A CRITIQUE OF THE ROLE OF THE JUDICIARY IN DEEPENING DEMOCRACY AND THE RULE OF LAW IN NIGERIA BY ADJUDICATING ON POLITICAL MATTERS

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1.0 ABSTRACT

The age-long principle of "separation of powers" allocates the governmental functions of law-making, enforcement/execution and interpretation respectively to the legislature, the executive, and the judiciary as organs of the state. This age-long doctrine as found in very many legal systems equally operates in Nigeria by virtue of sections 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The gravamen of this paper is that while carrying out its interpretative and adjudicatory functions, the Nigerian judiciary has helped in no small measure to deepen and consolidate democracy and the rule of law. This [5]paper therefore examines such instances where the judiciary has saved Nigeria's democracy and the rule from collapse. It concludes by suggesting and recommending some solutions to the inadequacies of the Nigerian judiciary.

2.0 INTRODUCTION

The need for the establishment of apparatus for the management of the affairs of society is as old as the society itself.[2] Hence, every human society recognizes the existence of some form of laws or norms which regulate the conduct of its members and define the rights and obligations of all within the group. Essentially, this is what government[3] is all about. By necessary implication, therefore, any society that wishes to operate based on democratic tenets must have a fearless, strong, impartial, independent, well-funded and structured judiciary that is driven and propelled by the need to do justice in all cases regardless of who is involved.

3.0 THE CONCEPT OF DEMOCRACY

Like most of the concepts in social sciences, democracy originated in Ancient Greece. To the Greeks, "demos" means the people; while "kratien" means government or rule. Since the days of Ancient Greece, the concept of democracy has been subjected to redefinition by various scholars and politicians.[4] In his celebrated definition of the concept of democracy, Abraham Lincoln, a

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[2] . Akintunde Emiola, *Remedies in Administrative Law* (Ogbomoso: Emiola Publishers Limited, 2000) 1.

[3] . "In this sense, the term refers collectively to the political organs of a country regardless of their function or level and regardless of the subject matter they deal with." See Bryan A. Garner, *Black's Law Dictionary,* 9th ed. (USA: Thomson Reuters, 2009) 764.

[4] . See Abdulhamid A. Ujo, *Democracy & Politics: A Guide for Students, Politicians and Election Managers* (Nigeria: Anyaotu Enterprises and Publishers Nigeria Limited, 2000) 4.

one-time President of the United States of America, defined democracy as the "government of the people, for the people and by the people."[5] Democracy has also been viewed as government by the people, either directly or through representatives elected by the people.[6] For Robert Dahl, democracy is the opposite of autocracy.[7] Democracy encourages or ought to encourage free expression of opinion and robust debate on issues.[8] There is no doubt that the quality of democracy and good governance is a function of the depth of the citizen's participation. The citizens must be provided with easy access to make inputs into the policies and law-making process of the government.[9]

3.1 FORMS OF DEMOCRACY

Democracy basically exists in two forms, namely; direct and indirect.

3.1.2DIRECT DEMOCRACY

In a direct democracy, individuals collectively choose what policy they will jointly pursue or what law they will accept.[10] Direct democracy was the type of political system in Ancient Greece. In Ancient Greece City-States, all citizens could speak and vote in assemblies. Not all individuals enjoyed political rights; slaves and women had no political rights.[11] According to Abdulhamid A. Ujo, referendum[12]is a form of direct democracy.

3.1.3INDIRECT DEMOCRACY

This is also termed "representative democracy" and it is practiced in most modern states.[13] The system introduces an electoral system in which those to represent the interest of the people are elected. Those elected are given the responsibility of making laws and policies for the people.[14]

4.0 THE CONCEPT OF THE RULE OF LAW

[5] .ibid.
[6] . Bryan A. Garner, *op.cit,* 497.
[7] . See Robert Dahl, "Power, Pluralism and Democracy: A Modest Proposal" A paper delivered at the 1964 Annual Meeting of the American Political Science Association, Chicago, 41-45.
[8] . See Jimoh Ailoje and John Anegbode, *Issues in Nigerian Government and Politics,* (Akure: Syiva Publishing Inc., 2001)78.
[9] . Ifedfayo Timothy Akomolede and E. M. Akpambang, "Good Governance, Rule of Law and Constitutionalism in Nigeria" in *University of Ado-Ekiti Law Journal,* 3 (2010)1-23. Democracy has equally been defined as "a system of government or organization in which the citizens or members choose leaders or make other important decisions by voting". See *BBC English Dictionary: A Dictionary for the World,* (London: Harper Collins Publishers Limited, 1992)300.
[10] . Abdulhamid A. Ujo, Op.cit. 5.
[11] . Ibid.
[12] . This has been defined as " a vote in which all the people in a country are asked whether they agree or disagree with a particular policy". See *BBC English Dictionary: A Dictionary for the World,* op.cit., 968.
[13] . Ibid.
[14] . Ibid.

The doctrine of the rule of law is of great antiquity. Although, it began as an abstract concept, it now has a precise meaning at least, for the purpose of determining an infraction of what it stands for.[15] Historically, the concept is rooted in the theories of early philosophers who proffered various definitions to the doctrine. Aristotle expressed the view that the rule of law was preferable to that of any individual.[16]Henry Bracton, a 13th century jurist, opined that the world was governed by law, either human or divine and that the king might not be subject to man, but he is surely subject to God and to the law because it is the law that made him king or in its undiluted Latin version-*ipse autem rex non debetesse subhominesed sub deoet sub lege, quia lex facitlegem*[17]

In the 17th Century, Locke commented on the concept as follows:

> *"Freedom of men under government is to have a standing rule to live by, common to everyone of that society and made by the legislative created in it, and not to subject to the inconstant, unknown arbitrary will of another man"*[18].

