



Immunity Clause, Transparency and Accountability in Nigerian Public Service, 2010-2023

Prof. Obiora C. A.¹, Prof. B. O. G. Nwanolue², Emelife Anthony Maduka³

Department of Political Science, Chukwuemeka Odumegwu Ojukwu University

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Abstract: This paper examines the interplay between the immunity clause under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria, and the principles of transparency and accountability within Nigeria's Public service, 2010-2023. The immunity clause grants temporary protection from civil and criminal proceedings to the President, Vice President, Governors, and Deputy Governors during their tenure, a provision retained from the 1979 Constitution to safeguard executive functionality. Drawing on A.V. Dicey's rule of law doctrine, the study analyzes how this constitutional exception creates tension with the principle of equality before the law and the demand for public accountability. Through doctrinal analysis of case law, particularly *Tinubu v. IMB Securities Plc* and *Fawehinmi v. IGP*, the paper demonstrates that Nigerian courts have adopted a broad interpretation of immunity, limiting judicial oversight while allowing post-tenure prosecution. The paper argues that although the clause serves to prevent executive distraction, it undermines transparency and weakens anti-corruption efforts by deferring accountability and eroding public trust. The study concludes that a constitutional amendment narrowing the scope of immunity to official acts, coupled with strengthened institutional mechanisms for evidence preservation and post-tenure prosecution, is necessary. Such reforms would balance executive effectiveness with the constitutional imperatives of transparency, accountability, and the rule of law in Nigeria's Public Service.

Keywords: Immunity Clause, Section 308, Rule of Law, Transparency, Accountability, Constitutionalism, Executive Protection, Anti-Corruption, Nigeria

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INTRODUCTION

The concept of executive immunity has been a persistent feature of constitutional design in many jurisdictions, aimed at balancing the need for effective governance with the demands of legal accountability in Nigeria's Public service. In Nigeria, this balance is codified in Section 308 of the 1999 Constitution, which grants temporary immunity from civil and criminal proceedings to the President, Vice President, Governors, and Deputy Governors while in office (Constitution of the Federal Republic of Nigeria, 1999). The provision was inherited from the 1979 Constitution and retained in 1999 to prevent litigation from distracting high-ranking executives and to preserve continuity in public administration. While the rationale reflects a concern for governance stability, the clause creates an exception to the doctrine of equality before the law, a central tenet of A.V. Dicey's conception of the rule of law (Dicey, 2013).

Judicial interpretation of Section 308 has largely reinforced its absolute character during tenure. In *Tinubu v. IMB Securities Plc* (2001), the Supreme Court held that immunity is non-waivable and bars both civil and criminal suits against protected officeholders, except where the proceedings concern actions taken in an official capacity as permitted by Section 308(2). Similarly, in *Fawehinmi v. Inspector General of Police* (2002), the Court of Appeal affirmed that private criminal prosecutions could not proceed against a sitting

governor, emphasizing that accountability must be deferred until the expiration of tenure. These decisions underscore a judicial preference for institutional functionality over immediate legal process, but they also raise questions about the compatibility of such deferral with transparency and anti-corruption objectives in a democratic system.

The tension between immunity and accountability has become more pronounced in Nigeria's Fourth Republic, where allegations of corruption against high-ranking officials are frequent and public demand for transparency has intensified. Agencies such as the Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission are often constrained in prosecuting protected officials until they leave office, leading to concerns about evidence deterioration and political interference (Olasupo, 2011). Critics argue that the clause fosters a culture of impunity and undermines public trust, while proponents contend that without such protection, executives would be vulnerable to frivolous suits that could impair policy implementation (Nwabueze, 2003).

Given these competing considerations, the background to this study is rooted in the need to examine how Section 308 operates within Nigeria's constitutional framework and to assess its implications for transparency and accountability. Understanding this relationship is essential for evaluating proposals to reform or retain the

clause and for developing institutional mechanisms that reconcile executive effectiveness with the rule of law.

Statement of the Problem

The immunity clause under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria was introduced to protect the executive arm from distractions that could impede governance. However, its application has generated persistent tension between the need for executive effectiveness and the constitutional demand for transparency and accountability. While the provision suspends civil and criminal proceedings against the President, Vice President, Governors, and Deputy Governors during their tenure, it does not extinguish liability. The deferral of prosecution until after office often compromises the integrity of evidence, prolongs the resolution of corruption allegations, and weakens the deterrent effect of the law (Okonkwo & Yusuf, 2020). This creates a structural gap in Nigeria's accountability framework, where high-ranking officials accused of misconduct remain shielded from judicial scrutiny for up to eight years.

