ORIGINAL ARTICLES

Internal Affairs of Political Parties and Judicial Review: An Expository Study of the Experience in Nigeria and Malaysia

Shamrahayu, A.A. and A.O. Sambo

Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia, Malaysia.

ABSTRACT

Democracy with calls for constitutionalism has gained more recognition in many parts of the world. Given the general functions of judiciary as one of check and balance mechanisms in democracy most people and government have developed the interest in the judiciary and judicial process. Despite this, the benchmark of academic discourse seems to argue that courts are or should avoid dabbling into internal affairs of the political parties. This article therefore makes an analytical exposition into the attitude of the courts in Nigeria and Malaysia to matters having to do with internal affairs of political parties. The objective is to improve the quality of courts’ decisions and aid law reform in this area of law. It therefore hypothesizes that interference into legal aspects of the affairs of political parties by the court promotes party discipline, democratic principles and reduces injustices across party politics. For the purpose of the analysis, various constitutional provisions and courts decisions from the countries under review are examined.

Key words: Political parties, political question, judicial review, Nigeria, Malaysia.

Introduction

One of the major problems faced by the judiciary today is the legal way of deciding disputes arises from the actions of the political parties which, in many occasions require some political processes (Miller, 1990). Thus, due to tendency of the political parties to use legal powers for political purposes, judiciary is to play a role to review questions which appear to be political in nature but with legal elements. This requires a discourse. Judicial review in this context is a legal way in which the court controls or overturns the actions of the political parties, or decides disputes arising from the exercise of powers and functions by the political parties (Fisher, 2001).

The need for comparative analysis of judicial review of internal affairs of political party between Nigeria and Malaysia therefore arises for obvious reasons. Firstly, Nigeria like Malaysia operates the doctrine of separation of powers (section 4, 5, 6 Nigerian 1999 Constitution and Article 39, 44, 121 Malaysian Federal Constitution). Secondly, both countries share similar colonial heritage by operating on the doctrine of common law where judicial precedent plays a crucial role in the administration of justice (Ashgar, 2003) though its application in constitutional law is not as stringent as in other areas of law. Also, both countries operate the concept of constitutional supremacy where the Constitution is the supreme law of the land (section 1(1) (3) Nigerian 1999 Constitution and Article 4(1) Malaysian Federal Constitution. Moreover, the two systems operate under a Federal system of government (section 2 (1) and (2) of the Nigerian 1999 Constitution and Article 1 of the Malaysian Federal Constitution) and are based on the concept of democracy.

Until recently, scholarly examinations of the role of judiciary with regards to political parties which appear political in nature have not been brought to the forefront. This is not surprising because classical conception of the judiciary has been that of impartial umpire having nothing to do with political questions, (Jones, 1991). This purely legalistic view of the nature of judicial powers and functions appear to enjoy warm reception even from judges who often see themselves not interested in the political aspect of a view ( Balarabe Musa v Hamza & Ors).

This article therefore makes an analytical exposition into the attitude of the courts in both countries under review to matters having to do with internal affairs of political parties. The objective is to improve the quality of courts’ decisions and aid law reform in this area of law. It hypothesizes that interference of the courts into the affairs of political parties and political questions promotes party discipline, democratic principles and reduces injustices across party politics. Thus article is divided into five parts. The first part introduces the paper and sets the tone of discussion. The second part makes an exposition into the meaning, origin and development of
judicial review, the third part examines the meaning of political questions, the fourth part analyses the extent of judicial review with respect to matters having to do with internal affairs of the political parties while the last part concludes the paper.

