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EXECUTIVE IMMUNITY AND THE CRISIS OF ACCOUNTABILITY IN NIGERIA: A CASE FOR CONSTITUTIONAL REFORM

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Abstract

Executive immunity, as enshrined in section 308 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), remains one of the most debated features of Nigeria's constitutional framework. While the provision is intended to protect high-ranking executive office holders from undue distraction and politically motivated litigation, its broad scope has raised serious concerns regarding accountability, the rule of law, and the fight against corruption. This article critically examines the scope, justification, and practical implications of executive immunity in Nigeria through the lens of key constitutional theories, including the rule of law, constitutionalism, and the doctrine of separation of powers. It argues that, although immunity serves a legitimate functional purpose, its current formulation creates a temporal shield that undermines effective accountability by delaying justice and weakening enforcement mechanisms. Through doctrinal analysis and comparative insights from jurisdictions such as the United States and the United Kingdom, the study demonstrates that Nigeria's approach is overly expansive and insufficiently balanced. The article further contends that the absence of clear limitations, coupled with weak institutional oversight, contributes to a governance environment susceptible to abuse and impunity. It therefore advocates targeted constitutional reform to narrow the scope of immunity, permit conditional accountability mechanisms, and strengthen institutional safeguards. Such reforms are necessary to align executive immunity with the principles of constitutionalism, transparency, and democratic governance in Nigeria.

Keywords: *Executive Immunity; Section 308; Accountability; Rule of Law; Constitutional Reform; Anti-Corruption*

1. Introduction

In Nigeria's constitutional framework, the idea of executive immunity holds a controversial but crucial place. The immunity provision, which is enshrined in section 308 of the Federal Republic of Nigeria 1999 (as amended) Constitution, protects the President, Vice President, Governors, and Deputy Governors from civil and criminal actions while they are in office. The clause was designed to protect the dignity of executive posts and allow holders to carry out their duties without being sidetracked by legal proceedings.¹

Executive immunity has sparked ongoing intellectual and legal controversy despite its justification, especially when it comes to its consequences for accountability, the rule of law, and anti-corruption initiatives. Opponents contend that the scope of immunity granted by section 308 has, in reality, produced a constitutional safe haven for power abuse, protecting public servants from criticism while they are in office.² This concern is especially acute within Nigeria's socio-political context, where allegations of corruption, abuse of office, and executive overreach are recurrent features of governance.

The tension between immunity and accountability raises fundamental constitutional questions. On the one hand, immunity is defended as a functional necessity designed to prevent frivolous litigation and political harassment that could paralyse executive action.³ However, it seems to run against the fundamental idea of constitutionalism and democratic administration, which is that no one is above the law.⁴ Calls for a reassessment of the immunity clause's continued applicability and scope in Nigeria's constitutional order have been sparked by this tension.

This research interrogates the doctrinal foundations, scope, and practical implications of executive immunity under section 308. It further examines whether the current framework strikes an appropriate balance between the need for effective governance and the imperative of accountability, ultimately making a case for constitutional reform.

2. Review of Related Literature

Academic discussion of executive immunity in Nigeria reveals a persistent conflict between its defense as a practical need and its criticism as an enabler of impunity. Nigerian legal experts have examined the application, justification, and implications of section 308 of the Constitution, providing both doctrinal and policy-oriented viewpoints. Leading academics

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 308.

² Yemi Akinseye-George, *Law of Immunity in Nigeria* (MIJ Publishers 2016).

³ Ben Nwabueze, *Presidentialism in Commonwealth Africa* (C Hurst & Co 1974).

⁴ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

Yemi Akinseye-George, Ben Nwabueze, and Akin Oyeboade's contributions are briefly examined in this section, which also places their claims within the larger discussion of immunity as protection versus immunity as impunity.

One of the most thorough doctrinal studies of executive immunity in Nigeria is offered by Yemi Akinseye-George. He contends that although the immunity clause protects executive office holders against pointless and politically driven lawsuits, its broad application has unforeseen ramifications for accountability.⁵ According to him, the provision creates a temporal barrier to justice, which may embolden misconduct and weaken the deterrent effect of anti-corruption laws. His work underscores the need for a more balanced approach that preserves the functional benefits of immunity while introducing safeguards against abuse. This position is directly relevant to the present study, as it reinforces the argument that the problem lies not in the existence of immunity but in its current breadth and operation.

