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Immunity Clause and Rule of Law in Nigeria (1999 - 2025)

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Abstract: The immunity clause under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria grants serving Presidents, Vice Presidents, Governors, and Deputy Governors immunity from civil and criminal proceedings while in office. Although designed to protect office holders from distractions and allow unhindered governance, the provision has generated sustained debate over its compatibility with the rule of law. This paper critically examines the tension between the immunity clause and the rule of law in Nigeria, focusing on its implications for accountability, anti-corruption, and constitutionalism between 1999 and 2025. Adopting a doctrinal legal methodology, the study analyzes statutory provisions, judicial decisions, and scholarly literature. It draws on Dicey's conception of the rule of law and the theory of constitutionalism as its analytical framework. Findings reveal that while the clause serves a functional purpose in safeguarding executive functions, its broad application has shielded public officials from legitimate prosecution, weakened public trust, and undermined equality before the law. Landmark cases such as *Fawehinmi v. IGP* and *A.G. Federation v. Abubakar* illustrate the judiciary's struggle to balance executive protection with accountability. The paper argues for a nuanced reform of Section 308 that preserves governance stability while subjecting office holders to judicial scrutiny for criminal conduct. Recommendations include constitutional amendment, clearer judicial guidelines, and strengthened oversight mechanisms. The study concludes that aligning the immunity clause with rule of law principles is essential for deepening Nigeria's democratic consolidation and institutional integrity.

Keywords: Immunity Clause, Section 308, Rule of Law, Constitutionalism, Accountability, Executive Privilege, Anti-Corruption, Nigerian Constitution, Judicial Interpretation

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INTRODUCTION

The adoption of constitutional immunity for executive office holders in Nigeria is rooted in the country's historical experience with military rule and the need to stabilize nascent civilian governance. Section 308 of the 1999 Constitution of the Federal Republic of Nigeria grants immunity from civil and criminal proceedings to the President, Vice President, Governors, and Deputy Governors while in office. The provision was carried over from earlier constitutions of 1979 and 1989, reflecting a design choice to insulate the executive from distractions that could impair policy implementation and national stability. In political science terms, this represents an institutional mechanism aimed at preserving executive autonomy and ensuring the separation of powers functions effectively during a tenure (Nwabueze, 2003).

However, the immunity clause has generated sustained debate within Nigeria's democratic consolidation process. From the perspective of constitutionalism, a system in which governmental power is limited by law, Section 308 appears contradictory to the principle of accountability. Critics argue that by placing elected executives above immediate judicial scrutiny, the clause weakens horizontal accountability mechanisms and undermines

the rule of law doctrine, which holds that all persons are equal before the law (Oba, 2008)

Drawing from the above premise, the principle of the rule of law, as articulated by A.V. Dicey (2013), holds that no person is above the law, and that all individuals, including public officials, are subject to the ordinary legal process of the land. In a constitutional democracy, this principle underpins accountability, legitimacy, and the limitation of executive power. However, the 1999 Constitution of the Federal Republic of Nigeria creates a tension between this doctrine and the executive's need for functional autonomy through Section 308, commonly referred to as the immunity clause. Section 308 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. The clause further prohibits arrest, imprisonment, or compulsory court appearance of these officials while in office.

Immunity clause embodies a classic trade-off between executive effectiveness and democratic accountability. Proponents argue that it insulates elected executives from frivolous litigation and distractions, enabling them to perform core governance functions without inhibition. This aligns with the theory of separation of powers, which seeks to protect the executive arm from undue judicial and legislative

interference during tenure. Conversely, critics contend that absolute immunity undermines the principle of equality before the law and creates a de facto ouster of judicial jurisdiction over high-ranking officials. The provision has been described as enabling impunity, particularly in contexts where corruption and abuse of office are prevalent (Ukoh & Ngwoke, 2021).

Judicial interpretation has reinforced the clause's absoluteness. In *Tinubu v. IMB Securities Plc*, the Supreme Court held that Section 308 imposes an absolute prohibition on courts from entertaining proceedings against protected officials during their tenure. While immunity lapses after office, the delay often weakens evidentiary integrity and public confidence in the justice system. This raises fundamental questions for democratic consolidation: whether constitutional protections designed to ensure stability inadvertently erode horizontal accountability mechanisms. (Legal Ideas Forum, 2020)

Given Nigeria's democratic trajectory since 1999, the immunity clause remains a contested institution in the broader discourse on constitutionalism, executive-legislative relations, and anti-corruption governance. This study therefore examines the political and legal implications of the immunity clause for the rule of law in Nigeria, assessing its compatibility with democratic norms and proposing reforms to balance executive autonomy with accountability.