**Meaning, Origin and Development of the Concept of Judicial Review:**

Despite the importance of the concept of judicial review in constitutional law, many scholarly works on judicial review have not given a proper definition to the term (Allan, 2010). Rather, the debate appears to be on the origin (Allan 2002), scope and arguments as to whether judicial review is actually needed or justified in a democratic society or in a particular case (Chemerinsky, 2001). Again, scholarly works have tended to give little attention to the current regulatory framework of judicial review when it affects internal affairs of political parties or when it involves political questions. This is perhaps because many constitutions until recently do not contain express provisions conferring powers on the courts to review the actions of the political class. Many arguments on judicial review have actually been centered on the review of administrative actions (Pillay, 2001).

The term judicial review has been described to imply when the court overturns the action of the government finds support for it or refuse to rule (Fisher, 2001). Some also see it as judicial law making (Hoadley, 1717). Some see it as judicial supremacy (Greene, 2008). The wider usage of the term appears to be when the court decides a case on the merit thereby affecting the powers and functions of the political class or where the court strikes down the actions of the political class (Mallesson, 2003). Judicial review in this article is used to mean the legal way in which the court overturns the action of the political class, or decides on the merit disputes arising from the exercise of power or functions of internal management of the political parties.

The origin of the concept judicial review has itself been controversial. Some scholars trace the origin to the case of *Marbury v Madison* while some trace it to the pre *Marbury* cases. However, the practices of the English courts in the sixteenth and seventeenth century are equally important. Larry Kramer argued that power of the court to review existed before *Marbury’s* case but was rarely exercised unless it expressly violated the constitution (Kramer, 2001, 2004). William Treanor was however of the view that judicial review was commonly practiced before *Marbury’s* case and was not limited to express constitutional violations (Treanor, 2005). Bickel argued that *Marbury’s* case was a clear departure from the original understanding of the role of the court as judicial review was never meant to apply to congressional legislation. Suzanna Sherry and some others examined the origin of judicial review from an elaborate understanding where the court examined statute in order to determine whether it violated natural law or written constitution Sherry, 1987). Another view is that judicial review to certain extent was caused by the dissatisfaction with legislative supremacy and obnoxious legislations (Rakove, 1997). Some were of the view that it was in the word of founders, thoughts of patriots, and actions of the states Baker, 2001). Kramer submitted that judicial review was unconstitutional as it was not permitted by the constitution (Kramer, 2000). Siakrishna Prakash argued that both text and structure actually intended to permit judicial review (Prakash and John 2003). Mark Tushnet advocated for complete abrogation of judicial review. Lawrence Joseph Perrone argued those founders were influenced by early repugnant reviews both by corporate practice and review for consistency with natural law.

Notwithstanding the controversial origin of the doctrine, one thing that must be admitted is that the doctrine has come to stay. What we shall therefore focus on is the extent to which the legal framework in Nigeria and Malaysia allows the court to exercise the powers of judicial review with specific reference to political parties and political questions. However, the term political questions needs to be understood for a proper exposition of judicial attitude towards internal affairs of political parties in the countries under review.

**The Doctrine of Political Questions:**

The doctrine of political questions is relevant in the discussion because it has some relations to the internal affairs of political party. Simply put, political questions are matters which the constitution or the law has given its determination to the political class. It is also a non justiciable matter or questions which the courts will refuse to take cognizance of, or to decide because of their purely political character or because their determination would involve an encroachment upon an executive or legislative powers. It is interesting to note that it is a constitutional law doctrine that was developed to stop the court from deciding on the merit certain questions which may affect the powers or functions of other arms of government, or questions relating to the affairs of the political parties (*Marbury v. Madison*).

