral disputes period (2000s–2010s), judicial activism and political question in election cases era (2010s–present). We shall equally look at political question and legislative oversight. This study will help us to know the past as well as the present. It will help us to position our democratic institutions for the future. The study will equally provoke further discussions on the subject matter. This study will go a long way in strengthening Nigeria's democracy most especially the doctrine of separation of powers.

Key words: *Doctrine, political question, historical perspectives, Nigeria.*

Introduction

The political question doctrine is an important ingredient of our democratic process. It ensures that the judiciary does not encroach on the functions of political bodies and electoral institutions. Section 6(6)(b) of the Constitution¹ provides that judicial powers shall extend to all matters between persons, or between government or authority and any person in Nigeria, including any question of whether any law or executive action conforms with the Constitutional provisions. Also, section 134(1) of the Electoral Act² stipulates that an election may be questioned on various grounds, such as non-compliance with the provisions of the Act, which implies that electoral matters are not purely political questions when violations of laws are involved. The political question doctrine in Nigeria's electoral process is circumscribed by the principle that the judiciary must uphold constitutional and legal standards, even in matters involving political actions. While some issues, such as the internal affairs of political parties, may be considered non-justiciable, courts will intervene when there are clear violations of electoral laws or the Constitution. This approach reinforces the principle of separation of powers and the principle of checks and balances and ensures institutional competence, and protects the integrity of Nigeria's democratic processes.

Political parties are made up of individuals with divergent opinions, value and interests. As platforms for recruiting personnel to occupy public offices, political parties cannot but be an arena of conflict arising from mutually exclusive views, thoughts and interests. Conflict, in

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

² Electoral Act 2022.

different shapes and dimensions, is part and parcel of the operational architectures of political parties in a liberal democracy. The most debilitating aspects of intra-party dispute are those arising over the selection of party leadership and candidates. Under normal circumstances, political parties are expected to put in place adequate institutional frameworks for mediating conflicts that may occasionally arise among their members. By institutionalizing such frameworks that do not only engender consensus building within their parties, it also contributes overtly to the stability of the entire system.

The significance of this research work is therefore predicated on deepening the discourse in this area. This paper examines the doctrine of political question in historical perspectives as well as the theories behind the doctrine of political question in Nigeria. Since the country re-democratized itself in 1999,³ it may not be out of place to assert that political parties' records in the area of internal conflict management have not been disappointing, but in the last few years, the lack of conflict management has resulted in unending intra-party wrangling, ceaseless litigations, wanton party defections, among other acrimonies that are rare in liberal climes. Intra-party disputes are not new, but have been manifested during the country's previous republics; the dimensions of the problem in the Fourth Republic are indeed alarming. This is evident from the acrimonies and crises that trailed primaries of major political parties across the country.

Meaning and Concept of Political Question in Nigeria's Electoral Process

The political question doctrine is a legal principle that establishes that certain disputes are unsuitable for judicial review because they inherently belong to the political domain. In the context of Nigeria's electoral process, the political question doctrine surfaces in matters such as the internal workings of political parties, decisions by the Independent National Electoral Commission (INEC) on candidate qualifications, and other discretionary functions of political bodies that do not involve clear constitutional or statutory breaches. In *Buhari v Obasanjo*,⁴ Muhammadu Buhari challenged the election of Olusegun Obasanjo as president, alleging widespread electoral malpractice. The respondent argued that the issues raised involved political questions that the courts should not entertain. The Supreme Court held that the issues were not purely political, as the courts had a duty to ensure compliance with the Electoral Act and constitutional provisions on fair elections. The court clarified that where electoral irregularities are alleged; the judiciary must intervene to uphold the law, rejecting the argument that all election matters are non-justiciable political questions. In *Ojukwu v Obasanjo*,⁵ Odumegwu Ojukwu challenged the validity of Olusegun Obasanjo's election. Obasanjo contended that the issues raised were political questions unsuitable for judicial resolution. The court held that while certain political issues are non-justiciable, allegations of violations of the law, such as electoral fraud, fall within the courts' jurisdiction. This case reinforced the judiciary's role in intervening when constitutional provisions, particularly those ensuring electoral integrity, are violated. Similarly, in *Ugwu v Ararume*,⁶ Ifeanyi Ararume was substituted by his political party as its gubernatorial candidate after winning the primaries. He challenged his substitution in court, and the defendants argued that it was a political decision and not justiciable. The Supreme Court ruled that the substitution of a candidate, if done contrary to the Electoral Act and party rules, is justiciable. The court emphasized that political questions are not immuned from judicial review when legal or constitutional rights are violated.

