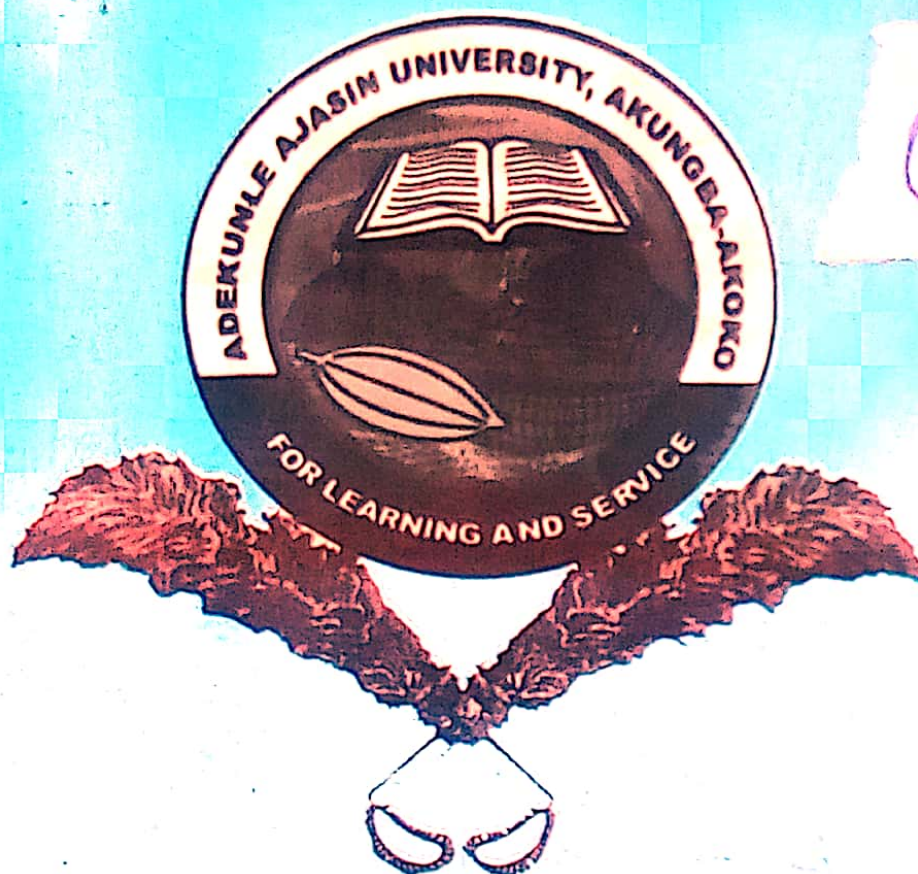


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ADEKUNLE AJASIN UNIVERSITY,
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An Overview of the Concept of Legislative Assembly's Immunity in Nigeria*

Introduction

In virtually all established and emerging democratic nations in the world today there is some sort of immunity from prosecution for members of the Legislature Congress, Bundestag or Parliament, often these rights are addressed in a country's constitution or statute. The legitimate purpose of this immunity is to allow legislators to freely express themselves and adopt policy positions without fear of politically motivated retribution or molestation. However, it is not an overstatement that the protection from criminal and/or civil prosecution may allow some legislators/parliamentarians to engage in corrupt or illicit behaviour with impunity which may in any event encourage abuses, this of course may serve to erode the confidence of the public in the legislature as a democratic institution of government.

It is well known that members of Legislative Assembly engage in many activities other than purely law-making in modern time. The legislative constitutional business is now enormous and complex, thus, in view of the complexity of legislative process with the Assembly almost constantly in session, that members of the Legislative Assembly enjoy some level of immunity and freedom to perform their duty effectively. Thus, in this paper, we shall attempt to examine Legislative immunity in practice in Nigeria with reference to other jurisdictions in the world, especially the lack of standards of ethical behaviour by legislators and clear parameters for prosecution of elected officials that are greater indicator of the abuse of immunity, than the legal scope of the immunity. The meaning, historical, types of the parliamentary immunities, the waiver of the immunity,

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possible shortcomings and institutional approaches to limiting immunity abuse, especially as it relates to corruption are discussed in this paper.

