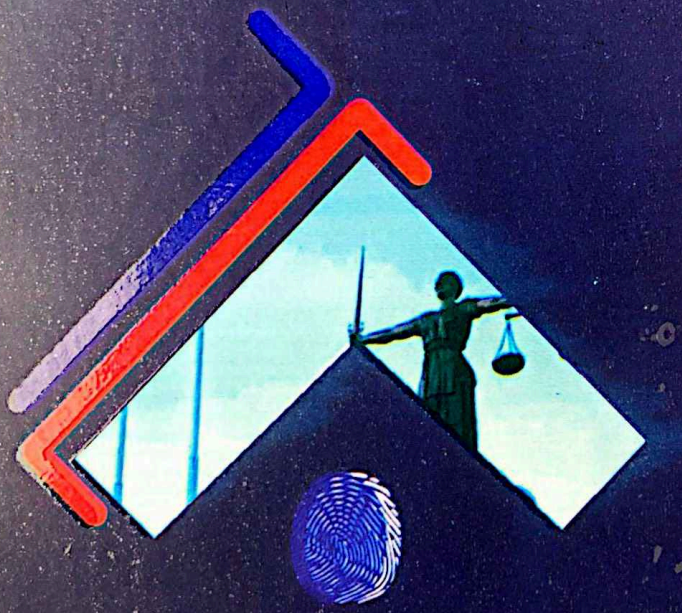
THE JURISPRUDENCE OF ELECTION PETITIONS IN NIGERIA



Edited by:
W. K. Shittu
A. B. Abdulkadir
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TABLE OF CONTENTS

List of Contributors iii
Preface and Acknowledgments ix
List of Cases xiii
List of Statutes xiv

PART ONE
THEORETICAL FRAMEWORK OF ELECTORAL ADJUDICATIONS

1. Theories of Election Petitions Adjudication in Nigeria
   Ibrahim Imam & Rilwan F. Mahmoud 1
2. Piercing Through the Merits and the Risks in Judicialising Electoral Disputes in Nigeria
   Abdulfatai Oladapo Sambo & Ruqayyah Olaide Abdulaziz 32

PART TWO
LEGAL FRAMEWORK ON ELECTORAL JUSTICE AND LITIGATION

3. The Legal Framework Governing Candidate Mortality in Nigeria's General Elections by Ademola Elufisoye Elubode, Olumide Ogidan & Ebenezer Fikayo Adeojo 55
4. The Legal Issues of Electoral Integrity, Technology, and Voter Engagement in the Nigerian Elections and Electoral Processes in the 21st Century by Akinsola O. K, Agboke M.O, & Oduyebo T. O. 70
5. An Assessment of the Electoral Act 2022 As a Legal Framework for Curbing Electoral Malpractices and Enhancing Electoral Justice in Nigeria
   Abdulkadir Bolaji Abdulkadir & Ali Aminu Muhammad 100
6. Towards Strengthening the Capacity of the Economic and Financial Crimes Commission under the Electoral Act in the Prosecution of Electoral Offences and Election-Related Terrorism in Nigeria
   Wahab Kunle Shittu, SAN 123

7. Towards the Integration of Mediation into Nigeria's Post-Election Dispute Resolution Framework
Bola Rasaq Gold, SAN & Abdulkareem Ademola Mashood 150

PART THREE
ELECTORAL JUSTICE AND DEMOCRATIC GOVERNANCE

8. Racing Against Democracy, Time Limits, Procedural Rigidity and Access to Electoral Justice in Nigeria
Ooreoluwa O. Agbede 185
9. Mainstream Judicial Review of Electoral Disputes and Its Implication for Constitutional Democracy in Nigeria
Onikosi, Ahmeed Adedeji, Adeyemi Jamiu Akolade & Sewankambo Hamza 200
10. A Legal and Constitutional Appraisal of Electoral Violence, Election-Related Terrorism and their Impacts on Democratic Consolidation in Nigeria
Wahab Kunle Shittu, SAN 221
11. The Jurisprudence of Election Petitions in Technicality and Substantive Justice and Implications on Nigeria's Democracy
Francis Ekene Ikebundu, Ph.D. 243

PART FOUR
JUDICIALISATION OF ELECTION DISPUTES

12. The Judicialisation of Politics in Nigeria Through Electoral Disputes and Their Implications for Democratic Consolidation, 2015–2023
Zekeri Momoh & Manasseh Namura Mai-Lafia 269
13. A Comparative Analysis of Election Petition Jurisprudence in Nigeria and South Africa in Relation to Electoral Justice and Democratic Legitimacy
Prince Pius Imiera & Emmanuel Adaramola Opeyemi 290
14. Between a Cinch and a Catch-22 in Procedural Efficiency, Statutory Deadlines, and the Quest for Substantive Justice in Nigerian Pre-Election Law
Oluwaseye Thompson Adeboye; Anthonia Ugowe & Solomon O. Afolabi 311

15. Justice on the Clock in Judicial Capacity, Time Constraints, and the Quality of Electoral Adjudication in Nigeria (1999–2023) John Afolabi Ogedengbe & Ruth N. Fadipe 329
16. The Impact of Conflicting Decisions of Courts on Election Disputes in Nigeria by Rasheedat Abimbola Hassan-Aribito & Ibrahim Imam 348
Appendix: Summary of Chapters 361
Index..... 372

PREFACE AND ACKNOWLEDGMENTS

Taylor Swift once said,

It's not enough to just want change ... You have to go and make change by voting."

This foregrounds the fundamental role of elections in democracy. In every democratic society, elections are regarded as the lifeblood of democracy because they provide the fundamental mechanism through which citizens choose their leaders, hold them accountable, and ensure the peaceful transfer of power, while also conferring legitimacy on governments and reflecting the popular will of the people. In Nigeria, where democratic governance has evolved through cycles of military interruption and civilian restoration, the integrity of elections has remained central to the legitimacy of public institutions and the stability of the state.

Therefore, election serves as the cornerstone and the heartbeat of democracy in Nigeria. Thus, this book on *The Jurisprudence of Election Petitions in Nigeria* catalyses academic discussions on electoral governance and constitutional adjudication in Nigeria. The surge in election petitions mirrors the judicialization of democratic processes in Nigeria. People ventilate their electoral grievance by contesting the election results in Courts. Since the advent of the Fourth Republic in 1999, Nigeria's superior courts particularly the Supreme Court of Nigeria and the Court of Appeal of Nigeriahave developed an extensive and complex body of jurisprudence that shapes the contours of electoral justice. This body of law has not only defined procedural and evidentiary standards but has also profoundly influenced political behaviour, institutional accountability, and democratic consolidation.

This text is tactically and thoughtfully divided into 4 parts and organised into 16 chapters. The book x-rays a systemic and pragmatic approach to the emerging jurisprudence in election petition. The first part, Theoretical Framework of Electoral Adjudication, centers on resolving electoral disputes within the realm of jurisprudential and constitutional theory. It questions the philosophical backgrounds of electoral disputes, the standard justifications for judicial intervention in political disputes, and the dilemma of striking the balance between the scale of sovereignty and judicial oversight. By grounding electoral adjudication within democratic theory, the

book demonstrates that election petitions are not mere technical contests over votes and forms, but constitutional dialogues about legitimacy, representation, and accountability. The second part, Legal Frameworks on Electoral Justice in Nigeria, provides an incisive analysis of the constitutional and statutory architecture governing elections. Anchored primarily on the Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act 2022, this section carefully dissects jurisdictional provisions, grounds of petition, procedural timelines, evidentiary thresholds, and the powers of election tribunals. It illuminates how constitutional designs, legislative reform, and judicial interpretation interact to define the scope and limits of electoral justice in Nigeria. The third part, Electoral Justice and Democratic Consolidation, moves beyond black-letter law to examine the broader implications of election adjudication for democratic stability.

In a polity where electoral outcomes are frequently contested, the judiciary serves as the ultimate arbiter of political legitimacy. The book critically assesses whether judicial interventions have strengthened public confidence in democratic institutions or inadvertently deepened political polarization. It engages with recurring themes such as substantial compliance, burden of proof, technological innovation in elections, and the tension between procedural technicality and substantive justice. The fourth and final part, Judicialisation of Election Disputes, addresses one of the most significant developments in Nigeria's democratic journey, the increasing resort to courts as decisive arenas of political competition. The phenomenon of judicialisation raises important questions about the separation of powers, judicial independence, and the proper limits of adjudication in inherently political matters. By examining trends in post-election litigation and the expanding role of appellate courts, the author contributes meaningfully to the ongoing debates about whether Nigeria's democracy is being strengthened or strained by the centrality of judicial pronouncements in electoral outcomes.

This book stands out in terms of its doctrinal depth and analytical clarity and even perspective. The book addresses debatable Judicial decisions with objectivity without being oblivious of the challenges that our courts face and the effects of their decisions on Nigerian democracy. The book synthesises judicial authorities, statutory authorities and constitutional principles in a way that is accessible to practitioners, academics, judges,

policymakers, and students alike. This is a digitalised political era where electoral processes are being digitalized, and virtual proceedings are increasingly evolving.

Thus, this book is a socio-political salvation at the moment. It thoroughly x-rays the judicialisation of the electoral processes the possible reforms that are capable of strengthening electoral justice. Ultimately, *The Jurisprudence of Election Petition in Nigeria* is more than a legal treatise; it is a reflection on the health of Nigeria's democracy. It reminds us that while elections are decided at the ballot, their legitimacy is often affirmed in the courtroom. The endurance of democratic governance depends not only on credible electoral administration but also on a judiciary capable of dispensing impartial, principled, and timely justice. This book stands as a significant addition to the growing body of scholarship on electoral law and democratic governance in Nigeria. It will undoubtedly serve as a valuable resource for years to come and as an enduring reference in the continuing quest to deepen constitutionalism and democratic consolidation in Nigeria.