Ben Nwabueze, writing from a constitutional and theoretical standpoint, situates executive immunity within the broader framework of presidentialism and governance in Africa. He defends the doctrine as a necessary feature of executive authority, particularly in systems where the executive plays a central role in policy implementation.⁶ For Nwabueze, immunity is essential to prevent undue interference with executive functions and to maintain the dignity and stability of the office. However, his analysis also acknowledges that such powers must be exercised within the bounds of constitutionalism and the rule of law. While his work tends to justify the retention of immunity, it implicitly supports the need for limitations that prevent its abuse. This perspective contributes to the present article by highlighting the functional rationale of immunity, which must be balanced against the competing demand for accountability.

Akin Oyeboade adopts a more critical stance, emphasizing the implications of executive immunity for democratic governance and accountability. He argues that the immunity clause, as currently framed, undermines the principle of equality before the law and contributes to a culture of impunity among political office holders.⁷ Oyeboade contends that the provision weakens institutional checks and balances by restricting judicial oversight during the tenure of executive officials. His critique aligns with the view that immunity, in its present form, is incompatible with the demands of transparency and good governance in a modern democratic state. This position is particularly significant for this study, as it provides a normative foundation for the call for constitutional reform.

⁵ Yemi Akinseye-George, *Law of Immunity in Nigeria* (MIJ Publishers 2016).

⁶ Ben Nwabueze, *Presidentialism in Commonwealth Africa* (C Hurst & Co 1974).

⁷ Akin Oyeboade, 'Immunity Clause and Democratic Governance in Nigeria' (2010) 4 *Nigerian Journal of Public Law* 45

The positions advanced by these scholars reflect the broader debate on whether executive immunity functions as a necessary protection or as a mechanism of impunity. Proponents of immunity emphasize its role in safeguarding executive efficiency and preventing the misuse of judicial processes for political ends. Critics, however, argue that the breadth of the immunity clause in Nigeria exceeds what is required for functional governance and instead operates to shield misconduct and delay accountability.

The middle-of-the-road viewpoint that has emerged from the literature is supported by this article. It contends that the Nigerian framework is unduly broad and unbalanced, even while it acknowledges the need for some kind of exemption. Together, Akinseye-George, Nwabueze, and Oyebode's observations show that the problem is not whether immunity should be preserved, but rather how to change it in a way that balances executive protection with constitutional accountability.

3. Theoretical Foundations of Accountability and Immunity

It is impossible to discuss executive immunity in a meaningful way without placing it within the larger theoretical frameworks of constitutional governance. The normative basis for evaluating the validity, extent, and constraints of executive immunity is provided by the principles of constitutionalism, the rule of law, and the separation of powers. These guidelines not only support the presence of specific safeguards for public office holders, but they also set limits to stop these safeguards from being abused.

2.1 Rule of Law

Any examination of executive immunity still revolves around the idea of the rule of law. Three fundamental components are emphasized in classical explanation of the idea, most notably by AV Dicey: equality before the law, the primacy of legal spirit, and the supremacy of law over arbitrary power.⁸ Of particular relevance is the principle that all persons, regardless of status or office, are subject to the ordinary law of the land.⁹ This notion directly challenges any legal framework that appears to place certain individuals above the reach of judicial processes.

Within the Nigerian constitutional context, the rule of law is expressly recognised as a foundational value underpinning democratic governance.¹⁰ However, by suspending the operation of legal accountability for certain office holders throughout their tenure, the

⁸ AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

⁹ *ibid.*

¹⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended).

immunity granted by section 308 introduces a qualified divergence from this concept. This divergence raises questions about whether such a broad exemption is consistent with the fundamental principles of the rule of law, even though it may be justified on practical grounds. Scholars have argued that the legitimacy of any exception to the rule of law must be narrowly construed and strictly justified.¹¹ In this regards, executive immunity must be viewed as a restricted procedural protection intended to support governance rather than as an unqualified privilege. Immunity runs the risk of compromising the same ideal it aims to uphold when its scope goes beyond what is reasonably necessary. The Nigerian experience, which is characterized by accusations of official misconduct and postponed accountability, raises the possibility that the current definition of immunity may go beyond these acceptable bounds.