Meaning of Legislative Assembly Immunity

Legislative or Parliamentary immunity describes a system in which members of legislature are granted partial immunity from prosecution from civil and/or criminal offences¹. It is instructive to note that immunity and privilege are sometimes used interchangeably to describe the protection afforded the Legislature in the performance of legislative function. The term 'privilege' refers not to any special benefits or entitlements enjoyed by Members of Parliament but to the immunity from ordinary law that, together with the potential exercise of parliamentary powers, enables the Houses of Parliament to carry out their primary functions of legislating, debate and inquiry more effectively and independently². B. A. Garner³ defines privilege as: A special legal right, exemption, or immunity granted to a person or class of persons, an exception to a duty. A privilege granted someone, the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability. Parliamentary privilege is the privilege protecting:

- 1) any statement made in legislature by one of its members and
- 2) any paper published as part of legislative business⁴.

The immunity of a legislature from civil liability arising from the performance of legislative duty it is either of two special immunities given to members of congress that is:

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1. Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union," European Centre for Parliamentary Research and Documentation, 2001, p. 6.
 2. The Concise Oxford Dictionary of Politics (Oxford University Press, 2003) p. 112.
 3. B.A. Garner, Black's Law Dictionary (Thomson West, 2004). pp. 1234-35.
 4. B.A. Garner, *ibid.*

- 1) The exemption from arrest while attending a session of the body to which the member belongs excluding any arrest for treason, breach of peace or a felony or
- 2) The exemption from arrest or question for any speech in debate entered into during a legislative session⁵.

Legislative immunity is necessary in any democratic governance especially in Nigeria with its experienced political crisis, election manipulations and one party's attempting dominance on the other political parties, the purpose is to reduce the possibility of putting pressure on legislators to change their official behaviour (for example voting, expressing their mind, criticising policy orientation and exposure of government corruption) by using the threat of prosecution⁶.

In Nigeria the Legislative Assembly or Parliamentary immunity traditionally takes one or two basic forms, each with merits and demerits as applicable in the world over. Some countries, like the United States, adopt a narrow scope of immunity, restricting protection to actions and statements that the legislator undertakes directly in his or her capacity as a politically elected representative and lawmaker⁷. If the legislator engages in illegal activity outside his or her legitimate role as a representative, he or she is subject to investigation, prosecution, trial and punishment like any other citizen⁸. Similarly, the British model provides legislators with

5. *ibid*, pp. 765-66. See also *United State of American's Constitution, Article 1 section 6*.

6. The experience was not palatable for Nigerians and political class in 2006-2007 before election. The period was characterized with a lot of scheming and manipulation by government in power to deny some perceived political enemies from contesting various political positions. This was achieved through threat of criminal prosecution using Ribadu led EFCC. Atiku Abubakar, (former Vice President, Umar Ghali Naaba (former Speaker House of representatives) were examples of the victims of threat of criminal prosecution.

7. S. Magee, *Rules on Parliamentary Immunity in European Parliament and Member States of the European Union* (Bussels: European Parliament, ECPRD, 2001) p. 12.

8. Salisu Buhari former Speaker of the House of Representative between 1999-2000 was prosecuted and convicted for using fake Toronto result for election into the House of Representatives.

protection from civil actions (e.g. charges of slander and libel) that transpire in the execution of their duties. The Continental Model (based on the French system) provides deputies with a broad scope of immunity, including protection from both civil and criminal prosecution, within and outside of their roles as parliamentarians. The majority of developing democracies have embraced a broad scope of immunity, presumably to protect against the authoritarian abuses of the past. Under their respective constitutions, Ukraine and Guatemala legislators enjoy broad immunity, while members of the Armenian parliament are protected by narrow immunity, related directly to their "status" as deputies⁹.

