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## Executive immunity clause and its effects on the fight against corruption in Nigeria

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**Abstract:** The Nigerian 1999 Constitution enshrined an outrageous and controversial clause known as the 'Immunity Clause' in Section 306 of the Constitution which provides maximum protection for the executive office holders at the Federal and State levels. Hence, the President, Vice President, Governors and their Deputies are immune from any investigation or sanction during their tenure in office even if they commit an offence or a breach of trust such as corruption. This study analysed critically the provision of the immunity clause and its effects on engendering corruption by the executive office holders in Nigeria. The study empirically examined top political office holders who hold executive offices from 1999 to 2020 that were under investigation for protected corrupt practices during their office days. The study utilised the secondary sources of data collection because the paper is a conceptual descriptive one. Sources such as books, journal articles, newspapers, reports and internet sources are utilised. Elite Theory was used to strengthen the literature in the work. The data collected were analysed and interpreted using content analysis where discussions and interpretations were made using the context of the existing knowledge for contribution. The work discovered that the presence of the immunity clause is preventing the fight against corruption from being actualised and it is helping in escalating corrupt practices. The work recommends among other suggestions that the clause should be removed and allow the executive office holders to face their actions even while in office to ensure transparency.

**Keywords** – Corruption, Effects, Executive, Immunity Clause, Nigeria

### 1. INTRODUCTION

The champions of democracy convinced the globe that it is the best form of government universally because it was built on accountability, transparency and masses-oriented structures. Democratic rule is expected to foster and facilitate processes that will make the leaders accountable to the governed most convincingly. Unfortunately, the current global democratic practices practically revealed an ambiguous and worrisome phenomenon of protecting criminals in the office which appears bizarre to the aspirations and promises of just management of state and its resources by democracies (Reddy, Schularick & Skereta, 2012). In many world countries, leaders in different forms and at different levels are shielded against any civil or criminal proceedings once they are in office (R.J.E, 2016). In some countries across America, Europe, Asia and Africa, immunity is provided constitutionally not only for the executive but also for other arms of government such as the parliaments, judiciary, ministers and even top-ranking civil servants in some instances (Transparency International, 2013). Many analysts and stakeholders are not

comfortable with this outrageous and seemingly contradictory clause in respective world constitutions because it is pointing toward supporting corrupt practices and criminal acts while in office (Fombad & Nwauche, 2012).

In Africa, the issue of immunity has taken a new dimension where the leaders are not only protected while in office in some countries but are constitutionally protected against previous civil and criminal proceedings and possibly after their stay in office. Africa is notorious for hatching leaders that breed corruption while in office. Transparency International's ranking of the Corruption Perception Index for over a decade disclosed how corrupt Africa is, being the Continent with countries that always recorded low performance. Protecting leaders or providing a constitutional immunity to African leaders encouraged them to act with impunity and it has given them the effrontery to mismanage public resources untamed (Noack, 2018). Even in the developed democracies of America and other European countries, leaders are being implicated for being corrupt severally while in office. The distinguishing feature that set the dividing line between them and Africa is the strength of the law and the level of sanction. Some of the leaders in developed countries may be investigated and sanctioned later after leaving office but in Africa, corrupt practices cases perpetrated by leaders are seldom investigated or sanctioned (Fombad et al., 2012).

Nigeria is one of the countries in Africa that enshrined in its 1999 Constitution as Amended the Immunity Clause in section 306. This controversial section has been attracting debates and condemnations from various Nigerians on its existence or removal. It is seen as a deliberate orchestration of the elite's conspiracy who designed the Constitution to protect their neck from embarrassment in office when they commit an offence. However, an immunity clause does not imply that an executive in Nigeria cannot be impeached from his office. Section 143 provides for the impeachment of the Nigerian President and his Deputy while Section 188 provides for the impeachment of Governors and their Deputies. This is to check their excesses in the office. The research asked some questions including what is the purpose of the Immunity Clause in the Nigerian Constitution? Was the aim of the Immunity Clause as provided by the Constitution achieved? To what extent has the Immunity Clause caused corruption in Nigeria and how can the Clause be removed, modified or made workable within the ambit of the law to avoid bastardisation? The controversy is how the impeachment clause identified both civil and criminal offences as some of the reasons why a President or a Governor can be removed and at the same time, such offences are protected by the same constitution. Many Nigerians have been calling for the removal of the clause from the Constitution but the ruling class will not listen to them. There are some studies (Olugbenga, 2012; Tajudeen, 2013; Lawson, 2014; Abegunde & Akinluyi, 2017; Fabamesi, 2017; Ifeanyi, Ojukwu & Nnamani, 2019; Ikono 2019; Obiora, 2019) on the subject from Nigerian perspective but the studies are found by this work to be inadequate in terms of the methodology adopted, a framework of analysis and the discussions procedure. This study examined critically the role of the executive immunity clause in the fight against corruption in the Fourth Republic (1999 to 2020). In doing so, the study found it imperative to succinctly examine the subject matter from the global perspective, African context, the peculiar Nigerian environment, the provisions, and how they induced corrupt practices by the executive.

