



Revisiting the Executive Immunity of Governors in Nigeria's Constitutional Democracy: A Comparative Jurisprudential Analysis

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ABSTRACT

This article examines the scope, justification and constitutional implications of executive immunity under section 308 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), particularly in relation to Governors and Deputy Governors. It adopts a doctrinal methodology, analysing section 308 alongside section 188 on impeachment and relevant provisions of the Sheriffs and Civil Process Act, supported by Nigerian judicial decisions. The principal cases selected include *Global Excellence Communications Ltd v Donald Duke*, *Tinubu v IMB Securities Plc*, *Fawehinmi v Inspector-General of Police*, *Alamiyeseigha v Igoniwari*, *Dapialong v Dariye* and *Inakoju v Adeleke*, selected for their direct treatment of the scope, operation and accountability implications of constitutional immunity. The United States is used as the principal comparative jurisdiction because its presidential immunity has developed substantially through judicial interpretation, providing a useful contrast to Nigeria's expressly textual and status-based regime. The analysis draws particularly on *Nixon v Fitzgerald*, *Clinton v Jones* and *Trump v United States* to examine functional and personal approaches to immunity. The study finds that section 308 provides legitimate protection for executive independence and effective governance, but its broad personal application may extend beyond conduct requiring constitutional protection and thereby constrain accountability. It concludes that executive immunity should not be abolished but recalibrated through a more function-sensitive framework that protects legitimate official functions while permitting appropriate accountability for private or unofficial conduct, supported by safeguards against politically motivated proceedings.

Keywords: Executive Immunity; Section 308; Constitutional Democracy; Constitutional Accountability; Rule of Law.

INTRODUCTION

The defining hallmark of a constitutional democracy is the preservation of the rule of law, a foundational principle requiring both individuals and state institutions to remain subject to the law. Constitutional democracy therefore combines popular sovereignty, expressed through periodic elections, with constitutionalism, which places legal limits on the exercise of public power and protects individual rights and institutional autonomy. Government is consequently expected to operate through constitutionally prescribed powers and procedures rather than through the personal will of those who occupy public office.

Yet, within modern constitutional architecture, this ideal frequently encounters a competing concern: the need to shield high-ranking political executives from proceedings that might distract them from the discharge of their constitutional responsibilities. This tension is particularly pronounced in Nigeria's sub-national governance. Section 308 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) grants the President, Vice-President, Governors and Deputy Governors immunity from the institution or continuation of civil and criminal proceedings during their period of office. It provides:



308 (1) Notwithstanding anything to the contrary in this constitution, but subject to subsection (2) of this section-

- a) No civil or criminal proceedings shall be instituted or continued against a person to whom this section applied during his period of office;
- b) A person to whom this section applies shall not be arrested or imprisoned during that period either on pursuance of the process of any court or otherwise; and
- c) No process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued;

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office

2. The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.
3. This section applies to a person holding the office of President or Vice-President, Governor or Deputy Governor; and the reference in this section to “period of office” is a reference to the period during which the person holding such office is required to perform the functions of the office.

Although the provision was intended to operate as a temporary shield around the holders of the specified offices, its practical consequences at the state level raise a more fundamental question about constitutional accountability. Because Governors exercise extensive control over public resources and state institutions while enjoying immunity from the institution or continuation of civil and criminal proceedings during their tenure, an incumbent Governor may, in practical terms, remain beyond the immediate reach of ordinary criminal process. The immunity is temporary rather than permanent, but the period during which accountability is deferred may be politically and institutionally significant.

The experience of James Ibori, former Governor of Delta State, illustrates this difficulty. Allegations concerning the diversion and laundering of public funds arose during his tenure, and although investigations were undertaken, the constitutional immunity prevented his arrest and prosecution in Nigeria while he remained Governor. Following the expiration of his tenure in 2007, criminal proceedings could be pursued. He was subsequently prosecuted in the United Kingdom and, in 2012, pleaded guilty before the Southwark Crown Court to charges including money laundering and fraud and was sentenced to imprisonment.

A similar issue arose in the case of Diepreye Alamiyeseigha, former Governor of Bayelsa State. He was arrested in the United Kingdom in connection with money-laundering allegations while still in office. Within Nigeria, however, the operation of section 308 meant that criminal proceedings could not be instituted against him while he remained Governor. It was following his impeachment and removal from office in December 2005 that he became subject to criminal proceedings in Nigeria. The case illustrates the temporal character of the immunity: the constitutional barrier attached to his office and when he ceased to hold it.

The experience of Joshua Dariye, former Governor of Plateau State, provides another illustration. Dariye was arrested in London in 2004 on money-laundering allegations but returned to Nigeria, where he continued to enjoy constitutional immunity as a sitting Governor. After leaving office in May 2007, criminal proceedings were commenced against him in Nigeria. The sequence of these cases demonstrates that section 308 does not confer permanent immunity from accountability; rather, it postpones the operation of important instruments of criminal justice until the protected official leaves office or otherwise ceases to enjoy the constitutional protection.

The implications of executive immunity, however, extend beyond the postponement of criminal proceedings.



The concentration of executive power at the state level may also create conditions in which the constitutional independence and functioning of other arms of government become vulnerable. The decision of the Court of Appeal in *Governor of Rivers State v Rivers State House of Assembly & Ors*¹ provides a striking illustration. In addressing the attempt to sustain legislative activity through only four members of a 32-member State House of Assembly, Justice Joseph Oyewole, JCA, observed that the Governor, by encouraging four members to constitute the basis of legislative activities, was effectively operating with 12.5 per cent of the constitutionally constituted legislature. The Court emphasised that, in a constitutional democracy, the foundation of governmental action must be located in the Constitution as the grundnorm, observing that “autocracy is out of place in constitutional democracy.”

The point is significant to the present inquiry because it demonstrates that the problem of executive excess cannot be reduced to the question whether a Governor can eventually be prosecuted for a criminal offence. Constitutional accountability also requires effective institutional checks while the Governor remains in office. Where executive power is deployed to weaken or circumvent the functioning of the legislature, the constitutional balance itself is placed under strain. The reported events in Edo State in August 2020 provide another practical illustration of the vulnerability of state legislative institutions during periods of intense executive-legislative conflict. Security personnel occupied the vicinity of the Edo State House of Assembly, while the roof of the legislative complex was removed and heaps of sand and gravel were deposited at its entrances. The State Government described the works as part of reconstruction or renovation, while contemporary reports recorded allegations that the measures were intended to prevent rival legislators from using the complex.