To our readers, this book would not have been possible without the kindness, contributions, encouragement, and support of many individuals whose efforts made its publication a reality. Our first and special appreciation goes to Wahab Kunle Shittu, SAN, whose intellectual and tremendous support made the publication of this book possible. Despite the demands of his busy private legal practice, he graciously devoted time to reviewing the manuscripts and offered several insightful and valuable suggestions that greatly enhanced the quality of this work. The Editors wish to express sincere appreciation to all the contributors who dedicated their time, knowledge, and expertise to the preparation of the chapters in this book. Their scholarly insights, commitment to research, and intellectual contributions have greatly enriched the quality and depth of this work. The successful completion of this book would not have been possible without their cooperation, patience, and willingness to share their ideas. The Editors are truly grateful for their valuable efforts and for the confidence they placed in this project. It is hoped that this collective work will contribute meaningfully to scholarship and serve as a useful resource for readers and researchers.

Finally, The Editors sincerely express their profound appreciation to the *Institute of Legislative Studies, University of Ilorin*, and the *Constitutional and Democratic Justice Initiative* for their invaluable collaboration in bringing this book on the *Jurisprudence of Election Petition in Nigeria* to fruition. Their institutional support, intellectual partnership, and commitment to advancing scholarship in electoral jurisprudence were instrumental to the successful completion of this project.The Editors acknowledge that this work would not have been possible without the cooperation, commitment, and shared vision of these institutions in promoting research, dialogue, and knowledge development within Nigeria's democratic and legal framework. Their support remains deeply appreciated.

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Adeleke Ademola Jackson Nurudeen v. Adegboyega Isiaka Oyetola & Ors. (2023-05) Legalpedia 26471 (SC)
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Bewaji v. Obasanjo (2009) 9 NWLR (Pt. 1093) 439
Clement v Iwuanyanwu (1989) 3 NWLR (Pt. 107) 39.
Dapialong v Dariye (2007) 8 NWLR (Pt. 1036) 332.
Eze v Governor of Abia State (2014) 14 NWLR (Pt. 1426) 192.
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Governor of Plateau State v Goyol& Ors (2007) 16 NWLR (Pt. 1059) 57.
GTB v Abiodun (2017) 9 NWLR (Pt. 1570) 185.
Ibikunle Amosun v Gbenga Daniel(2009) 04 E-WRN / 32 (CA).
Ibori v. Ogboru (2005) 6 NWLR (Pt. 920) 102
In Re – Madaki (1996) NWLR (Pt. 459) 153
Inakoju v Adeleke (2007) 4 NWLR (Pt. 1025) 423.
Muhammadu Buhari v. Independent National Electoral Commission & 4 Ors. (2008) 1 All N.L.R. 159
Rabiu v. Kano State (1980) 8–11 SC 130
Rauf Aregbesola v Olagunsoye Oyinlola(2011) 01 E-WRN / 33 (CA).
Stanbic IBTC Bank Plc v Udeuma (2014) 2 NWLR (Pt. 1392) 506.
Wike v. Peterside & Ors. [2016] NGSC 87

LIST OF STATUTES

Administration of Criminal Justice Act, 2015
Constitution of the Federal Republic of Nigeria, 1999 (as amended)
Court of Appeal Act, 2004
Criminal Code Act, 2004
Electoral Act, 2022

Evidence Act, 2011
Federal High Court Act, 2004
Freedom of Information Act, 2011
Independent National Electoral Commission (Establishment) Act, 1998
Interpretation Act, 2004
National Assembly (Powers and Privileges) Act, 2017
Oath Act 2004.
Penal Code Act, 2004
Political Parties (Registration, Regulation, etc.) Act, 2002
Public Officers Protection Act, 2004
Supreme Court Act, 2004

PART ONE
THEORETICAL FRAMEWORK OF ELECTORAL ADJUDICATIONS

CHAPTER ONE

THEORIES OF ELECTION PETITIONS ADJUDICATION IN NIGERIA

Ibrahim Imam* & Rilwan F. Mahmoud**

1.1 INTRODUCTION

Elections constitute the cornerstone of representative democracy, providing the institutional mechanism through which citizens express political choice and legitimise governmental authority. However, electoral processes are vulnerable to manipulation, administrative error, coercion, and procedural irregularities. To address these risks, modern constitutional systems establish specialised mechanisms for resolving electoral disputes through election petitions. In an ideal world, elections stand as mechanisms for selecting government officeholders and establishment of governments, that link citizens (as principals) with their representatives (as agents) in government, generate inclusive government and confer legitimacy on elected authorities. Election is also a means of holding leaders to account, and provide the main opportunity for most ordinary people to participate in politics. Elections constitute the foundational instrument through which constitutional democracies put into operation political participation, representation, leadership recruitment, and governmental accountability.

In Nigeria, elections are constitutionally ingrained and statutorily regulated under the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2022, and the subsidiary regulations issued by the Independent National Electoral Commission (INEC). Since the restoration of civil rule in 1999, Nigeria has conducted seven general elections 1999, 2003, 2007, 2011, 2015, 2019, and 2023, and numerous off-cycle elections, with outcomes marked by alternation of power, judicial intervention, and sustained contestation over electoral integrity. Indisputably, electoral laws operate as the legal framework through which political authority is constituted, transferred, and legitimized. It includes

constitutional provisions on formation of political party, rights and representation, statutory rules on voter registration, nomination, campaigning, voting procedures, vote counting, dispute resolution, and post-election governance.

Notwithstanding the development in electoral laws, Nigeria's electoral democracy remains characterised by weak party institutionalisation, declining voter turnout, extensive post-election litigation, persistent allegations of vote-buying and manipulation, and the dominance of identity-based mobilization. These features raise profound questions about the capacity of electoral law to produce meaningful democratic accountability and policy responsiveness. This facial appearance also explains the inevitability of judicial intervention in election disputes. In the same vein adjudication election disputes continues to have profound constitutional implications, as it determines who holds public office and whether the electoral process itself meets democratic standards. Invariably, in constitutional democracies, courts serve as guardians of electoral legality, political legitimacy, and democratic continuity.[1] The centrality of election adjudication in Nigeria reflects persistent concerns over electoral malpractice, including vote manipulation, exclusion, violence, and institutional failures. Consequently, election tribunals and appellate courts do not merely resolve private disputes between political contestants but perform constitutionally significant roles in determining governance legitimacy, stabilising political transitions, and shaping democratic norms.[2]

Against the above backdrop, this chapter is intended to analyse the seven theoretical approaches to election petition adjudication–legalistic, political, democratic, pragmatic, institutional, social theories; and maxis theory and adapts them to Nigeria's constitutional, statutory, and jurisprudential context. It contends that while Nigeria's plurality of electoral system produces some convergence toward dominant-party competition, the effects of electoral rules are mediated by ethno-religious cleavages, elite

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[1] Attahiru Jega, 'Improving Electoral Process in Nigeria' (2015) 9(1) Nigerian Journal of Public Law 1.

[2] Yemi Osinbajo, 'Judicial Politics and Electoral in Nigeria' (2011) 5 Nigerian Juridical Review 23.

bargaining, incumbency advantage, and weak ideological differentiation. Consequently, it integrates comparative insights from the United States, United Kingdom, and Kenya and identifies leading proponents of each theory through authoritative scholarship and case laws.

1.2 CONSTITUTIONAL AND STATUTORY FRAMEWORK

1.2.1 Constitutional Foundations

Nigeria operation a democratic system of government grounded under the doctrine of separation of powers between the executive, the legislature and the judiciary.[3] The judicial is vested with power to interpret and settle legal disputes. The judicial power of the Federation and the States is vested in the courts under section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Election petition adjudication is constitutionally institutionalised through specialised tribunals under section 285, while section 239 confers original jurisdiction on the Court of Appeal in presidential election disputes. Section 285(5)–(7) prescribes strict timelines for filing and determining election petitions, reflecting a constitutional commitment to finality and stability in electoral governance. These provisions underscore the *sui generis* nature of election proceedings, a point consistently emphasised by Nigerian courts.[4]

1.2.2 Statutory Framework

The Electoral Act 2022, particularly Parts VI–VIII, governs election petitions, stipulating grounds for challenge, burden of proof, standards of evidence, and remedies. Section 134 sets out the grounds upon which an election may be questioned, including lack of qualification, corrupt practices, non-compliance with the Act, and failure to score the majority of lawful votes. The section provides:

> An election may be questioned on any of the following grounds— (a) a person whose election is questioned was, at the time of the election, not qualified to contest the election; (b) the election was

[3]Section 4, 5, and 6 Nigerian Constitution 1999 (as amended)
[4] Abubakar v Yar'Adua (2008) 19 NWLR (Pt 1120) 1 (SC)

> invalid by reason of corrupt practices or non- compliance with the provisions of this Act; or (c) the respondent was not duly elected by majority of lawful votes cast at the election.[5]

However, according to the Act particularly subsection (3) of section 134, with respect to subsection (1) (a), a person is deemed to be qualified for an elective office and his election shall not be questioned on grounds of qualification if, with respect to the particular election in question, he meets the applicable requirements of sections 65, 106, 131 or 177 of the Constitution and he is not, as may be applicable, in breach of sections 66, 107, 137 or 182 of the Constitution.