According to a learned writer,[19] what John Locke meant in essence was that all governmental powers were to be exercised and determined by reasonably laid down laws and not by the whims and caprices of anybody or authority. The concept of the rule of law though, traceable to the works of early philosophers, like Aristotle, John Locke, Baron de Montesquieu, e. t. c., was postulated and popularized by Professor Albert Vein Dicey in his "The Law of the Constitution, 10th Edition, published in 1885.[20]

In his article, "Indigenous Perspectives on the Rule of Law as a Basis for Peace and Good Governance in Nigeria", Austin Onuoha describes the rule of law thus:

> *"The rule of law is concerned with protecting individuals from the arbitrariness of government and other officials and also protecting individuals from the arbitrariness of other individuals. In other words, the rule of law exists to maintain peace. This rule of law is designed to minimize or totally eliminate both private and public arbitrariness in order to preserve individual freedom".*[21]

Allan, on his part, believes that the rule of law involves certain standards, expectations and aspirations that encompass traditional ideas about the requirements of justice and fairness in the

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[15] . John Ademola Yakubu, *Trends in Constitution Making in Nigeria* (Ibadan: Demyaxs Law Books, 2003)70-71.
[16] . Aristotle, *Politics, 136,* quoted in John Ademola Yakubu, op.cit.
[17] .Ibid.
[18] . Locke John, *An Essay Concerning the True Original Extent and End of Civil Government, Section 22 (1690).*
[19] . Aihe D. O., *Selected Essays on Nigerian Constitutional Law* (Benin City: Idodo Umeh Publishers Limited, 1985) 19.
[20] . Dicey's postulation has been subjected to much criticisms. See for example, Akintunde Emiola, *op.cit*11-14; Lawson, "Dicey Revisited" 7, *Political Studies* (1959)109; Keir and Lawson, *Cases in Constitutional Law, 5th ed.*(1968) 309; Sir Ivor Jennings, *The Law and the Constitution, 5th ed.* (1960) 42-62; e. t. c.
[21] . The author equally sees justice as the broad framework under which any meaningful discussion of the rule of law could take place.

relationship between governors and the governed.[22] The opposite of the rule of law is the rule of force which a despotic government exhibits. One can therefore, agree with Montesquieu that in despotic government, one alone without law and without rule, draws everything alone by his will and his caprices. In this kind of situation, the people will be suppressed in such a way that they are cowed and they become complacent, since the principle of despotic government is fear.[23]

4.1 THE RULE OF LAW AS CONCEPTUALISED BY THE NIGERIAN JUDICIARY

In a plethora of cases which have been brought before them, the Nigerian courts have tried to conceptualizeor explain what the rule of law is all about. For instance, in *Governor of Lagos State v. Ojukwu*[24], Oputa, JSC, conceptualized the rule of law thus:

> *"The rule of law presupposes that the state is subject to the law, that the judiciary is a necessary agency of the rule of law, that the government should respect the rights of individual citizensunder the rule of law, and to the judiciary is assigned both by the rule of law and by our Constitution, the determination of all actions and proceedings relating to matters in disputes between persons, governments or authority".*

In the same case, Obaseki, JSC, conceptualized the doctrine in the following manner:

> *"Rule of law primarily means that government should be conducted within the framework of recognized rules and principles which restrict discretionary powers which Coke colourfully spoke of as a golden and straight method of law as opposed to the uncertain and crooked cord of discretion".*[25]

The Nigerian Supreme Court in emphasizing the centrality and primacy of the rule of law to constitutional democracy and good governance, stated in *Miscellaneous Offences Tribunal v. Okoroafor*[26] that:

> *"Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary powers"*

Apart from decided cases, provisions relating to the rule of law are decipherable from the wordings of both the 1979 and 1999 Constitutions of the Federal Republic of Nigeria. Such

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[22] . See Allan T. R. S., *Law, Liberty and Justice: The Legal Foundations of British Constitutionalism* (Oxford: Clarendon Press, 1993) 21.
[23] . See Montesquieu de Baron, *The Spirit of Laws, Book 3, Chapter 9 (1748).*
[24] . [1986] 1 NWLR (Pt. 18) 621 at 647.
[25] . supra at 636.
[26] . [2001] 18 NWLR (Pt. 745) 310 at 327/

provisions include section 1(1)[27]. The Constitution forbids the taking over of the mantle of leadership by force in Nigeria, except with laid down rules for that purpose as enshrined in the Constitution itself.[28] Should any law contravene the provisions of the Constitution, such other law or laws shall be declared null and void to the extent of such inconsistency with the provisions of the Constitution.[29]

Another provision which reinforces the rule of law in Nigeria is section 36(1) of the 1999 Constitution (as amended). It provides thus:

> *"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality."*

The above-quoted section of the Constitution guarantees fair-hearing and also ensures that a person cannot be arbitrarily tried, except by a duly constituted court or tribunal. As a way of checkmating the excesses of government and its agencies with regard to criminal trials, the Constitution by virtue of section 36(8) provides to the effect that, no person shall be held guilty on account any act or omission which did not constitute an offence at the time it took place, and no penalty shall be imposed for any criminal infraction heavier than the penalty in force at the time the offence was committed.[30]

Section 36(12)[31] gives credence to the idea of the rule of law when it provides:

> *"Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is identified and the penalty therefore is prescribed in a written law; and in this section, a written law refers to an Act of the National Assembly or a Law of a state and subsidiary legislation or instrument under the provisions of a law.*