## **2. LITERATURE SURVEY**

This section examined and analysed issues related to the subject of study including political immunity from the global perspective, the nature and dimension of the immunity clause in Nigeria, and executive corruption and immunity in Nigeria. Documented sources were referred to in this section.

### **2.1. Political immunity from the global perspective**

Immunity for politicians from prosecution and civil and criminal proceedings is existing in many world countries in different forms. In some European and American countries, it is not only the executive arm of government that is protected but parliaments too are included. In some countries, the immunity clause stretched to the judiciary, ministers and some top police and army officers (Reddy et al., 2012). The logic of public office protection

constitutionally is to prevent unnecessary litigations and allegations that may divert their attention, time and energy from facing policymaking and fulfilling campaign promises. Additionally, it is seen in many cases as a national embarrassment for a country to have its leader disgraced with criminal charges and other offences while in office (R.J.E, 2016). Either way, many legal and political pundits perceive this effort in shielding political leaders as outrageous and uncalled for.

There are two major systems of immunity globally. Britain, America and others grant mild immunity to executives including the President in the US and Prime Minister in Britain. This is also extended to Members of Parliament who are constitutionally mandated to speak freely in Parliament in the UK and Congress in the US without the fear of possible lawsuits or criminal charges. In some countries, the immunity is even more controversial where the lawmakers are provided with immunity from all kinds of prosecution. It is only the majority votes of the parliament that can lift such an immunity constitutionally. Many critics argue that such a system of immunity enables politicians to act with impunity and it encourages many criminals to run for important political office (R.J.E, 2016).

The global public outcries on political immunity are not unfounded. Some cases in world countries proved that corruption and crimes are protected from political leaders. For instance, in Romania, the parliament refused to lift immunity of an MP accused of taking bribes in 2015. In 2006, an Egyptian MP denied wrongdoing and was protected from facing trial after the country's customs discovered 1, 700 kg of Viagra illegally imported in his company's name. In 1982, a drug baron in Columbia, Pablo Escobar won a House of Representatives election which later earned him immunity. In Ukraine, all calls for the lifting of immunity even by the European Union were rejected which questioned the transparency of democracy itself. In 2014, one-third of India's MPs elected to India's Parliament faced accusations of criminal wrongdoings. In Brazil, around three-fifths of congressmen faced accusations of criminal charges. Many other European countries provide blanket immunity to lawmakers from prosecution. In Africa, many countries provide unconditional immunity to executive and legislative arms of government (R.J.E, 2016). Most or almost all of these immunities are offered to political office holders to the displeasure of the citizens of their country.

However, some countries made a giant effort in averting public suspicion of the motive for immunity by removing it. In Turkey, in 2016, more than 100 parliamentarians were stripped of their immunity by President Recep Tayyip Erdogan. Many people in the world applauded the efforts while others perceived it as an attempt to make Turkey's President authoritarian (R.J.E, 2016). In general, immunity is not as bad as one expects if the leaders can be conscious of moral and ethical issues but the question is, can democratically elected leaders with a personal motive be devoid of selfish desires that may lead to corrupt practices and crimes in office? It is sometimes argued that the leaders should be open to transparency and scrutiny of law. This will deter them from many acts that will compromise their integrity which may erode public confidence in them.

## **2.2. Nature and dimension of immunity clause in Nigeria**

In Africa, many constitutions provide for presidential immunity which is believed to have made the executive arm of government arrogant with excessive powers. Many presidents in Africa escaped justice for their crimes and corruption allegations due to the impunity of immunity that they have enjoyed. Various sections of the African constitutions enshrined in their different kinds of immunities ranging from Lesotho's Section 50(1), Section 11 of the Swaziland Constitution, Section 41(a) of the Botswanan Constitution, Article 127(1) of the Angolan Constitution, Article 43(1) (b) of Equatorial Guinea, Article 143(4) of the Kenyan Constitution, Section 43(3) of the Zambian Constitution, Article 57(6) of the Constitution of Ghana, Article 115 of the Burundian Constitution and Section 308(1)(a) of the Nigerian 1999 Constitution. Few constitutions in Africa like that of Tanzania allow for the filing of civil proceedings against the executive president while in power. The focus of this study is Nigeria which is the case study here.