3.2 Constitutionalism

Closely related to the rule of law is the doctrine of constitutionalism, which posits that governmental power must be exercised within the limits prescribed by the constitution. Constitutionalism is premised on the idea that the constitution is not merely a legal document but a normative framework that constrains authority, protects rights, and ensures accountability.¹²

In Nigeria, constitutionalism finds expression in the supremacy clause of the Constitution, which provides that the Constitution shall have binding force on all authorities and persons throughout the Federation.¹³ This principle implies that no public office holder, irrespective of rank, operates outside the constitutional order. Executive immunity, therefore, must be interpreted in a manner that is consistent with the overarching objective of limiting governmental power and preventing its abuse.

The tension between immunity and constitutionalism arises where the former appears to dilute mechanisms of accountability. While section 308 is itself a constitutional provision, its operation must be reconciled with other constitutional principles, including transparency, accountability, and the promotion of good governance.¹⁴ A rigid or expansive interpretation of immunity that frustrates these objectives would be inconsistent with the spirit of constitutionalism.

¹¹ Yemi Akinseye-George, *Law of Immunity in Nigeria* (MIJ Publishers 2016).

¹² Ben Nwabueze, *Presidentialism in Commonwealth Africa* (C Hurst & Co 1974).

¹³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 1(1).

¹⁴ *ibid*

Furthermore, constitutionalism demands that public power be exercised in trust for the people.¹⁵ This fiduciary conception of governance underscores the importance of accountability as an essential component of legitimate authority. Where immunity operates to shield misconduct or delay justice, it undermines this trust relationship and weakens the normative foundation of constitutional governance. Accordingly, any defence of executive immunity must be balanced against the imperative of ensuring that public office holders remain answerable for their actions.

3.3 Separation of Powers

The doctrine of separation of powers provides an additional lens through which executive immunity may be examined. This principle, traditionally associated with Montesquieu, advocates the division of governmental functions among the legislative, executive, and judicial branches in order to prevent the concentration of power and to promote checks and balances.¹⁶ Within this framework, executive immunity may be viewed as a mechanism designed to protect the executive arm from undue interference by the judiciary. By restricting the ability of courts to entertain proceedings against certain executive officials during their tenure, section 308 seeks to preserve the functional independence of the executive branch.¹⁷ This is particularly relevant in politically charged environments where litigation may be used as a tool to disrupt governance.

However, the doctrine of separation of powers does not imply absolute insulation of one branch from another. Rather, it envisages a system of interdependence and mutual accountability.¹⁸ The judiciary retains the responsibility of interpreting the law and ensuring that all actions of government conform to constitutional standards. Where executive immunity operates to exclude judicial oversight entirely, it risks creating an imbalance that favours executive dominance at the expense of accountability.

In the Nigerian context, this concern is amplified by the relative weakness of other oversight mechanisms, such as legislative control and political accountability. The inability of courts to exercise jurisdiction over certain executive actions during tenure may therefore result in a gap in the system of checks and balances.¹⁹ While impeachment remains a constitutional remedy,

¹⁵ Akin Oyeboade, 'Immunity Clause and Democratic Governance in Nigeria' (2010) 4 *Nigerian Journal of Public Law* 45.

¹⁶ Montesquieu, *The Spirit of Laws* (1748).

¹⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 308.

¹⁸ Ben Nwabueze (n 5).

¹⁹ Akin Oyeboade (n 8).

its effectiveness is often constrained by political considerations, thereby limiting its utility as a mechanism of accountability.

Consequently, a proper application of the doctrine of separation of powers requires that executive immunity be carefully circumscribed to avoid undermining judicial authority and the broader system of checks and balances. Immunity should not operate as a complete barrier to accountability, but rather as a limited protection that coexists with other mechanisms designed to ensure responsible governance.