From the above therefore, the tension between immunity and accountability has become more pronounced in Nigeria's Fourth Republic, where expectations of democratic governance and transparency are higher. Scholars and civil society actors argue that while the clause was intended to protect governance from frivolous litigation, it has been exploited to shield officials from legitimate prosecution. This has fueled calls for constitutional reform to narrow the scope of immunity or abolish it for criminal matters. Against this backdrop, understanding how Section 308 affects the balance between executive effectiveness and democratic accountability is crucial for evaluating Nigeria's progress toward consolidated democratic governance.

Despite Nigeria's formal commitment to constitutionalism and the rule of law under the 1999 Constitution, Section 308 creates a structural contradiction that undermines accountability and equality before the law. The immunity clause shields the President, Vice President, Governors, and Deputy Governors from civil and criminal proceedings while in office, effectively placing them above immediate judicial scrutiny. This weakens horizontal accountability the system of checks and balances among branches of government and concentrates de facto impunity within the executive branch (Nwabueze, 2003).

The practical consequence is that allegations of corruption, abuse of office, and human rights violations involving protected officials are often deferred until after tenure. By then, evidence may be lost, witnesses unavailable, and public trust in institutions eroded.

This creates a governance paradox: a provision intended to ensure executive stability and prevent distractions from governance has instead fostered perceptions of executive impunity and weakened democratic consolidation. The persistence of this tension raises the central problem of whether Section 308 is compatible with the rule of law and democratic accountability in Nigeria, and what reforms are necessary to reconcile executive effectiveness with institutional accountability.

Objectives of the Study

- To examine the legal basis, scope, and historical evolution of the immunity clause under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria.
- To analyze how the immunity clause affects the application of the rule of law, accountability, and anti-corruption efforts in Nigeria's democratic system.
- To evaluate the arguments for reforming or retaining the immunity clause and propose constitutional and institutional mechanisms that can balance executive effectiveness with accountability.

Research Questions

The following research questions guided the research.

- What is the constitutional and political justification for granting immunity to the President, Vice President, Governors, and Deputy Governors under Section 308?
- To what extent has the immunity clause undermined or supported the rule of law and accountability in Nigeria since 1999?
- What constitutional reforms or judicial interpretations can align the immunity clause with the principles of equality before the law and democratic governance in Nigeria?

Significance of the Study

This study is significant for deepening understanding of the tension between constitutional design and democratic accountability in Nigeria. By analyzing the immunity clause under Section 308 within the framework of the rule of law and constitutionalism, the research clarifies how institutional protections for the executive influence the balance of power among the branches of government. The findings will be valuable to constitutional scholars, legal practitioners, and political scientists studying executive-legislative relations and the consolidation of democracy in post-military states.

The study also has practical relevance for policy and reform. Nigeria's ongoing constitutional review

processes and anti-corruption agenda require evidence-based assessments of how legal provisions either enable or constrain accountability. By highlighting the effects of immunity on judicial oversight and public trust, this research provides insights that can inform lawmakers, civil society organizations, and the judiciary in proposing amendments or interpretive doctrines that align Section 308 with the principles of equality before the law.

Finally, the study contributes to comparative constitutional discourse by situating Nigeria's experience within broader debates on executive immunity and accountability. It offers lessons for other emerging democracies grappling with similar trade-offs between executive effectiveness and the rule of law, making the research relevant beyond the Nigerian context.

METHODOLOGY

This study adopts a qualitative doctrinal and analytical research design to examine the relationship between the immunity clause and the rule of law in Nigeria. The doctrinal approach involves a systematic analysis of primary legal sources, including the 1999 Constitution of the Federal Republic of Nigeria, judicial decisions such as *Tinubu v. IMB Securities Plc*, and relevant statutes. This allows for a precise interpretation of Section 308 and its application within Nigeria's legal system. To situate the legal analysis within a broader political context, the study employs a political-legal analytical framework drawn from political science and constitutional theory. Secondary sources, including peer-reviewed journal articles, books, policy reports, and scholarly commentaries on constitutionalism, accountability, and anti-corruption, are used to contextualize the findings and draw connections to democratic consolidation. The data gathered are subjected to content and thematic analysis to identify patterns, contradictions, and implications for governance. This methodological triangulation ensures that the study provides both legal rigor and political science insight into how the immunity clause shapes accountability and the rule of law in Nigeria.