The Nigerian 1999 Constitution was prepared and enveloped under the watch and guidance of the military in 1999 when the country finally decided to return to civilian rule. Many experts argue that some sections of the Constitution were hurriedly and carelessly included without a deep thought of what may transpire in future. One of the areas of contention since 1999 is the executive immunity clause. In Nigeria, unlike many American, European, Asian and even African countries, only the executives at the Federal and state levels are protected with constitutional immunity (Olugbenga, 2012). The parliament and other top government functionaries were not included in the clause even though, recently, there were efforts by the National Assembly to adopt the same for the Senate President and the Speaker of the House of Representatives. Section 306 became a notorious clause that draws controversy and debates from many angles. The Section made some provisions that are vital to be presented here. The Section prevents any civil or criminal proceedings against the President, Vice President, Governor, and State Governor as indicated below.

*Notwithstanding anything to the contrary in this constitution, but subject to sub-section 2 of this section:*

- a) No civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;*
- b) 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*
- 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.*

*The provision 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 an 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".*

The above Section of the 1999 Nigerian Constitution is interpreted as total protection of the executive arm of government at the Federal and state level. Nobody knows why the Chairman and Deputy Chairman of local governments were not included in the clause. Perhaps, it may be due to the other sections of the Constitution that allow for the joint accounts and other complications that successfully submerged local governments under the control of the states' whims and caprices. By implication, any person that commits a crime or is undergoing a civil proceeding will have his case immediately dropped once he became a President, Deputy President, Governor, and Deputy Governor in Nigeria. Many politicians utilised this process to escape justice comfortably.

Several studies perceived this Section as an albatross on the neck of democracy, fight against corruption and accountability in the country. For instance, Ikono (2019) saw the immunity clause in Nigeria as an edifice of corruption. Olugbenga (2012) emphasises that the immunity clause will deter democratic consolidation in the country. Obiora (2019) stresses that the immunity clause is a clog on the wheel of the fight against corruption in the country. Abegunde et al. (2017) saw the clause as a factor that leads to the invulnerability of the executive and its challenge against democratic sustainability. Tajudeen (2013) believed that the immunity clause is been abused by the executive in Nigeria leading to intensive debates on whether it should continue to exist or not. Fabamise (2017) submitted that the immunity clause is a strong blockade against the corruption fight. Lawson (2014) postulates that the immunity clause in Nigeria has a strong correlation with executive performance in office. Indeed, Lawson (2014) is suggesting that its removal will lead to more accountability and transparency while allowing the clause to continue may escalate corruption with impunity. This study decided to go to the field and get more views from actors and stakeholders in the field to complement these bodies of literature.

However, it should be noted that the Immunity Clause does not prevent the impeachment of the executive office holders in Nigeria. Several offences including bribery, gross misconduct, abuse of office, corruption, incapacitation due to health and mental issues, and other related offences can make an executive to be impeached by the lawmakers if it is established beyond any reasonable doubt. For instance, Section 143 of the Nigerian 1999 Constitution provides for the impeachment of the President and Vice President on the allegations of the above-mentioned offences if they are found to be true after investigation. In the same way, Section 188 of the Nigerian 1999 Constitution provides for the impeachment of a State Governor and Deputy Governor on the same above allegations of offences after an investigation by the state houses of assemblies. However, Fagbadebo (2020), observed that most of the executives escaped impeachment and arrest because of corruption and incumbent factors. They utilised all advantages of holding the office to block the process of investigation and bribe the judges to throw away the cases. That is how they managed to hide under the Immunity Clause to escape.

### 2.3. Executive corruption and immunity

According to Transparency International, the immunity clause has become a license for breaking the law in many countries including Nigeria. An example of how Mr Alamiyeseigha, former Bayelsa State Governor impeached on criminal charges but later released by his godson President Jonathan was cited. Several Presidents and Governors were suspected of civil or criminal charges in Nigeria but their incumbency and Section 308 blocked all investigations. They later escaped conveniently even after they departed from offices (Transparency International, 2013). There are views that the removal of the immunity clause may not stop political corruption by the executive. They believed that more emphasis should have been given to checking impunity which is the biggest problem instead of corruption itself (Emetulu, 2013; Integrity, 2013; Okeke & Okeke, 2015).