These episodes do not, by themselves, establish that section 308 authorises or causes executive lawlessness. They nevertheless illustrate the broader constitutional environment in which an unusually powerful executive operates. Where the Governor controls substantial state resources, exercises considerable influence over state institutions and is constitutionally insulated from arrest and criminal proceedings during tenure, the practical mechanisms for holding executive power to account may become considerably weaker. It is in this sense that the immunity can contribute to a condition of personal impunity, not because the Constitution declares the Governor to be above the law, but because the immediate legal processes through which ordinary criminal accountability is ordinarily enforced are temporarily unavailable. When combined with weak institutional checks, such insulation may facilitate a culture in which executive excesses, abuse of public resources and other forms of sub-national misconduct are more difficult to challenge while the office-holder remains in power.

The central concern of this paper is therefore not that every exercise of executive immunity produces corruption or lawlessness. Rather, it is that an immunity provision framed in absolute terms, and operating within a political environment characterised by strong gubernatorial control over state institutions and resources, may weaken the practical architecture of constitutional accountability. The question is whether the protection presently afforded by section 308 is broader than necessary to secure the legitimate objective of protecting executive office from vexatious or politically motivated litigation.

This paper argues that Nigeria's absolute executive immunity model is difficult to reconcile with contemporary approaches to constitutional accountability. By evaluating section 308 through a comparative jurisprudential lens, and by distinguishing textual, judicially developed, functional and personal approaches to executive immunity, the paper examines whether executive stability necessarily requires such extensive insulation from legal process. It ultimately proposes a more restrictive immunity framework containing carefully defined textual exceptions capable of protecting legitimate executive functions while preserving the fundamental principle that public office does not place its holder beyond the reach of the law.

¹ *Governor of Rivers State v Rivers State House of Assembly & Ors* CA/ABJ/133/2024

THEORETICAL FOUNDATIONS AND LITERATURE REVIEW

The contemporary legal doctrine of executive immunity cannot be fully understood without first tracing its historical evolution from the English common law concept of sovereign immunity. The doctrine is rooted in the feudal political conception of sovereignty and was encapsulated in the ancient maxim that “the King can do no wrong” and that “the King could not be sued in his own courts.”² Under this absolutist conception, the monarch was regarded as the fountainhead of justice. Since all courts operated under the authority of the King, it was considered legally incongruous for the King to be subjected to the jurisdiction of his own courts without his consent. The immunity was therefore essentially personal and absolute, attaching to the person of the sovereign by virtue of his status.

With the gradual development of constitutional government and the decline of absolute monarchy, however, the justification for immunity changed. The personal privilege of the monarch was progressively transformed into a structural doctrine concerned with preserving the effective functioning of government. In modern constitutional democracies, the rationale for executive immunity is no longer based on the supposed infallibility or sacred character of the sovereign. Rather, it is principally justified on the ground that certain constitutional office holders require protection from litigation that may unduly interfere with the discharge of their official responsibilities. The modern argument is that if the chief executive is constantly required to defend personal or official actions against civil or criminal proceedings while in office, the resulting distractions could impede effective governance and undermine the principle of separation of powers. Obiora accordingly observes that immunity may operate as a safeguard enabling public office holders to perform their functions without fear of personal consequences for actions undertaken in good faith and within the scope of their offices.³

The concept of immunity, however, requires clarification before its application to executive office can be properly examined. Black’s Law Dictionary defines immunity as an exemption from a duty, liability, or service of process, while constitutional immunity refers to immunity created by the Constitution.⁴ From the perspective of analytical jurisprudence, immunity is not merely an exemption from punishment or a personal privilege. It represents a particular alteration in the legal relationship between the person enjoying the immunity and the person or institution against whom the immunity operates. Wesley Newcomb Hohfeld, in his influential analysis of jural relations, identified “immunity” as the correlative opposite of “disability” and as the jural correlative of a “no-power.”⁵ In Hohfeldian terms, therefore, where an individual possesses an immunity, another person or institution, including a court, lacks the legal power to alter that individual’s legal position in the matter to which the immunity relates. Executive immunity may consequently be understood as a constitutional limitation on the power of the courts to subject a protected executive office holder to particular forms of judicial process.

In public law, immunity is generally discussed under two principal categories: functional immunity, or *immunity ratione materiae*, and personal immunity, or *immunity ratione personae*. Functional immunity attaches to particular official acts rather than to the individual who performs them. It protects an office holder from civil or criminal liability for acts legitimately performed in an official capacity. The protection is therefore conduct-based rather than status-based and may continue after the official has left office. Its principal characteristic is that the immunity relates to the nature of the act and does not ordinarily extend to private, unauthorised, or personal conduct.

Personal immunity, by contrast, attaches to the status of the office holder. It provides a procedural shield during the period in which the person occupies the protected office, without necessarily distinguishing between

² ECS Wade and G Phillips, *Constitution* (6th edn, Longmans, 1960) p 642. Maitland regarded “some of the flowers of this garland” as merely buds in the days of Henry III. See Pollock and Maitland, *History of the Laws of England*, vol. 501.

³ CA Obiora, BOG Nwanolue and EA Maduka, ‘Immunity Clause, Transparency and Accountability in Nigerian Public Service, 2010–2023’ (2026) *Indiana Journal of Humanities and Social Sciences* vol 7, pp 1–10.

⁴ BA Garner, *Black’s Law Dictionary* (9th edn) p 817.

⁵ WN Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* (Walter Wheeler Cook ed, (Yale University Press 1919).

official and private conduct. Its essential characteristic is therefore temporal: the protection operates because of the person's status as a serving office holder and ordinarily ceases when that status ends. This distinction between *immunity ratione materiae* and *immunity ratione personae* is particularly important to the Nigerian constitutional framework because section 308 of the Constitution adopts a predominantly personal and temporal form of immunity in respect of the President, Vice-President, Governors and Deputy Governors. The protection is not based exclusively on the character of the particular act complained of but principally on the fact that the person occupies one of the constitutionally protected offices.