1.3 JUDICIAL PHILOSOPHY IN ELECTION MATTERS

The importance of judiciary globally cannot be overemphasized; this is because disputes are inevitable phenomenon in every human society; just as the inevitability of their settlement. As a result, adjudication by courts/tribunals was formed by states or the entire international Community for settlement of disputes between two or more contending parties. The arrangements of courts or tribunals created by states are constitutionally allowed to function independently without the direct influence of states and make accessible to all parties.[6] Nigerian courts have long maintained that election petitions are special statutory proceedings distinct from ordinary civil litigation. In Abubakar v Yar'Adua, the Supreme Court held that election petitions are *sui generis* and must be conducted strictly within the procedural framework laid down by the Constitution and the Electoral Act.[7] In Nigeria, the constitution and the National Assembly recognize the fact that disputes may arise before, during and after elections and such disputes must be resolved within the confines of the law and due process. Consequently, the constitution created and empowered different levels of courts to adjudicate on matters involving electoral disputes. Therefore, this jurisprudential stand on the Nigerian election adjudication is entirely within the legalistic tradition, even as emerging decisions increasingly reflect democratic and pragmatic orientations.

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[5] Section 134(1)(a-c), Electoral Act 2022

[6] Hay, P., Federalism and Supranational organizations (Chicago: University of Illinois Press , 1966), 67

[7] 4. Abubakar v Yar'Adua (2008) 19 NWLR (Pt 1120) 1 (SC)

1.4 THEORIES OF ELECTORAL ADJUDICATION

Electoral law operates as the legal framework through which political authority is constituted, transferred, and legitimized. It includes constitutional provisions on formation of political party, rights and representation, statutory rules on voter registration, nomination, campaigning, voting procedures, vote counting, dispute resolution, and post-election governance. While election petition adjudication refers to the formal legal process through which courts or tribunals determine disputes arising from elections. Unlike ordinary civil or criminal litigation, election petitions involve matters of high public interest and constitutional significance. The subject matter concerns not merely private rights but the legitimacy of political representation and governance. Under the Nigerian constitution (as amended), electoral law is established in Sections 40, 65–69, 106–110, 131–137, and 221–229, supplemented by the Electoral Act 2022 and INEC regulations.

Beyond its procedural function, electoral law performs normative and institutional roles. Inclusively, it represents democratic values of political equality, popular sovereignty, participation, accountability, and representation. Institutionally, it structures encouragements for political actors, shapes party systems, directs voter behavior, and settles political conflict through adjudicatory strategies. Electoral theories therefore offer analytical frameworks for evaluating whether election petitions adjudicatory outcome and electoral laws achieve these objectives. The theories include legalistic, political, democratic, pragmatic, institutional, and social . The theories emphasize policy responsiveness and competition; highlights institutional incentives and party system outcomes; models strategic behavior; and the role of social divisions; in election petition adjudication.

1.4.1 LEGALISTIC THEORY OF ELECTION PETITION ADJUDICATION

The Legalistic or Formalistic Theory, in relation to election petition adjudication, emphasizes strict adherence to established legal rules, procedural requirements, and statutory provisions in resolving electoral

disputes. This theory is grounded in legal positivism and holds that the legitimacy of judicial decisions depends on their conformity with formally enacted laws rather than subjective considerations of fairness, morality, or political consequences. Under this approach, courts adjudicating election petitions focus primarily on whether electoral laws, constitutional provisions, and procedural rules have been complied with, and their decisions are based strictly on legal validity rather than political or equitable considerations.[8]

The intellectual foundation of legalistic theory can be traced to the works of Hans Kelsen, who argued in Pure Theory of Law that law must be understood as a system of norms independent of moral or political influences.[9] According to Kelsen, judicial decisions must derive their authority from established legal norms, and judges must apply the law as it exists rather than as they think it ought to be. Applied to election petition adjudication, this means that courts must determine electoral disputes strictly based on constitutional provisions, electoral statutes, and evidentiary rules, without regard to political sympathy or perceived fairness outside the law. This theory emphasizes strict adherence to legal rules, statutes, and procedures governing elections where tribunals and courts decide electoral disputes narrowly on the letter of electoral laws, constitutional provisions and procedural rules.[10] This approach emphises technical compliance over substantial , often placed the burden of proof on the petitioner to prove non-compliance with specific legal requirement. The Supreme Court's decision in *Liyel Imoke v INEC*[11] *reaffirmed the supremacy* of constitutional tenure provisions affirming legalistic theory. The Court held that constitutional tenure cannot exceed four years from the date of oath-taking, regardless of electoral irregularities. The Court in line with legalistic theory, emphasized that constitutional provisions must be strictly

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[8]H. L. A. Hart, The Concept of Law, 2nd ed. (Oxford: Oxford University Press, 1994) 94–110.

[9] Hans Kelsen, Pure Theory of Law (Berkeley: University of California Press, 1967) 193–205.

[10]Anleu, S. R., Brewer, R and Mark, K., Locating the Judge within Sentencing Research (2016), 6(2), *International Journal for Crime, and Social democracy,*570 – 599, Issues in Election Pettition Adjudication in Nigeria, (20170, 5(7), *Journal of Politics and Law Research* Asaad H Almohammad Towards a Theory of Political Emotion Causation, (2016) https://journals.sagepub.com

[11] (2011) 12 NWLR (Pt. 1262) 439 (SC)

interpreted to prevent abuse of democratic processes. This theory is rooted in legal positivism, most prominently articulated by John Austin, who argued that law derives validity from sovereign command rather than moral content,[12] and later refined by HLA Hart, who emphasized rule-based adjudication and institutional authority.[13] In the context of adjudication, Lon L Fuller and Joseph Raz further underscored procedural fidelity and institutional legitimacy as hallmarks of the rule of law.[14] Consequently the theory focus mainly on legalism, sacrificing substantial , which base on determining the true will of the people for technical that focuses on whether legal formalities were followed.

In Nigeria, the legalistic approach is clearly reflected in constitutional and statutory provisions governing election petitions. Section 285 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) establishes election tribunals and imposes strict timelines for filing and determining election petitions.[15] Similarly, Section 134 of the Electoral Act 2022 specifies the legal grounds upon which an election may be challenged.[16] Courts are therefore required to determine election petitions strictly within the framework of these legal provisions. Nigerian judicial decisions have consistently demonstrated the application of legalistic theory in election adjudication. In *Buhari v. INEC*, the Supreme Court of Nigeria emphasized that election petitions are statutory proceedings governed strictly by the provisions of the Electoral Act and that petitioners must prove allegations of non-compliance with credible and admissible evidence.[17] Similarly, in *Ucha v. Elechi,* the Court reaffirmed that election petitions are sui generis and must be conducted in strict compliance with procedural and evidentiary rules.[18]

Nigeria's election jurisprudence historically exemplifies legalistic formalism. In *Buhari v Obasanjo*, the Supreme Court dismissed the petitioner's

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[12] John Austin, The Province of Jurisprudence Determined (John Murray 1832).
[13] Hart, The Concept of Law (2nd edn, OUP 1994)
[14] Lon L Fuller, The Morality of Law (rev edn, Yale University Press 1969); Joseph Raz, The Authority of Law (2nd edn, OUP 2009)
[15] Section 285 (5) – (7); Constitution of the Federal Republic of Nigeria 1999 (as amended)
[16] Section 134 Electoral Act 2022 (Nigeria)
[17] Buhari v. INEC (2008) 19 NWLR (Pt. 1120) 246 (SC)
[18] Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330 (SC).

challenge to the 2003 presidential election on the ground that allegations of non-compliance must be proved polling unit by polling unit and supported by primary documentary evidence.[19] The Court insisted that election petitions are not platforms for speculative but legal proceedings bound by statutory proof requirements. Similarly, in *Omoboriowo v Ajasin*, the Court held that election results enjoy a presumption of regularity and that the burden lies heavily on the petitioner to displace this presumption through strict proof.[20] The Court's insistence on procedural regularity over substantive electoral fairness epitomizes the legalistic paradigm. These decisions illustrate the legalistic orientation of election petition adjudication, where courts prioritize legal certainty, procedural compliance, and statutory interpretation.

The theory was also exhibited in the case of Yari v. Marafa,[21] where the Supreme Court found that the failure of APC to conduct its primary election as stipulated by laws contravene the legal procedure for nominating candidate to contest election in Nigeria. Consequently, the court ordered that the candidates of political parties that scored the highest votes cast at the elections be declared as duly elected and returned. In similar paradigm, the legalistic theory was demonstrated in the cases of A*PC v. Bashir Machine*[22] and *Adeleke v. Oyetola.*[23] In the cases the Supreme Court faulted the respondent used of originating summons to commence his action as against ordinary summon on the ground that the disputed matter involves allegations that require prove by evidence. While in the case of Adeleke v. Oyetola,[24] the judge who delivered the lead judgment of the tribunal was absent and did not participate in the proceedings held on February 6, 2019, when RW12 and RW13 testified, during which vital exhibits were tendered and admitted as evidence. By implication, he did not listen, see, or observe the witnesses and assess their deportment. However, in his judgment, he reviewed, analyzed, and evaluated their evidence to give judgment in the petition. The Supreme Court rightly declared the judgment a nullity. This is because the issue goes beyond the territory of mere technicalities in that

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[19] Buhari v Obasanjo (2005) 13 NWLR (Pt 941) 1 (SC).
[20] Omoboriowo v Ajasin (1984) 1 SCNLR 108 (SC).
[21](2020) 6 NWLR (pt 1721) 383
[22] (2023) LPELR-59953(SC)
[23] (2020) 6 NWLR (pt. 1721)
[24] (2020) 6 NWLR (pt. 1721)

they are not just simple matters of procedure but a matter that actually ensures that is dispensed. This supports the rationale behind legalistic theory and the idea that the role of the judiciary is to interpret and apply these laws impartially without regard to the broader political context. The legalistic theory conceives election adjudication as a strictly technical exercise governed by formal legal rules, procedures, and evidentiary standards. Judges are expected to apply the law neutrally and mechanically, without regard to political outcomes or societal consequences.