Justice Marshall in the case of *Marbury v Madison* recognized the existence of certain questions that are wholly outside the purview of the courts by the use of the term ‘questions in their nature political’ has not been subject to definite definition. When these political questions are presented, it is the province and duty of Congress or the executive, not the courts, to say what the law is. These questions have come to form the substance of the so-called ‘political question doctrine.’ (Barkow, 2002).
Despite the above, the doctrine of political questions has not been subject to a universally acceptable definition. Chopper defines the doctrine as a substantive ruling by the justices that a constitutional issue regarding the scope of a particular provision (or some aspects of it) should be authoritatively resolved not by the Supreme Court but rather by one (or both) of the national political branches (Choper, 2002). Mark Tushnet describes the political question “issue” as “Who gets to decide what the right answer to a substantive constitutional question is?” and “Does the Constitution give a political branch the final power to interpret the Constitution?” (Tushnet, 2002) Henkin defines it as questions which the court foregoes their unique and paramount function of judicial review of constitutionality (Henkin, 1976). Bickel on the other hand opines that political question is the culmination of any progression of devices for withholding the ultimate constitutional judgment of the Supreme Court and in a sense their sum (Bickel, 1926) Black law sees the doctrine as question which the courts will refuse to take cognizance, or to decide, on account of their purely political character or because their determination would involve an encroachment upon the executive or legislative powers (Black’s Law Dictionary, 1979). Nwosu sees it as a non justiciable matter (Nwosu, 2005) Redish sees it as issues of constitutional law that are more effectively resolved by the political branches of government and not appropriate for judicial resolution (Redish, 2001). Spaeth and David Rohdes, (1976) sees it as when the court believes it to be a matter more appropriate for resolution by either of the other branches of government or where the court considers itself as incompetent as the matter is not amenable to resolution by judicial processes.

It appears therefore there is no universally acceptable definition of the doctrine. What is crystal clear from the various attempted definitions of the doctrine is that the court will not go into the merit of the case and will refuse judicial review where a matter has to do with political question.

Internal Affairs of the Political Parties and Judicial Review:

The phrase ‘an internal affair of the political parties’ refers to the affairs that involve the internal administration or the internal matters of a particular political party. We take note that the power of electing or choosing the leadership of the country with respect to some political offices has been textually committed by the Constitution. In democratic process, the people then elected their representatives through registered political parties. Since this is committed in the Constitution, it has become a constitutional issue. However, the process of deciding whom to nominate and who to disqualify in a party therefore becomes the duty and responsibility of the various registered political parties. This therefore makes the topic apt to be treated under the concept of political question and it is definitely an internal affair of the political parties which involves questions which in their nature are political. It is different from and not a constitutional issue.

The issue that this article seeks to analyze is whether the court has the power to review the internal affairs of the political party. What is the position of the law in Nigeria with regards to matters having to do with the affairs of the political parties? Is there any statutory provision in Nigeria regulating this important aspect of democracy i.e. the institution of political parties? Does this institution of political parties require legislative intervention in Nigeria rather than leaving the affairs for the court to determine? What are the attitudes of the courts in Nigeria towards the internal affairs of the political parties? Is there any rationale for judicial review of internal affairs of the political parties? Are the political parties bound by the provisions of their Constitution?

The opportunity to pronounce on the internal affairs of the political parties in Nigeria came up in the case of Onuoha v Okafor. This issue in this case has to do with whether the Court has the power to review the decision of a political party dealing with nomination and sponsorship of candidate for election. In that case, the plaintiff together with other members of the parties including the third defendant contested the primary election of the Owerri Senatorial District, Imo State of Nigeria under Nigerian Peoples’ Party after paying the required non refundable fee and was declared the winner since he had the highest number of votes. The third defendant who also participated in the Primaries alleged irregularities in the election process. The party therefore appointed a panel to investigate the allegation where the contestants were given opportunity to be heard. The party resolved the issue in favour of the third defendant and the plaintiff brought an action asking the Court to nullify the Panel’s decision and declare that his nomination was valid and subsisting and an injunction restraining the party from submitting the name of the third defendant or any other name to FEDECO. The Court granted the claims of the plaintiff. The Court of Appeal set aside the decision of the High Court and dismissed the claims on all the ground because in the court’s opinion, the matter was not subject to judicial review as selection of the candidate for sponsorship was the prerogative of the political parties and the decision of the party was binding on the members. The Supreme Court on appeal also affirmed the decision of the Court of Appeal unanimously on the ground that the matter falls under political question not subject to judicial review.