Judicial interpretation has further entrenched this gap. In *Fawehinmi v. Inspector General of Police* (2002), the Court of Appeal ruled that private prosecution could not proceed against a sitting governor, affirming that immunity is absolute during tenure. Similarly, in *Attorney General of the Federation v. Abubakar* (2007), the Supreme Court emphasized that the clause was designed to preserve institutional stability, even where allegations of misconduct exist. These decisions prioritize governance continuity but leave accountability mechanisms in abeyance, raising concerns about the compatibility of the clause with Section 17(2)(e) of the Constitution, which mandates that the state's actions conform to the ideals of freedom, equality, and justice (Constitution of the Federal Republic of Nigeria, 1999).

The practical consequence is evident in Nigeria's anti-corruption landscape. The Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission frequently initiate investigations against protected officials, yet prosecution is stalled until tenure ends. By that time, witnesses become unavailable, documents are lost, and political realignments alter the incentives for pursuing cases (Ezeani, 2019). Transparency is further undermined because the public perceives the law as selectively applicable, reinforcing the view that high office confers legal privilege. This perception erodes trust in democratic institutions and weakens civic engagement in governance.

Despite these challenges, the clause remains unchanged since 1999, and constitutional reform efforts have stalled due to political considerations. Without a recalibration of the scope of immunity and the strengthening of post-tenure accountability mechanisms,

the tension between executive protection and the rule of law will persist. The problem, therefore, lies in identifying how Section 308 can be reformed to preserve executive functionality while ensuring that transparency and accountability are not sacrificed in Nigeria's Public Service.

Objectives of the Study

- To examine the legal basis, scope, and judicial interpretation of the immunity clause under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria.
- To analyze the impact of the immunity clause on transparency and accountability, particularly in relation to anti-corruption efforts and public trust in Nigeria's Public Service.
- To evaluate arguments for reforming or retaining the immunity clause and propose constitutional and institutional mechanisms for balancing executive protection with accountability in Nigeria's Public Service.

Research Questions

- What is the legal scope of the immunity clause under Section 308, and how have Nigerian courts interpreted its application?
- In what ways does the immunity clause affect transparency, accountability, and the effectiveness of anti-corruption institutions in Nigeria's Public Service?
- What constitutional and institutional reforms can reconcile executive immunity with the principles of transparency and accountability in Nigeria's Public Service under the rule of law?

Scope of the Study

This study focuses on the immunity clause as contained in Section 308 of the 1999 Constitution of the Federal Republic of Nigeria, with particular attention to its application to the President, Vice President, Governors, and Deputy Governors during their tenure in office. The analysis is limited to the constitutional provision itself, the exceptions outlined in Section 308(2), and the judicial interpretation of the clause by Nigerian courts. Key cases such as *Tinubu v. IMB Securities Plc* (2001), *Fawehinmi v. Inspector General of Police* (2002), and *Attorney General of the Federation v. Abubakar* (2007) form the primary legal material for understanding how the courts have defined the boundaries of executive immunity.

The substantive scope of the research examines the relationship between the immunity clause and the principles of transparency and accountability within in Nigeria's Public Service, 2010-2023. It evaluates how the suspension of civil and criminal proceedings against protected officeholders affects anti-corruption efforts, evidence preservation, and public trust in institutions such as the Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission. The

study also considers the broader implications for the rule of law, specifically Dicey's principle of equality before the law, and assesses whether the current framework aligns with constitutional ideals of justice and equality.

Geographically and temporally, the study is confined to Nigeria from 1999 to the present, covering the Fourth Republic. While reference is made to comparative practices in other jurisdictions to contextualize reform options, the focus remains on Nigeria's constitutional design and practice. The research does not extend to immunity provisions for legislators or judicial officers, nor does it analyze criminal liability at the international level. By limiting the scope in this way, the study maintains a clear focus on the intersection of executive immunity, transparency, and accountability in Nigeria's constitutional democracy.

METHODOLOGY

This study adopts a doctrinal legal research methodology, which is appropriate for examining the content, interpretation, and operation of the immunity clause under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria. Doctrinal research focuses on analyzing legal rules, principles, statutes, and judicial decisions to understand their meaning and implications within the existing legal system. The approach allows for a systematic examination of constitutional provisions, case law, and statutory frameworks without the need for empirical fieldwork, making it suitable for a study concerned with normative and interpretive questions of law.

Primary sources form the core of the data collection process. These include the Constitution of the Federal Republic of Nigeria, 1999 as amended, relevant statutes, and binding judicial decisions from the Supreme Court and Court of Appeal. Cases such as *Tinubu v. IMB Securities Plc* (2001), *Fawehinmi v. Inspector General of Police* (2002), and *Attorney General of the Federation v. Abubakar* (2007) are analyzed to trace the evolution of judicial reasoning on executive immunity. Secondary sources, including peer-reviewed journal articles, academic monographs, policy reports, and commentaries on Nigerian constitutional law, are used to situate the legal analysis within broader debates on transparency, accountability, and the rule of law in the Nigerian's Public service.