The historical development of executive immunity consequently reveals an important divergence between the United States and Nigeria, notwithstanding their common historical connection to the English constitutional tradition. The American constitutional system did not expressly incorporate presidential immunity into the constitutional text. The Framers of the United States Constitution were particularly conscious of the dangers of executive overreach, having recently emerged from a political system dominated by the British Crown. During the Constitutional Convention of 1787, they therefore did not insert an express provision conferring general immunity upon the President. By contrast, the Constitution expressly provided legislative immunity for members of Congress through the Speech or Debate Clause in Article I, section 6.⁶

Alexander Hamilton's discussion in *Federalist No. 69* further demonstrates the distinction that the Framers intended to establish between the American President and the British monarch. The American President was conceived not as an inviolable sovereign but as a constitutional officer subject to the law. Because the Constitution contained no express provision conferring general presidential immunity, the subsequent doctrine of presidential immunity in the United States developed principally through judicial interpretation rather than through an explicit constitutional immunity clause. The American approach has therefore tended to focus on the nature and circumstances of the conduct complained of rather than simply on the temporal status of the President. The result is a comparatively differentiated approach in which the scope of immunity depends substantially upon whether the conduct is official or private.

Nigeria followed a markedly different constitutional path. Executive immunity was expressly incorporated into the Nigerian constitutional order during the transition from colonial rule to republican government. The 1963 Republican Constitution contained an express immunity provision in section 161. The provision reflected the desire to protect the newly established offices of the President and the Regional Premiers from personal litigation and to preserve the stability and dignity of the executive institutions during a politically sensitive period. Thus, unlike the American model, the Nigerian Constitution chose to resolve the question of executive immunity through express constitutional text rather than leaving its development principally to judicial implication.

The subsequent political instability and military interventions in Nigeria reinforced the constitutional concern with executive stability. When the country returned to constitutional government under the 1979 Constitution, the makers of the Constitution adopted a presidential system that drew substantially from the American model. Despite this institutional borrowing, however, Nigeria did not adopt the American constitutional approach of textual silence concerning executive immunity. Instead, the 1979 Constitution expressly entrenched executive immunity under section 267, thereby creating a constitutional shield for the President, Vice-President, Governors and Deputy Governors. The same basic approach was retained in the 1989 Constitution under section 320.

The decision to retain an express immunity provision is significant because it demonstrates that Nigeria's constitutional experience was not simply an adoption of the American presidential model. While the structure of the executive presidency was influenced by the United States, the Nigerian Constitution deliberately maintained a textual and comparatively broad immunity regime. The historical context is important. The First Republic had been characterised by intense political competition and constitutional instability, followed by military interventions. Against that background, constitutional designers appear to have regarded executive immunity as a mechanism for preventing litigation from becoming an instrument of political disruption and for enabling elected executives to concentrate on the functions of government.

⁶ Article I, section 6 of the Constitution of the United States.



The present constitutional framework is contained in section 308 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The provision substantially reproduced the immunity framework found in the earlier constitutional arrangements. It was retained as part of the constitutional settlement accompanying the return to civilian government in 1999 after a prolonged period of military rule. The underlying justification was that elected Presidents and Governors, particularly within a fragile democratic environment, required protection from proceedings that could distract them from the discharge of their constitutional responsibilities or expose them to politically motivated litigation. The provision consequently gives the President, Vice-President, Governor and Deputy Governor a broad procedural protection against civil or criminal proceedings during their tenure, subject to the limitations expressly recognised by the Constitution.

The Nigerian and American approaches therefore reveal two distinct constitutional conceptions of executive immunity. The American system has developed largely through judicial interpretation and has tended to differentiate immunity according to the nature of executive conduct. The Nigerian system, by contrast, is expressly constitutionalised and principally operates as a temporary, status-based protection. The significance of this distinction is that the Nigerian Constitution places the immunity beyond ordinary legislative alteration and makes its modification subject to the constitutional amendment procedure. Section 1 of the Constitution further establishes the supremacy of the Constitution over other laws. Consequently, the protection conferred by section 308 cannot simply be removed or substantially altered through ordinary legislation.

This constitutional entrenchment gives rise to an important theoretical question. Whether a broad temporary immunity for serving executive office holders is compatible with contemporary constitutionalism depends substantially on how the competing values of effective government, separation of powers, accountability and equality before the law are balanced. The issue is particularly significant because personal immunity may temporarily prevent judicial examination of conduct that would otherwise attract civil or criminal liability. The protection of the office may therefore, in particular circumstances, come into tension with the constitutional principle that public power should remain subject to law.

This tension becomes clearer when section 308 is examined against the classical conception of the Rule of Law. A.V. Dicey's tripartite formulation emphasises, among other things, the supremacy of regular law over arbitrary power and equality before the law.⁷ From this perspective, a broad constitutional immunity for political office holders raises questions about whether individuals exercising public power should enjoy a procedural protection unavailable to ordinary citizens. The issue is not necessarily whether immunity is inherently inconsistent with the Rule of Law, since constitutional systems may legitimately recognise limited immunities for public officials. Rather, the critical question is whether the scope of the immunity is sufficiently connected to the constitutional purpose it is intended to serve and whether its operation maintains an appropriate balance between executive independence and legal accountability.

The Nigerian academic literature reflects this unresolved tension and may broadly be divided into two competing approaches. The first may be described as the Functionalist or Retention School. Scholars associated with this position, such as Fabamise, regard executive immunity principally as an instrument of political and institutional expediency. Their argument is that Nigeria's political environment requires an executive capable of concentrating on governance without being subjected to incessant civil proceedings or criminal processes initiated by political opponents.⁸ From this perspective, the possibility of politically motivated litigation against serving governors and other protected office holders could interfere with governmental administration and undermine executive stability. Babatunde Fashola (SAN), for example, has expressed the view that the removal of immunity would not necessarily resolve the underlying problems

⁷ AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959)

⁸ S Fabamise, 'Constitutional Immunity Clause and the Fight against Corruption in Nigeria', *Journal of Sustainable Development Law & Policy* 8(2) (2017) 155-185. This writer, while making a case for the retention of the immunity clause, had argued elsewhere that its removal is not a panacea for corruption and executive lawlessness, rather what we need is attitudinal change. See BP Ojealoro, SK Mokidi, and GO Etose. 'Immunity Clause under the 1999 Constitution: Issues and Challenges' being a paper delivered at the Annual Conference of Nigerian Association of Law Teachers, held in Abia State University, Umuahia May 24th-28, 2009



associated with political leadership, stating that “you can remove the immunity, but you can’t change the people⁹.”