In a similar case of Okoli v Mbadiwe, the plaintiff having been nominated by the National Party of Nigeria was replaced by the name of the defendant as the candidate for elections in the Akokwa/Arondizogu constituency. The plaintiff brought an action on the manner he was duly elected and sought for an injunction restraining the first defendant from parading himself as the party’s candidate and to compel FEDECO to recognize him as the party’s candidate. The Court held that the Court lacked the power of judicial review in this
circumstance being a political question and that the court cannot inquire into the reasonableness or expedience of the political party.

Also, in *Ogunisan v Oshunride* having similar facts with the above, the High Court held that the Court would not interfere with the matter because it concerns the internal affairs of the political party relying on section 83(2) of the Electoral Act 1982.

In *Akure v National Party of Nigeria, Benue State*, the plaintiff, a member of the National Party of Nigeria brought an action to restrain the party from allowing the incumbent governor from seeking renomination under the party by participating in the primary elections on the ground that the governor misappropriated the public fund while in his first term in office and that nominating the governor for the second term would lower the esteem and integrity of the plaintiff in the eyes of the public as a member of the party. The Court was however of the view that the action was not fit for judicial determination being political in shape and in form, and are purely political matters.

Another type of intra party dispute arose in the case of *Rimi and Musa v Peoples Redemption Party*. In that case, the party’s chairman sought to convene convention 18 days after the notice of the convention was given contrary to the provision of the party’s constitution that provided that the party’s convention must be held within 14 days from the date of notice of the convention. The plaintiff sought an injunction against the party from holding the convention on a date fixed by the Chairman. The Court held that the matter is a non justiciable political question because the party’s constitution makes the Chairman’s interpretation of the Constitution final and binding.

Also, in the case of *Balarabe Musa v Peoples’ Redemption Party* the party resolved that governors elected on the party’s platform should not attend institutionalized meetings to which the governors of other political parties were invited. When the Court was invited to quash the resolution, it refused on the ground that it was an internal affairs of the party which the party has a supreme right over its affairs and that the Court cannot substitute its own will over that of the political party. The Court in *Obayemi v Awojola* also did not grant an injunction against National Party of Nigeria (NPN) from conducting its primary elections in Ondo State of Nigeria.

However, the Court in *Rimi & Anor v Aminu Kano* interfered with the internal affairs of the Peoples’ Redemption Party by nullifying the expulsion of two members from the party. The expulsion was carried out by the Chairman and Secretary of the party who summoned the meeting of the National Directorate of the Party and two members were expelled during the meeting for disobeying the party’s instruction. This was contrary to the provision of the party’s constitution which provides that expulsion could only be effected at the Annual Convention of the party.

The Supreme Court of Nigeria reiterated the position in Nigeria more in the case of *Dalhatu v Turaki*. In that case, the All Nigeria Peoples’ Party (ANPP) scheduled all its primary elections to hold on 3rd of January, 2003. The primary of Jigawa was to hold in Dutse, Jigawa State. A committee with chief Nnoruka as the Chairman, Hajiyi Nhibi as a member and Arc Joseph as secretary conducted the screening and primary election in Kano in which the first defendant did not take part. Only the appellant did and was declared the winner by the committee. Meanwhile, another primary election was conducted in Dutse in which the 1st defendant participated and the appellant did not. The 1st defendant was also declared as the winner. ANPP recognized the last primary election and the appellant brought an action challenging the recognition in Court. The High Court after holding in favour of the plaintiff advised the Supreme Court to re-amend its position on the internal affairs of the political parties. The Court of appeal allowed the appeal against the judgement of the lower Court. An appeal to the Supreme Court was dismissed. The Court was of the view as follows:

A Court of Law has no jurisdiction to adjudicate on the issue of which candidate a political party should nominate or sponsor for election. The exercise of this right is the domestic affair of the party guided by its constitution. Since there are no criteria or yardstick to determine which candidate a political party ought to choose, the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction. The question of a candidate a political party will sponsor is more in nature of a political question which the courts are not qualified to deliberate upon and answer. If a Court could do this, it would in effect be managing the political party for the members thereof.