Historical Development of Legislative Immunity

The origins of parliamentary immunity dated back to a session of the English Parliament in 1397, when the House of Commons passed a bill denouncing the scandalous financial behaviour of King Richard II of England. Thomas Haxey, the member who was behind this direct act against the King and his court, was put on trial and sentenced to death for treason¹⁰. Following pressure applied by the Commons, however, the sentence was not carried out, and Haxey received a royal pardon¹¹. This event prompted the House of Commons to review the right of members of parliament to discuss and debate in complete autonomy and freedom, without interference from the Crown. Freedom of speech, introduced into the House of Commons at the beginning of the sixteenth century was confirmed in the 1689 Bill of Rights, which expressly protected discussions

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9. Parliamentary Immunity Brief: A Summary of Case Studies of Armenia, Ukraine and Guatemala; publication of United States Agency for International Development (USAID) (2006), http://www.ipu.org,http:charter88.org.uk/link_cons.html, assessed on 18th, June 2009.
 10. L.R. Yankwich, *The immunity of Congressional Speech: Its Origin, Meaning and Scope* (G. M. Trevelyan, 1951) pages 960-962 see also P. S. Wattson, *Legislative Immunity in Minnesota* (2008), malto.peter.wattson@senate.leg.state.mm.us, assessed on 19/06/2009.
 11. R.M. Henanaere, *The Immunities of Members of Parliament* (Geneva: Inter-Parliamentary Union, 1998); S Magee, *op. cit.* (n 7 above) pp. 12-14.

and acts of Members of Parliament from any form of interference or objection from outside Parliament¹².

After the 1789 French Revolution, the need was established to guarantee the non-liability of elected representatives for opinions expressed by them in the performance of their duties. Such non-liability was enshrined in law by the Decree of 23 June 1789, approved on a proposal from Mirabeau. This was followed by the proclamation, in a Decree dated 26 June 1790, of the privilege whereby Members of the Assembly might not be indicted without the Assembly's authorisation. The relatively wider scope of parliamentary privileges in France, parts of which were taken from the English model, is closely connected with the position of superiority over the other bodies of the State, which the National Assembly and its Members acquired within the context of the Revolution¹³. Since then, parliamentary immunity has been enshrined in the other countries of continental Europe while the French model, with its dual aspects of non-liability/inviolability, has exerted a predominant influence¹⁴.

Nigeria being a former colony of Great Britain, one of the numerous laws inherited is the Legislative Houses (Powers and Privileges) Act¹⁵. It is an Act, which declares and defines certain powers, privileges and immunities of the Legislative House established under the Constitution of the Federal Republic of Nigeria and of the Members of such Legislative Houses. It also regulates the conduct of members and other persons in connection with the proceeding thereof and gives protection to the publishers of the reports and other papers of Legislative Houses, and for purposes incidental to or connected with the matters aforesaid¹⁶.

12. Wattson, *op. cit.* (n 10 above) p. 963.

13. Henanaere, *Ibid*, (n 11) p.125. See also (n 5).

14. John Locke, *The Second Treatise of Government*, ed. D. Wootton, John Locke: *The Political Writings* (Indianapolis: Hackett Publishing, 2003).

15. A.A. Idowu, 'Legislative Immunities: The Nigerian Experience Under the Presidential System', *Journal of Contemporary Legal Problem (Justice)* vol. 2 No 6, June 1991, and Legislative Houses (Power and Privileges) Act Laws of the Federation 1958 now L12, cap 2004.

16. *Ibid*.

Reasons for Parliamentary Immunity

The reasons for the concept of privilege and immunity for Legislative Assembly is as meticulously summarized by the Supreme Court of the United States of America in the case of *Tenny v Brandhove*¹⁷ thus;

In order to enable and encourage a representative of the public to discharge his public trust with fairness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offence.

Thus, among the reasons why legislative immunity is significant in any democratic society include the following:

- Immunity allows the legislature carry out its supervisory role and oversight functions.
- Parliamentary immunity helps to ensure free flow and unhindered speech and debate in legislative functions, so that the electorate are well informed about proposals and their merits, which will affect them when passed into law.
- Parliamentary immunity affords legislators the opportunity to scrutinize, criticize, or vote against the wishes of the executive, or that, which may undermine accountability in governance or against the interest of the people they are representing¹⁸.
- It gives the citizen confidence to appear before the House of Committee of the House either as a witness or to make their contribution to legislative Bills, proposals or matters of national interest without fear of intimidation, arrest or prosecution.

The above reasons point to the fact that for a virile democracy to thrive in Nigeria (and any democratic nation in the world) it is

17. 341 U. S at 373 (1951).

18. R.J. Robertson, *The Effect of Consent Decrees on Local Legislative Immunity*, (University of Chicago Law Review 56, no. 3 1989): 1129-31.

necessary for the legislature to enjoy certain immunity that would provide an enabling platform conducive for performing their constitutional duty of legislating for the peace and good governance of a nation.