Comparatively, in the United Kingdom, for example, election adjudication historically reflects legalistic formalism, particularly under the Representation of the People Act 1983. In Morgan v Simpson, the Queen's Bench Division held that an election is invalid only where statutory non-compliance affects the result or is so substantial as to undermine the election as a whole.[25] This technical threshold reflects a positivist orientation similar to Nigeria's early election jurisprudence. Likewise the US Supreme Court has displayed legalistic tendencies, especially in the enforcement of procedural election rules. In Purcell v Gonzalez, the Court cautioned against judicial interference with election administration close to elections, prioritizing institutional rules over substantive equity considerations.[26] In the jurisdiction of Kenya, the early post-2010 election jurisprudence initially adopted legalistic approaches, particularly in Raila Odinga v Independent Electoral and Boundaries Commission (IEBC) (2013), where the Supreme Court upheld the presidential election based largely on procedural and evidentiary insufficiencies in the petition.[27]

A careful appraisal of the practices in those jurisdictions, notwithstanding the fact that legalism promotes certainty, predictability, and procedural discipline, it has attracted criticism for enabling flawed elections to survive judicial scrutiny due to technical deficiencies rather than substantive innocence. Scholars such as Ronald Dworkin argue that adjudication must go beyond rules to embrace principles that reflect moral and democratic

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[25] Morgan v Simpson [1975] QB 151 (QB).

[26] Purcell v Gonzalez 549 US 1 (2006).

[27] Raila Odinga v Independent Electoral and Boundaries Commission [2013] eKLR (SC Kenya).

legitimacy.[28] In Nigeria, excessive formalism has often been perceived as judicial abdication of democratic responsibility, especially where credible allegations of malpractice fail on technical grounds. In essence, the legalistic or formalistic theory views election petition adjudication as a strictly legal exercise governed by established rules and procedures. It ensures predictability, consistency, and certainty in electoral dispute resolution by requiring courts to apply the law objectively and without external influence. While this approach promotes legal stability and institutional legitimacy, it may sometimes prioritize procedural compliance over substantive . Nevertheless, it remains a fundamental framework for ensuring the orderly and lawful resolution of electoral disputes in democratic systems.

1.4.2 POLITICAL THEORY OF ELECTION PETITION ADJUDICATION

The Political Theory, in relation to election petition adjudication, views the resolution of electoral disputes as an integral part of the broader political process and power structure within the state. This theory recognizes that election petition adjudication does not operate in a political vacuum but is influenced by political institutions, power relations, democratic values, and governance considerations. It emphasizes that courts, while expected to remain independent and impartial, inevitably function within a political environment and their decisions have significant political consequences, particularly in determining who exercises governmental authority.[29] The foundation of political theory in legal adjudication can be traced to scholars of 20th-century such as Harold Laski, a pluralist, championed individual conscience and decentralized authority, while Carl Schmitt, a conservative argued for a centralised, authoritarian, decisionistic sovereign. Harold Laski argued that law and legal institutions are closely connected to political power and state authority. In his conception contended that the state is not absolute, but one of many associations, and that loyalty should be based on the individual conscience and consent rather than unquestionable

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[28] Ronald Dworkin, Law's Empire (Harvard University Press 1986).

[29] Martin Shapiro, Courts: A Comparative and Political Analysis (Chicago: University of Chicago Press, 1981) 1–25.

obedience.[30] Similarly, Carl Schmitt emphasized that sovereignty ultimately involves the authority to make binding decisions, particularly in situations of political conflict.[31] In the context of election petition adjudication, courts exercise sovereign judicial authority to resolve disputes over political power, thereby playing a central role in the political organization of the state. The political theory of adjudication means that judicial decisions, particularly in election disputes, are inevitably shaped by political considerations and institutional power dynamics. Thus, courts are not neutral arbiters but political actors whose rulings influence governance, stability, and legitimacy. This theory draws heavily from legal realism, championed by scholars such as Karl Llewellyn and Jerome Frank, who argued that judicial decisions are influenced more by judges' values, social contexts, and policy preferences than by formal rules.[32] Political constitutionalists such as Mark Tushnet and Ran Hirschl further contend that courts operate within political structures and often serve elite or institutional interests.[33]

Political theory also recognises the judiciary as a political institution in the sense that its decisions influence governance, legitimacy, and democratic stability. As observed by Alexander Hamilton in The Federalist Papers, the judiciary serves as a guardian of the Constitution and plays a crucial role in maintaining constitutional order.[34] In election petition adjudication, courts interpret constitutional provisions, determine electoral legitimacy, and ensure that political authority is acquired in accordance with the law. In Nigeria, the political significance of election petition adjudication is clearly reflected in constitutional provisions and judicial practice. Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) vests judicial powers in the courts, while Section 285 establishes election

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[30] Harold Laski, A Grammar of Politics (London: George Allen & Unwin, 1925) 312–330. See also Thomas Poole, The Mystery of Lawlessness; War, Law and the Modern State (Cambridge University, Press, 2015)

[31] Carl Schmitt, Political Theology (Cambridge, Massachusetts: MIT Press, 1985) 5.

[32] Karl Llewellyn, 'Some Realism about Realism' (1931) 44 Harvard Law Review 1222; Jerome Frank, Law and the Modern Mind (Transaction Publishers 1930).

[33] Mark Tushnet, Taking the Constitution Away from the Courts (Princeton University Press 1999); Ran Hirschl, Towards Juristocracy (Harvard University Press 2004).

[34] Alexander Hamilton, The Federalist Papers No. 78 (New York: Signet Classics, 2003) 465

tribunals to resolve electoral disputes.[35] Through these institutions, the judiciary performs a critical political function by determining the validity of elections and resolving conflicts over political leadership. The Supreme Court of Nigeria, as the final appellate authority, plays a decisive role in determining electoral outcomes and ensuring constitutional governance.[36] Judicial decisions in election cases illustrate the political impact of election petition adjudication. In A.G. Federation v. Abubakar, the Court reaffirmed its role in interpreting constitutional provisions governing political participation and electoral competition.[37] These cases demonstrate that election petition adjudication serves as a mechanism for resolving political conflicts through legal means, thereby preventing instability and preserving democratic order. Similarly, in Abubakar v INEC, the Supreme Court dismissed challenges to the 2023 presidential election, reinforcing electoral finality and political stability while maintaining formal constitutional reasoning.[38] Although doctrinally framed, the Court's reasoning reflected sensitivity to the destabilising potential of overturning a presidential election. In real meaning, political theory views election petition adjudication as a process situated at the intersection of law and politics. It recognizes that courts play a crucial role in determining political authority, maintaining constitutional governance, and resolving political conflicts arising from elections. By providing a lawful and peaceful mechanism for resolving electoral disputes, election petition adjudication contributes to political stability, democratic legitimacy, and the orderly transfer of political power.

In the United States, the most striking example of political adjudication in election disputes is Bush v Gore, where the US Supreme Court halted the Florida recount in the 2000 presidential election, effectively determining the presidency.[39] The judgment has been widely criticized by scholars such as Richard Posner and Bruce Ackerman as reflecting judicial pragmatism and

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[35] Sections 6 and 285 Constitution of the Federal Republic of Nigeria 1999 (as amended)
[36] Ibid Section 235.
[37] A.G. Federation v. Abubakar (2007) 10 NWLR (Pt. 1041) 1 (SC).
[38] Abubakar v INEC (2023) 12 NWLR (Pt 1895) 257 (SC).
[39] Bush v Gore 531 US 98 (2000).

political expediency rather than principled constitutional reasoning.[40] In the United Kingdom, while courts traditionally exercise restraint/passivism in election disputes, political considerations occasionally surface. A good example is the case of *R (Miller) v Prime Minister (No 2).* Though, it was not an election related dispute, the UK Supreme Court asserted its authority over constitutional politics, illustrating the judiciary's political role in preserving democratic order.[41] This constitutional forcefulness put in the picture, the contemporary approaches to electoral adjudication. In the African continent for instance Kenya, provides one of the most unambiguous graphics of political adjudication in Africa. In the landmark case of *Raila Odinga v IEBC*, the Supreme Court nullified the presidential election, a historic decision in Africa. The court cited systemic irregularities and constitutional violations.[42] The ruling was widely regarded as politically courageous and institutionally transformative, reflecting judicial willingness to prioritise democratic legitimacy over political expediency.

Synthetically, political theory underscores the judiciary's unavoidable interventionist role in shaping political outcomes. Nonetheless, critics caution that overt politicisation threatens judicial legitimacy and independence. In particular, Alexander Bickel famously cautioned against the "counter-majoritarian difficulty" inherent in judicial review, particularly when courts overturn outcomes produced by popular vote.[43] Nigerian courts thus face a delicate balance between legal fidelity and political realism.