The opposing Constitutionalist or Reform School challenges the continued retention of such a broad immunity.¹⁰ Scholars such as Elijah Adewale Taiwo and I.B. Lawal argue that the breadth of section 308 creates a significant accountability deficit. Taiwo contends that executive immunity has departed from its original constitutional justification and can be exploited by state executives to engage in rent-seeking, financial misappropriation and other forms of misconduct without the immediate possibility of judicial intervention.¹¹ He further argues that the continued retention of section 308 contributes to lawlessness and corruption and may undermine the development of a sustainable democratic process.¹² Lawal similarly argues that executive immunity may foster a culture of executive lawlessness.¹³

Other scholars adopt a more nuanced reformist position. Obiora, Nwanolue and Maduka argue that although executive immunity may serve the legitimate purpose of preventing executive distraction, it may simultaneously undermine transparency and weaken anti-corruption efforts by postponing accountability and diminishing public confidence in public institutions.¹⁴ The reformist literature does not necessarily advocate the complete abolition of executive immunity. Rather, it generally supports a reconsideration of its scope in order to reconcile the legitimate need to protect the effective functioning of the executive with the equally important requirements of transparency, accountability and the Rule of Law.¹⁵ Olowu similarly views immunity as a procedural mechanism that postpones accountability until the end of an office holder's tenure, when the protection ceases to operate.¹⁶ Arishe's support is not for a total abrogation of executive immunity, but that it should be contained in an Act of the National Assembly rather than the Constitution.¹⁷

The foregoing literature demonstrates that the controversy surrounding section 308 is not simply a question of whether executive immunity should exist. The deeper constitutional question concerns the appropriate scope, duration and justification of the protection. The functionalist position emphasises executive effectiveness, governmental stability and protection against politically motivated litigation, while the reformist position emphasises accountability, transparency, equality before the law and the prevention of abuse of public office. Both perspectives identify legitimate constitutional interests, but they differ in their assessment of how those interests should be accommodated within the Nigerian constitutional order.

This paper builds upon the reformist strand of the literature but approaches the question from a comparative and jurisprudential perspective. Rather than treating executive immunity as a choice between complete abolition and complete retention, the paper examines whether the Nigerian model can be constitutionally restructured to preserve the legitimate institutional purposes of immunity while reducing the possibility of its abuse. In particular, it seeks to draw lessons from comparative constitutional systems in which executive accountability has been reconciled with the need to protect the effective functioning of executive government. The objective is therefore to develop a jurisprudential basis for reconsidering the breadth of section 308 and proposing a framework capable of balancing executive independence with constitutional accountability.

⁹ *The Guardian* Newspaper, 10 January 2009, p 49. Beko Ransome Kuti also argued that without immunity public officials would be vulnerable to harassment by adversaries in *This Day* Newspaper, April 18, 2001 p.13

¹⁰ Late President Musa Yar'adua at the launching of the Economic and Financial Crimes Anti Corruption Revolution (ANCOR) project in Abuja on 9th December 2008, called for the removal of constitutional immunity

¹¹ EA Taiwo, 'Executive Immunity under the Nigerian Constitution and its Impact on the Corruption Crusade' (2010) *East African Journal of Peace and Human Rights* vol 16 No 2, pp 216–247.

¹² EA Taiwo, 'Constitutional Immunity of the Executive and the Rule of Law: The Nigerian Experience' (2004) *Ibadan Bar Journal* vol 3 No 1, p 119.

¹³ IB Lawal, 'Is Executive Immunity Coterminous with Executive Corruption?' (2006) 3(1) *International Journal of Law and Contemporary Studies* Nos 1 & 2, pp 325–346.

¹⁴ CA Obiora, BOG Nwanolue and EA Maduka, 'Immunity Clause, Transparency and Accountability in Nigerian Public Service, 2010–2023' (2026) *Indiana Journal of Humanities and Social Sciences* vol 7, pp 1–10.

¹⁵ *Ibid.*

¹⁶ *Ibid.* See also D Olowu, 'Immunity Clause and Accountability in African Presidential Systems' *Journal of African Law* (2020) 64, pp 77–99.

¹⁷ GO Arishe, 'Reconsidering Executive Immunity under the Nigerian Constitution' *Nigerian Current Law Review* 2007-2010 p.274-311



SCOPE AND JUDICIAL INTERPRETATION: A COMPARATIVE CONTRAST

The operational boundaries of executive immunity in Nigeria are defined primarily by the text of section 308 of the 1999 Constitution. The provision creates an expansive protective regime for four political offices: the President, Vice-President, Governor and Deputy Governor. Nigerian courts have generally approached the provision literally, treating the immunity as a constitutional procedural bar against the institution or continuation of civil and criminal proceedings against persons occupying the specified offices during their tenure. In *Global Excellence Communications Ltd v Donald Duke*¹⁸, the Supreme Court affirmed the breadth of the protection, holding that section 308 prevents the institution or continuation of civil or criminal proceedings against a person to whom the section applies while in office. The Court also recognised the distinction between proceedings against the office-holder personally and proceedings in which the office-holder is merely a nominal party in an official capacity.

The breadth of this textual immunity is particularly significant because it is attached to the person occupying the office rather than being confined to conduct performed in the exercise of official functions. This explains why the protection may extend to proceedings arising from conduct that is unrelated to the performance of governmental duties. The Supreme Court's interpretation in *Global Excellence* also produced the unusual consequence that the immunity does not necessarily disable the protected office-holder from instituting proceedings in his or her personal capacity. Onnoghen JSC reasoned that the words of section 308 confer immunity on the specified office-holders without creating a corresponding disability against their exercise of the right to institute proceedings. A similar position had earlier been expressed by Ayoola JSC in *Tinubu v I.M.B. Securities Plc*,¹⁹ where he held that the immunity conferred by section 308 should not be construed as creating a disability on the beneficiary where the Constitution contains no express provision to that effect.

This interpretation exposes an important conceptual feature of the Nigerian model. Section 308 is essentially textual immunity: its existence, beneficiaries, duration and principal procedural consequences derive directly from the constitutional text. It is also substantially personal immunity, in the sense that protection follows the person by virtue of occupying one of the constitutionally specified offices, rather than depending principally on the character of the particular act complained of. The provision does not require the court, as a threshold matter, to determine whether the impugned conduct was an official act, an exercise of constitutional power or a private act. Once the requirements of section 308 are satisfied, the procedural protection ordinarily operates by reason of the office-holder's status. The consequence is that the Nigerian regime is broader in its temporal and personal reach than a system in which immunity is principally determined by the nature or function of the conduct.