The Court in trying to justify the rationale for the principle of law that court cannot be involved in the domestic affairs of the political party was of the firm view that since persons have freely given consent to be bound by the rules and regulation of the political party, they should be left alone to be governed by such rules and regulations. In other words, persons have freely mortgaged their consciences to a situation; a court of law should not intervene.

It is humbly submitted that the rationale for this principle of the law is very difficult to justify in the context of political parties in Nigeria. Although the decision of the Court was based on the position of the law at that point in time, the position was self inflicted by the judiciary as there was no law which precluded the court from entertaining such a matter having to do with internal affairs of the political parties. This is a good example of judicial self limitation.
The year 2007 therefore marks the turning point of judicial approach to matters relating to the internal affairs of the political parties. In the case of Ugwu and Anor v Ararume, the undisputed result of the primary election conducted in Imo State of Nigeria on the 14th April 2007 of the Peoples Democratic Party showed that the 1st respondent scored the highest number of votes. The 1st appellant who also contested ranked 16 of 22 participants in the primary election. The name of the 1st respondent was therefore forwarded to INEC as the winner of the primary elections. A month thereafter, the party forwarded the name of the 1st appellant to INEC as the party’s candidate without stating the reason for its action. In reaction to this, the 1st appellant brought an action at the Federal High Court, Abuja against the party to review the action of the party because no cogent and verifiable reason was stated for his substitution. The Court denied judicial review on the ground that it was within the power of the party to change the candidates if it wants to sponsor for election as doing that for the party will be reviewing the internal affairs of the political party which the Court was not prepared to do. The Court of Appeal set aside the decision of the trial Court and allowed the appeal on the ground that the trial Court failed to consider all aspects of section 34(1) and (2) of the Electoral Act, 2006 and that the trial Court decision does not meet the justice of the case. On further appeal to the Supreme Court, the Court rejected the argument that the Court cannot review the decision of the political party changing its candidate amounts to internal affairs of the party and held that the argument no longer has any support in whatsoever under any law in the Country’s present dispensation and the action is well justifiable.

In a similar case of Rt. Hon. Rotimi Chibuike Amaechi v Independent National Electoral Commission, the appellant together with seven other members of the Peoples Democratic Party(PDP) were aspirants during primaries of the party for the Governorship seat of Rivers State. The appellant won the primary election by pooling 6, 527 votes out 6, 575 votes. His name was consequently submitted to INEC as the party’s candidate for the election but was subsequently substituted with the name of the 2nd respondent who never contested the primary election. The party did not state any cogent and verifiable reason for so doing. The trial Court reviewed the purported substitution on the ground that it could not hold because it was done during the pendency of the suit. The Court of Appeal rejected this contention on the ground that it is within the power of the political parties to substitute it candidate and that the substitution was in compliance with the law. The Court of Appeal appears to be swayed away by the Respondents application urging the Court of Appeal to strike out the matter for lack of jurisdiction because on 10th April, 2007 the Appellant had been expelled from the party thereby rendering the appeal if eventually heard and in the event of the appeal succeeding, becomes a mere academic exercise. The Court was therefore of the view in the lead judgment delivered by Omoleye JCA that the expulsion of the Appellant from the party has taken life out of the appeal and the court no longer had jurisdiction to entertain the matter. On appeal to the Supreme Court, the Court held the appellant to be the proper candidate of the PDP and therefore ordered him to be sworn in notwithstanding the fact that Celestine Omehia was already serving as the Governor of the State because the Party emerged as the winner of the Governorship election in that State.