1.4.3 DEMOCRATIC THEORY OF ELECTION PETITION ADJUDICATION

Democratic theory is connected with principles of democracy; that is government by the people, either directly or through representatives elected by the people.[44] In essence democratic theory ideologically is

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[40]Richard Posner, Breaking the Deadlock: The 2000 Election, the Constitution, and the Courts (Princeton University Press 2001); Bruce Ackerman, 'The Court Packs Itself' (2001) 90 American Prospect 46.

[41] R (Miller) v Prime Minister [2019] UKSC 41, [2020] AC 373.

[42] Raila Odinga v IEBC [2017] eKLR (SC Kenya).

[43] Alexander Bickel, The Least Dangerous Branch (2nd edn, Yale University Press 1986).

[44] Black's Law Dictionary, 497 (9th ed. 2009).

government of, by, and for the people. The theory recognises that certain general principles are essential to a democracy. These principles include that all people are created equal and that all people are endowed with certain unalienable rights or freedoms. One of the most fundamental freedoms is the right to choose those in whom the people vest sovereign power. People want to live in a civil, orderly, democratic society with just laws that are uniformly enforced. To achieve this goal base on the theory of democracy, the people must be willing to relinquish some individual freedoms; cede some individual rights to persons they choose to put in leadership positions with sovereign power (e.g., public officeholders).[45]

This theory focuses on the role of election adjudication in upholding democratic principles. It asserts that the integrity of the electoral process is paramount, and courts should ensure that elections reflect the will of the people, protecting voters' constitutional rights and the legitimacy of democratic institutions. The democratic theory of election adjudication stresses that the judiciary must protect popular sovereignty of the people, electoral integrity, and citizens' voting rights. From this theory perspective, adjudication role of the judiciary is therefore justified not merely as legal rule enforcement (support legal theory) but as a instrument for safeguarding democratic self-government. This theory is grounded in the works of John Rawls, who argued that political institutions must ensure fair equality of participation in respect for the doctrine of separation of powers.[46] So also id Jürgen Habermas, who, accentuated deliberative democracy and procedural legitimacy.[47] In constitutional adjudication, Ronald Dworkin further advanced the idea that judges must interpret law in light of moral principles that best justify democratic governance.[48]

A democratic society establishes a system that allows for a peaceful implementation of change or, in essence, how a society can institutionalise the ability to have periodic, peaceful revolutions. This can be achieved through the establishment of a system of regular, free, and fair elections where the people can vote for those in whom they want to vest sovereign

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[45]Chad Vickery, Guideline for Understanding Adjudication, and Resolving Disputes in Elections, (USID, International Foundation for Electoral Systems, 2011)

[46] John Rawls, A Theory of (rev edn, Harvard University Press 1999).

[47] Jürgen Habermas, Between Facts and Norms (MIT Press 1996).

[48] Ronald Dworkin, Freedom's Law (Harvard University Press 1996).

power. The right to vote guarantees the people the right to participate in their government. Honest elections not only guarantee the right of the people to speak, but more importantly, they guarantee the people's right to be heard. A system of free and fair elections anticipates the need for change. Elections permit adjustments in the allocation of power and provide a method for a society to correct its mistakes.[49] Thus, for a democracy to thrive there must be a valid means to vindicate each citizen's most important individual right the right to vote.[50] This democratic theory finds strong constitutional backing in Nigeria under section 14(2)(a) of the Constitution, which declares that sovereignty belongs to the people from whom government derives its authority. In addition, the Constitution guarantees political participation by citizens under sections 40–42. On this theoretical proposition, the Nigerian judiciary has played a leading role in promoting and defining the legal status of political parties. Prominent was the case of INEC v. Musa,[51] where the Supreme Court struck down statutory provisions of ICPC Act 2002 that unduly restricted party registration, holding that freedom of association under Section 40 of the Constitution entitles citizens to form political parties without unreasonable state interference. This decision expanded party proliferation, reinforcing Nigeria's multiparty landscape despite plurality electoral rules. Similarly in n *Attorney-General of the Federation v Abubakar*, the Supreme Court reaffirmed that Nigeria is founded on democratic principles and that political rights are constitutionally protected.[52] This decision was in consequence of the then President of Obasanjo unilateral and illegally declaring the seat of his Vice President, Atiku Abubakar vacant.

Jurisprudentially, many decided election petitions have shown the significance of democratic theory in Nigeria such as the cases of *Uzodinma v Ihedioha*, in which the Supreme Court overturned gubernatorial election in Imo State and declared the appellant (Uzodinma) winner after crediting votes unlawfully excluded by INEC.[53] The Court emphasized that lawful

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[49] Chad Vickery, Guideline for Understanding Adjudication, and Resolving Disputes in Elections, (USID, International Foundation for Electoral Systems, 2011)

[50] Chad Vickery, Guideline for Understanding Adjudication, and Resolving Disputes in Elections, (USID, International Foundation for Electoral Systems, 2011)

[51] (2003) 3 NWLR (Pt. 806) 72

[52] Attorney-General of the Federation v Abubakar (2007) 10 NWLR (Pt 1041) 1 (SC).

[53] Uzodinma v Ihedioha (2020) 5 NWLR (Pt 1716) 1 (SC).

votes must not be wasted and those elections must reflect the will of the electorate rather than administrative errors or manipulations. Similarly, in *Ojukwu v Yar'Adua*,[54] the Court invalidated election results in several polling units due to substantial non-compliance, holding that electoral integrity, not procedural convenience, determines legitimacy.[55] Understandably the democratic theory shows that election adjudication should be a constitutional instrument for actualising democratic sovereignty.

Apposite for comparative consideration is the US Supreme Court disposition to increasingly framed election adjudication in terms of democratic participation and voting rights. In Reynolds v Sims, the Court found that the right to vote is fundamental and that electoral systems should at all times reflect the principle of "one person, one vote".[56] This ideological standing reflects democratic theory's emphasis on political equality. In the same vein in *Shelby County v Holder*, while the Court struck down parts of the Voting Rights Act, the dissenting opinions, especially, that of Ginsburg, reiterated the judiciary's duty to protect minority voting rights, a foundational element of democratic value.[57] In the United Kingdom, democratic theory, add force to judicial protection of electoral fairness and political participation of citizens, particularly under the European Convention on Human Rights, Article 3 of Protocol No 1. This found credence in case of Hirst v United Kingdom, in which the European Court of Human Rights held that blanket prisoner disenfranchisement violated democratic participation rights, influencing UK electoral jurisprudence.[58] In African continent Kenya practive gives good account of relevance of democratic theory in election petition adjudiciation. For example in the nullification of 2017 presidential election in *Raila Odinga v IEBC*, expressly demonstrate the court disposition to democratic principles. The Court in its decision reinvigorate the significance of elections, describing it as not just mere events but processes that must meet constitutional standards of integrity, transparency, and accountability.[59]

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[54](2009) 38 NSCQR 422

[55] Ojukwu v Yar'Adua (2009) 12 NWLR (Pt 1154) 50 (SC).

[56] Reynolds v Sims 377 US 533 (1964).

[57] Shelby County v Holder 570 US 529 (2013).

[58] Hirst v United Kingdom (No 2) (2005) 42 EHRR 41 (ECtHR)

[59] Raila Odinga v IEBC [2017] eKLR (SC Kenya)

Generally, the democratic theory enhances electoral legitimacy and voter confidence by ensuring that courts judgments protect popular sovereignty. However, critics argue that excessive judicial intervention risks substituting judicial preferences for popular will, particularly where courts reconstruct election outcomes through documentary audits rather than direct voter participation.

1.4.4 PRAGMATIC THEORY OF ELECTION PETITION ADJUDICATION

The intellectual foundation of pragmatic theory can be traced to the works of William James and John Dewey, who argued that the value of ideas and legal rules lies in their practical consequences and usefulness in solving societal problems.[60] Applied to election petition adjudication, this means that courts may interpret electoral laws in a manner that promotes democratic stability and prevents unnecessary political crises. The pragmatic theory does not reject legal rules but allows flexibility in their interpretation to achieve workable and beneficial outcomes for society. This approach is also reflected in the jurisprudence of Richard Posner, who argued that judicial decision-making should be guided by practical reasoning and the consequences of judicial outcomes rather than rigid formalism.[61] In the electoral context, courts may consider factors such as the extent of electoral irregularities, the overall credibility of the election, and the potential consequences of nullifying an election. The objective is to ensure that judicial intervention promotes democratic without creating unnecessary instability or undermining public confidence in governance.

The Pragmatic Theory, in relation to election petition adjudication, emphasises practical consequences, societal stability, and the effective functioning of democracy rather than rigid adherence to abstract legal rules or purely theoretical principles. This theory holds that judicial decisions in electoral disputes should consider the real-world impact of such decisions on democratic governance, political stability, and public confidence in the

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[60] William James, Pragmatism: A New Name for Some Old Ways of Thinking (New York: Longmans, Green and Co., 1907) 45–60; John Dewey, The Public and Its Problems (Athens: Ohio University Press, 1927) 15–35

[61] Richard Posner, How Judges Think (Cambridge, Massachusetts: Harvard University Press, 2008) 59–78

electoral process. Under the pragmatic approach, courts balance legal correctness with the practical necessity of maintaining order, legitimacy, and continuity in governance.[62] This theory draws heavily from American legal pragmatism, particularly the works of Oliver Wendell Holmes Jr, who argued that "the life of the law has not been logic; it has been experience",[63] and Richard Posner, who contends that judges should decide cases in ways that best serve social welfare and institutional functionality.[64] In Nigeria, pragmatic theory considerations often influence election petition adjudication due to the sensitive political nature of electoral disputes. The Constitution of the Federal Republic of Nigeria 1999 (as amended) empowers courts and election tribunals to resolve electoral disputes within strict timelines to ensure timely resolution and prevent prolonged political uncertainty.[65] The Supreme Court of Nigeria has, in several cases, demonstrated pragmatic reasoning by balancing strict legal compliance with the practical necessity of preserving democratic order.

