



Public Policy Implications of Immunity Practice in U.S.A and Nigeria Jurisdictions

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Abstract. The principle of immunity serves to ensure that individuals occupying high-level public offices—particularly within the executive branch—can carry out their responsibilities without being encumbered by legal distractions. It is a legal shield that grants temporary protection from criminal or civil proceedings for certain officeholders, recognizing the sensitive nature of their positions. This study examines the concept and implementation of immunity within both the Nigerian and American legal systems, assessing its broader implications on governance and public policy. The analysis explores relevant legal provisions, constitutional articles, and statutory frameworks in both countries, drawing attention to their similarities and notable distinctions, particularly concerning which officials are covered and the scope of their protection. In the United States, presidential immunity is rooted in the recognition that the President, due to the global and national significance of executive decisions, could easily become the target of numerous lawsuits. Legal proceedings against the President, if permitted during their term, could lead to significant distractions from the duties of office. Thus, immunity is intended to allow the President to fulfill official functions without being burdened by ongoing litigation or the threat of personal liability, especially in civil matters arising from official acts. In contrast, Nigeria’s constitutional immunity—enshrined in Section 308 of the 1999 Constitution (as amended)—grants broader protection. It bars any legal action, civil or criminal, against the President, Vice President, Governors, and Deputy Governors for the duration of their tenure. This form of immunity is more expansive and applies regardless of the context of the alleged misconduct, effectively insulating the covered officials from prosecution or civil suits during their time in office. This paper adopts a doctrinal method to analyze how immunity affects governance, legal accountability, and public interest in both systems. It evaluates the practical implications of these legal

protections and considers the tension between executive immunity and the rule of law within democratic societies.

Keywords: Article, Immunity clause, Nigeria, Public Policy, USA

1. Introduction

The concept of immunity has its origins in the historical English legal doctrine asserting that "the king can do no wrong," a maxim reflecting the notion that the sovereign was beyond legal reproach. This principle, rooted in English common law, was encapsulated in the Latin phrase *rex non potest peccare*, which translates to "the king cannot commit a wrong." The term "immunity" itself derives from the Latin word *immunitas*, referring to the release of an individual from certain legal duties or obligations.

The foundation of this doctrine lies in the feudal structures of medieval England, where the monarch was regarded as the personification of the State. As the British Empire expanded its reach, this legal principle was adopted in its various colonies and became ingrained in common law traditions.

Immunity can take different forms, commonly categorized as either absolute or qualified. Absolute immunity provides full protection from both civil and criminal proceedings, whereas qualified immunity typically limits protection to specific circumstances, often civil matters, and only in relation to official actions performed in good faith.

In the United States, qualified immunity is generally applied. For example, the President is shielded from civil liability for official actions undertaken in the course of executing presidential duties, as outlined in Article I of the U.S. Constitution.

Conversely, Nigeria upholds a form of absolute immunity under Section 308 of the 1999 Constitution (as amended), which strictly prohibits any civil or criminal legal action against sitting Presidents, Vice Presidents, Governors, or Deputy Governors in their individual capacities while in office.

Globally, the practice of granting immunity to heads of state has gained acceptance and is considered consistent with international norms. For instance, in the notable case of *Mighell v. Sultan of Johore*, the Sultan, who had traveled to the United Kingdom under the alias “Albert Baker,” was sued for breach of promise to marry. Once his real identity was disclosed, the British court recognized his immunity as a foreign sovereign, even though he had attempted to remain anonymous during his visit.

2. Types of Immunity

Sovereign Immunity: This legal provision shields the government and its institutions from being sued without their express approval. In Nigeria, such protections are outlined in the 1999 Constitution (as amended) and reinforced by the State Immunity Act (Cap. 373, Laws of the Federation of Nigeria). The Act restricts legal proceedings against the state unless the government has explicitly waived its immunity. Litigation can only move forward if formal consent or a waiver is granted by the appropriate authority.

Official Immunity (Qualified Immunity): This principle is primarily relevant in civil rights cases involving public officials. Courts typically evaluate whether the actions of such officials breached well-established legal or constitutional rights. In Nigeria, public servants are generally shielded from liability for actions carried out in their official capacity, with protection often stemming from specific legal statutes.