LITERATURE REVIEW

Conceptual Clarifications

Concept of Immunity Clause under Section 308, 1999 Constitution

Section 308 of the 1999 Constitution of the Federal Republic of Nigeria establishes a constitutional immunity that shields the President, Vice President, Governors, and Deputy Governors from civil and criminal proceedings while in office. Specifically, subsection (1)(a) provides that no civil or criminal proceedings shall be instituted or continued against these officials during their tenure, while subsection (1)(b) and (c) bar their arrest, imprisonment, and compulsory appearance in court. The rationale is to prevent distractions and litigation from interfering with the

execution of executive functions, thereby preserving executive autonomy and the continuity of governance (Olasupo, 2011).

The clause functions as a temporary privilege rather than a permanent exemption from liability. The immunity lapses once the officeholder leaves office, at which point legal proceedings may commence or resume.

Critically, the concept has generated debate over its compatibility with the rule of law and the principle of equality before the law. Scholars argue that while the clause aims to safeguard governance from frivolous suits, it creates a de facto hierarchy that places certain public officials above immediate accountability. Consequently, the immunity clause remains a contested institution in Nigeria's constitutional democracy, balancing the need for executive effectiveness against the demands of accountability and constitutionalism.

Concept of Rule of Law

The rule of law is a foundational principle of modern constitutionalism that denotes a system in which law is supreme, public power is exercised within legal limits, and individuals are treated equally before independent courts. Classical formulations by A.V. Dicey emphasized three elements: the supremacy of law over arbitrary power, equality before the law, and the protection of rights through ordinary courts rather than prerogative or administrative discretion. Contemporary scholarship has expanded this framework into two predominant tracks: the rule of judicature, which conceives law as a regime of rights guarded by an independent judiciary, and the institutional track, which frames the rule of law as a coordination mechanism that secures order, security, liberty, and human flourishing. (Dicey, 2013)

In practice, the rule of law now functions as a multidimensional standard for assessing governance. The World Justice Project's Rule of Law Index defines it through constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. The 2024 edition notes that while the rule of law is recognized internationally as essential for peace, human rights, effective democracy, and sustainable development, global adherence has continued to weaken (World Justice Project, 2024).

Similarly, the United Nations Development Programme's 2024 report frames the rule of law as central to people-centered justice, human rights protection, and security in fragile and conflict-affected contexts. UNDP's approach emphasizes that rule of law programming must be integrated with human rights and security to sustain peace and development (United Nations Development Programme, 2024)

Conceptually, modern interpretations stress three interrelated dimensions. First, formal legality requires that laws be public, prospective, clear, and consistently applied. Second, substantive justice links the rule of law to the protection of fundamental rights and limits on arbitrary power. Third, institutional independence demands an impartial judiciary and effective mechanisms of horizontal accountability to constrain executive and legislative overreach. This tripartite view moves the concept beyond a mere slogan, giving it operational content for measuring state performance and legitimacy (Waldron, 2023).

For Nigeria and other emerging democracies, the rule of law serves as both a normative ideal and a diagnostic tool. It exposes tensions where constitutional provisions, such as executive immunity under Section 308, may create exceptions that undermine equality before the law. Understanding the rule of law in its contemporary, multidimensional sense is therefore essential for evaluating whether constitutional design supports or constrains democratic accountability.

Relationship between constitutional immunity and constitutionalism

Constitutionalism is the doctrine that government power must be derived from and limited by a constitution, ensuring that authority is exercised within legal bounds and subject to checks and balances. Central to this doctrine is the rule of law, which demands equality before the law and accountability of all public officials. Constitutional immunity, as provided under Section 308 of the 1999 Constitution of the Federal Republic of Nigeria, introduces a deliberate exception to this principle by shielding the President, Vice President, Governors, and Deputy Governors from civil and criminal proceedings during their tenure. This creates an immediate tension: while constitutionalism seeks to constrain power, immunity temporarily places certain officials outside the reach of judicial scrutiny (Waldron, 2023).