The importance of this pragmatic theory can be explained from the delay in the determination of election petitions, which Nigeria experienced after the 2003 election.[66] This situation eventually led to the amendment of the Nigeria constitutional and the insistence on strict timelines for election petitions under section 285(5)–(7) reflects pragmatic considerations aimed at preventing prolonged electoral uncertainty.[67] The Supreme Court of Nigeria per Muhammed, JSC, emphasized the immutability of the limitation of time fixed by the Constitution in line with pragmatic theory in the case

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[62] Brian Z. Tamanaha, Beyond the Formalist–Realist Divide: The Role of Politics in Judging (Princeton: Princeton University Press, 2010) 99–121.

[63] Oliver Wendell Holmes Jr, 'The Path of the Law' (1897) 10 Harvard Law Review 457.

[64] Richard A Posner, How Judges Think (Harvard University Press 2008).

[65] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 285(6)–(7)

[66] The states are; Anambra, Bayelsea, Edo, Ekiti, Imo, Kogi, Ondo, and Osun. See the cases of Rivers State: Amaechi v INEC (2007) 18 NWLR (Pt. 1065) 98 (SC); (2008) 5 NWLR (Pt. 1080) 227 (SC); Kogi State; Action Congress v INEC (2007) 12 NWLR (Pt. 1048) 222 (CA); Adamawa State; Marwa v Nyako (2012) 6 NWLR (Pt. 1296) 199 (SC); Bayelsa State: Sylva v INEC (2015) 16 NWLR (Pt. 1486) 576 (SC); Cross River State: Liyel Imoke v INEC (2011) 12 NWLR (Pt. 1262) 439 (SC); Anambra State: Peter Obi v INEC (2007) 11 NWLR (Pt. 1046) 565 (SC); Edo State: Oshiomhole v Osunbor (2008) 15 NWLR (Pt. 1110) 335 (CA); Osun Statee: Aregbesola v Oyinlola (2011) 9 NWLR (Pt. 1253) 458 (CA) and Ekiti State: Fayemi v Oni (2010) 17 NWLR (Pt. 1222) 326 (CA)

[67] PDP v CPC (2011) 17 NWLR (Pt 1277) 485 (SC).

of *Ugba v. Suswan*.[68] In that case the Supreme Court held that the jurisdictional competence of the tribunal under Section 285(6) of the Constitution cannot, for any reason, cannot exceed the 180 days allotted. It remains sacrosanct and can neither be added to nor subtracted from. The time fixed by the Constitution is like the rock of Mount Zion, which cannot be extended, expanded, elongated, or in any way enlarged. With the Constitution being the final authority, any attempt to derogate therefrom will be met by a brick wall that cannot be penetrated through.

In *Mutfwang Caleb Manasseh v. Dr. Nentawe Yilwatda Goshwe & 3 Ors*[69] the Supreme Court, per Agim, JSC, delivered a forceful decision that aligned with pragmatic theory by restating the doctrine of stare decisis and the imperative of judicial fidelity to precedent. The Court criticized the lower courts for departing from well-established principles repeatedly affirmed by the Supreme Court. Agim JSC warned that deliberate refusal to follow binding precedent undermines the certainty of law, weakens public confidence in the judiciary, and threatens the sustenance of the rule of law, peace, and social order. He emphasized that once certainty in the content and application of law is lost; law ceases to function as an objective normative guide and instead becomes susceptible to manipulation. The Court described such disregard for constitutional provisions and precedent as extreme judicial misconduct and characterized the proceedings below as "illegitimate adjudication" and "false judicialism." In the case of *Edeoga Chijioke Jonathan and Anor v. Independent National Electoral Commission and 2 Ors*[70], focuses on evidentiary standards in proving non-compliance with the Electoral Act. Interpreting section 137 of the Electoral Act, the Supreme Court clarified that a petitioner alleging non-compliance need not call oral evidence only where original or certified true copies of documents "manifestly disclose" the alleged non-compliance. However, the Court emphasized that this provision does not eliminate or reduce the burden of proof. The petitioner must demonstrate, through legal argument and analysis of the documents, that the non-compliance is apparent on the face of the record and that it satisfies the applicable standard of proof. Not all

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[68] (2014); 14 NWLR (pt. 1427) 233 at 442
[69] (2024) 1 NWLR (pt 1925) 357, SC.CV/1/190/2023
[70] (2025) 3 NWLR (Pt. 1934) 1

documentary exhibits will automatically establish material non-compliance; the tribunal must still evaluate their probative value.

The decisions in *Mutfwang Caleb Manasseh v. Dr. Nentawe Yilwatda Goshwe and 3 Ors and Edeoga Chijioke Jonathan and Anor v. Independent National Electoral Commission and 2 Ors* represent important doctrinal developments connected with pragmatic theory of the Nigeria's election petition jurisprudence. When examined through the lens of international theories of election adjudication, both cases demonstrate a renewed judicial commitment to rule-of-law values, procedural discipline, and democratic stability. In *APC v Machina*, the Court emphasized that the importance of following proper procedure for the commencement of an action especially where there are contentious issues that need evidential proof. In the case, the respondent commenced his action by originating summon instead of ordinary summons in view of allegation of fraud contained in the affidavit in support of the originating summon.

Relatively, the experiences of practice in other jurisdictions demonstrate the embracement of the pragmatic theory of election adjudication. In the United State Supreme Court judgment in *Bush v Gore,* Breyer's dissent argued that the Court should avoid intervention that could undermine public confidence in the electoral process. This represents a distinctly pragmatic concern.[71] Likewise in the case of Purcell v Gonzalez, it was emphasized that courts should not disrupt election administration close to elections, reflecting institutional pragmatism.[72] In case of United Kingdom, one of the central doctrines in the adjudication of election petitions is the time honoured doctrine of substantial effect which originates from British electoral law. The doctrine still resonates with the historical origins of election petitions. United Kingdom courts are known for conventionally exerting pragmatic restraint in election disputes, emphasising stability and parliamentary sovereignty.

It is instructive to note that election petitions were not initially legal processes per se in UK; they were parliamentary processes concerned with the substance of the complaint about returns rather than the legal

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[71] **Bush** v Gore 531 US 98 (2000) (Breyer J dissenting).
[72] **Purcell** v Gonzalez 549 US 1 (2006).

technicalities of the case. The pragmatic doctrine has been the recurring bulwark of electoral legislation since the transfer of electoral disputes adjudication from parliament to the judiciary in 1868. Presently it is embodied in the United Kingdom Representation of People Act (1983), especially, under section 23(3), thus: No parliamentary election shall be declared invalid by reason of any act or omission by the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the parliamentary elections rules if it appears to the tribunal having cognizance of the question that (a) the election was so conducted as to be substantially in accordance with the law as to elections; and (b) the act or omission did not affect its result. In Morgan v Simpson, the UK Court balanced strict statutory compliance with practical considerations by holding that not every procedural irregularity warrants invalidation unless it affects the result.[73]

In Kenya jurisdiction particularly the Supreme Court decision in popular case of *Raila Odinga v IEBC* (2013), the Court declined to nullify the presidential election partly on pragmatic grounds, citing the need for stability and insufficient evidence to justify overturning the outcome.[74] Be that as it may, in 2017, the Court adopted a less pragmatic and more democratic posture by nullifying the election due to systemic failures, illustrating the dynamic interplay between pragmatism and democratic theory.[75]Essentially, the pragmatic theory views election petition adjudication as a practical instrument for maintaining democratic order, ensuring political stability, and promoting public confidence in electoral institutions. It allows courts to interpret and apply electoral laws in a manner that produces fair, workable, and socially beneficial outcomes. While grounded in legal principles, the pragmatic approach recognizes that electoral must ultimately serve the broader objective of sustaining democratic governance and societal stability.

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[73] Morgan v Simpson [1975] QB 151 (QB).

[74] Raila Odinga v IEBC [2013] eKLR (SC Kenya).

[75] ibid.

1.4.5 INSTITUTIONAL THEORY OF ELECTION PETITION ADJUDICATION

Institutional Theory, in relation to election petition adjudication, focuses on the role, structure, legitimacy, and behavior of formal institutions, particularly courts/election tribunals and electoral institution (INEC), in resolving electoral disputes and maintaining democratic order. The theory emphasizes that the effectiveness, independence, and credibility of adjudicatory institutions are essential for ensuring , stability, and public confidence in electoral governance. Institutional theory examines how institutional design, procedural rules, judicial norms, and organizational autonomy influence the outcomes and legitimacy of election petition adjudication.[76] The theoretical foundation of institutional theory can be traced to the work of scholars such as Douglass North, who defined institutions as the "rules of the game" that structure political, economic, and social interactions.[77]

An institution could be judicial, legislative or administrative in nature, or some mixture. The institution could be a permanent standing entity (Judiciary, INEC), or formed in anticipation of or as a response to each election (Election Tribunals) as it takes place. It can be independent of other branches of the government, or it can be a special court (Election Petition Tribunal) or administrative agency within the government. Each of these institutions has role to play on how the adjudicatory institution will interact with the election laws and the system as a whole. Institutional theory thus relates to the need for flexibility and creativity in the electoral adjudication process to address the different types of electoral claims that exist based on the institutional responsibilities.