Diplomatic Immunity: Governed by the 1961 Vienna Convention on Diplomatic Relations, diplomatic personnel are granted immunity from both criminal prosecution and civil litigation. This international framework has been domesticated under Nigerian law, allowing accredited diplomats to operate without legal interference in accordance with the treaty’s provisions.

Witness Immunity: In the United States, the Department of Justice oversees the implementation of witness immunity. In Nigeria, such protection is available in criminal proceedings and is typically granted by the Attorney General or based on directives issued by the courts.

3. Immunity under the United States Jurisdiction

Both Nigeria and the United States operate under a constitutional democracy with a presidential system of governance. In the U.S., Article II, Section 4 of the Constitution authorizes the removal of the President, Vice President, and other civil officers through impeachment upon conviction for treason, bribery, or other serious offenses. Notably, the President of the United States benefits from immunity in certain civil contexts. In the landmark case of *Nixon v. Fitzgerald* (1982), the Supreme Court held that a sitting President is entitled to absolute immunity from civil liability for actions performed within the outer limits of their official responsibilities. The judiciary lacks the authority to adjudicate civil suits seeking damages for such official conduct.

In *Clinton v. Jones* (1997), the Court addressed whether presidential immunity extends to actions undertaken prior to taking office. The ruling made clear that it does not, as immunity only applies to conduct linked directly to presidential duties. There has been ongoing debate as to whether the Vice President enjoys similar protection. The Department of Justice, since the 1973 investigation of Vice President Spiro Agnew, has maintained that Vice Presidents are not constitutionally protected from prosecution while in office, unlike the President.

Presidential immunity, in essence, means that as long as the President acts within constitutional bounds, legal actions cannot be brought against them for those decisions. Given the gravity and global impact of presidential functions, immunity is seen as essential to prevent litigation from obstructing official duties. Without this protection, the daily administration of governance could be seriously hampered.

However, this shield does not extend to acts committed before assuming office. While legal proceedings may be postponed, they are not extinguished. The recent criminal conviction of former President Donald Trump marked a historic moment in U.S. legal history, showing that former Presidents can be held liable for personal misconduct after leaving office.

The *Clinton v. Jones* case emphasized that immunity does not protect Presidents from litigation for pre-presidential actions. The recent decision in *Trump v. United States* (2024) suggested a presumption of immunity for actions performed in an official capacity, but not for private conduct. This has led some scholars to argue that impeachment should precede any

criminal prosecution of a sitting President. Although former Presidents continue to be addressed by their title, this does not automatically extend their legal protections post-tenure.

Unlike Nigeria, where immunity for executive officeholders is codified in Section 308 of the 1999 Constitution and interpreted broadly, U.S. presidential immunity has evolved primarily through court rulings. One pivotal early case was *Mississippi v. Johnson* (1866), which laid foundational principles for executive privilege and immunity.

Further developments followed the Watergate scandal in 1972, culminating in *United States v. Nixon*. In this case, operatives linked to Nixon's re-election campaign illegally entered the Democratic National Committee headquarters at the Watergate complex. When confronted with a subpoena to release White House recordings, Nixon argued that executive privilege granted him complete discretion to withhold evidence.

He contended:

That the judiciary lacked authority to compel the President;

That executive privilege was absolute and non-reviewable.

The Supreme Court unanimously rejected Nixon's position. It held:

That the judiciary has the authority to evaluate claims of executive privilege;

That a special prosecutor can subpoena the President;

That confidentiality does not apply when evidence is crucial in a criminal trial.

Consequently, Nixon surrendered the tapes, which led to multiple indictments and ultimately his resignation. He was later pardoned by President Gerald Ford.

This case affirmed the power of courts to compel presidential compliance in criminal matters, although it did not settle the issue of prosecuting a sitting President. The rationale behind presidential immunity in the U.S. is to ensure that the Chief Executive can carry out their duties without the distraction or threat of personal lawsuits. Yet, this protection is not all-encompassing and is subject to constitutional and judicial limitations.