³ When the Nigerian's 4th Republic started.

⁴ (2005) 13 NWLR (Pt 941) 1.

⁵ (2004) 12 NWLR (Pt 886) 169.

⁶ (2007) 12 NWLR (Pt 1048) 367.

Theories of Political Question in Nigeria

Below are the theories behind the political question doctrine in Nigeria's electoral process:

1. Separation of Powers Theory

This theory is grounded in the constitutional separation of powers between the judiciary, executive, and legislature. The judiciary may refuse to intervene in matters it considers to be within the purview of the executive or legislative branches, particularly where political discretion is exercised. In Nigeria, electoral matters often involve decisions made by political institutions that courts may deem unsuitable for judicial review due to the discretionary nature of political decision-making. See *A.G. Federation v Abubakar*⁷ where the Supreme Court held that certain issues relating to political actions of the executive branch are non-justiciable as they involve political discretion. In *Okafor v Governor of Lagos State*,⁸ the court recognized that certain electoral matters, particularly disputes within political parties, are primarily political in nature and should be handled within the party, not the courts.

2. Justiciability and Non-Justiciability Doctrine

The political question doctrine distinguishes between "justiciable" and "non-justiciable" issues. Justiciable issues are those that are appropriate for court review, while non-justiciable ones, often involving political considerations, fall outside judicial review. In the electoral process, courts may declare certain electoral matters non-justiciable based on their inherently political nature. See *Bakare v L.S.C.S.C.*,⁹ where the court emphasized that questions about whether a particular election process complies with the constitution are justiciable, but broader political decisions, such as electoral policy, are non-justiciable. Section 6(6)(b) of the Constitution¹⁰ emphasizes that judicial powers extend to all justiciable matters, leaving room for political questions to be classified as non-justiciable issues under the doctrine of separation of powers.

3. Political Question as a Defence against Judicial Overreach

Courts are cautious of overstepping their boundaries and interfering with political matters, which could lead to judicial overreach. In electoral disputes, the courts may invoke the political question doctrine to avoid encroaching upon the functions of election bodies such as the Independent National Electoral Commission (INEC), which is vested with the authority to manage elections. In *Ladoja v INEC*,¹¹ the Supreme Court declined to intervene in matters regarding INEC's discretion to regulate elections, recognizing the political nature of certain electoral decisions. Also in *Yusuf v Obasanjo*¹² that involved an election petition where the court refused to delve into matters relating to the executive's political decisions, treating them as political questions outside the purview of judicial review.

4. Institutional Competence Theory

This theory posits that certain institutions are better equipped to handle specific matters due to their expertise and specialized functions. In the electoral context, courts may defer to institutions like INEC on questions relating to election management, procedures, and disputes, considering them to possess the requisite competence to handle these politically

⁷ (2007) 10 NWLR (Pt 1041) 1.

⁸ (1991) 6 NWLR (Pt 200) 659.

⁹ (1992) 8 NWLR (Pt 262) 641.

¹⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹¹ (2007) 12 NWLR (Pt 1047) 119.

¹² (2005) 18 NWLR (Pt 956) 96.

sensitive issues. In *PDP v Okorocho*,¹³ the court refused to invalidate INEC's decisions regarding election schedules and administration, recognizing that such matters involve political questions better handled by the electoral body. Section 153 of the 1999 Constitution establishes INEC as an independent body responsible for managing elections, reinforcing the doctrine that election management is a political question that the courts should not interfere with unless clear legal violations occur.

5. Political Questions and the Integrity of Democratic Institutions

Another theory suggests that judicial intervention in political questions could undermine the legitimacy and integrity of democratic institutions, such as political parties and electoral bodies. Courts, therefore, avoid ruling on issues that could destabilize the political system or infringe on the sovereignty of the people as expressed through elections. In *Dangana v Usman*,¹⁴ the court emphasized the importance of upholding the integrity of INEC and political processes; refusing to entertain a matter it considered a political question that could compromise INEC's role.