The position has, however, generated a tension with conventional conceptions of equality before the law. The reasoning in *Global Excellence* illustrates the difficulty. If a serving Governor cannot be sued personally because of section 308, yet may himself institute proceedings in his personal capacity, the immunity operates asymmetrically between the office-holder and other litigants. The Supreme Court nevertheless considered that the role of the court was to apply the constitutional provision as enacted and not to enlarge or modify it on grounds of fairness or social policy. The resulting tension is therefore less a question of judicial inconsistency than a consequence of the breadth of the constitutional text itself.

The Nigerian position should also be distinguished from judicially developed immunity. Although the courts have interpreted the scope of section 308, they did not create the immunity itself. Its source is constitutional text. The courts have instead determined the meaning and procedural consequences of that text. This distinction becomes important when the Nigerian position is compared with the United States, where presidential immunity has been developed largely through judicial decisions in the absence of a constitutional provision equivalent to section 308.

¹⁸ *Global Communications Ltd v Donald Duke* [2007] 16 NWLR (Pt. 1059) 22

¹⁹ *Tinubu v IMB Securities Plc* [2001] 8 NWLR (Pt. 740) 192. See also *A.G Federation v Abubakar* [2007] 8 NWLR (Pt. 1035) 154



The United States therefore does not present a single model of executive immunity. Its jurisprudence is better understood as combining functional immunity, official-act immunity and personal or unofficial-act exclusion, with the precise scope depending upon the nature of the proceeding and the conduct in question. The American approach is consequently not simply an alternative version of textual immunity; it is substantially a judicially developed and function-sensitive framework.

The functional basis of American presidential immunity is particularly evident in *Nixon v Fitzgerald*.²⁰ The United States Supreme Court held that a former President enjoyed absolute immunity from civil damages liability for acts falling within the outer perimeter of his official responsibilities. The Court expressly described this as a functionally mandated incident of the presidency, grounded in separation-of-powers considerations and the need to protect the effective performance of presidential functions. The critical inquiry was therefore not merely whether the defendant was President, but whether the conduct complained of was sufficiently connected with the functions of that office.

This functional approach is complemented by a different rule for personal or unofficial conduct. In *Clinton v Jones*,²¹ the Supreme Court rejected President Clinton's claim to temporary immunity from a civil action based on conduct alleged to have occurred before he became President. The Court reasoned that the justification for presidential immunity from liability for official acts did not extend to unofficial conduct because such conduct did not implicate the effective performance of presidential functions. The decision therefore established an important boundary: presidential status does not, by itself, immunise conduct that is personal or unofficial.

The distinction has become even more pronounced in the criminal context following *Trump v United States*.²² There, the Supreme Court recognised different degrees of criminal immunity according to the character of the presidential act. The Court held that a former President enjoys absolute immunity for conduct falling within the President's exclusive or core constitutional authority and at least presumptive immunity for other official acts. At the same time, it expressly maintained that there is no immunity for unofficial acts. Thus, the contemporary American framework distinguishes between core official acts, other official acts, and unofficial acts, rather than extending one undifferentiated immunity to everything done by a person while occupying the presidency.

The distinction between functional and personal immunity is also important in understanding *United States v Nixon*. The case demonstrates that even the President's official position does not produce an absolute immunity from every form of judicial process. The Supreme Court rejected an absolute, unqualified claim of presidential privilege in the context of a criminal proceeding and held that the President's generalized interest in confidentiality could yield to the demonstrated needs of the judicial process. The case therefore illustrates that presidential protection in the United States is structured around competing constitutional functions rather than a general personal exemption from judicial authority.

The contrast with Nigeria is consequently one of constitutional design as much as judicial interpretation. Nigeria begins with textual and substantially personal immunity and permits judicial interpretation principally within the boundaries fixed by section 308. The United States, by contrast, has developed a differentiated immunity regime through judicial decisions that ask what function the President was performing, whether the conduct was official or unofficial, and what form of legal process is involved. The American model is therefore neither wholly “functional” nor wholly “personal”; it contains different forms of immunity operating at different levels. This distinction is important because it prevents the comparative analysis from reducing the United States experience to a single model and brings into sharper focus the distinctive breadth of Nigeria's section 308.

²⁰ *Nixon v. Fitzgerald* 457 U.S. 731 (1982)

²¹ *Clinton v Jones* 520 US 681 (1997)

²² *Trump v United States* 603 US 593 (2024)



The practical significance of the distinction is particularly apparent in the Nigerian position on investigation. In *Fawehinmi v Inspector-General of Police*,²³ the Supreme Court distinguished between investigation and prosecution, holding that section 308 does not prevent law-enforcement authorities from investigating allegations of criminal conduct against a person protected by the provision. Uwaifo JSC observed that to hold otherwise would produce an untenable situation in which the constitutional protection from prosecution also prevented the investigation necessary to establish criminal responsibility. The decision therefore shows that even within Nigeria's predominantly textual and personal immunity regime, the courts have recognised a distinction between protection from judicial proceedings and the investigative processes that may precede them.

This distinction remains significant in contemporary practice. The proceedings involving former Kogi State Governor Yahaya Bello illustrate the practical difficulties that may arise when the temporal protection of section 308 intersects with criminal proceedings concerning conduct allegedly committed before or during a previous tenure. The issue is not simply whether evidence may be gathered while an office-holder is protected, but how effectively the criminal process can proceed where constitutional immunity temporarily prevents the institution or continuation of proceedings against the serving office-holder. The Nigerian model therefore combines a broad personal and temporal constitutional protection with a judicially recognised investigative space, rather than adopting the more differentiated official-act and unofficial-act framework found in contemporary United States jurisprudence.

The comparative contrast is thus better understood not as one between a supposedly “blanket” Nigerian model and a single American model, but between different foundations of immunity. Nigeria's section 308 is principally textual, personal and temporally linked to the holding of specified offices, while the United States framework is predominantly judicially developed and function-sensitive, distinguishing between official and unofficial conduct and, in the criminal context, between core constitutional powers and other official acts. That distinction provides a more precise basis for assessing whether the breadth of section 308 is justified by the constitutional objectives of executive independence and effective government, or whether its protection extends beyond what is necessary to safeguard those functions.