More recently, in line with the decisions of the Supreme Court above, the Court of Appeal in the case of Saidu v Abubakar was of the view that whether the appellant was validly nominated and sponsored by 3rd respondent/appellant in the circumstances of this matter is a very serious constitutional issue actionable in connection with the election either at pre election stage or after the election depending on when the constitutional disability came to the knowledge of the party seeking to challenge the qualification of the contestant relevant to the office of the declared winner of the election. The Court noted that this must be so because it is not unusual in this country for a person who seeks to challenge some decisions of political parties to be expelled from the party.

Content analysis of the above cases would reveal that the judicial reactions or attitudes towards internal affairs of political parties in Nigeria was largely dictated by the position of the law at the time those cases were presented before the court. However, it is arguable that there has been no law which expressly barred the courts from reviewing matters that bordered on internal affairs of political parties. This was a self restraint measure by the court because the courts were of the view the matters were political in nature and therefore not fit for judicial intervention. It must also be said that almost all the decisions that were reached in this area by the courts before 2007 denied interference with the decisions of the political parties by deciding the matter on the merits. However, 2007 witnessed a change in attitude of the courts to this issue on internal affairs of political parties.

The reason for this change of attitude was firstly due to section 34(2) of Electoral Act, 2006 which requires all political parties which seeks to change its candidates to provide ‘cogent and verifiable reason’ before such can be done effectively. Before then, the parties would seem to enjoy absolute right to determine who their candidates were. The second reason was because was the recalcitrant attitude of political parties and its non compliance with internal democracies of the parties. This made the courts to wear its active posture by ensuring that political parties do not become lawless.
It is therefore submitted that position of the law today is that the court has the power to review the internal affairs of the political parties. The court by so doing is not managing the affairs of the parties for parties. Rather, the court is enforcing the internal democracies and party discipline and the parties’ constitutions which the parties have made for themselves. This is also the rationale why the courts must intervene in the affairs of the parties. Any party which does not want the courts to intervene in its internal affairs would only follow the parties’ constitutions and guidelines, the law, the Constitution of the Federal Republic of Nigeria and ensures that justice prevails in the party. The parties are bound to follow strictly all these. Although there appears no laws that expressly confer on the courts to now interfere with internal affairs of the parties, there are also no laws that expressly preclude the courts from such interference with the affairs of the parties if need be. However, the courts are interfering and can now interfere relying on its inherent powers under section 6 of the Nigerian Constitution and the law as the courts are the custodians of the law and the Constitution.

The position of the law in Malaysia is that disputes arising from the internal affairs of the political parties are meant to be decided or resolved by the political party concerned with such disputes. In fact, section 18(c) of the Societies Act makes such disputes matters of internal affairs of the political parties and a non justiciable political question not fit for judicial determination. The section precludes the courts from exercising jurisdiction in matters relating to the internal affairs of political parties. The validity or otherwise of such questions or dispute is not subject to the court’s interpretation. It provides that:

The decision of a political party or any person authorized by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

The question therefore is that how has the court been dealing with this political question over the years? Are the courts’ hands tied by this provision of the law?

The Federal Court in the case of Datuk Ong Kee Hui v Sinyium Anak Matit protected the internal arrangement of the political party by not interfering with the decision of the political party in this case where the respondent signed a document undertaking to donate the allowance paid to him as a Member of the House of Representatives to the party. He also agreed that in the event of his doing any act which was seen to be against the interests of the party he would forfeit his seat in the House of Representatives and the party could then submit the letter of resignation, signed by him, to the Speaker of the House of Representatives. The Court held that in whatever way the matter was looked at, the respondent’s claims must be dismissed. If the arrangements were not illegal and therefore valid, it goes without saying that what were done by the party and the appellant with regard to the remuneration and the resignation were fully authorised by the arrangement and no claim could arise therefrom, unless it could be shown that the appellant was in breach of the agreement. The Court further held that the arrangement was not a fraud and neither was the facts constituting the alleged causes of action for malicious falsehood, fraudulent misrepresentation or conspiracy separable from those constituting the illegality. Nor were the acts of the appellant done otherwise than in pursuance of the arrangement so as to exclude the maxim volenti non fit injuria.