6. Judicial Restraint and Deference to the Political Process

This theory advocates for judicial restraint in matters where political solutions are preferable to judicial ones. Courts may defer to the political process, particularly where there are constitutional mechanisms for resolving disputes within the electoral framework, such as through electoral tribunals or political party processes. In *Nwankwo v Yar'Adua*,¹⁵ the court exercised restraint, recognizing that the resolution of certain electoral disputes is best handled through political processes, such as legislative oversight.

The Doctrine of Political Question in Historical Perspective in Nigeria

The doctrine of "political question" in Nigeria has evolved as part of the judicial response to constitutional and political developments over time. Historically, the judiciary has grappled with the delicate balance between respecting the autonomy of political institutions and fulfilling its constitutional duty to protect the rule of law. Below is a historical analysis of the political question doctrine in Nigeria.

1. Colonial Period and Early Post-Independence (1960s)

In Nigeria's colonial and early post-independence era, the political question doctrine was largely undeveloped. During this period, the judiciary maintained limited engagement with political matters due to the colonial legacy of judicial restraint. Courts focused on upholding colonial laws rather than addressing broader political issues, which were seen as the domain of the colonial administration. The Nigerian Independence Act of 1960 set the foundation for the 1960 Constitution, which was largely modeled after the British system, emphasizing parliamentary sovereignty over judicial activism in political matters.

2. Military Era and the Judicial Approach to Political Questions (1966–1999)

During Nigeria's multiple military regimes, the political question doctrine became more pronounced. The judiciary was often reluctant to intervene in political matters, especially during military rule, where political power was concentrated in the executive. The courts recognized the military's constitutional authority to govern, which often left political decisions unchallenged. We shall examine some cases to throw more light on the position of

¹³ (2012) 15 NWLR (Pt 1323) 205.

¹⁴ (2012) 7 NWLR (Pt 1300) 134.

¹⁵ (2010) 12 NWLR (Pt 1209) 518.

the doctrine during this period. The case of *Lakanmi v A.G. Western Nigeria*¹⁶ readily comes to mind. It is a landmark case that arose from the political events that followed the Nigerian military coup of 1966. After the military seized power, the Federal Military Government passed various Decrees that led to the confiscation of properties from civilians, particularly those accused of corrupt practices during the First Republic. Chief F.R.A. Lakanmi, a former high-ranking official in Western Nigeria, was one of the individuals whose property was seized under these military Decrees.¹⁷ The key issue in the case was the legality of the actions of the military government in confiscating Lakanmi's property without due process under the Constitution. Lakanmi challenged the legality of *Decree* No. 45 of 1968, which established the Forfeiture of Assets Tribunal and empowered it to seize property. He argued that the Decree violated his constitutional right to property as guaranteed under the 1963 Constitution of the Federal Republic of Nigeria. The Supreme Court led by Chief Justice Adetokunbo Ademola, held in favor of Lakanmi. The Court held that the seizure of Lakanmi's property by the military government was unconstitutional, as it bypassed the judicial process, thus violating his constitutional right to property under *Section* 31 of the 1963 Constitution. The court emphasized that the military, despite suspending parts of the Constitution, could not override fundamental rights without due process. This case is significant because it marked the judiciary's assertion of authority in reviewing actions of the military government, thus contributing to the doctrine of judicial review in Nigeria.¹⁸

The *Lakanmi's* case indirectly touched on the political question doctrine, as the military government's actions in seizing property were deeply rooted in political decisions following the coup. However, the Supreme Court rejected the argument that such decisions were beyond judicial review because they involved political matters. This rejection was a significant stance in affirming that no government action, even by a military regime, is entirely immune from constitutional scrutiny. The case illustrates that the political question doctrine does not shield government actions from judicial review, especially when fundamental human rights are at stake.

Also in *Adegbenro v. Akintola*,¹⁹ the Supreme Court was called upon to decide whether the Governor of Western Nigeria acted constitutionally in removing Premier Akintola from office without a vote of no confidence. Although the case revolved around political decisions, the Court ruled that the governor's actions were justiciable, rejecting the notion that they were beyond judicial review. The Court emphasized that even political acts must be performed according to the law. This case underscores the principle that courts can review political decisions where there is a constitutional question.

In the United States of America, the case of *Baker v Carr*²⁰ is relevant for its handling of the political question doctrine. The U.S. Supreme Court ruled that courts have the authority to decide cases involving electoral districting, which had been previously considered a political question. The case established that the judiciary could intervene in matters traditionally

¹⁶ (1970) 6 NSCC 143.