4. Immunity under the Nigeria Jurisdiction

Section 308 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) expressly bars the initiation of civil or criminal proceedings against individuals holding the offices of President, Vice President, Governor, or Deputy Governor in their

private capacities. This provision grants these officeholders complete legal immunity for the duration of their time in office.

The essence of this immunity is to uphold the integrity of high public offices and to prevent the interruption of executive functions through potentially disruptive or frivolous lawsuits. By shielding these leaders from legal distractions, the constitutional clause aims to promote efficient governance and maintain institutional stability.

This legal safeguard, being both civil and criminal in scope, amounts to what is known as absolute immunity, and the relevant constitutional section serves as its statutory foundation.

1) Notwithstanding anything to the contrary in this Constitution, but Subject to Subsection (2) this Section,

No Civil or Criminal Proceeding shall be instituted or continued against a person to whom this section applies during his period of office:

A person to whom this Section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any Court or otherwise; and

No process of any Court requiring or compelling the appearance of a person to whom this Section applies, shall be applied for issued;

It is further stipulated that, in determining whether the statutory time limit for initiating legal action has lapsed against an individual covered by this Section, the duration of their time in office shall be excluded from the calculation.

(3) This constitutional provision is specifically applicable to individuals occupying the offices of the President, Vice President, Governor, or Deputy Governor. The term "period of office" as used within the section denotes the duration during which the individual is actively engaged in performing official duties.

A noteworthy aspect of Nigeria's immunity framework is that the protection is tied to the office itself, not the person occupying it. As such, even if the officeholder wishes to waive this immunity to face judicial proceedings, they are legally unable to do so. Once an individual assumes any of these executive positions, all ongoing civil or criminal matters against them are automatically suspended for the duration of their tenure.

Nonetheless, the absolute nature of this immunity was somewhat clarified in the landmark case of *Fawehinmi*

v. Inspector General of Police. In this case, Chief Gani Fawehinmi approached the Federal High Court seeking an order of mandamus to compel the Inspector General of Police to investigate allegations of criminal conduct against then-Governor Bola Ahmed Tinubu of Lagos State. The High Court rejected the application, prompting an appeal.

The Court of Appeal held that, in line with Section 4 of the Police Act, law enforcement agencies have a statutory duty to investigate reported criminal activities, including those involving persons protected under Section 308 of the Constitution. The court clarified that while such individuals cannot be arrested or detained during their time in office, they are not exempt from being investigated. The Supreme Court later affirmed this position.

In comparison, the United States does not grant absolute immunity to its President from all forms of judicial scrutiny. A sitting President can be compelled by subpoena to provide documents in criminal investigations, demonstrating a narrower application of executive protection.

Many legal scholars and practitioners in Nigeria argue that this immunity provision plays a crucial role in ensuring that the machinery of government operates without interruption from legal entanglements. Its removal will cause dislocation because executives would be distracted by litigations and in the process governance will suffer. As a result, this provision not only serves to uphold the esteem of key executive offices but also acts as a safeguard against disruptive and unnecessary legal actions that could hinder the functioning of government. Legislators have consistently advocated for the continuation of this immunity, noting that the Constitution already outlines a formal process for holding executive officeholders accountable—namely, through impeachment.

Sections 143 and 188 of the 1999 Constitution (as amended) outline the procedures for removing individuals covered by Section 308 from office. These provisions are typically triggered in situations involving verified misconduct, financial impropriety, or abuse of authority.

Although impeachment processes can be politically contentious, they are generally more expedient than prolonged litigation. Furthermore, appeals arising from impeachment are often unsuccessful, especially where constitutional guidelines have been properly observed.

5. Public Policy Implications

Although the concept of immunity has faced considerable debate and criticism, its practical benefits seem to outweigh the perceived drawbacks. In the legal systems examined—specifically Nigeria and the United States—recipients of immunity are often unable to dedicate adequate time or attention to defending themselves in litigation while in office (Okeke, Ojukwu, & Nnamani, 2020). In nations where governance and institutional responsibilities are intense and demanding, removing such legal protections could result in more disruption than benefit. Both countries operate constitutional democracies with active political frameworks, free press, and human rights protections. Without the safeguard of immunity, governance could be slowed by constant legal distractions, including politically motivated lawsuits aimed at weakening current officeholders.