The method of analysis is qualitative and analytical. Constitutional provisions and case law are subjected to content analysis to identify the scope of immunity, its exceptions, and the rationale behind judicial interpretations. Theoretical insights are drawn from A.V. Dicey's rule of law doctrine to evaluate the compatibility of the immunity clause with the principle of equality before the law. Comparative references to other jurisdictions are employed selectively to highlight alternative approaches and inform reform proposals. The

findings are presented in a structured, argumentative format that links legal reasoning to the study's objectives and research questions.

Significance of the Study

This study is significant for clarifying the practical and constitutional implications of the immunity clause under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria. By analyzing the legal scope and judicial interpretation of the clause, the research provides a clearer understanding of how executive protection interacts with the principles of transparency and accountability. Legal practitioners, judges, and policymakers stand to benefit from a consolidated doctrinal analysis that traces how Nigerian courts have balanced governance stability against the demand for equality before the law. The study therefore contributes to legal scholarship by addressing a gap in the literature on the constitutional limits of executive privilege in Nigeria's Fourth Republic.

The findings also have direct relevance for institutional reform and anti-corruption policy. Agencies such as the Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission operate within the constraints imposed by Section 308, and their effectiveness is often undermined by the deferral of prosecution. By examining the consequences of this deferral for evidence preservation and public trust, the study offers evidence-based recommendations for strengthening post-tenure accountability mechanisms. These insights can inform ongoing constitutional review processes and legislative efforts aimed at aligning the immunity clause with democratic norms.

Beyond Nigeria, the study holds comparative value for other constitutional democracies grappling with similar tensions between executive immunity and accountability. The analysis of theoretical justifications, judicial trends, and reform options provides a framework that can be adapted to contexts where executive protection is contested. In doing so, the research contributes not only to Nigerian constitutional discourse but also to broader debates on how rule of law principles can be upheld without compromising effective governance.

Conceptual and Theoretical Framework The Rule of Law: Dicey's Principles

A.V. Dicey's formulation of the rule of law remains a foundational framework for evaluating constitutional limits on executive power. In *Introduction to the Study of the Law of the Constitution*, Dicey identified three interrelated principles that define the rule of law in a liberal democratic order. The first is the absence of arbitrary power, which requires that no person be punished or made to suffer except for a breach of law established in the ordinary legal manner before the ordinary courts (Dicey, 1982). This principle rejects discretionary

authority that operates outside legal norms and demands that all governmental actions be justiciable. The second principle is equality before the law, meaning that every person, regardless of rank or office, is subject to the same legal standards and processes. For Dicey, this precluded special legal regimes that exempt public officials from ordinary liability (Dicey, 1982). The third principle is that the rights of individuals are secured through judicial decisions rather than abstract constitutional declarations, emphasizing the role of common law courts in safeguarding liberty.

When applied to Nigeria's immunity clause under Section 308, Dicey's principles reveal a structural tension. Section 308 suspends civil and criminal proceedings against the President, Vice President, Governors, and Deputy Governors during their tenure, thereby creating a category of officials temporarily insulated from ordinary legal processes. While the provision does not extinguish liability, its deferral effect conflicts with the principle of equality before the law, as it establishes a procedural distinction between public officials and ordinary citizens (Okon & Bello, 2021). Nigerian courts have upheld this distinction in cases such as *Fawehinmi v. Inspector General of Police* (2002), where the Court of Appeal held that private prosecutions could not proceed against a sitting governor. The decision prioritizes institutional continuity but raises questions about whether accountability mechanisms remain consistent with Dicey's conception of a government of laws, not of persons.

Contemporary scholarship has sought to reconcile Dicey's classical formulation with modern constitutional practice. Scholars argue that limited immunity may be justified to preserve executive functionality, but only to the extent that it does not undermine judicial oversight or the ability to secure accountability after tenure (Adeyemi, 2019). From this perspective, the rule of law does not demand the abolition of immunity outright, but requires that any exception be narrowly construed, subject to clear constitutional boundaries, and balanced by effective post-tenure prosecution mechanisms. This reinterpretation allows Dicey's principles to function as a normative benchmark for assessing whether Section 308 serves its stated purpose without eroding the foundations of constitutional accountability in Nigeria.