4. Executive Immunity under Section 308: Scope and Justification

Section 308 of the 1999 Constitution provides that no civil or criminal proceedings shall be instituted or continued against a person to whom the section applies during his or her period of office.²⁰ It further stipulates that such a person shall not be arrested or imprisoned, and that no process of any court requiring or compelling his appearance shall be applied.²¹ The protection extends specifically to the President, Vice President, Governors, and Deputy Governors, thereby limiting its applicability to a narrow class of executive office holders.²²

The scope of this immunity is both substantive and procedural. Substantively, it bars the initiation or continuation of legal proceedings against the covered officials during their tenure. Procedurally, it prevents any form of coercive judicial process, including arrest or summons. However, the immunity is not absolute in all respects. For instance, it does not preclude the institution of actions in which such officials are nominal parties or where they initiate proceedings themselves.²³ Moreover, the immunity is temporal rather than permanent; it subsists only during the tenure of office, after which the individual may be subject to legal proceedings for acts committed while in office.²⁴

Judicial interpretation has played a significant role in clarifying the contours of section 308. In *Fawehinmi v Inspector-General of Police*, the Supreme Court held that while the immunity clause protects certain public officers from prosecution, it does not prevent the investigation of alleged criminal conduct.²⁵ This distinction is critical, as it allows law enforcement agencies to gather evidence and prepare cases that may be instituted once the official leaves office. Similarly, in *Tinubu v IMB Securities Plc*, the court emphasized that immunity under section

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 308(1)(a).

²¹ *ibid* s 308(1)(b)–(c).

²² *ibid* s 308(3).

²³ *Tinubu v IMB Securities Plc* [2001] 16 NWLR (Pt 740) 670 (SC).

²⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 308.

²⁵ *Fawehinmi v Inspector-General of Police* [2002] 7 NWLR (Pt 767) 606 (SC).

308 is limited to the individuals expressly mentioned and cannot be extended by implication²⁶ Functional and institutional factors are the main justifications for executive immunity. It is suggested that bringing lawsuits against incumbent executives could divert them from carrying out their responsibilities and expose them to politically driven lawsuits intended to weaken governance.²⁷ This issue is especially important in a growing democracy like Nigeria, where political rivalry can be fierce and hostile. Therefore, immunity is viewed as a defense against the abuse of legal procedures as tools of political vendetta.

Furthermore, the doctrine is often defended on grounds of preserving the dignity and stability of executive offices. Continuous legal battles involving sitting executives could erode public confidence in governance and create institutional instability.²⁸ By insulating office holders from such disruptions, the immunity clause seeks to ensure continuity and effectiveness in executive administration.

However, given the realities of Nigerian government, these arguments are coming under more and more scrutiny. Opponents claim that by postponing accountability and reducing disincentive against misconduct, the extensive protection provided by section 308 has, in certain cases, allowed impunity.²⁹ Although post-tenure prosecution is still theoretically feasible, its efficacy is frequently compromised by real-world issues like evidence loss, political meddling, and institutional flaws

In this regard, the scope and justification of executive immunity must be reassessed against contemporary demands for transparency, accountability, and good governance. The question is no longer whether immunity is necessary, but whether its current breadth and operation are compatible with the principles of the rule of law and democratic accountability in Nigeria.

5. Immunity and the Crisis of Accountability in Nigeria

Over time, the use of executive immunity under section 308 of the Constitution has created a serious conflict between the necessity of accountability and efficient governance. Although the clause was intended to be a practical safeguard, its actual implementation in Nigeria's political context has led to what may be called an accountability dilemma. Weakened implementation of anti-corruption laws, postponed justice, and a general decline in public confidence in government institutions are all signs of this crisis.

²⁶ *Tinubu v IMB Securities Plc* (n 8).

²⁷ Akin Oyebo, 'Immunity Clause and Democratic Governance in Nigeria' (2020) 4 *Nigerian Journal of Public Law* 45.

²⁸ Ben Nwabueze (n 3).

²⁹ Yemi Akinseye-George (n 2).

A major concern is that the immunity clause creates a temporal shield against prosecution, thereby allowing incumbent executive office holders to evade immediate legal scrutiny for alleged misconduct. Although the immunity is not permanent, the delay inherent in postponing prosecution until after tenure often undermines the effectiveness of legal accountability mechanisms.³⁰ Evidence may be lost, witnesses may become unavailable, and political dynamics may shift, all of which can frustrate subsequent prosecution.³¹ In this sense, the immunity provision operates not merely as a procedural delay but as a practical impediment to justice.