On the other hand, there are divergent views which believed that the existence of the immunity clause is a great challenge on the path of the fight against corruption. Ayanruoh in the Sahara Reporter's opinion column in 2009 opined that the immunity clause is bad for Nigeria because it will hinder the fight against corruption and it will shield criminals and immoral leaders in office. Albert (2016) suggested that immunity clauses are facilitators of executive corruption in Nigeria since it is well known that all crimes in the office cannot be investigated. The Vanguard Newspaper in its viewpoint column on October 24<sup>th</sup> 2017 analysed that the Nigerian thieving elites are well-protected from facing charges of their wrongdoings by the outrageous immunity clause. The opinion concluded that executive corruption is supported and protected constitutionally. Therefore, Section 306 must be removed if the government is serious about the fight against corruption. Babatunde (2017) identified the immunity clause as the highest parable of injustice in Nigeria. How could a criminal be protected and trusted with peoples' mandate? Olasunkanmi and Agulanna (2018) conclude that while the intention of including the clause in the Constitution is good, politicians have used the provision of the clause to the detriment of democracy and this has a direct bearing on the performance of democratic rule in Nigeria since 1999. Many lawyers in Nigeria pronounced that the immunity clause is hindering the war against corruption in Nigeria (Azu, 2020). This view is strong if one considers how the executives in Nigeria are always blamed for corrupt practices accompanied by weighty allegations backed by huge facts but any attempt at investigating them is blocked. Falana (2020) opined that the immunity clause is supporting official corruption and is helping corruption to flourish. In another place, Falana (2020) still emphasises that several executive and official corruption were prevented from being investigated by the outrageous immunity clause. He cited examples of many Governors in Ekiti, Plateau and many states in the country. Bamgboye (2020) believed that until President Buhari remove the immunity clause from the Constitution, his fight against corruption will remain a hoax. Ubimago (2020) suggested that until the immunity clause is removed, Nigeria will never succeed in the fight against corruption.

Thus, it can be deduced from the above views that the clause itself is not perceived as evil by many Nigerians. The intention is believed to have been good. It is the action of politicians in office and how they utilised the clause in achieving their selfish aim that is drawing lots of arguments and disapproval from the public. Some of the

consulted informants in this study revealed that nearly one hundred (100) state governors since 1999 in Nigeria are facing corruption allegation charges and other crimes because, during their office days, they were protected, by the time they leave the office, they have anointed their successors who will cover their track records, secure another elective office like Senate or wield enough influence and connection in terms of money and logistics to engage the services of the best lawyers in the country to continue to evade justice in prolonged litigation.

### 3. THEORETICAL FRAMEWORK: ELITE MODEL

This theory came into being in the Nineteen Thirties by Italian Sociologists Vilfredo Pareto, Gaetano Mosca and Political Scientists Roberto Michels and Jose Ortega. The predominant assumptions of this idea are; that in every society, there are two major divisions of classes, the elite and the masses. This division is asymmetrical and uncoordinated due to the fact one of the lessons is the leader with the other, the led. There is a range of tries at explaining Elite propositions significantly by scholars (Varma, 2005; Mahajan, 2011; Johari, 2012; Johari, 2013; Asirvatham & Misra, 2011; Gauba, 2012).

One of the primary tenets of Elite Theory is; that the minority few who belong to the ruling class are influential in decision-making, politically developed and economically better off. They possessed natural skills and are genius for management owing to the top-notch power they are endowed with and management qualities which put them in a natural role and benefit from domination and control of the state comfortably. They manipulate their way into electricity and sustained it due to the fact they possessed abilities and knowledge for leadership. The Theory poses that; the Elite can employ doubtful capability and the dirty sport of politics in the power manipulate and also in the management of the financial system (Varma, 2005; Mahajan, 2011; Johari, 2012).

Roberto Michels developed a thesis on the "Iron Law of Oligarchy". This means that the Elite must use brutal force and coercion if the need arises to subject the masses under their political and economic control for the simple reason that, the Elite knows what the society needs more than ordinary members of the society and therefore, they must be forced into submission for them to enjoy what is best for them, and to which the elite knows well better than the masses themselves (Johari, 2013).

The Theorists advanced that the Elite, though; genius and great in leadership qualities, now and then must be engaged in illegal activities, authoritarianism, manipulation of the economy and political procedure to preserve themselves into electricity and all, which is for the typical benefit of the society. Their moral judgment of right and wrong can be questionable but, their leadership abilities and characteristics are unquestionable and they are located in a nice role to have easy access to strength and economy than the non-elite or masses (Eddy and Asirvatham, 2011).

In applying this theory within the context of this study, it is pertinent to observe that, this Theory is Eurocentric and pro-capitalist agenda of imposing stooges worldwide who will continue to dominate the politics and the economy of the world for the promotion of neo-liberal agenda internationally. In Nigeria today, there is a cartel of the elite which conglomerated into a ruling class involving four major categories; politicians, traditional rulers, domestic bourgeoisie and technocrats who operate bureaucratic affairs of the state. This conglomeration creates elite conspiracy where they cycle power and control the economy since political independence in 1960 to date exclusively among them interchangeably.

The elite in Nigeria has grown to become itself into a classification of perpetual power mongers who are determined to go past any sensible doubt to any extent to the detriment of the ruled and the nation to preserve power for accumulation of wealth and have an impact on in the society continuously. Looking at the problems and targets of this lookup as well as the hypothesis, one can see a direct link between the behaviours of the elite in Nigeria and the causes of corruption supported formally with the aid of the immunity clause.