Transparency and Accountability in Democratic Governance

Transparency and accountability are constitutive elements of democratic governance, functioning as mechanisms through which public power is subjected to scrutiny and control. Transparency refers to the openness of government processes, decision-making, and access to information, enabling citizens to understand how authority is exercised and resources are allocated. Accountability, in turn, denotes the obligation of public officials to justify their actions, accept

responsibility for outcomes, and face consequences where misconduct occurs. Together, these principles reinforce the legitimacy of democratic institutions by reducing opportunities for abuse of power and fostering trust between the state and its citizens (Fox, 2007). In constitutional democracies, transparency and accountability are often institutionalized through legal frameworks, independent oversight bodies, and judicial review, which collectively constrain arbitrary exercise of authority.

Within Nigeria's constitutional order, the demand for transparency and accountability is expressed in Section 14(2)(c) of the 1999 Constitution, which declares that the participation of the people in their government shall be ensured in accordance with democratic principles. This provision is complemented by statutes establishing the Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission, both of which are mandated to investigate and prosecute corruption and abuse of office. However, the operation of the immunity clause under Section 308 introduces a structural limitation on these mechanisms by suspending proceedings against protected officeholders during their tenure. Scholars argue that while such deferral may serve to preserve executive functionality, it weakens the immediate enforcement of accountability and creates a perception that high office confers legal privilege (Olowu & Erero, 2020). The delay also affects transparency, as the public is denied timely access to judicial determinations on allegations of misconduct.

The tension between executive protection and public accountability highlights the need for institutional designs that reconcile both values. Comparative practice suggests that accountability can be preserved even where limited immunity exists, provided that robust mechanisms for evidence preservation, post-tenure prosecution, and legislative oversight are in place (Rose-Ackerman & Palifka, 2016). In Nigeria, the effectiveness of such mechanisms depends on the independence of anti-corruption agencies, the willingness of the judiciary to enforce constitutional standards, and the capacity of civil society to demand transparency. Strengthening these elements is essential for ensuring that democratic governance does not degenerate into a system where legal responsibility is suspended for those in positions of power.

Transparency and Accountability in Nigeria's Public Service, 2010–2023

Between 2010 and 2023, transparency and accountability in Nigeria's public service remained central concerns due to persistent challenges of corruption, mismanagement, and weak institutional enforcement. The Nigerian government introduced several legal and institutional frameworks during this period to curb financial malpractice and promote open governance. Amongst these were the Economic and

Financial Crimes Commission Act of 2002, the Independent Corrupt Practices and Other Related Offences Act of 2000, and the establishment of the Budget Monitoring and Price Intelligence Unit. These measures were designed to strengthen oversight, ensure due process in public procurement, and enhance financial reporting standards in ministries, departments, and agencies. Despite these interventions, reports from civil society and international bodies continued to highlight lapses in financial accountability, with public funds frequently misappropriated or unaccounted for in annual audits (Omoniyi & Akintoye, 2024).

Transparency and accountability are interdependent concepts that function as mechanisms for building public trust in governance. In the Nigerian context, transparency involves the open disclosure of information regarding public expenditure, policy decisions, and administrative processes, while accountability requires public officials to justify their actions and accept responsibility for outcomes. Theoretical perspectives, such as Goldberg's Commander Theory, argue that effective control of public resources depends on separating ownership from management and ensuring that delegated authorities act in the public interest. When these principles are weak, the public sector becomes vulnerable to opacity and abuse of office, which undermines service delivery and erodes citizen confidence (Nwali, 2025).

From 2010 to 2023, efforts to improve transparency were reinforced by global initiatives such as the Open Government Partnership, which Nigeria joined in 2016. This commitment led to the adoption of policies on fiscal transparency, beneficial ownership disclosure, and citizen engagement in budgeting processes. However, implementation gaps, political interference, and judicial delays limited the impact of these reforms. Secondary data from Transparency International indicated that Nigeria's scores on the Corruption Perceptions Index remained low throughout the period, reflecting ongoing concerns about accountability in public administration (Omoniyi & Akintoye, 2024). Scholars argue that reversing this trend requires judicial reforms, the creation of specialized anti-corruption courts, and stronger enforcement of existing laws to ensure that transparency and accountability move beyond policy rhetoric to measurable outcomes.

Constitutionalism and Executive Power

Constitutionalism denotes a system of government in which political authority is derived from and limited by a supreme legal framework. It embodies the principle that governmental power must be exercised according to established rules that bind both rulers and citizens, thereby preventing arbitrary rule. Within this framework, executive power is not conceived as absolute but as a delegated function subject to legal and institutional constraints. The doctrine requires that the executive act within the confines of the constitution, with

its powers defined, distributed, and made accountable through mechanisms such as judicial review, legislative oversight, and separation of powers (Griffiths, 2020). In this sense, constitutionalism transforms executive authority from a source of personal discretion into a public trust exercised for defined purposes.