¹⁷ By Decree No. 45 of 1968 the Military government established the Forfeiture of Assets Tribunal and was used to seize properties.

¹⁸ Even though the military regime subsequently enacted the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970, which nullified the court's decision, demonstrating how military authorities treated judicial decisions on political matters as non-justiciable.

¹⁹ (1963) 3 WLR 63.

²⁰ (1962) 369 U.S. 186 (U.S. Supreme Court).

viewed as political when there are significant constitutional implications, such as the right to equal protection under the law.

In the Nigerian case of *Attorney-General of the Federation v Attorney-General of Abia State & 35 others*,²¹ which involved the allocation of federal revenue among States, a matter with political implications; the Supreme Court held that the issue was justiciable because it concerned the interpretation of the Constitution. This case reinforced the principle that not all issues with political undertones are immune from judicial scrutiny if constitutional rights are involved. Also, in the celebrated case of *Olaniyan v University of Lagos*,²² Dr. S.O. Olaniyan and several other Lecturers were senior academic staff members at the University of Lagos. They were appointed under the University of Lagos Act of 1967, which outlined the terms and conditions of their employment, including procedures for discipline and dismissal. In 1978, due to a directive from the Federal Military Government aimed at reducing the workforce in federal institutions, the University Council terminated the appointments of the plaintiffs without following the due process prescribed by the Act and the University's Statutes. The plaintiffs challenged their termination in court, arguing that their employment had statutory flavor and that the university was required to adhere strictly to the statutory provisions governing their employment. They contended that the summary dismissal violated their rights to fair hearing and due process as provided under the relevant statutes. The Supreme Court ruled in favor of Olaniyan and his colleagues. The Court held that the employment of the plaintiffs was indeed governed by Statute, specifically the University of Lagos Act and the University's Statutes made under it. Therefore, any termination of their appointments must comply with the procedures laid down in these Statutes. The failure of the University Council to follow due process rendered the termination *null* and *void*. The Court emphasized that statutory bodies must act within the confines of the law and respect the rights conferred upon individuals by Statutes. The decision underscored the principle that when an employment is regulated by Statute, any disciplinary action must strictly adhere to the statutory provisions. During the hearing of the case, the University argued that the termination was as a result of a directive from the Federal Military Government, implying that it was a matter of governmental policy and thus a political question beyond judicial scrutiny. However, the Supreme Court rejected this argument. The Court asserted that even actions taken under governmental directives must conform to the law, especially when they affect individual rights protected by Statute.

This case illustrates that the political question doctrine does not preclude judicial review of actions by governmental or public authorities that infringe upon statutory rights. The judiciary has the constitutional mandate to interpret the law and ensure that all branches of government act within legal boundaries. The Court's decision affirmed that administrative or executive actions, even if politically motivated, are justiciable when they contravene statutory provisions or constitutional rights.

In *Shitta-Bey v Federal Public Service Commission*,²³ Mr. Shitta-Bey, a civil servant, was compulsorily retired by the Federal Public Service Commission without being given an opportunity to be heard, contrary to the civil service regulations. The Supreme Court held that his retirement was *null* and *void* because it violated the statutory procedures governing his employment. The Court reinforced the principle that employments with statutory flavor

²¹ (2001) 11 NWLR (Pt 725) 689.

²² (1985) 2 NWLR (Pt 9) 599.

²³ (1981) 1 SC 40.

require strict adherence to the governing Statutes, and failure to do so renders any punitive action invalid. Also in *Eperokun v University of Lagos*,²⁴ which is similar to *Olaniyan's case*, academic staff members were dismissed by the University of Lagos without following due process as prescribed by the University Act and Statutes. The Supreme Court declared the dismissals *null* and *void*, reiterating that statutory bodies must comply with statutory provisions in disciplinary matters. The case further established that directives from higher authorities do not excuse statutory bodies from adhering to the law. Similarly, in *Garba v University of Maiduguri*,²⁵ students were expelled from the University of Maiduguri following allegations of misconduct during a protest. The university acted summarily without giving the students a fair hearing. The Supreme Court held that the expulsions were invalid as they violated the principles of natural justice and the statutory procedures outlined in the University Act. The Court emphasized that even in situations involving internal disciplinary measures; statutory bodies must follow due process. **Section 33**²⁶ guarantees the right to fair hearing. It mandates that in the determination of civil rights and obligations, every person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law.