Ogundiya (2012: 43), coined what he termed "Elite Conspiracy in Nigeria". Ogundiya portrays the Nigerian elite as exhibiting certain characteristics that are inimical to the social, economic and political development of the Nigerian state. Indeed, the backwardness, crass underdevelopment and attendant consequences, legitimacy

disaster and gross social and political instability are the products of the nature and character of the elite. Nigerian political or governing elites each in the early and post-independence durations are ravenous, rapacious, predatory, materialistic, parochial, sentimental, unpatriotic and non-nationalistic and above all, devoid of the ethical fibres to champion the direction of the Nigerian state (Ogundiya, 2012: 43). This psycho-political appreciation of the Nigerian state through the elite makes stealing a permissible act when you consider that Nigeria in the psyche of the elite does no longer exist or if it does, belongs to none. To loot the treasury or squander the commonwealth is never perceived as an act of illegality. Therefore, elites in Nigeria are nothing but sellers of social destruction, monetary saboteurs and political vandals. Not minding their regional and ethnic affiliations, Nigerian elites are one and the same. What binds them collectively is pilfering commercial enterprise and what usually separates them is pilfering business and ambitions. They share a common ideology of greed, avarice and looting. Thus, kingdom assets are awkwardly distributed and insurance policies are designed to enhance their access to the kingdom's wealth. In other words, the Nigerian elite is conspirators, continually conniving to loot the treasury and always equipped to protect themselves (Ogundiya, 2012: 44). Therefore, the find out about by means of Ogundiya (2012) summarised that political corruption has undermined Nigeria's improvement venture from the prism of the concept of conspiracy.

The greatest weakness of this theory is its ethnocentric and capitalist value-oriented stand trying to influence the audience to surrender to the elite's manipulation. Psychological theories have since proved wrong the stereotyping of natural leaders and followers. Most of the time, those from low-performing backgrounds may after a long period of training and commitment become leaders. Thus, leadership is not a natural trait isolated specifically for one category of class in the society rather than the capitalist methodology of domination and manipulation of the masses to persuade them to surrender for political and economic control.

#### **4. METHODOLOGY**

The study is a case study approach which used the research design of a qualitative method of data collection and analysis. It is a case study owing to the nature of the topic and the area covered in the research. Immunity is provided in various world constitutions at different levels and in different forms but this study decided to limit its analysis to the Nigerian context only regarding corruption scandals of the executive covered by immunity. There are other issues too of office abuse such as crimes and nepotism and other personal acts that contravene the ethics of their office. The study adopted a case study because it is argued that taking a single case study in political research and social sciences will provide values for a clear focus and comparison (George & Bennett, 2005). The results of a case study have the potential for providing practical implications for policy making (Gerring, 2007) and it helps in answering the what, why and how of research (Yin, 2018).

The data from this study were collected from two major sources: primary and secondary sources. The primary source is an in-depth personal interview with some selected stakeholders who are believed to have possessed classified and relevant information on the subject of inquiry. Four categories of informants were identified and interviewed. The first category is the Economic and Financial Crimes Commission (EFCC) senior officials in Abuja. The EFCC is the anti-graft agency in Nigeria which is handling corruption allegation scandals against many former and serving executive political office holders in the country. The second category is the academicians in which prominent professors of Political Science, Law and Sociology were interviewed. The third category is the civil societies where some were randomly identified and interviewed. The last category is politicians who are identified based on accessibility and affordability. In category A, three (3) officials were interviewed, three (3) academics were interviewed, four members of civil societies and four politicians. The interviews were conducted in Abuja in January/February of 2019. The criteria used for the selection of the informants were three. The first is the relativity of the informant to the subject matter and his possession of required information. The second is the accessibility to the informants and the last criteria is the use of a minimum yardstick for a qualitative interview as suggested by Sharan (2009) of at least five (5) informants and Creswell (2014) of four (4) and a maximum of thirty (30) for

reaching a saturation point. The secondary sources consist of documented materials and media sources such as books, journal articles, reports, newspapers and internet sources.

Table 1: Category of informants and frequencies

S/No.	Informants' Category	Frequency
1.	Category A: EFCC officials	3
2.	Category B: Academicians	3
3.	Category C: Civil Societies	4
4.	Category D: Politicians	4
5.	<b>Total</b>	<b>14</b>

Source: Field survey 2019

The data obtained from the field were transcribed and grouped into different themes for discussion and interpretation. Content analysis was used to subject the data to the rigours of academic analysis. Where applicable, tables and charts were used for further elaboration.

## 5. DISCUSSIONS AND FINDINGS

The data collected were presented and analysed using content analysis where three major themes were identified based on the diverse views and submissions of informants in line also with the existing knowledge in the field. Tables and charts were used in some places to elaborate further on the extent of the findings.