IMMUNITY, IMPEACHMENT AND CONSTITUTIONAL ACCOUNTABILITY

The constitutional immunity conferred by section 308 cannot be considered in isolation from the constitutional procedure for the removal of a Governor or Deputy Governor under section 188. The two provisions address different aspects of executive accountability, but they operate within the same constitutional structure. Section 308 protects specified executive office holders from civil and criminal proceedings, arrest or imprisonment, and processes compelling their appearance before a court during their period of office. Section 188, on the other hand, provides a constitutionally prescribed mechanism through which a Governor or Deputy Governor may be removed from office for gross misconduct. The relationship between the provisions is therefore not that impeachment simply “strips” a Governor of immunity. Rather, a successful removal under section 188 terminates the office to which the protection in section 308 is attached and, consequently, brings the period of immunity to an end.

The temporal character of section 308 is significant. The protection applies only “during his period of office”, and section 308(3) defines that period by reference to the period during which the person is required to perform the functions of the office. The provision therefore does not confer a permanent personal immunity from legal responsibility. Its operation is tied constitutionally to the tenure of the office holder. The courts have consistently treated the immunity as a protection enjoyed by virtue of the office rather than as an enduring exemption from liability for acts committed while in office. In *Alamieyeseigha v Igoniwari*, the Court of Appeal considered the relationship between the Governor's immunity and the constitutional process for his removal, including the question whether proceedings could be maintained against persons protected by section

²³ *Fawehinmi v Inspector-General of Police* [2002] 7 NWLR (Pt. 767) 606



308 while the Governor remained in office. The case illustrates the importance of identifying whether the constitutional protection is still operative at the time judicial proceedings are contemplated.²⁴

The Supreme Court's decision in *Dapialong v Dariye* also demonstrates the strength of the protection afforded by section 308 to a serving Governor. The immunity prevents the institution or continuation of civil or criminal proceedings against the Governor during the period of office, subject to the exceptions expressly recognised by the Constitution. It is therefore more accurate to describe section 308 as a temporary procedural bar than as an adjudication that the conduct of the Governor is lawful or that the Governor is permanently immune from subsequent accountability.²⁵

The temporary character of the protection becomes particularly important when considered alongside the constitutional removal procedure. Section 188(1) provides that a Governor or Deputy Governor “may be removed from office in accordance with the provisions of this section”. The process involves a notice of allegation, the investigation of the allegations by a panel appointed by the Chief Judge, an opportunity for the affected office holder to defend himself or herself, and consideration of the panel's report by the House of Assembly. Where the panel finds that an allegation has been proved and the House of Assembly adopts the report by the constitutionally prescribed majority, the Governor or Deputy Governor stands removed from office.²⁶

The Supreme Court's decision in *Inakoju v Adeleke* is particularly important to an understanding of the constitutional character of this process. The Court emphasised that the requirements of section 188 must be strictly observed and that a House of Assembly cannot employ the removal procedure for purposes outside the constitutional conditions prescribed for it. The case also demonstrates that section 188 cannot be reduced to a purely political process beyond all judicial scrutiny. Although the Constitution gives the House of Assembly a central role in determining whether the constitutional conditions for removal exist, compliance with the procedural requirements of section 188 remains a constitutional question.²⁷

The decision is significant for the present discussion because it establishes that impeachment, or more precisely the constitutional procedure for removal under section 188, is itself an accountability mechanism created by the Constitution. It is not a substitute for the ordinary criminal justice process. The object of the procedure is the removal of a Governor or Deputy Governor from office where the constitutional conditions for removal have been established; it is not the determination of criminal guilt. Consequently, a successful removal does not amount to a criminal conviction, just as the failure of an impeachment process does not necessarily amount to a judicial determination that no criminal offence has been committed.

The constitutional relationship between sections 308 and 188 is therefore better understood as one of complementarity. Section 308 limits the immediate operation of judicial processes against a serving Governor, while section 188 supplies a constitutional mechanism through which the Governor may cease to hold office before the expiration of the normal tenure. Once removal is constitutionally completed, the individual no longer occupies the office protected by section 308. The termination of the office consequently terminates the statutory condition upon which the immunity depends. The same consequence follows, without impeachment, when the constitutional tenure of the Governor expires. In either situation, the former office holder becomes subject to the ordinary jurisdiction of the courts, subject of course to the applicable substantive and procedural law.

This distinction is important because it avoids treating impeachment as though it were itself a form of criminal prosecution. A Governor may be removed from office without being criminally convicted, because the constitutional standards and purposes of the two proceedings are different. Conversely, a Governor's failure to be removed through section 188 does not necessarily establish that there is no basis for subsequent criminal

²⁴ *Chief Diepreye S.P. Alamiyeseigha v Hon Justice Emmanuel Igoniwari & Ors* [2007] 15 NWLR (Pt 1057) 343.

²⁵ *Hon Michael Dapialong & Ors v Chief (Dr) Joshua Chibi Dariye & Anor* [2007] 8 NWLR (Pt 1036) 332.

²⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 188(1)–(9)

²⁷ *Hon Muiywa Inakoju & 17 Ors v Hon Abraham Adeolu Adeleke & 3 Ors* [2007] 4 NWLR (Pt 1035) 403.



proceedings. The constitutional process of removal and the criminal justice process should therefore be regarded as distinct forms of accountability which may operate at different stages.

The decision of the Supreme Court in *Fawehinmi v Inspector-General of Police* provides an important bridge between these two forms of accountability. The case concerned allegations of criminal conduct against the then Governor of Lagos State and the question whether section 308 prevented the police from investigating those allegations. The Supreme Court held that section 308 did not prevent investigation. Uwaifo JSC explained that the police could investigate and preserve evidence even though the Governor could not, while in office, be subjected to the judicial processes prohibited by section 308. The Court recognised that evidence obtained during the period of office might be relevant to impeachment and might also be used for prosecution after the Governor had left office.²⁸

Fawehinmi's case is particularly significant because it prevents section 308 from being understood as creating a period during which allegations of criminal conduct must simply be ignored. The constitutional protection is directed principally at judicial proceedings and the coercive processes specified in section 308. It does not create a constitutional prohibition against the preservation of evidence or the investigation of alleged wrongdoing. This distinction is essential to the effective operation of both section 188 and post-tenure accountability. If investigation and evidence preservation were also prohibited during tenure, the expiration of immunity could occur at a time when the evidence necessary to establish responsibility had already been lost.