1. Post-Military Era and Democratic Transition (1999–2000s)

With the return to democratic governance in 1999, the political question doctrine was revisited by the courts, which became more assertive in checking political powers. However, the courts still demonstrated reluctance to intervene in matters considered inherently political, such as decisions involving political party affairs and the discretion of electoral bodies. The case of *A.G. Federation v. Abubakar*,²⁷ readily comes to mind. This case arose from the political rivalry between then-President Olusegun Obasanjo and his Vice President, Atiku Abubakar, during the lead-up to the 2007 general elections. Atiku Abubakar defected from the ruling People's Democratic Party (PDP) to join the Action Congress (AC) to contest for the presidency. Following this defection, the President declared Abubakar's office vacant, contending that by defecting to another political party, Abubakar had automatically forfeited his position as Vice President under the Nigerian Constitution. Abubakar challenged the President's decision, arguing that the Constitution did not empower the President to unilaterally remove the Vice President. He contended that the office of the Vice President could only be vacated through specific procedures laid down by the Constitution, such as impeachment by the National Assembly or voluntary resignation. The Attorney General of the Federation, representing the President, argued that the matter was a political issue not subject to judicial intervention, invoking the political question doctrine. The Attorney General maintained that the President, being the appointing authority, had the discretion to declare the office of the Vice President vacant, particularly when the Vice President had switched political allegiance. The Supreme Court ruled in favor of Atiku Abubakar, holding that the President lacked the constitutional power to remove the Vice President from office. The Court emphasized that the Nigerian Constitution expressly outlines the circumstances under which the office of the Vice President can become vacant, and defection from one political party to another was not one of those circumstances. The Court further ruled that the political question doctrine did not apply in this case because the dispute centered on the interpretation of constitutional provisions, which is within the judiciary's domain. The judiciary, the Court held, has a responsibility to interpret the Constitution and ensure that all public officers, including the President, act within the confines of the law. This case

²⁴ (1986) 4 NWLR (Pt 34) 162.

²⁵ (1986) 1 NWLR (Pt 18) 550.

²⁶ Now *Section 36* of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

²⁷ (2007) 10 NWLR (Pt 1041) 1.

reaffirmed the supremacy of the Nigerian Constitution and the principle of separation of powers, stating that no branch of government can act outside its constitutional mandate. It also affirmed that the removal of elected officials, such as the Vice President, must strictly follow the procedures outlined in the Constitution.

In this case, the Supreme Court rejected the argument that the matter was a political question. The Court held that the political question doctrine does not prevent judicial review of cases involving constitutional interpretation, especially when the rights and duties of public officers are in question. The judiciary has the power to interpret the law and resolve disputes arising from constitutional provisions, even if such disputes involve political decisions. The case illustrated that the political question doctrine in Nigeria does not provide blanket immunity for political actors when constitutional violations are alleged. The judiciary remains the ultimate arbiter of disputes involving the interpretation of constitutional provisions, even in politically sensitive matters.

Similarly, in *Inakoju v. Adeleke*,²⁸ the then Governor of Oyo State, Rasheed Ladoja, was removed from office by the Oyo State House of Assembly, allegedly without following the proper constitutional process for impeachment. Ladoja challenged his removal in court, and the Supreme Court ruled that his impeachment was unconstitutional because the House of Assembly failed to adhere to the impeachment process outlined in the Constitution. The Court held that the removal of an elected official must strictly comply with the Constitution, and any deviation renders the action null and void. Also in *Balonwu v. Governor of Anambra State*,²⁹ this case has to do with the removal of the Speaker of the Anambra State House of Assembly, Mrs. Balonwu, by a faction of the House. She challenged the legality of her removal, arguing that it was not done in accordance with the rules of the House or the Constitution. The Court held that her removal was unconstitutional; emphasizing that political decision affecting public officials must follow the rule of law and constitutional provisions.