The relationship between constitutionalism and executive power is particularly significant in presidential and semi-presidential systems where the executive exercises broad administrative, legislative, and foreign policy functions. While a strong executive is often justified on grounds of decisiveness and coherence in governance, unchecked executive authority poses a risk to constitutional balance. Courts and legislatures therefore serve as counterweights that ensure executive actions conform to constitutional norms and procedural regularity. Comparative constitutional practice shows that the legitimacy of executive action depends on its demonstrable basis in law and its amenability to independent scrutiny (Fombad, 2019). Where these safeguards are weakened, the executive may expand its domain beyond constitutional limits, eroding the rule of law.

In Nigeria, the 1999 Constitution embodies this tension by vesting substantial powers in the President and Governors while simultaneously subjecting them to legislative and judicial checks. Provisions such as Section 1(1), which declares the Constitution supreme, and Section 6, which vests judicial powers in the courts, reflect a commitment to constitutionalism. However, specific clauses like Section 308 introduce exceptions that temporarily insulate high executive officers from legal process, raising questions about the consistency of such provisions with the broader constitutional order. Scholars argue that the durability of constitutionalism depends not only on the text of the constitution but also on the willingness of institutions to enforce limits on executive power in practice (Agbakwa, 2021). Effective constitutionalism therefore requires a balance between enabling effective governance and preventing the concentration of unaccountable authority.

Theoretical Justifications for Executive Immunity

Executive immunity is defended primarily on the grounds of functional necessity and the preservation of governmental effectiveness. The central argument is that subjecting a sitting executive to civil or criminal proceedings during tenure would distract from the discharge of constitutional duties and undermine the continuity of government. This rationale draws from the doctrine of separation of powers, which holds that each branch of government must be free from undue interference by the others to perform its functions effectively. By temporarily shielding the executive from litigation, immunity prevents the judiciary and private litigants from obstructing executive action through procedural harassment or politically motivated suits (Klug, 2019). The justification is not that the officeholder

is above the law, but that the office requires protection to maintain institutional stability.

A second justification is rooted in public policy and the need to encourage decisive decision-making. Executives are expected to make high-stakes decisions under time constraints, often in matters of national security, economic management, and foreign affairs. The prospect of immediate personal liability could induce risk aversion and paralysis, leading to suboptimal governance. Immunity therefore operates as a safeguard that allows officeholders to act without fear of subsequent personal consequences for actions taken in good faith and within the scope of office (Nwabueze, 2018). This perspective aligns with the common law doctrine of official immunity, which distinguishes between acts performed in a private capacity and those performed as part of public duty.

A third theoretical basis lies in the principle of representative legitimacy. In democratic systems, executives are elected to represent the will of the electorate for a defined term. Allowing litigation to proceed against a sitting executive is argued to subvert this mandate by enabling unaccountable actors to remove or incapacitate a leader through the courts rather than through elections. Immunity clauses thus serve as a procedural mechanism that defers accountability until after the term of office, when the electorate or successor institutions can address alleged misconduct (Olowu, 2020). This deferred accountability model seeks to balance the need for immediate governance with the long-term imperative of legal responsibility.

Legal Basis, Scope, and Historical Evolution of Section 308

Legal Basis

Section 308 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), provides the constitutional foundation for executive immunity in Nigeria. The provision states that “no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office,” and further prohibits arrest, imprisonment, or compulsory court appearance of such persons while in office. Subsection 3 specifies that the section applies to the President, Vice-President, Governor, and Deputy Governor. The legal basis is therefore rooted in the supreme law of the land, operating “notwithstanding anything to the contrary in this Constitution” but subject to the exceptions in subsection 2. This creates a constitutional exception to the general rule that all persons are equal before the law under Section 17(2)(e).

Scope

The scope of Section 308 is limited in both persons and subject matter. It applies only to four offices: President, Vice-President, Governor, and Deputy Governor, and only during their period of office. The immunity covers civil and criminal proceedings, arrest,

imprisonment, and any court process compelling appearance. However, subsection 2 carves out exceptions for civil proceedings against the officeholder in their official capacity and for cases where the officeholder is only a nominal party. The proviso also ensures that limitation periods for instituting actions are tolled during the period of office, meaning proceedings can commence after the term expires. Thus, the immunity is temporary and procedural, not substantive absolution from liability. 809e21b1

Historical Evolution

The immunity clause first appeared in Nigeria’s 1979 Constitution as Section 267, modeled partly on the United States’ understanding of presidential immunity and the British doctrine of Crown immunity. It was retained in the 1999 Constitution with minor modifications, reflecting a continuity of the post-military transition preference for protecting the executive to ensure governmental stability. Historically, the provision was justified on the grounds that exposing sitting executives to litigation would distract from governance and expose the office to political harassment. Over time, however, the clause has been subject to judicial interpretation and public criticism, particularly in high-profile corruption cases where prosecution was deferred until the end of tenure. Scholars note that while the clause has remained structurally unchanged, its application has evolved through case law that clarifies the distinction between personal and official acts and reinforces the tolling of limitation periods.