The Nigerian courts have continued to decide cases touching on the rule of law and with particular reference to constitutional provisions. Such cases include; *Aoko V. Fagbemi*[32]. There, the applicant was convicted and sentenced to pay a fine or go to prison for one month by a Grade 'D' Customary Court for an alleged offence of adultery by living with another man without judicial separation from her husband. The law applicable to the court in question did not make adultery a written offence. The application to the High Court on her behalf was for an order to

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[27] . *Constitution of the Federal Republic of Nigeria, 1999 (as amended).* The section establishes the supremacy of the Constitution (the ordinary law of the land) over and above all persons and authorities throughout the Federation.
[28] . *Ibid.* Section 1(2).
[29] . *Ibid.* Section 1(3).
[30] . Section 36(8) of the Constitution therefore, prohibits retrospective trials.
[31]. *Constitution of the Federal Republic of Nigeria, 1999 (as amended).*
[32] . (1960) All NLR 400.

quash the said conviction and set aside all consequential orders based on it and to refund all the sums of money paid. Her contention was that there was no written law which she violated and that her conviction for an offence which was not written was contrary to section 21(10)[33]of the 1960 Constitution of Nigeria. The court held that the applicant's conviction violated her right as guaranteed by section 21(10) of the 1960 Constitution of Nigeria. The case under review is usually cited as a reference point in discussing the rule of law as a constitutional concept.[34]

Of particular importance is the decision of the High Court of Lagos on the rule of law during a military regime where Taylor, CJ, frowned at the unlawful act of some members of the Nigerian Army as follows:

> *"I am, as I know is every member of the Bench and every right thinking and honest member of our society, against the prevailing conditions of corruption and embezzlement of public funds existing in the country today, but if we are to live by the rule of law, if we are to have our actions guided and restrained in certain ways for the benefit ofsociety in general and individual members in particular, then whatever status, whatever post we hold, we must succumb to the rule of law. The alternative is anarchy and chaos…"*

In Nigeria and elsewhere,[35] it is incumbent on the judiciary to maintain and uphold the rule of law, since it is believed to be one of the pillars upon which true democracy and good governance are established.[36] A careful perusal of all the cases decided by the Nigerian courts during the military and civil rules will reveal that the Nigerian courts have continued, without fear or favour, to curtail executive lawlessness in both regimes. It is therefore the sacred responsibility of the judiciary to maintain the rule of law.[37] Other cases in which the Nigerian judiciary has defended and upheld the rule of law include, but are not limited to the following: *Attorney-General of the Federation v. G. O. K. Ajayi*[38], *Garbav. FCSC*[39]and all the electoral and unlawful impeachment cases.[40]

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[33] . This section is in *pari material* with section 36(12) of the present 1999 Constitution of the Federal Republic of Nigeria (as amended).
[34] . John Ademola Yakubu, *op.cit., 73.*
[35] . For example, the United States of America, the United Kingdom, e.t. c.
[36]. Ifedayo Timothy Akomolede and Akpambang E. M., *op. cit.*
[37] . According to Kayode Eso, JSC, in *Ojukwu v. Governor of Lagos (supra) at 246, "*The judiciary cannot shirk its sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all persons in Nigeria. The law should be even handed between the government and the citizens." It is interesting to note that this case was decided by the Supreme Court of Nigeria during a military junta and the decision was against the Military Government of Lagos State.
[38] . [2000] 12 (Pt. 682) 509 at 537 per Aderemi, JCA.
[39] . (1988) 19 NSCC (Pt. 1) 306 at 320, per Eso, JSC.
[40] . See for example, *Obi v, INEC[2007]11 NWLR (Pt. 1046) 560, (2007)45 EWRN 1; Ngige v. Obi (2006) All FWLR (Pt.330) 1041; Adeleke v. Oyo State House of Assembly (2007) All FWLR (Pt. 345)211; Amaechi v. INEC (2008)All FWLR (Pt.407)1; INEC & Ors. V. Oshiomole & Ors. (2009) 174 LRCN 178; e. t. c.*

4.2RELEVANCE OF THE RULE OF LAW TO THE POLITY

1. It ensures that nobody assumes leadership and elective position by force;[41]
2. It enjoins the government and its officials to shun corrupt practices that may ruin the country's growth economically[42];
3. It ensures that the ordinary laws of the land apply equally to both the rulers and the ruled[43];
4. It helps to curtail executive lawlessness and excesses since it preaches equality of all before the law;
5. It is one of the pillars upon which true democracy and good governance are established; and
6. Adherence to the principle of the rule of law gives room for justice, peace and security in the society, the alternative to the rule of law will be anarchy and chaos.[44]

The relevance of the rule of law in a polity cannot be overemphasized. Hence, the hallmark of the rule of law is that while the citizens are conducting themselves in line with the laws of the land, the leaders are equally ruling the society with reference to generally and legally accepted rules of conduct.

4.3 EXCEPTIONS TO THE RULE OF LAW

The rule of law admits of some exceptions in our modern world, as there is no useful rule without an exception. Some of the noticeable exceptions and modifications after Dicey are summarized hereunder:

a. That the rule of law is opposed to the exercise of discretion as postulated by A. V. Dicey[45] is difficult to practice to the letter in modern societies, as modern government shows, without doubt, that the exercise of discretion is inevitable. Indeed, without some form of discretion, the machinery of government and administration would come to a standstill.[46]
b. Dicey's contention that legal rights must be determined by regular courts established by law[47] is not tenable in our world of today with the existence of the various specialized tribunals[48]established under various statutes which do not fall within the scope of

[41] . Section 1(2), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[42] . Re *Mohammed Olayori (supra).*
[43] . See section 1(1) & (3), Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[44] . Re *Mohammed Olayori (supra).*
[45] . See Dicey A. V., *The Law of the Constitution, 10th ed. 202; Christian Iwuji v. Federal Commissioner for Establishment & Ors.(1985)4 SC 77.*
[46] . It is for this reason that administrative law is devised as a means of checking any abuse of power or discretion. See *Akintunde Emiola, op. cit. 11.*
[47] . See Dicey A. V., *op. cit. 202-203.*
[48] . For example, Election Petition Tribunals in Nigeria.