Types and scope of Legislative Immunity

At this point it is instructive to discuss the protections available to members of Legislative Assembly through the concept of legislative non-liability and in-violability. Nigeria and most democratic system of government provide for this dual protections for the members of Legislative Assembly or parliament that is; non-liability or non-accountability for votes cast and opinions expressed in the performance of their duties and, as well as, inviolability, prohibiting arrest, service of legal process, detention or legal proceedings against the legislators except upon the consent of the authority of the Houses being sought and granted.

For better understanding and putting this discourse in proper perspectives in this paper the terms shall further be referred to as 'non-liability' when referring to the first immunity/privilege, and 'inviolability' when referring to the second.

Immunity Against Non-Liability

The scope of legislative non-liability ordinarily covers protection against all kinds of public penalties for acts committed in the performance of members' duties or, more popularly formulated, deals with members' freedom of speech or vote¹⁹. In general, members of legislative assembly are not liable in civil or criminal terms for the acts encompassed within this form of immunity. In Nigeria the law²⁰ provides that,

19. Section of the Nigerian Constitution guaranteed freedom of speech for its entire citizens including the Legislature. Thus Legislature are immune from speeches or written submission the appears defamatory (either in slander or libel) in the course and scope of their legislative function.

20. Section 3 of Legislative Houses Power and Privileges Act Cap L12 Laws of the Federal Republic of Nigeria, 2004.

dispute. Statements of doubtful truth are challenged by opposing witnesses and by members. Eventually, the members must take a decision on what they consider and believe to be the fact of the matters as well as appropriate policy. This is part of legislative duty and it enjoys legislative immunity as evidently buttressed by W. Wilson²⁵ thus:

The informing function of Congress should be preferred even to its legislative function. The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but more than that, that the only really self-governing people are that people which discusses and interrogates its administration.

Legislative Privilege/Immunity Extends to the Operation of Committees

The power to conduct inquiries is usually delegated to committees of the Legislative Assembly. In Nigeria legislation dealing specifically with individual committee and standing orders and resolutions of the Legislative Assembly that govern the activities of the various committees reinforces the power to call witnesses, compel attendance and answers and require the production of documents²⁶. Witnesses appearing before parliamentary committees are also accorded the same immunities and privileges as witnesses appearing before courts.

Legislative Immunity From Introduction of Bills, Questioning, and Voting for Legislation

Legislative privilege and immunity extends to all legislative acts which commences from introduction of bills into the Houses, questioning during plenary session or at a committee public hearing on a bill as well as committee report. Voting or refusing to vote for the passage of bills into law, to seat or unseat a member, confirmation of an Executive appointment, impeachment, declaration of state of emergency, ratification of treaty or declaration of war are all legislative activities which enjoy legislative immunity²⁷.

Immunity Against Inviolability

In general, this form of immunity is such that, unless Legislative Assembly gives its authorisation, no member may be arrested or prosecuted for acts carried out in the performance of his duties. The scope of inviolability varies according to the degree of protection afforded to members: it may

25. W. Wilson, *Congressional Government* (Johns Hopkins Paperback ed, 1981) 1.

26. Sections 62 and 103 of the Nigerian Constitution 1999.

27. P.S. Wattson, *ibid*, (n 10) pp 20-25.

thus be the case that, unless the House concerned has given its prior authorisation, members are protected only from arrest or, in addition, from enforcement of particular measures such as searches or, more widely still, from summons before a court or indeed any form of criminal proceedings²⁸. The only acts covered are, in principle, those likely to be the subject of criminal prosecution. The Legislative Houses Act²⁹ provides that:

*Notwithstanding anything in any written law no processes issued by any court in Nigeria in the exercise of its civil jurisdiction shall be served or executed within the chamber or precincts of a Legislative House while that House is sitting or through the president, speaker or any officer of a Legislative House.*³⁰

Neither the president nor speaker, as the case may be, of a Legislative House nor any officer of a Legislative House shall be subject to the jurisdiction of any court in respect of exercise of any power conferred on or vested in him by or under this Act or the standing orders of the Legislative House, or by the Constitution.³¹

Some constitutions contain specific provisions permitting the maintenance of immunity during the period running between the dissolution of the Chamber and the formation of a new Chamber, in the case of re-elected Members of Parliament. Such provisions are set out in the Italian and Greek Constitutions, for those accused of political crimes³².