In Senator Lau Keng Siong & Anor v Ng Cheng Kiat, the Court inter alia held that the court has no jurisdiction to deal with the injunction sought to restrain the holding of the elections at the general assembly, by virtue of section 18 (c) of the Societies Act 1966. The Court in arriving at this conclusion also relied on the provision Articles 74 and 75 of the parties Constitution. Article 175 provides that notwithstanding any provisions to the contrary in the Constitution, no member shall take any party matters to a court of law until he has exhausted all possible avenues or remedies provided by the provisions of this Constitution. Article 174 reads as follows: In case of any dispute as to the interpretation, construction, rendering or meaning of all or any of the articles of the party’s Constitution or of any Standing Rules and Orders, or of any rules, regulations and bye-laws made there under, or of any word or words contained in any such Articles, Standing Rules and Orders, rules, regulations and bye-laws, the interpretation, construction, rendering or meaning determined and fixed by the Central Committee shall be final and conclusive and not subject to question by or in any court of law. The Court therefore declined jurisdiction on the ground that it is a non justiciable political question not fit for judicial determination but meant to be decided by the political parties.

Thus, in the case of Abdul Aziz Bin Jamal Mohammad & Ors v Maniam Kvs @ Mhayveas, the Court refused to interfere with the internal affairs of the party by holding that Section 18C of the Act which provided in effect that the decision on any matter relating to the affairs of the party shall be final and shall not be challenged in any court on any ground relating to the validity of such decision was very clear and unambiguous and brooked no other interpretation. In view of that, the Court observed that there was no merit in the suggestion that invalid decisions do not come within the purview of section 18 (c) whilst good ones do.

Also in the case of SI Rajah & Anor v Dato Mak Hon Kam & Ors (No 2) Lim Beng Choon J noted that an amendment vide Act 743/90 was made to the Societies Act 1950 by introducing Pt IIA entitled ‘Provisions
Applicable to Political Parties Only’ and the amendment came into force on 12 January 1990. The amendment has the effect of confining disputes arising from the election of disqualified persons as office bearers of a political society within the said party itself and that it is for the political party itself to settle such disputes.

In *PV Das v Maniam KVS Kayveas*, the High Court was of the view that it has no jurisdiction to entertain an application which questions the decision of a political party or its office-bearers relating to the affairs of the party. The facts disclosed that the plaintiff was unanimously elected as President of PPP at the Triennial Delegates Conference on 13 August 95 at Segamat attended by 215 representatives from 95 out of 110 Branches of the party. The defendant’s Presidency was approved and endorsed at the Extraordinary Delegates Conference on 10 October 93 attended by 310 members and 98 delegates from 84 Branches of the Party. It was manifest that both presidents enjoyed popular votes. The Court noted that under the circumstance the election of the plaintiff as President of PPP and the approval and endorsement of the defendant’s Presidency of the PPP are the decisions of a political party within the meaning of s 18C of the Act and held further that the business of electing the president or the approval and endorsement of the president are ‘matters relating to the affairs of the party’. The Court therefore held that such decisions on such matters are final and conclusive decisions and the court has no jurisdiction to question the validity of such decisions.