The relationship becomes clearer when immunity is understood as a functional component of constitutional design rather than a rejection of constitutionalism. The purpose of Section 308 is to prevent distractions and litigation from impairing executive performance, thereby preserving the continuity and stability of governance. From this perspective, immunity serves as an institutional mechanism to safeguard the separation of powers and protect the executive from frivolous suits that could undermine policy implementation.

However, the trade-off is significant for accountability, which is another pillar of constitutionalism. By deferring prosecution and civil liability until after office, immunity weakens horizontal accountability and delays the enforcement of legal responsibility. Critics argue that this delay often erodes

evidence and public confidence, thereby undermining the rule of law principle that no person is above the law. Consequently, the relationship between constitutional immunity and constitutionalism is conditional: immunity is compatible with constitutionalism only to the extent that it does not negate the ultimate accountability of officeholders or erode public trust in legal institutions. The ongoing debate over reforming Section 308 illustrates that constitutionalism requires periodic reassessment of such provisions to ensure they align with democratic norms of equality and accountability.

THEORETICAL FRAMEWORK

Constitutionalism and Separation of Power Theory

Constitutionalism is the doctrine that governmental authority is derived from and limited by a constitution, ensuring that power is exercised according to law rather than arbitrary will. It emerged from early modern debates on limited government and was consolidated in the 18th and 19th centuries through works on the rule of law and representative government. A central figure in articulating its legal dimension was A.V. Dicey, who in *Introduction to the Study of the Law of the Constitution* (1885) argued that constitutionalism requires the supremacy of law, equality before the law, and the protection of rights through ordinary courts.

The core assumptions of constitutionalism are:

- Limited government: public power is defined and constrained by constitutional provisions.
- Rule of law: all persons, including officials, are subject to law and equal before it.
- Accountability and checks: institutions monitor each other to prevent abuse of power.
- Protection of rights: individual liberties are safeguarded against state overreach.

In this view, the constitution functions as the supreme legal instrument that structures and controls state power, providing legitimacy and stability to political order.

The classical formulation of the separation of powers theory is attributed to Charles-Louis de Secondat, Baron de Montesquieu, in *The Spirit of the Laws* published in 1748. Building on earlier ideas from Locke and earlier classical thinkers, Montesquieu argued that political liberty depends on dividing government into three distinct branches: legislative, executive, and judicial (Montesquieu, 1748).

The theory rests on several assumptions:

- Functional separation: each branch should perform a distinct function: law-making, law-execution, and law-adjudication.
- Institutional independence: no branch should exercise the functions of another, to prevent concentration of power that leads to tyranny.

- Checks and balances: while separate, the branches must have mechanisms to limit and balance each other, ensuring mutual restraint.
- Protection of liberty: the ultimate purpose is to safeguard individual freedom by preventing despotism and arbitrary rule.

Montesquieu's analysis of the English constitutional system led him to present this separation as the institutional safeguard of liberty, an idea that profoundly influenced the U.S. Constitution and subsequent democratic frameworks.

The immunity clause under Section 308 of the 1999 Constitution interacts directly with both constitutionalism and separation of powers. By barring civil and criminal proceedings against the President, Vice President, Governors, and Deputy Governors while in office, the clause creates a temporary exemption from judicial oversight. From a constitutionalist standpoint, this appears to conflict with the rule of law principle that all persons are equal before the law. It introduces a category of officials who cannot be subjected to ordinary judicial processes, thereby limiting the judiciary's role as a check on executive conduct.

Within separation of powers theory, the clause affects the balance between the executive and judiciary. The judiciary's power to hold the executive accountable is suspended during the tenure of protected officials, as confirmed in *Tinubu v. IMB Securities Plc*. This reduces the judiciary's capacity to perform its constitutional function of checking executive excess and enforcing legal responsibility. The legislature's oversight role is similarly constrained, since criminal and civil liability are key tools for enforcing accountability.

However, the clause can also be read as a design choice within constitutionalism to preserve executive effectiveness. Proponents argue that shielding high-ranking executives from litigation during their term prevents distractions that could impair governance and national stability. In this view, immunity is not a rejection of separation of powers but a calibrated adjustment to ensure the executive can function without undue interference. The tension, therefore, lies in reconciling this functional rationale with the constitutionalist demand for accountability and equality before the law.