The impact of immunity on anti-corruption efforts in Nigeria is particularly significant. Agencies such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) are constitutionally and statutorily empowered to investigate and prosecute corruption. However, their inability to prosecute sitting executive office holders creates a gap in enforcement.³² While investigations may continue, the absence of immediate prosecutorial consequences weakens deterrence and may embolden misconduct. This institutional limitation has been widely criticized as inconsistent with Nigeria's broader anti-corruption commitments under both domestic and international frameworks.³³

Judicial pronouncements have attempted to mitigate some of these challenges by clarifying that immunity does not extend to criminal investigation. In *Fawehinmi v Inspector-General of Police*, the Supreme Court affirmed that law enforcement agencies may investigate allegations against protected officials, even though prosecution must await the expiration of their tenure.³⁴ While this distinction is doctrinally important, it does not fully address the practical limitations associated with delayed prosecution. Investigations without the prospect of immediate legal consequences may lack urgency and effectiveness, particularly in politically sensitive cases. Executive immunity affects governance and the rule of law in ways that go beyond its effects on anti-corruption initiatives. The idea of equality before the law is compromised by the belief that some public officials are exempt from legal responsibility while in office.³⁵ This view has the potential to strengthen a culture of impunity inside political institutions and undermine public trust in the legal system. In a democracy, the accountability of persons in positions of

³⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 308.

³¹ Yemi Akinseye-George, *Law of Immunity in Nigeria* (MIJ Publishers 2016).

³² Economic and Financial Crimes Commission (Establishment) Act 2004.

³³ United Nations Convention against Corruption 2003.

³⁴ *Fawehinmi v Inspector-General of Police* [2002] 7 NWLR (Pt 767) 606 (SC)

³⁵ A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

public authority plays a role in the legitimacy of the government. Public trust is negatively impacted when accountability is thought to be compromised.

Moreover, the immunity clause may inadvertently encourage abuse of office by reducing the immediate risks associated with misconduct. While not all office holders exploit this protection, the structural possibility of impunity creates an environment in which accountability is deferred rather than enforced.³⁶ This is particularly problematic in a context where institutional checks and balances are still evolving and where political accountability mechanisms, such as impeachment, are often influenced by partisan considerations.

The cumulative effect of these factors is a systemic accountability deficit that challenges the effectiveness of Nigeria's constitutional framework. While section 308 serves a legitimate purpose, its current operation raises serious concerns about its compatibility with the principles of transparency, accountability, and the rule of law. Addressing this crisis requires not only doctrinal clarification but also structural reform aimed at recalibrating the balance between executive protection and public accountability.

6. Comparative Insights

A comparative analysis of executive immunity across jurisdictions provides valuable perspective on the Nigerian framework and highlights possible pathways for reform. While the doctrine of immunity is not unique to Nigeria, its scope and application vary significantly across different constitutional systems, particularly in terms of the balance between executive protection and accountability.

In the United States, the President enjoys a form of immunity grounded in judicial interpretation rather than an explicit constitutional provision. In *Nixon v Fitzgerald*, the United States Supreme Court held that the President is entitled to absolute immunity from civil damages liability for official acts performed while in office.³⁷ However, this immunity is limited in scope. In *Clinton v Jones*, the Court clarified that the President does not enjoy immunity from civil litigation arising from unofficial conduct, even while in office.³⁸ Furthermore, the President is not immune from criminal investigation, and although the question of criminal prosecution of a sitting President remains debated, there is no constitutional provision equivalent to Nigeria's blanket immunity under section 308.³⁹ This

³⁶ Akin Oyeboade, 'Immunity Clause and Democratic Governance in Nigeria' (2020) 4 *Nigerian Journal of Public Law* 45.

³⁷ *Clinton v Jones* 520 US 681 (1997)

³⁸ *Nixon v Fitzgerald* 457 US 731 (1982)

³⁹ Erwin Chemerinsky, *Constitutional Law* (7th edn, Wolters Kluwer 2025).

more limited approach reflects an attempt to balance executive functionality with accountability.