Unlike non-liability, inviolability is effective only during the period of the parliamentary mandate, and ceases to have effect after this has expired. Legal action is thus only postponed and not permanently prevented.³³

*Once it is determined that the activities of a legislator fall within the parameter of legislative activities, the immunity or protection of speech, debate or vote is absolute*³⁴. Legislative immunity is personal and belongs to individual member of the Legislative Assembly; it may be

28. O.H. Philip *Constitutional and Administrative Law*; (Sweet & Maxwell, 1970) 14-15.

29. Legislative Houses (Power and Privileges) (n 15).

30. *Ibid*, section 31.

31. *Ibid*, section 30.

32. Rules on Parliamentary Immunity, (n 1) p. 22. See also Masson's Manual of Legislative Procedure, (2000) pp 411-412.

33. *Ibid*, for instance in India, protection against arrest extends to 30 days before and ceases after 40 days of the session, Nigeria, Belgium United Kingdom immunity last for duration of the session.

34. Absolute privilege is a complete defence to defamation and may be use as a defence in cases of proceeding before the courts or Houses of Assembly or where public policy demands see *Ojemen v Punch Nig Ltd* (1996) 1 NWLR (pt 427) 701.

asserted or waived as each individual legislator wishes. Note also that the immunity against civil action continues even after a legislator has ceased to be in the House.

Limits to Legislative Immunity

The question one may ask is, to what extent and limit should Legislative immunity be defined to adequately protect the constitutional function of legislature, whether it is enough to protect only their speeches, debates and votes, or should all their other activities outside their legislative function be immune to legal scrutiny.

As earlier noted, there are two ways of protecting the public function of legislature, the first method only bars legal questioning of the immediate legislative agency of representatives (parliamentary non-accountability)³⁵, while the second model includes non-accountability, but also requires the consent of the representative assembly before the non-legislative agency of representatives can be legally questioned (parliamentary inviolability). The first model, formally inscribed in the 1689 English Bill of Rights, originates from the struggle between the crown and the English parliament and has therefore typically been adopted by those countries that were subject to British colonisation. The rest of the world's democracies, following the French National Assembly's coupling of parliamentary non-accountability with parliamentary inviolability in 1790, have adopted the second model³⁶.

Therefore in legislative non-accountability, the legislature enjoys unconditional immunity to the effect that he cannot be legally questioned at any time, including after losing legislative mandate in as much as the act, speeches are made within the scope of legislative function.

There are some limitations to Legislative concept of immunity; thus, a Legislator's activities outside the legislative House or jurisdiction are not protected. The Nigerian Legislative Houses (power and Privileges)³⁷ provides that:

35. J. Chafat, *Democracy's Privileged Few: Legislative Privilege and Democratic Norms in British and American Constitution*. (Yale University Press, 2006) p. 130.

36. Robert Myttenaere, *The Immunities of Members of Parliament* (Geneva: Inter-Parliamentary Union, 1998); M. Crespo Allen, *Parliamentary Immunity in the Member States of the European Union and the European Parliament* (Brussels: European Parliament, ECPRD, 1999); Simon Magee, *Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union* (Brussels: European Parliament, ECPRD, 2001).

37. Section 33, Legislative Houses (Powers and Privileges).

- (1) Subject to the provision of this section, no meeting of more than fifty persons shall be conveyed or held within a radius of one mile of a Legislative House during any sitting day, and any meeting conveyed or held contrary to the provisions of this subsection, shall be deemed to be a sections meeting.
- (2) Nothing in this section shall be construed to apply to any meeting conveyed or held,
 - a) for the transaction of the business of a legislative House or
 - b) for any religious, charitable or scientific purpose or
 - c) for any other purpose with the consent of the President or Governor given on such terms as he may think fit.
- (3) Every person who convenes, gives notice of or attend any meeting prohibited by this section, or as owner or occupier of any premises consents by any means to the use of the premises for the purpose of such a meeting, shall be guilty of an offence and be liable on summary connection to a fine of not less than one hundred naira or to imprisonment for a term not less than (6) six months or to both.