"regular courts". These are tribunals such as the Rent Tribunals, National Insurance Commissioners and Tax Appeal Tribunals.[49]

c. Equality of all before the law as postulated by Dicey is limited by state privilege[50] and the immunity of the President and Governors in litigations.[51] According to some learned writers, Dicey's veneration of the concept of "equality before the law" as practiced in English legal system is nothing, but sheer window dressing.[52] According to Moore,[53]Even the individual servant of the Crown is not liable upon contracts made by him for the public service, whether it is or is not duly authorised.[54]
d. Other exceptions are legislative privileges[55], judicial privileges,[56] the immunity of Diplomatic Corps[57]and Public Officers.[58]

Despite the foregoing exceptions and criticisms, we submit with the greatest respect that the concept of the rule of law and its relevance in the governance of modern nations,most especially those ruled or governed based on democratic tenets, cannot be done away with, as the modifications that greeted the doctrine after Dicey were necessary in human society which is not static, but dynamic in nature.

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[49] .Akintunde Emiola, *op. cit. 12.*

[50] . See *Conway v. Rimmer (1968) AC. 910 and S. 190, Evidence Act, 2011.*

[51] .See S. 308(1) & (3), *Constitution of the Federal Republic of Nigeria, 1999 (as amended); Alameyeseigha v, Teiwa(2002) FWLR (Pt. 96)552 ; Bisi Onabanjo v. Concord Press (1981)2 NCLR 399; Governor of Ogun State v. President of Nigeria & Ors.(1982)3 NCLR 166; Fawehinmi v. Tinubu [2007]7 NWLR (Pt.665)21 and A. G. Federation v. Abubakar (2007) All FWLR (Pt. 389) 1264 at 1294.*

[52] . See Keir and Lawson, *op. cit. 308.*

[53] . See Moore W. H., "Liability for acts of Public Servants" in *Law Quarterly Review,* 23, (1907) 12-19.

[54] . It is submitted with respect, that Moore's contention that "whether it is or is not duly authorised" may not completely hold water if viewed from the angle of vicarious liability in the law of tort. Hence, if the servant "…was going on a frolic of his own, without being at all on his master's business, the master will not be liable." See *Joel v. Morrison(1834)172 ER 1338 at 1339; Rayner v. Mitchell(1877)2 CPD 357; Storey v. Ashton(1869) LR 4 QB 476 at 479-480* and Ese Malemi, *Law of Tort, 1st ed.* (Lagos: Princeton Publishing Co., 2008) 300-301.

[55] . See S. 3 Legislative House (Powers and Privileges) Act, Cap. L12, LFN, 2004; *Ndaeyo Utta v. House of Assembly, Cross River State* (1985)6 NCLR 761; *El-Rufai v. House of Representatives* (2003) FWLR (Pt.173)162; *Edwin Ume-Ezeoke* (1982)3 NCLR 663.

[56] . See S. 88(1) High Court Laws of Lagos State, Cap. H3, LLS, 2003; s. 71(1), High Court Laws, Cap. H57, Laws of Ogun State; S. 72(1), High Court Laws, Cap. 45, Laws of Ondo State; S. 31, Criminal Code Act, Cap. C28, LFN, 2004; S. 31, Criminal Code, Cap.30, Laws of Ondo State, 1978; S. 46, Penal Code, (Applicable to Northern States of Nigeria); *Onitiri v. Ojomo*(1954)21 NLR 19; *Egbe v. Adefarasin* [1985]1 NWLR (Pt.3) 549 at 567; *Sirros v. Moore*(1974)3 All ER 77 at 781-782, where Lord Denning, M.R. traced the concept of judicial immunity beyond 1613; Abimbola A. O. O., *Law of Judicial Immunities in Nigeria* (Ibadan: Spectrum Law Series, 1992) 33; Akpambang, E. M., "Nigerian Judiciary under the 1999 Constitution" in *Journal of Law and Diplomacy,*6, no.2, (2009) 19-20.

[57] . S. 1(1), Diplomatic Immunities and Privileges Act, Cap. D9, LFN, 2004; *Zabusky v. Israeli Aircraft Industries* (2007)1 All FWLR (Pt. 352) 1759; *Ishola-Noah v. His Excellency, the British High Commissioner to Nigeria* (2002) FWLR (Pt.86)634 at 636.

[58] . S. 2(a), Public Officers Protection Act, Cap. 389, LFN, 1990; and see also *Forestry Research Institute of Nigeria v. Gold* (2007) All FWLR (Pt. 380) 1444 at 1462, 1466.

5.0A CRITICAL APPRAISAL OF SOME OF THE WAYS THE NIGERIAN JUDICIARY HAS HELPED TO DEEPEN DEMOCRACY AND THE RULE OF LAW

In the course of performing its interpretative and adjudicatory roles, the Nigerian courts have in a number of cases saved Nigeria's democracy and the rule of law from total collapse. Some of the instances are discussed under the following headings:

5.1CONTROL OF ADMINISTRATIVE ACTS BY THE NIGERIAN JUDICIARY:

The word "administration" has been defined as the range of activities connected with the organization and supervision of a company, institution or country.[59] Therefore, administrative work involves organizing and supervising a country, company, or institution.[60]Even if the whole governmental powers can neatly and practically be classified as "legislative", "executive" and "judicial", a few will deny that the administrative agencies today wield all these powers.[61] They have powers of legislation through the making of rules, regulations, orders, statutory instruments, e. t. c., which to all intents and purposes, are as valid and capable of imposing sanctions as the laws passed by the legislature.[62] Attempts are made here to discuss "judicial review" which is one of the methods employed by the judiciary to control administrative acts.