2. Electoral Disputes and Political Question (2000s–2010s)

In the early 2000s, Nigeria witnessed an increase in electoral disputes, leading to more frequent invocations of the political question doctrine in electoral matters. Courts were often called upon to review the actions of electoral bodies and political parties, but they maintained a cautious approach to avoid overstepping their boundaries in matters deemed political. In *Yusuf v Obasanjo*,³⁰ the petitioner/appellant, Alhaji Muhammadu Yusuf and others, contested the validity of the 2003 presidential election, in which Chief Olusegun Obasanjo was declared the winner and subsequently sworn in for a second term as President of Nigeria. Yusuf, along with other opposition candidates, challenged the election results on the grounds of widespread electoral irregularities, voter intimidation, fraud, and non-compliance with the provisions of the Electoral Act 2002. Yusuf argued that the Independent National Electoral Commission (INEC) failed to conduct a free and fair election in accordance with the principles of democracy enshrined in the Nigerian Constitution and the Electoral Act. The alleged irregularities included vote rigging, manipulation of results, and disenfranchisement of voters in various States. The petitioners sought to nullify Obasanjo's election, arguing that the entire election process was marred by illegality and could not be said to represent the will of the people. Obasanjo and INEC, the respondents, contended that the election was

²⁸ (2007) 4 NWLR (Pt 1025) 423.

²⁹ (2009) 18 NWLR (Pt 1172) 13.

³⁰ (2005) 18 NWLR (Pt 956) 96.

conducted in substantial compliance with the law and that any irregularities were minimal and did not affect the overall outcome. They also raised the political question doctrine, arguing that the court had no jurisdiction to interfere in electoral matters that fell within the purview of the political process. The Supreme Court dismissed Yusuf's petition, ruling that although there were irregularities in the conduct of the election, the petitioner had not provided sufficient evidence to prove that these irregularities affected the overall outcome of the election. The Court held that the burden of proof in election petitions rests on the petitioner, who must establish that the irregularities were substantial enough to invalidate the election results. On the issue of the political question doctrine, the Court held that election disputes are justiciable and do not fall under the category of political questions that are beyond judicial scrutiny. The Court reaffirmed its role as the interpreter of the law and the guardian of the Constitution, emphasizing that it has the jurisdiction to hear and determine cases involving the legality of elections and the conduct of public officials in the electoral process. This case underscores that while the political question doctrine limits the judiciary's involvement in purely political matters, election disputes that involve allegations of constitutional and legal violations are justiciable. The Court, in this case, reinforced the principle that electoral matters are not immune from judicial oversight, particularly when fundamental rights and the principles of democracy are at stake.

In *INEC v Musa*,³¹ that arose from a political controversy over the registration of political parties in Nigeria. The Independent National Electoral Commission (INEC), as the electoral body in Nigeria, had placed restrictive conditions on the registration of new political parties ahead of the 2003 general elections. Specifically, INEC imposed rules that required political associations seeking registration to meet certain thresholds, including demonstrating significant support across various States, which many saw as overly stringent. The plaintiff and other political activists (including the National Conscience Party), filed a suit at the Federal High Court challenging the constitutionality of the restrictive provisions under the Electoral Act 2001 that INEC had relied upon to deny registration to their political parties. They argued that these restrictions violated the fundamental rights to freedom of association and political participation enshrined in the 1999 Constitution. INEC, on the other hand, contended that the regulation of political parties fell within its constitutional powers and that the judiciary should refrain from intervening in what it termed a political question. INEC argued that the rules were necessary to avoid an over proliferation of political parties, which could potentially destabilize the political process. The Supreme Court, in a landmark judgment, upheld the right of political associations to be registered as political parties. The Court held that the conditions imposed by INEC were unconstitutional and violated the right to freedom of association as guaranteed under Section 40 of the 1999 Constitution. The Court found that INEC's powers to regulate political parties must be exercised within the confines of the Constitution and should not infringe upon fundamental rights. The Court also rejected INEC's argument that the matter was a political question beyond the jurisdiction of the judiciary. The Court reaffirmed its role in safeguarding constitutional rights, emphasizing that the regulation of political parties involves constitutional issues that the judiciary is competent to adjudicate. The ruling expanded the political space in Nigeria, allowing for the registration of several new political parties ahead of the 2003 general elections. This case is significant in Nigerian constitutional law as it addressed the intersection of political rights and regulatory powers, reinforcing the principle that political rights are justiciable and do not fall under the political question doctrine.

³¹ (2003) 3 NWLR (Pt 806) 72.