Judicial Interpretation and Landmark Cases

Tinubu v. IMB Securities Plc (Scope and Non-Waivability)

Tinubu v. IMB Securities Plc 16 NWLR (Pt. 740) 670 is one of the leading Nigerian Supreme Court decisions on the scope and effect of Section 308 of the 1999 Constitution. The case arose when a creditor instituted a debt recovery action against Bola Tinubu, then Governor of Lagos State, during his tenure. The Supreme Court held that the suit was incompetent because Section 308(1)(a) bars the institution or continuation of any civil or criminal proceedings against a sitting President, Vice-President, Governor, or Deputy Governor during their period of office. The Court emphasized that the immunity is not a mere procedural privilege but a constitutional ouster of jurisdiction for the duration of the term of office.

On scope, the Court clarified that the immunity extends to all civil and criminal proceedings, regardless of whether the cause of action arose before or during the term of office. The protection is personal to the officeholder and attaches automatically by virtue of holding the office. The Court also stressed that the immunity does not extinguish the cause of action; it only suspends the ability to institute or continue proceedings until the officeholder leaves office. This interpretation

aligns with the proviso in Section 308(1), which tolls limitation periods during the term of office.

On non-waivability, *Tinubu v. IMB Securities Plc* established that Section 308 immunity cannot be waived by the officeholder. The Supreme Court reasoned that the provision is designed to protect the office, not the person, and therefore the individual cannot unilaterally submit to jurisdiction during tenure. This distinguishes it from other privileges that may be waived by consent. Subsequent cases such as *Fawehinmi v. IGP* 7 NWLR (Pt. 767) 606 have reaffirmed this stance, holding that the immunity remains in force for the entire period of office and cannot be circumvented by framing the suit as against the officeholder in a personal capacity where the action directly targets the person.

Fawehinmi v. IGP (Private Prosecution and Immunity)

Fawehinmi v. Inspector General of Police 7 NWLR (Pt. 767) 606 is the leading Nigerian Supreme Court authority on the interaction between private prosecution and executive immunity under Section 308 of the 1999 Constitution. The appellant sought to initiate a private criminal prosecution against a sitting President for alleged perjury, arguing that the constitutional guarantee of private prosecution in Section 174(1)(c) overrides the immunity in Section 308. The Supreme Court held that the immunity granted to a sitting President under Section 308(1)(a) is absolute during the period of office and precludes the institution or continuation of any criminal proceedings, including those initiated by private individuals. The Court reasoned that to allow private prosecution would defeat the purpose of the immunity, which is to protect the office from distraction and political harassment while the holder is in office.

On private prosecution, the Court distinguished between the right to institute criminal proceedings and the jurisdictional bar created by Section 308. While Section 174(1)(c) and Section 211(1)(c) reserve the right of private prosecution to any person, the Court held that this right is subject to the constitutional limitations expressly provided in Section 308. The judgment clarified that immunity does not abolish the alleged offence or prevent prosecution after the term expires; it only suspends the process. The proviso to Section 308(1), which tolls limitation periods, was cited to support the view that accountability is deferred rather than denied. This interpretation ensures that the constitutional design balances immediate governance with eventual legal accountability.

The case also reinforced the non-waivability of Section 308 immunity in the context of criminal matters. The Court held that the immunity cannot be waived by the officeholder, nor can it be circumvented by describing the suit as a private action. This position has been followed in subsequent decisions and academic

commentary, which treat *Fawehinmi v. IGP* as settling the scope of immunity against both state-led and private criminal processes during tenure. The ruling remains central to debates on executive accountability in Nigeria, illustrating the tension between the rule of law and the need for functional governance.

A.G. Federation v. Abubakar (Executive Tenure Protection)

A.G. Federation v. Abubakar 7 NWLR (Pt. 1025) 423 is a landmark Supreme Court decision on the protection of executive tenure and the limits of presidential power over the office of the Vice-President. The case arose when President Olusegun Obasanjo sought to declare the office of Vice-President Atiku Abubakar vacant after Abubakar defected to another political party. The Federal Government argued that such defection effectively terminated the joint ticket under which they were elected. The Supreme Court rejected this argument and held that the Constitution does not confer on the President the power to remove the Vice-President or declare the office vacant. The Court emphasized that the only constitutional grounds for removal are those provided in Section 143, which requires impeachment for gross misconduct through a process involving the National Assembly.