5.1.1 Judicial Review

Judicial control of administrative adjudication or of administrative bodies, their powers, actions and omissions generally, have often been referred to as judicial review.[63]To enable the courts perform their supervisory functions effectively, the Nigerian Constitution of 1999[64] has made express provisions subjecting all the organs of state to the jurisdiction of courts. The provisions of section 6 of the Constitution are of immense value in this wise.

Administrative action is controllable by means of review.[65] Section 6 of the Nigerian Constitution places much duty of judicial review on the High Court by virtue of section 46 thereof.[66]

5.1.2 Grounds for Judicial Review of Administrative Actions

[59] .See *BBC English Dictionary: A Dictionary for the World, op.cit.15.*
[60] *.Ibid.*
[61] . See Eka B. U., *Judicial Control of Administrative Process in Nigeria* (Ile-Ife: OAU Press Limited, 2001) 1.
[62] . *Ibid.*
[63] . See Ese Malemi, *The Nigerian Legal System: Text and Cases* (Lagos: Grace Publishing Inc., 2005) 167.
[64] . See S. 6(6)(b), the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[65] . Akintunde Emiola, *op.cit. 21.*
[66] . However, by virtue of Order 1, Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, the courts that can review any administrative action are the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory (FCT) Abuja.

The grounds for judicial review of administrative actions according to Professor Emiola[67] include: excess or lack of jurisdiction, *ultra vires*, error of law or fact and breach of the rules of natural justice. David Herling[68] on his part lists just three grounds which are: illegality, irrationality and procedural impropriety. These latter grounds have in them all the grounds listed by Professor Emiola, hence we subscribe to Emiola's in this paper.

i. Lack of Jurisdiction

Jurisdiction, according to Aderemi, JSC, in *Oduko v. Government of Ebonyi State,*[69] is "the authority which a court must have to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision." A court cannot therefore, expand its jurisdiction and an act done without jurisdiction is invalid.[70] While lending credence to this in *Amaechi v. INEC*[71]the Nigerian Supreme Court has this to say:

> *"An administrative body lacks the jurisdiction and competence to try the issue of crime, for such a body is not a court much less a criminal court. Only a court vested with criminal jurisdiction is competent to hear and determine the criminality of the person accused…"*

This case and the others referred to in this part have explained the effect of lack of jurisdiction of administrative authorities; which is that the courts will set aside or declare invalid all decisions reached by such administrative agencies without jurisdiction.

ii. Ultra Vires

The doctrine of *ultra vires* derives its origin and authority from two Latin words- "ultra" which means "beyond"[72] and "vires" which means "natural powers, forces; granted powers".[73]The phrase *ultra vires* therefore means unauthorized; beyond the scope of power allowed or granted by a corporate character or by law.[74]While the phrase includes excess or lack of jurisdiction, its

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[67] . Akintunde Emiola, *op.cit. 23.*

[68] . See David Herling, *Briefcase on Constitutional and Administrative Law, 3rd ed.* (London & Sidney: Cavendish Publishing Limited, 2000) 117-163.

[69] . (2009)4 MJSC (Pt.1) 11.

[70] .See *Sanyanolu v. INEC &Ors.*[199]7 NWLR (Pt. 612) 600 (CA).The word "invalid" is similar to the phrase "null and void" which has been defined in *Amaechi v. INEC* (2008)All FWLR (Pt.407)1 at 204to mean "that which binds no one or is incapable of giving rights under any circumstances or that which is of no effect".

[71] .*Supra* at 195. See also *Garba v. UNIMAID* [1986] 1 NWLR (Pt. 18) 550; *FCSC v. Laoye* [1989] 2 NWLR (Pt. 106) 652.

[72] .See Bryan A. Garner, *op. cit. 1662.*

[73] .*Ibid.* 1706.

[74] . *Ibid.* 1662.

application is restricted to corporations; whether sole,[75]or aggregate,[76] whether incorporate or unincorporated.[77]In effect, any act of an administrative authority that is outside the powers conferred by statute is null and void, and according to the court in *Ekperokun v. UNILAG,*[78] "it is an act that is void for all purposes and at all times", and in contemplation of the law, an act that is void is a nullity, it is as if the act had never occurred.[79]*Ultra vires* acts take two forms; substantive *ultra vires* which means that the substantive law has been breached by an administrative body, and procedural *ultra vires* in which case, the procedure adopted is defective.[80]Thus, in *Attorney-General of Bendel State v. Attorney-General of the Federation,*[81] the court declared unconstitutional an Appropriation Bill which has been passed by the National Assembly and assented to by the President on the ground that the procedure followed was wrong.

iii. Error of Fact or Law

Every fundamental error of law or fact affects the validity of an act or decision of an administrative body or authority. The court will therefore set aside an administrative act or decision where there is an apparent error on the face of the record which affects the justice of the matter.[82]

iv. Breach of the Rules of Natural Justice

The principle or idea of natural justice is as old as existence of man. No wonder why it is a natural phenomenon that has been inherent in human nature. Whenever it is violated or is about to be violated, human beings will not be comfortable.[83]In *R v. Chancellor of the University of Cambridge(Dr. Bentley's Case),*[84]Fortescue, J., described the rules of natural justice as "the laws of God and man". Natural justice takes two forms which are expressed in two Latin maxims, namely; *audialterampartem*[85]and *nemo judex in causa sua*[86]. Even though it has been said that

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[75] . This means "a body having perpetual succession constituted in a single person, who in right of some office or function, has a capacity to take , purchase, hold and demise lands, tenements and hereditaments, and also to take and hold personal property to him and his successors in such office forever, the succession being forever." See Ifedayo Akomolede, *Introduction to Jurisprudence and Legal Theory* (Lagos: Niyak Prints and Law Publications, 2008) 95.