Furthermore, the Court in the case of *Pendaftar Pertubuhan Malaysia v PV Das (Bagi Pihak People’s Progressive Party of Malaysia (PPP))* was of the view that prayers sought for by the respondent arose from the dispute regarding the validity of the extraordinary delegates conference; the election of Kayveas and his supporters as president and office bearers respectively; the validity of the voting done and the resolutions passed; and as to who were members and who were not. These were clearly according to the Court decision(s) of a political party on any matter relating to the affairs of the party ‘...’ as stipulated in section 18(c) of the Act. The Court rejected the argument that at least in respect of prayers what were being challenged were the acts of the Registrar and not the decisions of PPP. However, the Court noted that to take that view would mean that whereas a decision of a political party cannot be challenged in court, when recognition was given to that decision by the Registrar, it may be challenged in court, and all the issues may be reopened for decision by the court and held that it would defeat the whole purpose of s 18C of the Act. The Court concluded that under the circumstance the election of the plaintiff as President of PPP and the approval and endorsement of the defendant’s Presidency of the PPP are the decisions of a political party within the meaning of s 18C of the Act and that the business of electing the president or the approval and endorsement of the president are ‘matters relating to the affairs of the party’. Therefore, decisions on such matter in the view of the Court are final and conclusive decisions and the court has no jurisdiction to question the validity of such decisions.

The courts appear to be following the principle of interpretation of statute laid down by Gopal Sri Ram JCA in *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano* in determining the intention of Parliament in legislating s 18C where it was said that the function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. Prima facie, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases.

**Conclusion:**

The study has therefore revealed in Nigeria that the courts had not, until recently, reviewed matters relating to internal affairs of the political parties. The year 2007 witnessed a remarkable turning point from the former position of avoiding questions relating to the affairs of the political parties. The reason for judicial self restraint at that time was that the court felt it was a political question requiring political solution and that it would amount to managing the affairs of the political parties for the parties. However, wisdom and happenstances revealed that it did not serve the justice of the case as politician now use this as a medium to perpetuate injustices across party politics. The courts now saw an urgent need to interfere with internal affairs of the matter where the justice of the case so demands. Although the courts did not overrule previous decisions it had laid down, it however on many occasions interfered in the affairs of the political parties to serve the interest of justice in the matter. Study therefore revealed that the change in attitude was because of Electoral Act 2006 that mandates political party which seeks to substitute a candidate to give cogent and verifiable reason for it to be valid. Since the constitution and the law sets upon political parties, their activities must also be seen to be regulated by law through the courts.

In contrast, Malaysia courts have consistently refused to interfere with the internal affairs of political parties. This used to be the position in Nigeria prior to 2007. The courts see it as matters which are political in nature and does not therefore require courts intervention; the injustice notwithstanding. The courts are not really interested to be involved in determining whether the procedures leading to such acts are regular or not; whether it creates injustices or not. The major obstacle for judicial review of the affairs of political parties is section 18 (c) of the Societies Act.
References

Abdul Aziz Bin Jamal Mohammad & Ors v Maniam Kvs @ Mkayveas, 1998. 5 MLJ 794.
Arthur, E.W., Jr., "Elusive Foundation: John Marshall, James Wilson, and the Problem of Reconciling
Baker v Carr., 1962. 369 U.S. 186. for the six factors considered by the United States Supreme Court as constituting.
Balarabe Musa v Hamza., 1982. & Ors, 3 N.C.L.R 229 at 247.
Dalhatu v Turaki., 2003. 15 NWLR.
Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykan., 1997. 1 MLJ 94.
Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).
Obayemi v Awojolu, 1984. 5 NCLR 425.
Ogunsan v Oshunride, 1986. 6 NCLR 611.
Onuoha v Federal Electoral Commission and Anor Suit No HOW/217/83 of 17/6/83.
Onuoha v Okafor, 1983. 2 SCCLR 244.
Pendaftar Pertubuhan Malaysia v PV Das (Bagi Pihak People’s Progressive Party of Malaysia (PPP)) 2003. 3 MLJ 449.
PV Das v Maniam KVS Kayveas, Civil No 22: 72-96.
Senator Lau Keng Siong & Anor v Ng Cheng Kiat, 1990. 3 MLJ 417.
Rajah SI. and Anor v Dato Mak Hon Kam & Ors (No 2) 1994. 1 CLJ 215 at pp: 223.