These legislative functions are considered to include each legislator's speech and voting while in legislative session or legislative committee. Notwithstanding, there exists some form of limitation to the immunity granted the legislature

- It is instructive to note that, speeches delivered outside parliament, press releases or conferences *etc* are considered to be non-legislative, therefore, legislators are accountable to the law for their action that fall within this limitation and accordingly can legally be questioned³⁸.
- Note that while immunity may protect a legislator against intimidation, molestation and threat of prosecution by authorities,

38. If legislator delivered such a speech to the assembly, (whether it's considered offensive or defamatory provided it is fair) he cannot be prosecuted at any time. However, the position will be different where he delivered that same speech at a political campaign rally, and then he can be prosecuted in any of the following circumstances vis-à-vis, if he is caught at the scene, if consent is given by the parliament, or where he loses his electoral mandate (recall). B. H. Rosenwein, *Negotiating space: Power Restraint and Privilege of Immunity in Early Medieval Europe* (Ithaca: Coraell University Press, 1999) pp 7-16 and 215-217.

it will not practically protect the mal-treatment of the minority legislators by the majority in the House³⁹.

- Unconstitutional procedure for enactment of legislation, thus legislative immunity does not prevent a court from issuing a declaratory judgment that the procedure used by the legislature was unconstitutional⁴⁰.
- Legislative immunity does not protect otherwise legislative acts that are taken without legislative authority.
- Legislative immunity does not protect unlawful seizure of documents by the legislature or its committee without subpoenas after its authority had expired.
- Solicitation for bribes; immunity on speeches or debates does preclude inquiry into alleged criminal conduct of legislator(s) apart from his action as legislature⁴¹.
- Legislative immunity does not extend to the issuance of press release that republishes speech made on the floor of the House or to mail materials to constituents and potential constituent.

It is apposite to state in summary that Legislative immunity is only designed to protect legislature's actions, words, and votes and not the legislative decisions; it can be subjected to review by the other branch of government⁴². Therefore it is crystal that within the constitutional

-
39. In a Legislative House where a particular political party is in the majority there is tendency for maltreatment and intimidation of the minority by the majority, like Nigeria where PDP is in the majority.
40. *A.G. of the Federation v Attorney General Abia State* (2002) 4 Sc (pt ii) 1 at 61 or (2002) 6 NWLR (pt 764) 542 or (2002) 4 SCNj 1n (2004) 20 NSCQR 90 at 187, *Attorney General of Ogun State v A. G. Federation* (2002) 18 NWLR (pt 798) 232, *Attorney General of Ogun State v A. G. Federation* (20003) 12 SC 1, *Attorney General of Ogun State v A. G. Federation* (1982) 13 NSCC 1, *Attorney General of Ondo State v A. G. Federation* (2002) FWLR (pt iii) 1972 and *Attorney General of Bendel State v A. G. Federation* (1981) 10 SC
41. Evidence abound that immunity does avail a senator defence against crime, for instance, Senator Iyabo Obasanjo (Chairperson Senate Committee on Health) is being tried over the activities of Health sector between 1999 to 2008 for mismanagement of N125 or N300, so also is Hon. Elumelu and some Senators (accomplice) are in the net of EFCC on their alleged involvement in the N5 6 Billion power plant probe. See *The Nation* of Monday June 27 & 30, 2008. At a recent press conference Senator Anthony reiterated the Senate's commitment to handover any Senator who committed offence against the nation. This was monitored on the *NTA Programme Inside the Senate* 11-12 pm Wednesday 20th, of May 2009.
42. This is consistent with the principle of separation of power that allows other branches of government the right to check the laws passed by parliament. Indeed,

constraints, Legislative assembly immunity does not render legislators not bound by the law.⁴³

Waiver of Immunity

In most countries, requests to waive immunity are drawn up by the prosecution services, but in some countries such requests may be drawn up by other authorities (the courts having jurisdiction, for example).⁴⁴ Requests are sent to the Speaker of the House concerned either directly or, in some cases, via another authority such as the Minister of Justice or the president or Governor⁴⁵. The request, once received, is forwarded to the competent committee. This may be a committee specially formed to assess each specific case or a permanent committee. The latter is more common. The decision of the Chamber concerned is usually based on the recommendations of the competent committee. The Rules of Procedure of the Italian Senate contain a provision authorizing the submission of reports containing minority positions. In the parliaments of some States there are specific rules imposing certain limitations on the debate, particularly as regards the speakers who are allowed to take part⁴⁶.