[76] . "This is composed of a number of individuals vested with corporate powers as a single legal unit". See Akintunde Emiola, *op. cit.* 23.

[77] . See *Bonsor v. Musicians Union*(1973) A.C. 104; *Abubakri & Ors. V. Audu Smith & Ors.* (1973) ANLR 634 at 642.

[78] . [1986] 4 NWLR (Pt. 34) 162 at 201.

[79] . See *Kolawole v. Alberto* [1989] 1 NWLR (Pt. 98) 382.

[80] . See *A. G. Bendel State v. A. G. Federation* (1981)10 SC 1; *Sefekun v. Chief Akinyemi & Ors.* (1980) ANLR 153; *UNTH Board of Management v. Hope Nnoli* [1992]6 NWLR (Pt. 250) 653, on appeal [1994] 8 NWLR (Pt. 636) 376, (1994) 10 SCNJ 71; *Adeniyi v. Council of Yaba College of Technology & Ors.* [1993] 6 NWLR (Pt. 300) 426; *Adeyemo v. Oyo State Public Service Commission* (1979) OYSHC 83.

[81] . *Supra.*

[82] . See *President of Ogoja Province, Ex parte Onah* (1957) 2 FSC 30.

[83] . See Banjie Ogwo, "A Perusal of the Application of Natural Justice in Nigeria" in *Essays on Administrative Law in Nigeria*, Yerima T. F. and Abegunde B., eds. (Ado-Ekiti: PETOA Educational Publishers, 2006) 178.

[84] . (1723) 1 Strange557 at 567.

[85] This means "hear the other side".

[86] This means "no one should be a judge in his own cause or matter".

many Nigerian judges could not employ judicial activism in matters of breach of the rules of natural justice during military regimes,[87]it is humbly submitted that the courts have in a plethora of cases upheld the rules of natural justice when non-adherence to same was observed even during military juntas.

It suffices to add that the principle of judicial control of administrative acts is hinged on the time-hallowed Latin maxim; *ubi jus ibiremedium*[88] a principle which usually goes with "judicial activism"[89]. Although, we have seen that the judiciary usually carries out this control via judicial review, it should be noted however, that the power of the courts to review administrative acts may be directed at the court itself and there are authorities in support of this assertion. For instance, section 22 of the Supreme Court Act[90]which gives the court such power to exercise its discretion, so long as this leads to the promotion of true justice has been held by Aderemi, JSC, in *Obi v. INEC*[91] to confer general power on the Supreme Court to do all things that will bring about unalloyed justice. In conclusion, we submit that the power of the judiciary to review administrative acts is usually given to the courts expressly or impliedly by many statutes.[92]

5.2 INTERVENTION OF THE COURTS IN POLITICAL MATTERS/DISPUTES

The control the Nigerian judiciary exercises over political matters is most noticeable in disputes arising from pre-electionand post-election matters. The Nigerian judiciary has employed and continues to employ its all-encompassing power of judicial review to upturn a number of elections when frauds are perpetrated byunscrupulous politicians assisted by the Independent National Electoral Commission (INEC) especially since May, 29, 1999 when the military

[87] . According to Akin Oyebode, "…during the military era of Buhari,… the complicity of the judges in the rape of the fundamental rights of the citizens reached its zenith when Ademola, JCA declared that 'in matters of civil liberties in Nigeria, the courts must now blow muted trumpets". See Akin Oyebode, *Law and Nation-Building in Nigeria: Selected Essays* (Lagos: Centre for Political and Administrative Research (CEPAR). The erudite Professor of law was referring to Ademola JCA, in *Wa Ching Yao v. Chief of Staff,* Suit No. CA/L/25/85, 1st April, 1985 (Unreported).

[88] . This means literally that "where there is a wrong, there is a remedy".

[89] . For various definitions of the phrase "judicial activism" see Ibrahim Imam, *et.al.,* "Judicial Activism and Intervention in the Doctrine of Political Questions in Nigeria: An Analytical Exposition" in *African Journal of Law and Criminology,* 1, no.2, (2011) 50-69; Keenan D. K., "The Origin and Current Meaning of 'Judicial Activism' *in California Law Review* , 92 (2004) 1441-1442; Paul Mahoney, " Restraints in the European Court of Human Rights: Two Sides of the Same Coin" in *Human Rights Law Journal,* 11 (1990) 57.

[90] . Cap. S15, LFN, 2004.

[91] . [2007]11 NWLR (Pt. 1046) 560.