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[76] Neil MacCormick, Institutions of Law: An Essay in Legal Theory (Oxford: Oxford University Press, 2007) 1–15

[77] Douglass North, Institutions, Institutional Change and Economic Performance (Cambridge: Cambridge University Press, 1990) 3.

It is a theory developed primarily in the 1970s by John Meyer and Brain Rowan,[78]and Paul DiMaggio and Walter Powell,[79] explains how organizational structures and practices are shaped by social, legal and emvironment pressure rather than just efficiency. It focuses on the legitimacy or isomorphism, where organizations become similar to gain social acceptance. Thus, within the context of election petition adjudication, institutional theory examines how the structures and functioning of electoral and judicial institutions impact election adjudication. While it is the institution court/tribunal that adjudicates it is also the responsibility of the Independent National Election Commission to conduct elections in Nigeria. The Election Petitions Tribunal and courts adjudicate over dispute arising from the conduct of those elections.[80]Therefore, institutional theory looks at the role of institution of courts, their powers, and how institutional frameworks (like the electoral commission) affect the adjudication process. The institutional theory focuses on how the structure, competence, independence, and interaction of institutions shape adjudicatory outcomes. Law is viewed not merely as doctrine but as an institutional practice shaped by organisational design, incentives, and capacities.[81]

This theory also draws on new institutionalism in political science and legal theory, particularly the works of Douglass North, who emphasized institutions as constraints shaping human interaction,[82]and Neil Komesar, who analyzed how institutional competence determines which branches of government should resolve particular social problems.[83] In constitutional

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[78] Meyer, J. W., & Rowan, B., 'Institutionalized Organizations: Formal Structure as Myth and Ceremony. (1977), 83(2), *American Journal of Sociology*,340–363. https://doi.org/10.1086/226550

[79] DiMaggio, P. J., & Powell, W. W. (1983). The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational fields. (1983), 48(2), *American Sociological Review*, 147–160. https://doi.org/10.2307/2095101

[80] Alter, J.K., 'Agents or Trustees, International Courts in Their Political Context ', (2008), 14(1), *European Journal of International Relation*, - 33-63

[81] See Mary L. Volcansek, Judicialization of Politics and Politicization of the Courts in New Democracies, (Cambridge University Press, 2019)

[82] Douglass C North, Institutions; Institutional Change and Economic Performance (Cambridge University Press 1990).

[83] Neil K Komesar, Imperfect Alternatives: Choosing Institutions in Law, Economics, and Public Policy (University of Chicago Press 1994).

law, Tom Ginsburg[84] and Mark Tushnet further examine how judicial institutions evolve within political systems.[85] Ginsburg contends that constitutional courts in new democracies are often established or vested with powers by departing political elites who wish to lock in policy gains, ensuring they can influence politics even after losing elections. Similarly as against the position that courts only matter in democracies based of the doctrine of separation of powers, Ginsburg opines that authoritarian regimes (i.e. Military rule), most times use courts for administrative, economic, and sometimes political purposes, using them as tools for stability.[86] In the perspective of Tushnet, he explicated the rise of weak-form of judicial review, where courts can declare statute in consistent with the constitution,[87] but do not have final, binding say, allowing for a more dialogic relationship with the legislature. Institutional theory emphasizes the importance of judicial independence and procedural integrity. As observed by Montesquieu in The Spirit of the Laws, separation of powers is essential to prevent abuse of authority and to safeguard liberty.[88] Election tribunals and courts must therefore operate independently from the executive and legislative branches to ensure impartial resolution of electoral disputes. Their autonomy enables them to invalidate unlawful elections, affirm rightful winners, and enforce electoral laws without political interference.

In Nigeria, institutional theory is reflected in the constitutional establishment of election tribunals and the vesting of judicial powers in the courts. Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) vests judicial powers in the courts, while Section 285 establishes specialized election tribunals to adjudicate election disputes.[89] These tribunals serve as institutional safeguards designed to ensure that electoral disputes are resolved within a structured legal framework. The Supreme Court of Nigeria, as the apex judicial institution, plays a crucial role in ensuring uniformity, consistency, and finality in election petition

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[84] Tom Ginsburg, Judicial Review in New Democracies (Cambridge University Press 2003);
[85] Mark Tushnet, Weak Courts, Strong Rights (Princeton University Press 2008).
[86] Tom Ginsburg, Judicial Review in New Democracies (Cambridge University Press 2003);
[87] Mark Tushnet, Weak Courts, Strong Rights (Princeton University Press 2008).
[88] Montesquieu, The Spirit of the Laws (Cambridge: Cambridge University Press, 1989 edition) 157.
[89] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 6 and 285.

adjudication.[90] There institutions responsible for elections generally are the Electoral Commission and the judiciary. Nigeria's institutional framework comprises. INEC is established under sections 153 and 160 of the Constitution, responsible for election administration; the Election Tribunals/Courts, established under section 285, vested with exclusive original jurisdiction over election disputes; the Appellate Courts, particularly the Court of Appeal and Supreme Court under sections 233 and 239. This institutional design reflects functional specialization and constitutional insulation of election adjudication from ordinary courts.

Judicial decisions in Nigeria have reinforced the importance of institutional integrity in election adjudication. In *Awuse v. Odili*, the Supreme Court emphasized that election tribunals are constitutionally created institutions with exclusive jurisdiction over electoral disputes, highlighting their central role in protecting democratic legitimacy.[91] Similarly, in Amaechi v. INEC, the Court demonstrated the institutional authority of the judiciary to correct electoral in and uphold the rule of law.[92] These decisions illustrate how institutional structures provide mechanisms for resolving electoral conflicts peacefully and lawfully. The institutional jurisprudence in election petition adjudication is built on the institutional foundations laid down in the legal framework. It encompasses a number of distinct agencies and organizations that form the institutional structures of electioneering processes and adjudication such as the INEC and the judiciary represented by courts or tribunals.[93] In Shinkafi v Yari, the Court reaffirmed that only election tribunals possess jurisdiction over election disputes, thereby preventing forum shopping and institutional fragmentation.[94] Similarly, in Adesanya v INEC, the Court of Appeal emphasized that INEC must strictly comply with statutory procedures, as institutional failures undermine electoral legitimacy.[95]

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[90] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 235.
[91] Awuse v. Odili (2005) 16 NWLR (Pt. 952) 416 (SC).
[92] Amaechi v. INEC (2007) 9 NWLR (Pt. 1040) 504 (SC)
[93]Aneke, Peter Chidera 'the Challenges of Adjudicating Presidential Election Petitions in Nigeria: Establishment of an African Supranational Court as a Possible Solution,' (2021), 1(4) *MUNFOLLJ*
[94] Shinkafi v Yari (2016) 7 NWLR (Pt 1511) 340 (SC).
[95] Adesanya v INEC (2002) 8 NWLR (Pt 768) 225 (CA).

In *Mutfwang Caleb Manasseh v. Dr. Nentawe Yilwatda* Goshwe, the Supreme Court, per Agim, JSC, delivered a forceful restatement of the doctrine of *staredecisis* and the imperative of judicial fidelity to precedent. The Court criticised the lower courts for departing from well-established principles repeatedly affirmed by the Supreme Court. Agim warned that deliberate refusal to follow binding precedent undermines the certainty of law, weakens public confidence in the judiciary, and threatens the sustenance of the rule of law, peace, and social order. He emphasized that once certainty in the content and application of law is lost, law ceases to function as an objective normative guide and instead becomes susceptible to manipulation. The Court described such disregard for constitutional provisions and precedent as extreme judicial misconduct and characterized the proceedings below as "illegitimate adjudication" and "false judicialism." In the electoral context, courts and election tribunals function as institutional mechanisms established to regulate electoral competition and resolve disputes arising from elections. Their legitimacy depends on their independence, impartiality, and adherence to constitutional and legal norms. Where institutions function effectively, election petition adjudication promotes political stability and democratic consolidation. Conversely, weak or compromised institutions undermine electoral and public trust. Classical constitutional theorists such as A.V. Dicey stressed that the supremacy of law and equality before the law require predictability and consistency in judicial decisions. Similarly, Lon L. Fuller identified consistency and certainty as part of the "inner morality of law." In election disputes, where political stakes are exceptionally high, adherence to precedent becomes even more critical. Comparative practice in jurisdictions such as United States and United Kingdom demonstrates that institutional legitimacy in election adjudication depends heavily on judicial consistency and restraint. The Mutfwang decision therefore situates Nigerian electoral jurisprudence firmly within the global commitment to legal certainty as the foundation of democratic stability.[96]

Comparatively, in the US, electoral dispute resolution framework is institutionally decentralised, with state courts, federal courts, and administrative agencies exercising overlapping jurisdiction. In Bush v Gore, the Supreme Court intervened due to institutional breakdown at state level,

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[96] Amaechi v INEC (2007) 18 NWLR (Pt 1065) 42 (SC).

illustrating how institutional failure triggers judicial intervention.[97] Scholars such as Heather Gerken emphasize that election law is fundamentally institutional law concerned with governance structures rather than individual rights alone.[98] While in the United Kingdom, adjudication historically resided in parliamentary election courts but is now vested in the judiciary under the Representation of the People Act 1983. Institutional continuity and judicial restraint characterize the system, reflecting parliamentary sovereignty and limited judicialization of electoral politics.[99] In Africa, Kenya's 2010 Constitution completely restructured electoral institutions by establishing the Independent Electoral and Boundaries Commission (IEBC) and conferring exclusive election jurisdiction on specialized courts. In Raila Odinga v IEBC, the Supreme Court asserted institutional supremacy over the IEBC, holding that constitutional compliance outweighs administrative discretion.[100]

In essence, institutional theory views election petition adjudication as a function of well-structured, independent, and credible judicial institutions. The effectiveness of electoral depends not only on legal principles but also on the strength, independence, and legitimacy of adjudicatory bodies. By providing a formal and structured mechanism for resolving electoral disputes, institutional frameworks ensure democratic stability, uphold the rule of law, and reinforce public confidence in the electoral process.