In the United Kingdom, the constitutional framework does not provide for executive immunity in the same manner as Nigeria. The principle of the rule of law, as articulated by A. V. Dicey, emphasizes that all persons, regardless of status, are subject to the ordinary law of the land.⁴⁰ While certain immunities exist for the Crown, public officials, including members of the executive, may be held accountable through judicial review and other legal mechanisms.⁴¹ The absence of a broad constitutional immunity clause underscores a strong commitment to legal accountability within the UK system.

Other common law jurisdictions adopt intermediate approaches. In South Africa, for example, the Constitution does not grant absolute immunity to the President. Instead, accountability is reinforced through robust judicial oversight and constitutional provisions that allow for legal challenges to executive action.⁴² Similarly, in India, while certain protections exist for high-ranking officials, these are more narrowly tailored and do not preclude all forms of legal proceedings during tenure.⁴³

These comparative models reveal that while executive immunity is a recognized doctrine, its scope is often carefully circumscribed to prevent abuse. Unlike Nigeria's section 308, which provides a broad and categorical bar to proceedings, other jurisdictions tend to adopt more nuanced frameworks that distinguish between official and unofficial acts, civil and criminal liability, and the timing of legal processes.

The Nigerian approach, by contrast, has been criticized for its breadth and rigidity. By completely insulating certain office holders from both civil and criminal proceedings during their tenure, section 308 departs from the more balanced models observed in other jurisdictions.⁴⁴ This divergence raises important questions about whether the current framework adequately reflects contemporary standards of accountability and good governance. The comparative analysis thus supports the argument for reform. It demonstrates that it is possible to design immunity provisions that protect the functional integrity of executive offices while still preserving mechanisms for accountability. For Nigeria, the challenge lies in recalibrating its constitutional framework to align with these principles, ensuring that immunity serves as a shield for governance rather than a cloak for impunity.

⁴⁰ A V Dicey (n 6).

⁴¹ Mark Elliott and Robert Thomas, *Public Law* (3rd edn, OUP 2017).

⁴² Constitution of the Republic of South Africa 1996.

⁴³ Constitution of India 1950.

⁴⁴ Yemi Akinseye-George (n 2).

7. The Case for Constitutional Reform

The aforementioned study shows that although executive immunity under section 308 of the Constitution has a valid functional purpose, its current scope and application have greatly exacerbated Nigeria's accountability crisis. The central issue is not the existence of immunity per se, but the absence of adequate safeguards to prevent its abuse and to ensure that it does not undermine the rule of law. In order to rebalance the balance between executive protection and public accountability, constitutional reform is therefore urgently needed.

Reducing the immunity clause's scope is one of the main areas for improvement. Regardless of the type of accused behavior, section 308 as it is currently written offers a general prohibition against both civil and criminal procedures. This method does not differentiate between actions taken in an official capacity and those resulting from illegal or private behavior. A more complex system, like that found in other countries, would rigorously restrict immunity to actions taken while performing official tasks, eliminating illegal or personal behavior from its protection.⁴⁵ Such a distinction would preserve the functional rationale of immunity while preventing its misuse as a shield for illegality.

The necessity to reevaluate the absolute bar on criminal procedures is closely tied to this. Although political harassment and distraction are legitimate issues, they do not support a total suspension of criminal responsibility for the term of an official's employment. A revised clause might permit conditional prosecution, subject to protections like court permission or the consent of a specific constitutional body.⁴⁶ This would ensure that only serious and well-founded cases proceed, thereby minimizing the risk of frivolous or politically motivated litigation while upholding the principle that no individual is above the law.

Another critical dimension of reform is the strengthening of investigative and pre-trial mechanisms. Although judicial authority confirms that immunity does not preclude investigation, the effectiveness of such investigations is often undermined by institutional weaknesses and lack of coordination among enforcement agencies.⁴⁷ Constitutional or statutory provisions should therefore mandate time-bound investigations, preservation of evidence, and the establishment of independent prosecutorial frameworks capable of preparing cases for prompt trial upon the expiration of tenure. This would enhance the credibility and effectiveness of post-tenure accountability.

⁴⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 308.