[92] . See for instance s. 20 , Freedom of Information Act, 2011, which has the bold heading "Judicial Review" and provides that "any applicant who has been denied access to information or a part thereof, may apply to the court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such other time as the court may either before or after the expiration of 30 days fix or allow. We humbly opine that s. 28(1) of the Land Use Act, 1978, Cap. L5, LFN, 2004, which empowers the Governor "to revoke a right of occupancy for overriding public interest" by necessary implication states also that where the Governor revokes for selfish interest, such will be declared null and void on a review by the court. See also *Administrator/Executor of Estate of Abacha v. Ekespiff*[2003] 1 NWLR (Pt. 300)114; s. 44, Constitution of the Federal Republic of Nigeria (as amended); s. 44, Land Use Act, Cap. L5, LFN, 2004; *Nkwocha v. Governor of Anambra State*(1984) 5 NSCC 484; Oke G. D., "Interests in Land: A Multi-facet Concept" in *University of Ado-Ekiti Law Journal,* 4 (2010) 132.

yielded to the calls for civil rule in the country. This encourages democratic practices of pursuing grievances through the court of law.[93] The complicity of INEC in fraudulent elections which has engendered judicial interventions since the country returned to democratic rule in May, 1999, has been put succinctly by some legal scholars in the following manner:[94]

> *"…INEC has become nothing but the instrument with which politicians have let loose their dogs of vandalism and death upon the very political process it was set up by law to nurture, protect and preserve…"*[95]

In the light of the pre and post electoral malpractices in Nigeria, we therefore turn to discuss some of the instances where the judiciary as an organ of government has exercised control over some political matters or dispute in Nigeria, thereby helping to safeguard the rule of law and deepen Nigeria's democracy. We shall appraise these instances with decided cases under three subheads as follows:

5.2.1 Judicial Intervention in Wrongful Substitution of Aspirants/Candidates

Determined to uphold the rule of law, good governance and deepen democracy, the judiciary has exercised its power of adjudication and interpretation to upturn unlawful or wrongful substitution of candidates who have won their parties' primaries by the parties' "big wigs" assisted by INEC. In *Onyekweli v. INEC,*[96]the Court of Appeal took it upon itself to counsel INEC on the need to wake up to its constitutional and statutory responsibilities. In that case, the petitioner/appellant brought a separate suit against the PDP before the Federal High Court(FHC) questioning the substitution of his name with that of Mercy Alumona-Isei as the party's candidate in the Ndokwa/Ukuani Federal Constituency of Delta State for the House of Representatives. The

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[93] Judedavid Mbamalu, "The Nigerian Judiciary: Impacting Elections Through Court Decisions" in *A Paper Presented to Walden University in Partial Fulfillment of the Requirements for the Award of PH.D in Public Policy and Law* (2012) 5, retrieved from www.jumbolaw.com/.../elections.pdf (Accessed 10th June, 2021).

[94] A. O. Enabulele and A. O. Ewere, "When the Shepherd Becomes the Wolf: What is Wrong with the Independent National Electoral Commission of Nigeria?" in *Journal of Politics and Law,* 3, no. 2 (2010) 184-185, retrieved from : www.ccsenet./jpl (accessed 5th May, 2021).

[95] Very many of the elections conducted since 1999 when the country returned to civil rule have directly or indirectly been litigated upon in the law courts (election petitions tribunals). As a matter of fact, issues pertaining to some of the already decided electoral disputes continue to rear their ugly heads even after the court judgments. For instance, it was the alleged unethical role of Ayo Salami, PCA (as he then was) in the final determination of the electoral battle between incumbent Governor Kayode Fayemi of Ekiti State (during his first tenure in office) and the ousted Governor Segun Oni which led to Justice Salami's removal from office. Engineer Segun Oni unsuccessfully approached the court again following the disciplinary measure taken by the National Judicial Council (NJC) against Salami. Also, Justice Naron of the Plateau State High Court was compulsorily retired due to his alleged misconduct in the 2008 Governorship Election Petition in Osun State, while he was a member of the panel.(See *The National Mirror,* vol. 3, No. 564, Monday, February, 25, 2013, p. 41 for details).Late President Musa Yar'Adua equally lent credence to these flawed elections when he said in his inaugural speech to the nation on May, 29, 2007 that " we acknowledge that our elections had shortcomings… Accordingly, I will set up a panel to examine the entire electoral process with a view to ensuring that we raise the quality and standard of our general elections and thereby deepen our democracy." See The Guardian Newspaper of Wednesday, May 30, 2007 at pp. 1-2 particularly at p. 9.

[96][2008]14 NWLR (Pt. 1107)317.

Federal High Court gave judgment in favour of the petitioneror appellant by declaring the said substitution illegal, not having been done with cogent and verifiable reasons as stipulated under the Electoral Act, 2006.[97] INEC did not appeal this ruling and neither did Mercy Alumona-Isei. Nevertheless, INEC conducted elections into the said office wherein results were declared in favour of the People's Democratic Party(PDP) *without declaring the names of the candidates that participated in the election.*[98]

Afraid that INEC might declare Mercy Alumona-Isei as the winner of the election, the appellant filed a petition at the Election Petition Tribunal against INEC seeking a declaration that he was the validly nominated candidate of the PDP and that he is entitled to the certificate of return, as his party scored the highest number of votes. Without regard for the pending petition, INEC issued a certificate of return to Mercy Alumona-Isei. As a result, the appellant filed an application joining Mercy Alumona-Isei as a respondent to the petition. The Tribunal did not grant the application to join Mercy Alumona-Isei and the petition was dismissed. The appellant appealed to the Court of Appeal which upheld the case of the appellant. It is submitted that in upholding the appellant's case in the case under appraisal, the Court of Appeal has averted a miscarriage of justice, solidified democratic tenets, the rule of law as against the rule of force and has reconfirmed the saying that the judiciary is the last hope of the common man.