For Nigeria's Fourth Republic, the practical implication is that the immunity clause tests the strength of constitutionalism and separation of powers in practice. If accountability mechanisms are deferred or weakened, public trust in institutions declines. If reforms narrow the scope of immunity or strengthen post-tenure accountability, the system can better align with both constitutionalism and the rule of law. Thus, analyzing the clause through these theories provides a framework for evaluating whether Nigeria's constitutional design

effectively balances executive authority with legal and democratic constraints.

Rule of Law Doctrine

The rule of law doctrine in its modern constitutional form was systematically articulated by Albert Venn Dicey in his work *Introduction to the Study of the Law of the Constitution*, first published in 1885. Dicey, an English jurist and constitutional scholar, sought to explain the distinguishing features of the English constitution and to provide a theoretical framework for understanding legal supremacy and individual liberty. His formulation remains one of the most influential classical expositions of the rule of law in common law systems.

Dicey's doctrine rests on three core assumptions. First, the supremacy of law means that no person is above the law, and that arbitrary power, prerogative, and discretion are excluded. Government authority must be exercised according to legal rules rather than personal will. Second, equality before the law holds that all persons, regardless of status or office, are subject to the same legal standards and jurisdiction of ordinary courts. This rejected the idea of separate administrative tribunals or special immunities that place officials outside ordinary legal accountability. Third, the protection of rights through the common law emphasizes that individual liberties are secured not by abstract declarations but by judicial decisions and legal remedies enforced by the courts.

Dicey's conception linked legal formalism with liberal constitutionalism. By insisting that law governs both rulers and citizens, the doctrine provides a check on executive power and a foundation for judicial review. While later scholars have expanded the concept to include substantive justice and institutional independence, Dicey's tripartite formulation remains foundational for understanding how the rule of law operates to constrain power and protect liberty.

Applying A.V. Dicey's rule of law doctrine to the immunity clause under Section 308 of the 1999 Constitution reveals a direct tension between constitutional design and the principle of equality before the law. Dicey's first element, the supremacy of law, requires that all public power be exercised according to legal rules and that no person exercise arbitrary authority. Section 308, by barring civil and criminal proceedings against the President, Vice President, Governors, and Deputy Governors while in office, creates a temporary exception to this supremacy. The judiciary is ousted from hearing cases against these officials during their tenure, as affirmed in *Tinubu v. IMB Securities Plc*. This limits the capacity of courts to enforce legal accountability contemporaneously and raises questions about whether executive conduct remains fully subject to law.

Dicey's second element, equality before the law, is similarly affected. The doctrine insists that all persons, regardless of status or office, are subject to the ordinary courts of the land. The immunity clause creates a category of officeholders who are not amenable to judicial process during their term, effectively placing them outside the reach of ordinary legal proceedings that apply to other citizens. While the immunity is temporary and lapses after office, the deferral weakens the immediacy of accountability and can erode public confidence in the principle that no one is above the law.

The third element, the protection of rights through ordinary courts, is also constrained. Dicey argued that rights are best secured by judicial remedies applied by independent courts, not by abstract declarations. Section 308 restricts access to those remedies for the duration of the protected tenure, meaning alleged wrongs committed by high executive officials cannot be adjudicated until they leave office. This delay often compromises evidence and remedies, undermining the practical enforcement of rights.

In sum, when measured against Dicey's formulation, the immunity clause illustrates a structural trade-off within Nigeria's constitutional system. It prioritizes executive functionality and stability over immediate judicial accountability. For the rule of law to be fully realized, reforms would need to reconcile this trade-off by ensuring that immunity does not negate the ultimate subjection of all officeholders to law and the courts.

Rule of Law and Judicial Response to Immunity Claims

Nigerian courts' interpretation of Section 308

Nigerian courts have consistently interpreted Section 308 of the 1999 Constitution as imposing an absolute bar on civil and criminal proceedings against the President, Vice President, Governors, and Deputy Governors during their tenure. The leading authority is *Tinubu v. IMB Securities Plc* 16 NWLR (Pt. 740) 670, where the Supreme Court held that the provision is an ouster clause that removes the jurisdiction of courts to entertain any action against protected officeholders while in office. The Court emphasized that the immunity is not personal to the officeholder but attaches to the office, and therefore cannot be waived by the individual (*Daily Trust*, 2025).