Immunity helps maintain stability within government by shielding key executives from becoming vulnerable to legal entanglements. If an executive were to be frequently subjected to court proceedings while in office, it would risk stalling state functions. A case in point is that of former Illinois Governor Rod Blagojevich in the United States. He was recorded discussing the value of appointing a successor to Barack Obama's Senate seat, referring to it as something "you don't give away for nothing." Blagojevich was eventually prosecuted and convicted, highlighting that in the U.S., state governors do not benefit from the same level of immunity as their Nigerian counterparts.

Nigeria, by contrast, has experienced widespread misuse of the immunity clause. Since the return to democratic rule in 1999, nearly all state governors have been accused or investigated for corrupt practices while in office. However, only a handful have faced convictions once their tenure ended. This pattern aligns with the often-cited Nigerian saying: "When you fight corruption, corruption fights back."

Although the immunity granted is strictly tied to the duration of one's term in office, the problem lies in how many Nigerian governors exploit their time in power to accumulate resources and influence that can later be used to undermine judicial and enforcement institutions. Critics argue that the fight against corruption remains difficult because those who frame the laws and policies tend to leave loopholes that shield political elites from accountability.

While there have been numerous calls by the public and political actors to eliminate immunity, the prevailing sentiment is that elected executives should not be subjected to individual judicial oversight during their terms. Doing so could erode the authority of the offices they hold and by extension, undermine the will of the electorate. From a public policy perspective, prosecuting sitting executives is widely discouraged.

Instead, the Constitution entrusts the legislature with the responsibility to check executive misconduct—primarily through the process of impeachment. This approach ensures that elected officials who breach their constitutional obligations can be removed through democratic means. Eliminating immunity could render citizens' choices meaningless and undermine the democratic process itself, potentially leading to institutional instability and social unrest.

6. Conclusion

In the United States, the concept of immunity is primarily designed to shield the President from disruptive and baseless legal actions. In contrast, Nigeria extends this legal protection to the President, Vice President, Governors, and Deputy Governors, ensuring they are not burdened by frivolous lawsuits. This safeguard enables them to focus on governance and fulfill their official duties effectively, while also preserving the integrity of the offices they occupy. This is the ideal in civilized countries. For instance, in the U.S.A where we have a well-structured, and sophisticated system, immunity aids free flow of governance. Nigeria's implementation of executive immunity has been severely undermined by frequent misuse, largely driven by pervasive corruption and systemic underdevelopment. Rather than acting as a shield for effective governance, immunity has often become a loophole exploited by officeholders to divert public funds with little fear of accountability—even after their tenure ends. Section 308 of the 1999 Constitution appears to offer a level of protection that has, in practice, placed some public officials above the reach of the law.

Numerous court cases have highlighted this concern. For instance, former Bayelsa State Governor Diepreye Alamieyeseigha attempted to invoke his immunity status when detained in the United Kingdom. Similar situations have arisen with other former state executives, such as James Ibori of Delta State, Joshua Dariye of Plateau State, and Jolly Nyame of Taraba State. These instances reflect the broader challenge of holding powerful figures accountable within the current legal framework.

While this submission does not advocate for the outright elimination of constitutional immunity—due to the risks of politically motivated lawsuits from habitual litigants—it strongly recommends that impeachment procedures, as outlined in the Constitution, should be activated in verified instances of constitutional violations.

Both Nigeria and the United States acknowledge immunity as an essential doctrine within their legal systems. However, the procedural frameworks differ significantly. In the United States, immunity is more systematically defined through legislative instruments and includes structured provisions, such as statutory waivers, particularly in relation to federal agencies. Nigeria, on the other hand, relies more heavily on legislative enactments, customary practice, and international obligations. Diplomatic immunity remains a shared principle in both systems, largely governed by the Vienna Convention on Diplomatic Relations.