5.2.2 Judicial Intervention in Rigged Elections

The judiciary has also helped to upturned several rigged elections under Nigeria's present democracy. One of such cases is the case of *INEC &Ors. V. Oshiomhole&Ors.*[99]In that case, the 1st respondent and the 2nd appellant (Professor Osunbor) contested the governorship election in Edo State respectively as the candidates of the Action Congress (AC) and the PDP. Against loud protests by majority of voters, INEC declared Prof. Osunbor as the winner of the election. Oshiomhole filed a petition at the Election Petition Tribunal which ruled in his favour and declared him winner after recounting the votes cast in the areas represented by the results being challenged in court. The 1st respondent(INEC) and others appealed to the Court of Appeal.[100] In affirming the tribunal's verdict, the President of the Court of Appeal lamented the role played by INEC during the election and in the course of litigation and reminded INEC that it is expected to be impartial, unbiased and neutral in performing its duties, but that it derailed from that role in the case at hand, when it indulged in filing objections to the petition and filing appeals against the ruling and judgment of the Tribunal".[101]

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[97] . Note that the 2006 Electoral Act had since been repealed by the Electoral Act, 2010.
[98]. Italics mine.
[99] . (2009)174 LRCN 178. The acronym LRCN means: Law Report of Courts of Nigeria.
[100] . The Court of Appeal was then the final court in respect of governorship election petition. but following the amendments to the 1999 Constitution of Nigeria, such can now go up to the Supreme Court. See s. 6(2)(iv), (v)CFRN (Second Alteration) act, 2010.
[101]. Per Abdullahi, PCA in *INEC &Ors. V. Oshiomhole & Ors.* (supra). The judiciary has helped to restore stolen mandate in Anambra State in the case of *Ngige v. Peter Obi*(2006) All FWLR (Pt. 330) 1041; such was done to

5.2.3 Judicial Intervention in Wrongful Impeachments

In the case of *Inakoju v. Adeleke,*[102] the judiciary intervened by reviewing a purported impeachment of the Governor by some of the members of the Oyo State House of Assembly outside the Assembly premises. In that case, the plaintiff, Senator RashidiLadoja was elected and sworn into office as Governor of Oyo State on 29, May, 2003, for a four-year term that was to end on May 29, 2007. Following disagreements, the 33 members of Oyo State Assembly had two factions with 18 members against the Governor and 14 members including the 1st and 2nd plaintiffs/appellants supporting the Governor. On the 13th day of December, 2005, the 18 legislators at a meeting held at D'Rovans Hotel, Ring Road, Ibadan, drew a notice of gross misconduct against the Governor. The meeting excluded the 1st and 2nd appellants who were the Speaker and Deputy Speaker of the House of Assembly respectively. The Governor was subsequently removed by the 18 members. The purported impeachment was replete with several procedural irregularities or constitutional breaches of section 88(1)-(9) of the 1999 Constitution. The 14 members and the governor challenged the purported impeachment in the High Court of Oyo State which declined jurisdiction on the ground that its jurisdiction is excluded by section 88(10) of the 1999 Constitution the Court of Appeal heard the case and granted all the reliefs sought. Both parties cross-appealed to the Supreme Court which held in favour of the plaintiff/appellant Governor and granted all the reliefs on the ground that the purported impeachment was unconstitutional, null and void for being in breach of the several procedural requirements enshrined in the Constitution.

From the cases and three instances examined above, we humbly submit that the judiciary has played this all-important role of safeguarding the rule of law and deepening democracy why adjudicating on disputes arising from unlawful impeachments, frauds or malpractices emanating from electoral processes. Although, it is not the gravamen of this paper that it is only in political matters or disputes that the Nigerian judiciary has helped to uphold the rule of law and deepen democracy, however, we are of the humble opinion that other private and non-political suits are not capable of engendering anarchy and chaos in the polity the way political matters would lead to the collapse of the rule of law and democracy if not adjudicated upon properly.

6.0 CONCLUSION

There is no doubt that the judiciary as the bulwark against tyranny, oppression, unconstitutional and undemocratic practices, is bedeviled with some noticeable inadequacies in Nigeria; some of the inadequacies ranging from bribery and corruption, inadequate funding and lack of basic infrastructural facilities, executive interference, improper use of discretionary powers,[103] etc.

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bring Mr. Rauf Aregbesola to the Governorship seat in Osun State in 2010 and same was done by the court to bring Dr. Kayode Fayemi to Ekiti Governorship seat in 2010; and same has been done in so many others.

[102][2007]4 NWLR (Pt. 1025)423 SC.

[103] . In this wise, we submit that the High Court of the FCT did not exercise its discretionary powers to the satisfaction of very many Nigerians when it fined Mr. John Yakubu Yusufu the sum of N720,000.00(seven hundred and twenty thousand naira) only when the said Police Pension boss admitted that he stole about

There is equally no doubt that a good judiciary will not only check the abuses of power by the government and its agencies, but it will also be capable of managing conflicts which are bound to result from unwholesome rivalry for political powers. Accordingly, if Nigeria will ever mature into a truly free and egalitarian society, all efforts must be directed towards having a judiciary that would be able to play its historic roles safeguarding civil liberties, the rule of law and democratic tenets. All hands must therefore be on deck to help the Nigerian judiciary carry out these roles. This is because a smooth and effective administration of justice involves the mutual co-operation among the stakeholders in the justice administration system such as the bench, the bar, the police, the correctional centres, all other law enforcement agencies of government and the general public.

Finally, to be more efficient the judiciary in Nigeria, needs to be well and adequately funded, appointment to the Bench should not be subject to the whims and caprices of either the President or the Governor, by a politically neutral separate body so as to remove partisanship from the judiciary, judicial officers of all kinds should be retrained regularly so as to update their knowledge in order to cope with modern trends in their dispensation of justice, and competent, upright, highly disciplined and courageous persons who will be ready and bold to dispense justice without fear and bias regardless of who is involved, should be appointed as judicial officers.

N32.8billion pension funds. See *The Nation* of Tuesday, January 29, 2013 at the front page with the headline: "N32b Pension Fraud: Convicted Director Fined N720,000". This judgment was criticized by the Economic and Financial Crimes Commission(EFCC) at page 8 of same newspaper. See also *The Nation*(Tuesday February 5, 2013) 29-33.