The constitutional design therefore permits accountability to operate sequentially. During tenure, section 308 protects the Governor from the specified judicial processes, while investigation, constitutional oversight and, where the constitutional conditions are satisfied, the removal procedure under section 188 remain possible. If the removal process succeeds, the Governor ceases to hold office and the protection under section 308 correspondingly comes to an end. If the Governor remains in office until the expiration of the constitutional tenure, the immunity likewise terminates with the office. Thereafter, ordinary judicial proceedings may be instituted or continued in accordance with the law. Section 308 itself reinforces this temporal conception by providing that, for the purpose of calculating limitation periods, the period during which a person enjoys the constitutional protection is excluded.²⁹

The constitutional significance of impeachment is consequently not that it constitutes the only means by which accountability can follow immunity. It is more accurately regarded as a constitutional accountability mechanism capable of operating during tenure, while judicial accountability may ordinarily become available after the tenure or office has ended. This distinction is especially important in a constitutional democracy because it prevents temporary immunity from being converted into permanent impunity. A Governor who is not impeached remains protected for the duration of the constitutionally recognised period of office, but the protection does not ordinarily continue after the office has ended. Similarly, a Governor who is removed through section 188 does not thereby become criminally liable; rather, the constitutional impediment created by section 308 ceases to operate, leaving any subsequent criminal responsibility to be determined through the ordinary legal process.

The effectiveness of this constitutional arrangement, however, depends upon the integrity of the institutions responsible for operating it. Section 188 places substantial responsibility upon the State House of Assembly. *Inakoju v Adeleke* demonstrates why strict compliance with the constitutional requirements is necessary: impeachment is a serious constitutional power which affects the tenure of an elected executive and cannot lawfully be converted into an instrument for achieving purposes unrelated to the constitutional standard of gross misconduct. At the same time, the experience of impeachment proceedings in Nigeria demonstrates that the existence of the constitutional power does not necessarily guarantee its effective exercise. Political alignment between the executive and legislative arms, the dependence of legislators upon political structures, and other institutional considerations may affect the willingness or ability of a House of Assembly to exercise its constitutional responsibilities.

²⁸ *Fawehinmi v Inspector-General of Police & Ors* [2002] 7 NWLR (Pt 767) 606.

²⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 308(1)(a) and proviso.



This institutional dimension is important to the operation of section 308. If immunity prevents prosecution during tenure, but the mechanisms for investigation, evidence preservation and constitutional oversight are weak, and the legislature is unwilling or unable to employ section 188 where appropriate, the temporary protection may have the practical effect of postponing accountability without ensuring that accountability will subsequently occur. The constitutional problem is therefore not simply whether Governors should enjoy immunity. It is whether the constitutional institutions surrounding that immunity are sufficiently effective to ensure that the protection remains temporary and does not become practical impunity.

The proper constitutional relationship between sections 308 and 188 may consequently be expressed in three stages. First, during the period of office, section 308 limits specified judicial proceedings against the Governor, while investigation and constitutional oversight are not thereby eliminated. Secondly, where the constitutional requirements are satisfied, section 188 permits removal from office before the normal expiration of tenure, thereby bringing the status upon which the section 308 protection depends to an end. Thirdly, upon removal or expiration of tenure, the former Governor is no longer protected by section 308 and may be subjected to ordinary judicial proceedings, subject to the applicable law and the requirement that criminal liability must still be established according to the ordinary standards of justice.

The resulting constitutional framework is therefore one in which immunity, impeachment and post-tenure accountability are complementary rather than mutually exclusive concepts. Section 308 protects the continuity and independence of executive office during tenure; section 188 provides a constitutional means of terminating that tenure in cases of gross misconduct; and the end of the tenure removes the constitutional barrier to ordinary judicial accountability. The central issue for Nigerian constitutional democracy is consequently not whether one mechanism should displace another, but whether the mechanisms operate effectively enough to ensure that the temporary protection granted by section 308 does not become a shield against accountability beyond the period for which the Constitution intended it to operate.

SOCIO-POLITICAL REALITIES AND SUB-NATIONAL CORRUPTION

The absolute shield of Section 308 creates a severe power imbalance within Nigeria's federal structure. Because a sitting Governor is entirely insulated from personal litigation, the office frequently centralizes immense political and economic power, transforming the state executive into a virtually unchecked monarch who exercises near-total discretion over State allocations, security votes, and internally generated revenue (IGR). A critical structural consequence of this unchecked power is the systemic diversion of the State Joint Local Government Account (SJLGA).³⁰ Governors historically utilized their absolute immunity to seize or heavily manipulate funds intended for local government councils, rendering grassroots governance financially paralysed and subservient to the whims of the state executive. Yet transparency and accountability, according to Nwali, are constitutive elements of democratic governance functioning as mechanism through which public power is subjected to scrutiny and control.³¹

The socio-political reality of executive impunity is further exacerbated by the legislative mechanisms designed to protect public funds, which inadvertently protect corrupt executives. Under Section 84 of the Sheriffs and Civil Process Act, a successful litigant cannot execute a Garnishee Order to freeze a state government's bank account to recover a judgment debt without first obtaining the explicit consent of the state's Attorney General. Because the Attorney General is a political appointee serving at the pleasure of the Governor, this consent is routinely withheld, creating a profound enforcement bottleneck where everyday citizens are left with hollow judicial victories against executive overreach.

³⁰ On July 11, 2024 the Supreme Court in *Attorney General of the Federation v. Attorney General of Abia State and 35 Others*, [2024] 17 NWLR (Pt. 1966) 1 ruled in favour of the Federal Government's suit seeking to enforce financial independence for local governments. Mr President Bola Ahmed Tinubu, worried by the diversion of Local Government allocation by State governor, at the 15th National Executive Committee meeting of the All Progressives Congress (APC), threatened to issue an executive order to enforce direct allocations to local governments

³¹ TB Nwali, 'Transparency and Accountability in Managing Public Sectors in Nigeria' *Multidisciplinary Journal of Current Research and Review* 8(1) (2025) 68-82



As local avenues for accountability face these structural hurdles, the debate over Section 308 has increasingly expanded into international and transnational legal arenas. Corrupt sub-national executives have historically relied on the absolute nature of Section 308 to safely coordinate the movement of looted public assets into foreign bank accounts. However, the international legal order does not always recognize these domestic boundaries. International anti-money laundering frameworks and mutual legal assistance treaties (MLATs) allow foreign jurisdictions to freeze illicitly transferred assets while the executive is still in office. Furthermore, under international conventional law, Section 308 cannot shield a Governor from prosecution for international crimes, such as war crimes or crimes against humanity, under the Rome Statute of the International Criminal Court (ICC), to which Nigeria is a signatory.