Subsequent cases have reinforced this strict interpretation. Courts have held that Section 308 applies regardless of the nature of the alleged wrongdoing, and that any process requiring the appearance, arrest, or detention of a protected official is void during the period of office. The immunity also extends to preventing the issuance of legal processes compelling appearance in court. However, the courts have clarified the scope of exceptions under Section 308(2). Proceedings against a person in their official capacity, and suits where the

officeholder is a nominal party, are not barred. This means civil actions relating to official acts of the government may proceed against the officeholder in a representative capacity (Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 308.)

Nigerian courts have also maintained that investigations are permissible under Section 308, provided they do not involve questioning, arrest, or detention of the officeholder. Evidence gathered during investigations can be preserved and used for prosecution once the officer leaves office. This interpretation seeks to balance the constitutional purpose of protecting executive functions from distraction with the need to preserve evidence for future accountability.

Overall, judicial interpretation has favored a literal and broad reading of Section 308, treating it as a non-waivable constitutional privilege that temporarily suspends judicial oversight over protected executives. The approach underscores the judiciary's recognition of the constitutional intent to safeguard governance continuity, even as it has drawn criticism for limiting the rule of law and equality before the law.

Landmark cases

Fawehinmi v. Inspector General of Police 7 NWLR (Pt. 767) 606

This case arose when Chief Gani Fawehinmi sought to privately prosecute former Lagos State Governor Bola Tinubu for alleged perjury and forgery. The Court of Appeal held that a private person could institute criminal proceedings under Section 160 of the Criminal Procedure Act, but the prosecution was barred by Section 308 of the 1999 Constitution while Tinubu remained in office as governor. The court reaffirmed that the immunity clause is absolute during the tenure of protected officials and cannot be circumvented by private prosecution. The decision clarified that immunity applies to both state and private prosecutions, and that the appropriate remedy is to defer proceedings until the officeholder leaves office. *Fawehinmi v. IGP* became a reference point for understanding the limits of private enforcement of criminal law against high-ranking executives in Nigeria (Constitution of the Federal Republic of Nigeria, 1999 as amended, s. 308).

Attorney General of the Federation v. Abubakar 10 NWLR (Pt. 1044) 372

This case concerned the attempt to remove Vice President Atiku Abubakar from office after a fallout with President Olusegun Obasanjo. The Supreme Court addressed the scope of executive powers and the protection afforded to the office of the Vice President. While the case did not directly turn on Section 308, it engaged with the broader constitutional framework of executive immunity and tenure protection. The Court held that the President lacked the power to unilaterally remove a democratically elected Vice President, emphasizing constitutionalism and the separation of

powers. The decision reinforced that constitutional offices are protected by due process and that executive authority is limited by the constitution. Together with *Fawehinmi v. IGP*, it illustrates how Nigerian courts interpret constitutional provisions that shield executive officials, balancing political accountability with constitutional stability.

Tensions between Immunity Clause and Rule of Law Equality before the law vs. executive protection

Equality before the law is a core requirement of the rule of law as articulated by A.V. Dicey. It demands that all persons, regardless of status, office, or political influence, are subject to the same legal standards and amenable to the ordinary courts of the land. The principle rejects the idea of legal privileges that place certain individuals beyond judicial reach. In a constitutional order committed to the rule of law, this means that public officials can be investigated, prosecuted, and sued for unlawful acts in the same manner as ordinary citizens.

Executive protection under Section 308 of the 1999 Constitution creates a qualified exception to this principle. By shielding the President, Vice President, Governors, and Deputy Governors from civil and criminal proceedings during their tenure, the clause prioritizes the uninterrupted functioning of the executive arm. The rationale is that allowing litigation against high-ranking executives while in office would distract them from governance and destabilize public administration. Nigerian courts have upheld this view, treating the immunity as absolute and non-waivable for the duration of office, as seen in *Tinubu v. IMB Securities Plc* and *Fawehinmi v. IGP*.

The tension arises because executive protection directly limits the operational scope of equality before the law. While the immunity is temporary and does not extinguish liability, it defers accountability until after office. This delay can weaken evidence, reduce the deterrent effect of prosecution, and create a perception that high office confers legal privilege. Critics argue that such deferral undermines the rule of law's demand that no person is above the law, while proponents contend that it is a constitutional trade-off designed to preserve governance stability and protect the separation of powers.

Ultimately, the relationship reflects a balancing act within constitutional design. Equality before the law remains the normative standard, but the immunity clause introduces a functional exception that tests the limits of that standard in practice. The legitimacy of the clause depends on whether post-tenure accountability mechanisms are effective and whether the exception is narrowly tailored to serve constitutional governance rather than entrench impunity.