1.4.6 SOCIAL THEORY OF ELECTION PETITIONS ADJUDICATION

Social theory is a political and philosophical framework focused on ensuring fairness, equity, and the impartial distribution of resources, opportunities, and rights across all members of society. It addresses systemic inequalities and advocates for the rights of marginalized populations, emphasizing equity, access, participation, and human rights. The principles of social : they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of benefits and

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[97] Bush v Gore 531 US 98 (2000). 49.

[98] Heather K Gerken, The Democracy Index (Princeton University Press 2009).

[99] Richard McLean and Alistair McMillan, State of the Union: Unionism and the Alternatives in the United Kingdom since 1707 (Oxford University Press 2005).

[100] Raila Odinga v IEBC [2017] eKLR (SC Kenya).

burdens of social co-operation."[101] The social definition is the political philosophy that focuses on equal opportunity and fairness. Social assumes that individuals should be treated equally by being granted equal opportunities and being treated fairly. It is tied to the belief that individuals in a society should be given equal access to wealth and social benefits. Social is closely related to conflict theory.[102]

The Theory of Social , as applied to election petition adjudication, emphasizes fairness, equality, and the protection of the collective will of the people in the electoral process. The theory finds its strongest philosophical articulation in the works of John Rawls, who argued that is fairness and that social institutions must be arranged to guarantee equal basic liberties and fair equality of opportunity for all persons.[103] In the electoral context, this principle translates into the requirement that electoral processes and their judicial review mechanisms must operate fairly, ensuring that every citizen's vote carries equal weight and that political power reflects the genuine will of the electorate. Election petition adjudication serves as a mechanism for correcting electoral in and restoring democratic legitimacy. Under social theory, courts are not merely interpreters of technical legal rules but custodians of democratic fairness. Their role is to ensure that elections are conducted in accordance with constitutional and legal standards, and where violations occur, to provide remedies that restore . The judiciary, particularly institutions such as the Supreme Court of Nigeria, is therefore entrusted with the responsibility of ensuring that electoral outcomes reflect lawful and legitimate democratic participation.[104] Where elections are marred by fraud, irregularities, or substantial non-compliance with electoral laws, the courts have a duty grounded in social to invalidate such elections and affirm the rightful winner.

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[101] John Rawls, A Theory of (rev edn, Harvard University Press 1999).

[102] Sampurnaa Dutta, 'Rawls Theory of Social : An Analysis', (2017), 22(1), IOSR Journal Of Humanities And Social Science (IOSR-JHSS)

[103] Rawls, John. A Theory of : (Revised Edition. Cambridge, MA: Harvard University Press, 1999) 3-30

[104] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 6; see also Adesanya v. President of Nigeria (1981) 2 NCLR 358

Furthermore, the theory is reinforced by the jurisprudence of Ronald Dworkin, who argued that the law must treat all individuals with equal concern and respect.[105] This principle is directly relevant to election petition adjudication, as courts must ensure that all candidates and voters are treated equally under the law and that no individual or group gains unfair advantage through unlawful means. In the same vein, Amartya Sen emphasized that requires the removal of institutional ins and the protection of substantive freedoms.[106] Applied to electoral adjudication, this means courts must focus on substantive and the protection of democratic rights rather than rigid adherence to procedural technicalities that could undermine fairness. This theory draws on critical legal studies and distributive theory, particularly the works of John Rawls, who articulated as fairness,[107] and Amartya Sen, who emphasized capabilities and substantive freedoms rather than formal rights.[108] Feminist legal scholars such as Catharine MacKinnon and critical race theorists such as Derrick Bell further underscore the need for context-sensitive adjudication attentive to power asymmetries.[109]

Social serves to remind all humanity (government and civil society) that the needs of all individuals and societies should be met within the constraints imposed by the biosphere and that all should have equal opportunity to improve their living conditions. The theory of social is embedded in the Nigeria's Constitution such as Section 17(2)(a) and (c), on commitment to equality and social . In Attorney-General of Ondo State v Attorney-General of the Federation, the Supreme Court held that Chapter II, though non-justiciable, provides interpretive guidance for constitutional and statutory construction.[110] Other constitutional provisions the ensure social is Section 42 that prohibits all forms of discrimination; In Nigeria, this social function of election petition adjudication is constitutionally

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[105] Ronald Dworkin, Law's Empire (Cambridge, Massachusetts: Harvard University Press, 1986) 190–216.

[106] Amartya Sen, The Idea of (Cambridge, Massachusetts: Harvard University Press, 2009) 18–27.

[107] John Rawls, A Theory of (rev edn, Harvard University Press 1999).

[108] Amartya Sen, Development as Freedom (Oxford University Press 1999).

[109] Catharine A MacKinnon, Toward a Feminist Theory of the State (Harvard University Press 1989); Derrick A Bell, Faces at the Bottom of the Well (Basic Books 1992). 55.

[110] Attorney-General of Ondo State v Attorney-General of the Federation (2002) 9 NWLR (Pt 772) 222 (SC).

grounded. Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) vests judicial powers in the courts to determine disputes and protect legal rights, including electoral rights.[111] Similarly, Section 285 establishes election tribunals specifically to ensure in electoral disputes.[112] Nigerian courts have consistently affirmed that the purpose of election petitions is to ensure that the mandate of the people is respected. In realm of Election petition adjudiciation, the social jurisprudence has been consistently exhibited in Cases. Examples in *Amaechi v. INEC*, the Supreme Court emphasised that elections belong to political parties and ultimately to the electorate, reinforcing the principle that electoral must reflect the will of the people.[113] In *Kakih v PDP*, the Supreme Court emphasized internal party democracy and invalidated arbitrary substitution of candidates, thereby protecting aspirants from elite exclusion.[114] Also In *Eze v Okoloagu*, the Court nullified an election due to disenfranchisement of voters in substantial polling units, holding that exclusion of voters undermines electoral legitimacy and violates democratic equality.[115] The Electoral Act 2022 further advances social by enhancing accessibility for persons with disabilities, promoting gender inclusivity, and strengthening result transparency through electronic transmission mechanisms under sections 47, 60, and 64. In essence, the theory of social views election petition adjudication as a corrective and distributive mechanism designed to ensure fairness in political representation. It ensures that democratic power is not acquired through illegality but through lawful and fair electoral processes. By safeguarding electoral integrity, ensuring equality of political participation, and restoring the legitimate mandate of the electorate, election petition adjudication fulfills the fundamental objectives of social and strengthens democratic governance.

From comparative perspectives, the United States, Voting Rights Act jurisprudence reflects social theory's influence. In *South Carolina v Katzenbach*, the Supreme Courtupheld the Act's extraordinary protections for minority voters, emphasizing substantive equality over formal

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[111] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 6(6)(b).
[112] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 285.
[113] Amaechi v. INEC (2007) 9 NWLR (Pt. 1040) 504 (SC)
[114] Kakih v PDP (2014) 15 NWLR (Pt 1430) 374 (SC).
[115] Eze v Okoloagu (2010) 3 NWLR (Pt 1180) 183 (SC).

neutrality.[116] Although later narrowed in *Shelby County v Holder*, dissenting opinions stressed the continuing necessity of judicial protection against structural disenfranchisement.[117] In the United Kingdom practice, the UK's incorporation of the European Convention on Human Rights through the Human Rights Act 1998 has enhanced judicial sensitivity to social in electoral participation. In *Hirst v United Kingdom,* the European Court of Human Rights held that blanket prisoner disenfranchisement violated democratic equality, prompting domestic constitutional debate.[11859] While the Kenya's post-2010 election jurisprudence ever more reflects social concerns. In *Raila Odinga v IEBC*, the Supreme. Court emphasized transparency, accountability, and the protection of voters from systemic administrative failures, grounding its reasoning in constitutional values of social and democratic inclusion.[119] In essence, social theory enriches election adjudication by foregrounding substantive equality, voters' inclusion, and democratic fairness. Nevertheless, critics caution that overtly redistributive or activist adjudication risks undermining neutrality and predictability, thereby weakening institutional legitimacy.

1.5 CONCLUSION

Election petition adjudication in Nigeria operates at the intersection of law, politics, democracy, institutions, pragmatism, and social justice. While historically dominated by legalistic formalism, contemporary jurisprudence increasingly reflects democratic and -oriented commitments, particularly in protecting voter sovereignty and electoral integrity. Comparative perspectives from the United States, United Kingdom, and Kenya demonstrate that Nigeria's experience mirrors global struggles to balance judicial restraint with democratic accountability, institutional stability with substantive, and procedural certainty with electoral legitimacy. A consciously integrated multi-theoretical approach grounded in constitutional values and institutional competence remains essential for strengthening Nigeria's electoral system and consolidating democratic governance.

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[116] South Carolina v Katzenbach 383 US 301 (1966).
[117] Shelby County v Holder 570 US 529 (2013) (Ginsburg J dissenting).
[118] Hirst v United Kingdom (No 2) (2005) 42 EHRR 41 (ECtHR).
[119] Raila Odinga v IEBC [2017] KLR (SC Kenya).