### 5.1. How executive immunity promotes corruption in Nigeria

Since the return to civilian rule in Nigeria in 1999, shocking revelations emerged of corruption scandals involving many political office holders. The EFCC was established to handle financial crimes such as looting, advance fee fraud, money laundering, misappropriation of public funds and other related issues. From 1999 to 2007 alone, an investigation disclosed that about forty-four (44) state governors were investigated by EFCC on different corruption allegations scandals some looting of the public treasury, diversion of contracts and personal enrichment, misappropriation, money laundering and abuse of office. The investigation further reported that only eight (8) governors within the said period recorded a clean health bill of a corruption scandal. From 2007 to 2018, another crop or set of governors investigated on corruption allegations by EFCC reached over thirty in number (Chioma, 2018). All the above state governors were comfortably protected by immunity despite their atrocities in office. The ex-Presidents too are not all that clean. President Obasanjo was accused of corruption scandals severally to the extent that an impeachment notice was served to him in 2003. Similarly, President Jonathan was accused of numerous corruption scandals and abuse of office leading to an impeachment attempt in 2014. All these scandals and allegations were not peanuts or an ordinary phenomena. Billions of Naira and millions of dollars or even billions of dollars were involved. In some instances, governors were accused of looting money worth hundreds of billions from their states amidst poverty, insecurity, unemployment and declining infrastructures and services (Falana, 2020). The immunity clause is seen as an official backup to corruption and corrupt practices in Nigerian law (Falana, 2020).

Most of the informants consulted shared the above views too. Their various views were summarised in the table 2 below. However, it is pertinent to share some of the submissions of informants at this point. In an interview, one of the informants narrated that:

*"The major obstacles in our way towards addressing corruption issues in this country is that grotesque and controversial selfish Section 308 of the Constitution. We sometimes came across convincing and compelling facts that will hook many governors but we are always restricted and deterred from moving into action once we are reminded of that Section. We seem to be helpless in this regard. My sincere suggestion is it should be removed totally"* (An in-depth interview with an informant in category A on 7<sup>th</sup> January 2019 in Abuja).



In another view, an informant disclosed that:

*“Immunity clause is not an evil. It is obtainable in developed democracies too. The effective mechanisms of legal enforcement and ethical conduct differentiate the whole matter. In Nigeria, it is being used and abused by politicians for their personal goal. Failure to build a strong democratic institution deprives us of the means to hold our leaders accountable. Even if it is removed, still the elites will find a way of manipulating the process to escape justice. In this regard, my suggestion is, let the National Assembly open up and sample people’s opinion on whether the clause should be eschewed totally, make some amendment or leave it as it is”* (An in-depth interview with an informant in category B on 16<sup>th</sup> January 2019 in Abuja).

In a different view, an informant revealed the following:

*“It is not only the immunity clause that should be removed, all other ambiguous processes and clauses in the Constitution should equally be totally expunged to subject our leaders to public scrutiny. It is evident that the Nigerian ruling class are busy abusing Section 308 to amass wealth and to avoid arrest”* (An in-depth interview with an informant in category C on 2<sup>nd</sup> February 2019 in Abuja).

In a different view, an informant suggested the following:

*“Removal of immunity clause will collapse the Nigerian democracy. Many detractors of a sitting president or state governor may deliberately divert his attention with spurious and unfounded allegations. In this way, he may end up not achieving anything and this may spell doom for his re-election or future political career. If we pay attention to this, we may not achieve anything, my suggestion, let the EFCC, academicians, anti-corruption watchdogs, civil societies and international agencies monitor closely the financial activities of executives with immunity and hold them accountable”* (An in-depth interview with an informant in category D on 11<sup>th</sup> February 2019 in Abuja).

Apart from the above different views, the study summarised the opinion of the informants on whether the immunity clause in Nigeria leads to corruption or not as presented below.

**Table 2: Summary of Informants on the Role of Immunity Clause in Fostering Corruption**

S/No.	Responses	Frequency
1.	Strongly Agree	8 (57.14%)
2.	Agree	2 (14.29%)
3.	Strongly Disagree	1 (7.14%)
4.	Disagree	3 (21.43%)
5.	No View	0 (0.00%)
6.	Total	14 (100%)

Source: Field Survey 2019.

The above table indicates that over 70% of the informants agree either strongly or partially that the immunity clause is leading to executive corruption. Other contradictory views of less than 30% disagree with that. In this case, it can be inferred that most Nigerians going by this sample are not happy with the clause and will prefer it if it is removed. It is not only Nigerians that hold this view. Fombad et al. (2012) and R.J.E. (2016) reported that many African and world countries are protecting criminals in a way that their citizens are not happy with it in the name of immunity.