SUMMARY OF FINDINGS

The study finds that the legal basis of the immunity clause lies in Section 308 of the 1999 Constitution, which grants temporary protection from civil and criminal proceedings to the President, Vice President, Governors, and Deputy Governors during their tenure. Historically, the provision was inherited from the 1979 Constitution and retained in 1999 to prevent litigation from distracting executive officeholders and to safeguard continuity in governance. Nigerian courts, particularly in *Tinubu v. IMB Securities Plc* and *Fawehinmi v. IGP*, have interpreted the clause as absolute and non-waivable while in office, though investigations and actions against officials in their official capacity remain permissible under Section 308(2).

The analysis shows that the clause creates a direct tension with the rule of law, particularly Dicey's principles of equality before the law and supremacy of law. By suspending judicial processes against protected executives, the clause limits immediate accountability and weakens anti-corruption efforts, since prosecution is deferred until after office. This delay often compromises evidence and public confidence, creating a perception of legal privilege for high officeholders. At the same time, the study notes that the immunity serves a functional purpose by shielding the executive from frivolous suits that could impair policy implementation.

On reform, the study finds that arguments for retaining the clause emphasize executive effectiveness and institutional stability, while arguments for reform focus on strengthening accountability and aligning with democratic norms of equality before the law. The findings suggest that a balance can be achieved through constitutional amendment to narrow the scope of immunity, strengthen post-tenure prosecution mechanisms, and enhance independent investigative bodies such as the EFCC and ICPC. Institutional reforms that ensure evidence preservation and timely adjudication after tenure would better align executive protection with the requirements of the rule of law.

CONCLUSION

The immunity clause under Section 308 of the 1999 Constitution represents a deliberate constitutional choice to protect executive effectiveness by temporarily shielding high officeholders from civil and criminal proceedings. Nigerian courts have consistently upheld this interpretation, viewing the provision as essential for preserving governance continuity and preventing executive distraction. However, when measured against the principles of constitutionalism and the rule of law, the clause creates a clear tension with the doctrine of equality before the law and the expectation that no person is above legal process.

The findings indicate that while the immunity clause serves a functional purpose, its broad application undermines immediate accountability and weakens anti-corruption efforts. The deferral of prosecution until after tenure risks erosion of evidence and public trust, creating a gap between constitutional design and democratic accountability. A sustainable balance requires reform that narrows the scope of immunity, strengthens mechanisms for evidence preservation, and ensures that post-tenure accountability is effective and timely.

Retaining the immunity clause in its current form compromises the rule of law, but its outright removal may expose the executive to disruptive litigation. A calibrated approach that limits protection to strictly official functions and reinforces institutional checks offers a path to reconcile executive effectiveness with the constitutional demand for accountability.

RECOMMENDATIONS AND POLICY IMPLICATIONS

Constitutional Amendment to Narrow the Scope of Immunity

Section 308 should be amended to limit immunity to acts performed strictly in an official capacity, while removing protection for personal misconduct and criminal acts unrelated to governance. This would align the clause with Section 308(2) and reduce the perception of legal privilege. Amending the provision to allow civil and criminal proceedings to commence but be suspended until the end of tenure would preserve executive functionality while ensuring that accountability is not deferred indefinitely. Policy makers should initiate constitutional review processes that engage civil society, legal experts, and the judiciary to build consensus on the revised scope.

Strengthen Post-tenure Accountability Mechanisms

To address the accountability gap created by deferred prosecution, institutions such as the EFCC, ICPC, and the police must be mandated to preserve evidence gathered during investigations of protected officeholders. Establishing a statutory framework for automatic referral of cases to the courts once immunity lapses would prevent loss of evidence and reduce political interference. The judiciary should also create specialized divisions to expedite cases involving former executives, ensuring that delayed trials do not become a barrier to justice.

Enhance Institutional Independence and Oversight

Policy implications extend to strengthening the independence of anti-corruption agencies and the judiciary. Budgetary autonomy, security of tenure for agency heads, and protection from executive interference are necessary to ensure that investigations proceed without fear of reprisal. Additionally, legislative oversight committees should be empowered to monitor compliance with post-tenure prosecution protocols.

These measures would reinforce the rule of law by ensuring that executive protection does not translate into impunity, and that accountability remains a credible component of Nigeria's democratic system.

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