3. Judicial Activism and Political Question in Election Cases (2010s–Present)

In recent years, the Nigerian judiciary has become more assertive in dealing with electoral disputes, but it continues to invoke the political question doctrine in certain cases. While courts now frequently rule on the constitutionality of electoral laws and processes, they remain cautious about intervening in matters involving political party decisions and executive discretion. In *Ladoja v INEC*,³² the appellant, Rashidi Ladoja, was the Governor of Oyo State until he was impeached by a faction of the Oyo State House of Assembly in January, 2006. The impeachment process was marred by irregularities, as some of the members of the House who participated in the impeachment were not part of the constitutional quorum. Ladoja challenged his impeachment, arguing that it was unconstitutional. The Supreme Court ruled that the impeachment violated constitutional provisions and procedures, specifically section 188 of the 1999 Constitution of Nigeria, which prescribes the process for impeachment of a governor. The court held that the impeachment process must strictly follow the constitutional procedure, and because the House did not meet the constitutional quorum, Ladoja's impeachment was invalid and unconstitutional. He was subsequently reinstated as Governor of Oyo State.

This case raised the issue of the political question doctrine, which posits that certain matters, particularly political decisions, are outside the jurisdiction of the courts and should be left to the executive or legislative branches. The respondent argued that Ladoja's impeachment was a political matter, thus outside the purview of the court's jurisdiction. However, the Supreme Court dismissed this argument, holding that while impeachment is a political process, it must comply with the Constitution. Failure to follow the constitutional procedures elevates the issue from a political question to a legal one, thereby warranting judicial intervention. Also, in *PDP v Okorochoa*,³³ the dispute arose from the 2011 gubernatorial elections in Imo State. Rochas Okorochoa, the candidate of the All Progressives Grand Alliance (APGA), emerged victorious against Ikedi Ohakim, the candidate of the People's Democratic Party (PDP), who was the incumbent governor. The PDP challenged the election results at the Imo State Governorship Election Petition Tribunal on several grounds, including allegations of electoral malpractice, non-compliance with the Electoral Act, and irregularities in the conduct of the election. The crux of the case revolved around whether the election was conducted in substantial compliance with the provisions of the Electoral Act. The PDP argued that the alleged irregularities affected the outcome of the election and sought for the election of Rochas Okorochoa to be nullified.

The issue of political question emerged during the proceedings when Okorochoa's defence contended that the conduct of elections and the determination of their outcomes, especially regarding compliance with the Electoral Act, were inherently political and should be left to the Independent National Electoral Commission (INEC) and not the courts. However, the tribunal, and subsequently the Court of Appeal, held that the courts have the jurisdiction to determine whether elections are conducted in compliance with the law, and such issues are not purely political questions. The courts ruled that the election was conducted in substantial compliance with the Electoral Act, and Okorochoa's election was upheld.

4. Political Question and Legislative Oversight

The political question doctrine has also been invoked in cases involving the oversight powers of the National Assembly. While the judiciary has recognized the oversight function of the

³² (2007) 12 NWLR (Pt 1047) 119.

³³ (2012) 15 NWLR (Pt 1323) 205.

legislature, it has also acknowledged that certain political decisions, particularly those involving internal legislative processes, are non-justiciable. In *Dangana v Usman*,³⁴ the appellant, Dangana, challenged the election of the respondent, Usman, who had been declared the winner of the 2011 National Assembly election for the Lavun/Mokwa/Edati Federal Constituency in Niger State. The election petition centered on allegations of non-compliance with the provisions of the Electoral Act 2010 (as amended), particularly concerning the conduct of the primaries within the political party and the substitution of candidates. The appellant argued that the political party did not conduct a valid primary election and that his name was wrongfully substituted by the party in favor of Usman, thereby questioning the legitimacy of the process that led to Usman's nomination and eventual election.

The trial tribunal, and subsequently the Court of Appeal, dismissed the petition, ruling that the issues raised by Dangana pertained to internal party matters, which were non-justiciable. This was based on the political question doctrine, which holds that certain disputes, particularly those regarding the internal affairs of political parties, are not within the purview of the courts. These issues were deemed political questions, suitable for resolution by the party and not by the judiciary. The Supreme Court upheld the decisions of the lower courts, reaffirming that question of party nominations, primaries, and substitutions are political questions that do not invite judicial intervention.

Conclusion

The political question doctrine in Nigeria has evolved through various constitutional and political phases, from the colonial era to the present democratic system. While the judiciary has become more assertive in adjudicating constitutional and electoral matters, it continues to recognize the boundaries between judicial review and political discretion. This historical perspective demonstrates the careful balancing act that the judiciary must perform in ensuring the rule of law while respecting the autonomy of political institutions.

³⁴ (2012) 7 NWLR (Pt 1300) 134.