The judgment clarified the concept of executive tenure protection by holding that the term of office of the President and Vice-President is fixed and runs until May 29 following a general election, unless terminated by death, resignation, impeachment, or incapacity under Sections 135 and 143. The Court reasoned that allowing the President to unilaterally terminate the Vice-President's tenure would undermine the constitutional separation of offices and the electoral mandate derived from the joint ticket. Akintan JSC noted that the Constitution deliberately links the offices of President and Vice-President for the purpose of harmonious governance, but it does not make the Vice-President a subordinate who can be dismissed at will.

On the issue of Section 308 immunity, the Court reaffirmed that the Vice-President's immunity remains intact for the duration of the term, and the President cannot withdraw, tamper with, or interfere with that immunity. The decision reinforced the principle that executive tenure is protected by the Constitution and cannot be shortened by political expediency or executive fiat. This case is frequently cited alongside *Tinubu v. IMB Securities Plc* and *Fawehinmi v. IGP* as authority for the proposition that Section 308 immunity and tenure protection are constitutional safeguards against arbitrary interference with the executive branch.

Judicial Trends and Policy Implications

Judicial Trends

Recent jurisprudence on Section 308 of the 1999 Constitution shows a consistent judicial trend toward upholding the literal and purposive scope of

executive immunity while narrowing attempts to circumvent it. Courts have maintained that immunity applies automatically to the President, Vice-President, Governor, and Deputy Governor during tenure, and that it cannot be waived by the officeholder or circumvented through private prosecution. In *Fawehinmi v. IGP* 7 NWLR (Pt. 767) 606, the Supreme Court affirmed that the immunity bars both state and private criminal proceedings, reinforcing the view that the provision is jurisdictional rather than procedural. Similarly, *Tinubu v. IMB Securities Plc* 16 NWLR (Pt. 740) 670 established that the immunity is non-waivable and that the cause of action is merely suspended, not extinguished. A parallel trend is evident in tenure protection cases such as *A.G. Federation v. Abubakar* 7 NWLR (Pt. 1025) 423, where the Court held that executive tenure can only be terminated through constitutionally prescribed processes, not executive fiat. Collectively, these decisions reflect a judiciary cautious about eroding constitutional safeguards designed to ensure continuity of governance.

Policy Implications

The judicial approach to Section 308 has significant implications for governance and accountability. On one hand, preserving immunity supports policy goals of stability and decisiveness by shielding executives from frivolous or politically motivated litigation during their term. This aligns with the functional rationale that public officials must make high-stakes decisions without fear of immediate personal liability. On the other hand, the policy trade-off is a perceived accountability gap, particularly in cases involving allegations of corruption or abuse of office. Scholars argue that while deferred accountability through the tolling of limitation periods mitigates this concern, public confidence is weakened when high-profile matters remain unresolved until after tenure. The trend suggests that reform debates are shifting toward strengthening post-tenure accountability mechanisms rather than abolishing immunity outright. Strengthening institutions such as the judiciary, anti-corruption agencies, and legislative oversight may provide a more balanced approach that preserves executive functionality while reducing impunity.

Immunity Clause and Its Impact on Transparency and Accountability

The Immunity Clause and Its Purpose

Section 308 of the 1999 Constitution of Nigeria grants immunity from civil and criminal proceedings to the President, Vice-President, Governor, and Deputy Governor during their period of office. The clause is grounded in the principle that immediate legal exposure could distract officeholders from constitutional duties and expose the office to politically motivated litigation. Courts have consistently held that the immunity is non-waivable and operates as a jurisdictional bar, suspending but not extinguishing causes of action until after tenure. This design reflects a balance between enabling effective

governance and deferring accountability to a later point, with limitation periods tolled during the term of office.

Impact on Transparency

The immunity clause creates structural limitations on transparency because it restricts access to judicial processes that would otherwise bring executive conduct under public scrutiny while the officeholder is in power. By barring civil and criminal proceedings, it prevents contemporaneous disclosure of evidence and prevents the courts from acting as a check on executive actions in real time. While the proviso to Section 308(1) ensures that limitation periods do not run during tenure, the practical effect is that information relevant to public interest remains unavailable until after the officeholder leaves office. Scholars argue that this reduces the ability of civil society, the media, and oversight institutions to hold executives accountable through open legal processes during the period when policy decisions are being implemented.