PATHWAYS TO CONSTITUTIONAL REFORM

For the rule of law to be salvaged, the constitutional architecture must shift from an absolute immunity model to a restrictive immunity model. The most direct pathway to reform is a rigorous textual amendment to Section 308 through the National Assembly to explicitly insert a Criminal Exclusion Clause. The proposed text should dictate that the protection of Section 308 immediately lapses where a *prima facie* case is established against a Governor or Deputy Governor regarding the systemic misappropriation of public funds, corruption charges, or gross violations of the fundamental human rights of citizens.

Furthermore, drawing from global best practices, the reform must explicitly state that civil actions stemming from personal, unofficial, or pre-tenure conduct shall not be barred or stayed during the period of office. To prevent these private lawsuits from physically paralyzing state governance, structural safeguards can be included, such as allowing the Governor to testify via video link or depositions, permitting legal counsel to represent the Governor in chambers without the executive's personal presence, and restricting the courts from issuing bench warrants against the sitting executive for private civil matters.

Finally, to neutralize the potential for the federal government to weaponize anti-corruption agencies against defiant opposition Governors, any amendment to Section 308 must be accompanied by the creation of an Office of the Independent Special Prosecutor (ISP). The Special Prosecutor would be nominated by the National Judicial Council (NJC) and confirmed by a two-thirds majority of the Senate, ensuring cross-party consensus, with funding secured as a direct first-line charge on the Consolidated Revenue Fund. The ISP would hold the exclusive constitutional authority to investigate sitting governors, freeze suspicious state accounts through *ex-parte* judicial orders, and initiate expedited trials before a dedicated anti-corruption division of the Federal High Court, bypassing the political bottlenecks that currently paralyze sub-national accountability. Reforming Section 308 is no longer merely a preferred legal upgrade; it is an urgent constitutional necessity to restore the rule of law and breathe true accountability into the spirit of Nigerian democracy.

CONCLUSION

Executive immunity occupies an uneasy position within constitutional democracy. Its justification is not without merit. A Governor or other constitutionally protected executive office holder should not be exposed to proceedings designed merely to harass, distract or incapacitate the office and thereby undermine the effective performance of constitutional responsibilities. The difficulty, however, lies in determining the extent to which that legitimate institutional objective should justify insulating the office holder from ordinary legal processes.

This article has demonstrated that section 308 of the 1999 Constitution adopts a particularly broad form of executive immunity. Its protection is principally textual, personal and temporal. It attaches to the holder of the protected office rather than being determined primarily by the nature of the conduct complained of. Consequently, the immunity may extend beyond acts performed in the discharge of official functions to private or unofficial conduct. The Nigerian courts have largely respected this constitutional design, while nevertheless recognising that the immunity does not prevent investigation or permanently extinguish the possibility of subsequent accountability. *Fawehinmi v Inspector-General of Police* is particularly significant in this regard



because it preserves the investigative space necessary for evidence to be gathered while the constitutional bar against prosecution remains operative.

The relationship between sections 308 and 188 further demonstrates that immunity was not intended to create permanent impunity. Impeachment or removal under section 188 can terminate the tenure upon which the immunity depends, while the expiration of tenure likewise brings the protection to an end. Investigation, legislative oversight, impeachment and post-tenure judicial proceedings therefore form different components of the constitutional accountability structure. The difficulty is that the effectiveness of these mechanisms depends substantially on the independence and willingness of the institutions responsible for operating them. Where legislative oversight is weak, prosecutorial institutions lack sufficient independence, and political control over state institutions is strong, the temporary postponement of accountability may in practice become prolonged or ineffective accountability.

The comparative analysis reinforces this concern. The United States experience does not constitute a single model of executive immunity. Rather, its jurisprudence demonstrates a more differentiated approach in which textual silence has been supplemented by judicially developed principles distinguishing functional immunity from personal or unofficial conduct. *Nixon v Fitzgerald*, *Clinton v Jones* and *Trump v United States* illustrate, in different contexts, the importance of identifying the nature of the conduct and the constitutional function implicated before determining the scope of immunity. The comparison does not suggest that Nigeria should simply transplant American doctrine. It demonstrates, however, that protection of executive independence does not necessarily require a comprehensive personal shield against legal proceedings.

The central constitutional difficulty with section 308 is therefore not the existence of executive immunity as such, but its breadth. A regime that protects legitimate official functions is capable of serving the constitutional interests of governmental stability and executive independence. A regime that also protects private conduct merely because the person performing it occupies a protected office is more difficult to justify on functional grounds. The distinction is particularly important in Nigeria, where the concentration of political, financial and institutional power at the state level can make the effectiveness of ordinary accountability mechanisms especially significant.

The article consequently argues for a recalibration rather than an indiscriminate abolition of executive immunity. The constitutional objective should be to preserve protection for legitimate governmental functions while narrowing the circumstances in which personal status prevents access to judicial accountability. Private and unofficial conduct should not receive the same degree of constitutional protection as conduct genuinely connected with the discharge of executive functions. At the same time, any reform must contain adequate safeguards against the use of criminal or civil proceedings as instruments of political persecution. Reform should therefore be accompanied by stronger institutional guarantees for investigation and prosecution, effective legislative oversight and procedural safeguards capable of preventing frivolous or politically motivated litigation.

Ultimately, constitutional immunity should serve the office, not transform the office holder into a person beyond meaningful legal accountability. Section 308 remains defensible to the extent that it protects the continuity and effective functioning of constitutional government. Its present breadth, however, creates a substantial tension between executive protection and the principles of equality before the law, the Rule of Law and democratic accountability. A constitutionally sustainable approach is therefore one in which immunity is sufficiently limited to protect legitimate executive functions while ensuring that the temporary protection attached to public office does not become, in practice, a shield for personal misconduct or a substitute for constitutional accountability.