⁴⁶ Yemi Akinseye-George, *Law of Immunity in Nigeria* (MIJ Publishers 2016).

⁴⁷ *Fawehinmi v Inspector-General of Police* [2002] 7 NWLR (Pt 767) 606 (SC).

Reform initiatives should also tackle the institutional oversight and governance deficiencies that presently worsen the issue of impunity. The ability of current institutions to guarantee accountability is hampered by the lack of formal procedures for keeping an eye on executive behavior throughout tenure. Any revision of the immunity provision must be accompanied by strengthening oversight organizations including the legislature, anti-corruption organizations, and judicial institutions.⁴⁸ In instance, despite being permitted by the constitution, the impeachment procedure has frequently failed because of political factors. Accountability would be greatly improved by reforms that shield oversight procedures from excessive political interference.

Furthermore, there is a need to align Nigeria's immunity framework with its international obligations and evolving global standards on governance and anti-corruption. Instruments such as the United Nations Convention against Corruption emphasize the importance of accountability, transparency, and the effective enforcement of anti-corruption laws.⁴⁹ A clause in the constitution that seriously hinders or delays prosecution could be viewed as being at odds with these promises. Therefore, changing section 308 would not only solve home issues but also strengthen Nigeria's reputation abroad.

The necessity of reestablishing public trust in government is ultimately what makes the argument for constitutional revision. The idea that public servants can conduct without consequence while in office erodes public confidence in democratic institutions and the state's legitimacy. A revised immunity clause that is carefully crafted to strike a balance between accountability and functional necessity would demonstrate a dedication to the rule of law and fortify Nigeria's constitutional democracy.

8. Conclusion & Recommendation

This article has looked at Nigeria's executive immunity concept, emphasizing its constitutional basis, practical ramifications, and part in the larger accountability dilemma. It has been determined that although section 308 of the 1999 Constitution was intended to safeguard the integrity and operation of executive offices, its broad application has resulted in unforeseen repercussions that compromise accountability and the rule of law.

The research revealed that the immunity clause as it stands now creates a temporal shield that impedes justice, undermines anti-corruption initiatives, and encourages a sense of impunity.

⁴⁸ Akin Oyebo, 'Immunity Clause and Democratic Governance in Nigeria' (2020) 4 *Nigerian Journal of Public Law* 45.

⁴⁹ United Nations Convention against Corruption 2003.

The essential constraints of the provision still exist, even though judicial interpretations have clarified some areas of its application, most notably the permissibility of investigation. Comparative analysis also shows that other jurisdictions have taken more reasonable measures to safeguard executive activities without totally shielding office holders from legal responsibility.

In light of these findings, the article makes a compelling case for constitutional reform. Such reform should focus on narrowing the scope of immunity, distinguishing between official and private conduct, permitting conditional criminal proceedings, and strengthening institutional mechanisms for oversight and enforcement. These measures would ensure that immunity serves its intended purpose as a functional safeguard rather than a barrier to justice.

In conclusion, the challenge before Nigeria is not merely to retain or abolish executive immunity, but to redefine it in a manner that aligns with the principles of constitutionalism, accountability, and good governance. A reformed immunity framework will not only enhance the effectiveness of the legal system but also restore public confidence in the integrity of governmental institutions.

References

- Chemerinsky E, *Constitutional Law* (7th edn, Wolters Kluwer 2025).
- Constitution of the Federal Republic of Nigeria 1999 (as amended) s 308.
- Constitution of the Federal Republic of Nigeria 1999 (as amended) s 308(1)(a).
- Dicey AV, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).
- Dicey AV, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).
- Nwabueze B, *Presidentialism in Commonwealth Africa* (C Hurst & Co 1974).
- Oyebode A, 'Immunity Clause and Democratic Governance in Nigeria' *Nigerian Journal of Public Law* (2020) 4.
- Oyebode A, 'Immunity Clause and Democratic Governance in Nigeria' *Nigerian Journal of Public Law* (2020) 4 45.
- Oyebode A, 'Immunity Clause and Democratic Governance in Nigeria' *Nigerian Journal of Public Law* (2020) 4 45.
- Yemi A, *Law of Immunity in Nigeria* (MIJ Publishers 2016).