Furthermore, a discovery by some studies revealed the role of the immunity clause in shielding corrupt practices perpetrated by the executives in Nigeria. For instance, a study (Chioma, 2018) reported how the executive office holders abused public funds for the personal campaigns during the election without facing any sanction by the electoral body because of their status of holding an executive office. Another study (Fagbadebo, 2020), revealed

how the immunity clause in Nigeria blocked the impeachment of the executives in Nigeria. For instance, former Plateau State Governor, Joshua Dariye was jailed for 14 years over N2 billion fraud only after leaving the office of the Governor for over ten (10) years. The former Governor of Edo State, Lucky Igbinedion, stole N2.9 billion and even when he left office, the court ordered his arrest but nothing was done so far on the matter. In the same vein, another former State Governor, Jolly Nyame of Taraba State was accused of stealing for over N2 billion but justice against him was delayed from 2007 because of the Immunity Clause until 2018 when he was sentenced to prison (Fagbadebo, 2020).

A former Governor of Gombe State, Alhaji Muhammadu Danjuma Goje, too was ordered for an arrest warrant by the court for alleged stealing of N25 billion. To date, since he left office in 2011, he is still roaming freely as a serving Senator. The protection he enjoyed as an executive in the country continued to influence his further protection. In the same way, Orji Uzor Kalu, was accused of stealing around N70 billion but he escaped arrest because of the Immunity Clause and he is still enjoying protection even after leaving the office for over ten (10) years. Another Governor that was ordered by the court for arrest due to fraud is Alhaji Saminu Turaki of Jigawa State who was accused of stealing N36 billion but to date, he is a free person without any action even when he finished serving his tenure in 2007. The Governor of Delta James Ibori could not face punishment while serving his tenure as a Governor despite being accused of diverting over N100 State funds. After his tenure in 2007, all efforts to arrest him were blocked by the Government until he was arrested and imprisoned in the United Kingdom in 2009 for money laundering. Even after his term in jail, he returned to Nigeria and escaped any sanction to date (Fagbadebo, 2020). Such cases were uncountable involving several Governors. In essence, Chioma (2018) mentioned that ex-Governors became frequent visitors of EFCC after their terms of office even if they usually escaped arrest or punishment.

Additionally, the Elite Theory adopted and applied in this research is relevant here. The Elite Model espoused how the ruling elites used to manipulate their way into power, perpetuate themselves in power and protect themselves from any form of punishment for the crimes that they committed while in public office. In this regard, the Theory is perfectly an exemplary and explanatory viewpoint of the phenomenon of the immunity clause in Nigeria.

## 5.2. Should the immunity clause be retained?

There are divergent views and perceptions from the informants on the argument of whether the immunity clause enshrined in the Nigerian 1999 Constitution in Section 308 should continue or it should cease to exist. For instance, one of the informants submits that:

*"If immunity clause continues, corruption will flourish undeterred"* (An in-depth interview with an informant in category A on 13<sup>th</sup> February 2019 in Abuja).

In another view, an informant postulates that:

*"While immunity clause for political office holders is obtainable in many countries, in Nigeria, it should not have existed in the first place. The framers of the Constitution did a disservice to the citizens by including this clause. Environment and attitude matter and Nigerian political culture indicate that the elites can manipulate any law to serve their selfish interest. The clause is simply not required"* (An in-depth interview with an informant in category B on 26<sup>th</sup> January 2019 in Abuja).

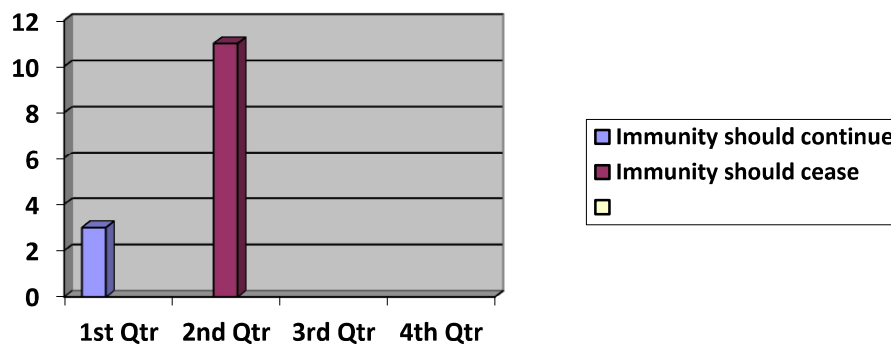
Furthermore, another informant suggests that:

*"The clause should not only be removed but all ambivalent provisions too in the Constitution should be expunged before it escalates into lawlessness. Currently, the National Assembly too is seeking for immunity for the Senate President and Speaker of the House which is uncalled for"* (An in-depth interview with an informant in category C on 20<sup>th</sup> February 2019 in Abuja).

However, in another different view, an informant opined that:

*“I will rather prefer that this clause remains as it is. It should be understood that the aim is not to protect crime and corruption. Chief executive officers in the country deserve respect and a frame of mind that will keep them in a condition which will guarantee and support their actions”* (An in-depth interview with an informant in category D on 6<sup>th</sup> February 2019 in Abuja).