References

- Adujie, P. (2024). Immunity from Prosecution: www.com/publication/adujie immunity
- Arishe, G (2021) Reconsidering executive immunity under the Nigeria Constitution <www.nial-nigeria.org/Journals/NCLR 10. P&6 accessed 10-03-2025
- Article II, Section 4. United States Constitution <http://Constitution>. Congress.
- Clinton V Jones (1997). 520 U.S 681. Justia U.S. Supreme Court Center Constitution of the Federal Republic of Nigeria (1999) as amended.
- Coon, E. (2018), Vice Presidential immunity in the Age of impeachment: A Fresh look at the Agnew's Precedent. Center for Constitutional Law>CONLAWNO Vol 9. 201
- Cooper, C. (1980). Act of State and sovereign immunity: A further inquiry < Law economics.LUC.Edu/Cgi/view. Vol II issue 2. 1980
- Fabamise, S. (2025). Constitutional immunity Clause and the fight Against corruption in Nigeria <http://www.ujol.info>>journal of sustainable Development law and Policy. Accessed 10/03/25
- Fawehinmi V Inspector General of Police 10 NSCQR 826
- Malami, E. (2006). The Nigerian Constitutional Law (Princeton publishing) 446-458
- Mississippi V Johnson (1866) 71 U.S, 475. Library of Congress.gov

- Mrs Olufumilayo Ransome-Kuti V AG of the Federation (1985) 2 NLR (Pt6) 211 @ 236-237. The Supreme Court held that the Federal Government was not vicariously liable for the arson and willful damage to property carried out its agents.
- Nixon V Fitzgerald (1982). 457. US 731. N:79-1738. Argued 30/11/1981.
- Obih V Mbakwe (1984) LPELR. 446 (SC).
- Clinton V Jones (1997). 520 U.S. 681. Justina U.S. Supreme Court Center
- Mississippi V Johnson (1866) 71 U.S. 475. Library of Congress. gov.
- Ojonugwa, A; Savedau D. Dafiel, G. (2024). A Comparative Analysis of Immunity Clause in Nigeria, United States, & Australia: should they be retained or repealed.
- Okeke, M; Ojukwu, U., & Nnamani D. (2024). The implication of Immunity clause and the pollution Excellency for Democratic consolidation in Nigeria. Academic management science. www.researchgate.net
- Olu, O. (2006). Corruption and the Problem of Development in Nigeria. Social Science (3) 183-187.
- Section 308 of the Constitution of the Federal Republic of Nigeria 1999(as amended).
- Silverstein, A. (2009). The History of Immunology in Paul W.E. (Ed). Fundamental immunology (Lippincott-Raven Publishers).
- Schor, E. (2008). Illinois Governor charged with taking bribes for Obama's Senate seat. The Guardian Washington. December 09,2008. <http://www.theGuardian.com>.⁸
- Strom, S. (2024). Article II: President immunity to Criminal & Civil suits. Reviewed by Laura Temme Esq.
- United States V Nixon (1974). Federal Criminal Subpoena. 418. US. 683,712.
- United States V Nixon (1974). 418 US 683. 712 (1974).
- Ojonugwa, A. Savedau D, Dafie, G (2024). A comparative analysis of immunity clause in Nigeria, United States of America, & Australia should they be retained or repealed
- Fawehinmi V Inspector General of Police 10NSCQR 826
- Fabamise, S. (2025). Constitutional Immunity clause and the fight against corruption in Nigeria.<https://www.Ujol.info>>journal of sustainable development law and policy. Accessed 10th march,2025.
- Obih V Mbakwe (1984) LPELR.446 (SC)
- Okeke, M; Ojukwu, & Nnamani (2024). The implication of Immunity Clause and the
- Pollution of Excellency for Democratic Consolidations in Nigeria. Academic Management Science.www.researchgate.net
- Schor, E (2008). Illinois Governor charged with taking bribes for Obama's Senate seat. The Guardian Washington. December 09, 2008. <http://www.theguardian.com/w>
- Olu, O. (2006). Corruption and the problem of development in Nigeria Social Science (3) 183-187
- Adejie, P. (2004) Immunity from Prosecution: www.com/Publication/adujie/immunity