Impact on Accountability

Accountability is affected in two ways. First, the clause defers personal accountability, meaning that allegations of misconduct are not adjudicated until after the term expires. This can lead to delays in justice, loss of evidence, and diminished public confidence in the rule of law. Second, it does not eliminate accountability entirely; post-tenure prosecution remains possible, and civil actions against the officeholder in an official capacity are permitted under Section 308(2). Judicial decisions such as *Fawehinmi v. IGP* 7 NWLR (Pt. 767) 606 and *Tinubu v. IMB Securities Plc* 16 NWLR (Pt. 740) 670 have reinforced that the immunity is temporary and that the Constitution contemplates eventual legal responsibility. The policy implication is that accountability in Nigeria's system is structured around electoral and post-tenure mechanisms rather than contemporaneous judicial intervention. Strengthening institutions like anti-corruption agencies, legislative oversight, and freedom of information regimes is therefore critical to offsetting the transparency deficit created by the immunity clause.

SUMMARY OF FINDINGS

Legal Basis, Scope, and Judicial Interpretation of Section 308

The study finds that the legal basis of the immunity clause is rooted in Section 308 of the 1999 Constitution of the Federal Republic of Nigeria, which provides that no civil or criminal proceedings shall be instituted or continued against the President, Vice-President, Governor, or Deputy Governor during their period of office. Judicial interpretation by the Supreme Court in *Tinubu v. IMB Securities Plc* 16 NWLR (Pt. 740) 670 and *Fawehinmi v. IGP* 7 NWLR (Pt. 767) 606 establishes that the immunity is non-waivable, jurisdictional, and applies to both state and private prosecutions. The courts have also clarified that the immunity suspends rather than extinguishes liability, as

limitation periods are tolled under the proviso to Section 308(1). The scope is limited to four offices and operates only during tenure, but it creates a constitutional ouster of jurisdiction that prevents contemporaneous judicial scrutiny of executive conduct.

Impact on Transparency and Accountability

The findings show that Section 308 significantly constrains transparency by barring legal proceedings that would otherwise make executive actions subject to public and judicial examination during tenure. This limits the availability of information on alleged misconduct and reduces the role of courts as immediate checks on executive power. In terms of accountability, the clause defers personal responsibility until after the officeholder leaves office, creating a gap between the commission of alleged acts and their adjudication. While post-tenure prosecution remains possible, the delay contributes to loss of evidence, public cynicism, and perceptions of impunity, particularly in high-profile corruption cases. These effects weaken public trust in the rule of law and complicate anti-corruption efforts within Nigeria's democratic system.

Arguments for Reform and Mechanisms for Balance

The study evaluates two competing positions. Proponents of retention argue that immunity is necessary to protect the executive from distraction and politically motivated litigation, thereby ensuring continuity and decisiveness in governance. Proponents of reform contend that the clause undermines accountability and should be narrowed to cover only official acts, excluding personal criminal conduct. The findings suggest that a balanced approach lies in strengthening non-judicial oversight during tenure through legislative scrutiny, freedom of information, and independent anti-corruption agencies, while ensuring that post-tenure prosecutions are timely and effective. Institutional independence and targeted constitutional amendments that differentiate between official and private acts are proposed as mechanisms to reconcile executive protection with accountability.

CONCLUSION

The immunity clause serves a legitimate constitutional purpose of preserving executive functionality and protecting the office from distraction and political harassment during tenure. However, its application produces a tension between stability of governance and the ideals of transparency and accountability in the Public service. Judicial interpretation has upheld the literal scope of the provision, reinforcing that accountability in Nigeria's presidential system is structured around deferred and post-tenure mechanisms. While this preserves continuity in government, it risks weakening public trust if allegations of misconduct are not addressed promptly or if post-tenure processes are ineffective.

RECOMMENDATIONS

- **Strengthen Post-Tenure Accountability Mechanisms:** Anti-corruption agencies and the judiciary should be resourced to ensure that cases deferred under Section 308 are prosecuted expeditiously once immunity lapses. Clear timelines for instituting actions after tenure would reduce the risk of evidence loss and public cynicism.
- **Enhance Non-Judicial Oversight:** Legislative oversight, freedom of information laws, and administrative inquiries should be utilized more robustly to provide transparency during the period of immunity. These mechanisms can scrutinize executive actions without violating the constitutional bar on proceedings.
- **Consider Targeted Constitutional Reform:** Future amendments could limit the scope of immunity to acts strictly connected to official functions, while excluding personal criminal conduct from protection. This approach, adopted in some comparative jurisdictions, would balance functional necessity with accountability.
- **Promote Institutional Independence:** Ensuring the independence of the judiciary and anti-corruption bodies is critical to preventing the perception that deferred accountability equates to impunity. Institutional credibility is essential for maintaining legitimacy when prosecutions occur after tenure.

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