Thus, a summary of the views of informants ranging from those who support and those who oppose the removal of the clause presents the following data:

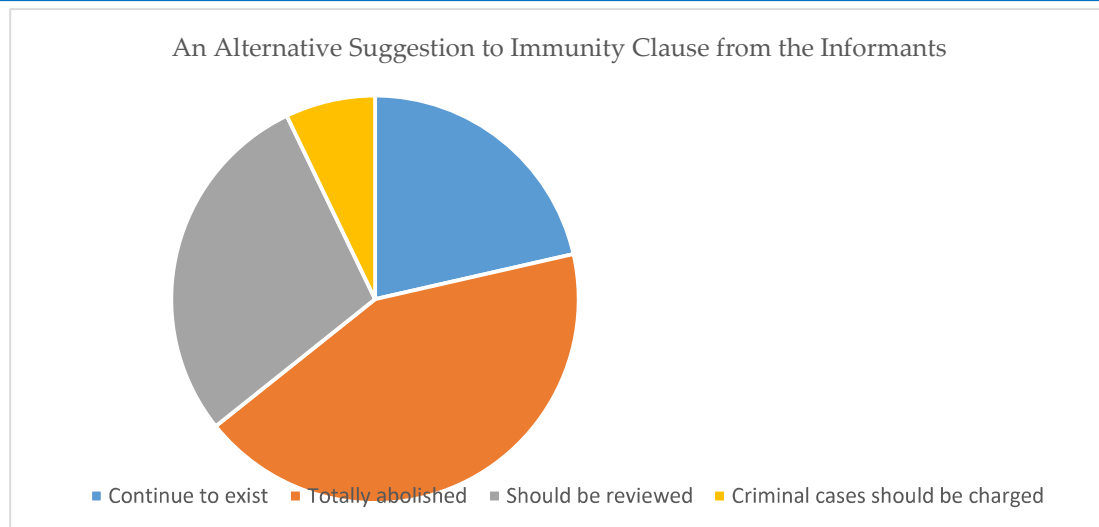


**Figure 1:** Summary of Informants’ Views on the Continuous Existence of Immunity Clause in the Nigerian Constitution  
 Source: Field Survey 2020.

The existing literature (Ayanruoh, 2009; Fombad et al. 2012; Olugbenga, 2012; Tajudeen, 2013; Obiora, 2017; Ikono, 2019; Falana, 2020 and Falana, 2020) all postulate the abolishing of immunity because they perceived it as corruption protection. In addition, the Elite Theory used in this work can further explain the finding from the above statistics. Surprisingly, most of the informants or almost all of them from EFCC, academicians and civil societies strongly advocated for the withdrawal of the immunity clause from the Constitution but politicians juxtapossibly argued otherwise. This is perhaps, because of the benefits that they enjoyed from the proceeds of protected corruption. The elite can always come with processes and manipulative tendencies to control power and avoid being subjected to the law when they are found wanting. Even the Cybercrime Act could not prevent the executives from their corrupt practices in as much as the immunity clause is in existence (Falana, 2020).

### 5.3. An alternative

The informants were asked about the alternative that they think can be adopted if the immunity clause is helping corruption. Based on their suggestions, the following was presented.



**Figure 2:** Informants' Suggestions on Alternative to Immunity Clause  
Source: Field Work 2019

From the informants' suggestion above, some are of the view that the clause should be abolished, others suggested a review that may retain the clause but enable holding leaders accountable. For instance, in some countries, the parliaments may be required to clear and remove the immunity for a political leader to face criminal and civil proceedings when it is necessary. This may be adopted. Others are of the view that the clause should be retained and maintained for the protection of political leaders only from civil proceedings. Where a criminal proceeding is involved, it should not protect them.

## 6. CONCLUSION

This study concludes that the immunity clause is misperceived by many Nigerians thinking that only in Nigeria that such a clause exists. However, it is existing in many democracies even the advanced ones in various forms. The study further established that the immunity clause in Nigerian Constitution is aiding corruption and preventing criminals in political offices. Many compelling cases with sound and substantiated evidence are buried deliberately because the culprits are holding executive political power. The study further concludes that the removal of the immunity clause may help in holding Nigerian political leaders accountable and transparent because the majority opinion of the consulted informants and previous literature on the subject matter pointed towards that. Additionally, the study concludes that the removal of the immunity clause in the Nigerian Constitution may not lead to a total decline in corrupt practices and crimes in office because the elites will continue to find several alternatives to evade justice. Finally, the study concludes that there are alternative frameworks that the Constitution can adopt to appease the protesting groups against the current clause in the Constitution. This may be in form of review to enable immunity on civil proceedings while criminal proceedings should be investigated and sanctioned or a room should be provided for the parliament to lift the immunity from a political office holder if the crime is huge to warrant an investigation.

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