In the Bundestag, the member in question cannot participate in the substantive debate. On the other hand, debates on questions of immunity

in the Nigerian case the legislative assembly is not supreme insofar as laws are subject to the possibility of presidential veto (although the veto can be circumvented if the parliament returns the bill unchanged) and judicial review by the constitutional court. See Uwais CJN, *The Guardian Newspaper* of 15th June 2003 at page A8 and A. Tocqueville, *Democracy in America* (London: Penguin, 2001), 309.

43. *Ibid.* See also J. S. Mill, *On Liberty* in *John Stuart Mill: On Liberty and Other Essays*, ed. John Gray (Oxford: Oxford University Press, 1991) p. 62.
44. Parliamentary immunity is normally regulated by parliamentary rules of procedure. The rules of the Bundestag on this subject are extremely detailed, and even contain, in addition to Rules of Procedure, actual principles for guidance on decisions to be taken. The provisions in force in the French National Assembly and in the Italian, Spanish and Luxembourg Chambers, for example, are also very comprehensive. In contrast, the texts of the Rules of Procedure in Belgium the Folketing and the Eduskunta are very succinct, whilst in some countries, such as Ireland, the UK and the Netherlands, no procedure exists at all. See J Chafat, (n 14) and R. J. Robertson, *The Effect of Consent Decrees on Local Legislative Immunity*, *University of Chicago Law Review* 56, no. 3 (1989): 1129-31.
45. E. May *op. cit.*
46. S. Wigley, 'Parliamentary Immunity: Protecting Democracy or protecting Corruption?' *Journal of Political Philosophy*, Vol. 11, No. 2, pp. 23-40. See U.K. Parliamentary Reports of the Joint Committee on Parliamentary privilege in Session, (London, The Stationary Office Limited 1999).

take place 'behind closed doors' in some parliaments (such as the Luxembourg Chamber of Deputies, the Spanish Congress of Deputies and Senate, and the European Parliament). The decisions of the parliamentary assemblies on requests concerning the lifting of immunity are taken by secret ballot in Spain, Greece, Italy, Luxembourg and Portugal⁴⁷.

One of the most important variations connected with the procedures for waiving parliamentary immunity stems from the fact that, in some systems, a time limit is established within which the Chamber concerned must grant or refuse the authorisation requested and that specific consequences arise from the non-observance of that time limit. The Greek Constitution, for example, states that, if the Chamber does not decide on the request for authorisation within a period of three months, the request is considered rejected. From an analysis of parliamentary practice we can see that there is an extreme diversity of criteria and interpretations used in making decisions on immunity, which are sometimes contradictory and not always properly systematised. In some cases, the absence of fixed criteria is even presented as a demonstration of the sovereignty of Parliament, which is therefore seen as entitled to look at each specific case on a discretionary basis, without being subject to rigid, predetermined principles.

Abuse of Immunity

Members may utilize a seat in parliament specifically to cloak their illegal or corrupt activities.

A powerful executive, with the backing of a majority in parliament, may violate the spirit of immunity altogether in order to silence opposition members publicizing government corruption.

A country's politics should be considered when discussing changes in the legal definition or scope of immunity

Media and civil society organizations can play an important role in highlighting cases and putting pressure on the executive and parliament to protect or punish individuals in high profile that want to hide under immunity clause.

Conclusion

It has been shown from all discourse that legislative immunity is a veritable tool that provides avenue for the legislature to perform their constitutional role effectively with utmost freedom.

47. J. Chafetz, (n 35) pp 30-31.

The Nigerian Constitution 1999 did not specially provide for privileges and immunities for the legislative members. In other words, legislative privileges and immunities are not constitutionally guaranteed like that of America, India and Germany. The constitution vested the National and State Assemblies power to make laws in relation to their privileges and immunity in Nigeria. However, the legislative privileges and immunities are contained in The Legislative Assembly (Powers and Privileges) Act, how such legislative rights can be exercised devoid of conflict with the interest of the State and that of the citizens is not known.

If any seriousness is to be attached to Legislative Privileges and Immunities in Nigeria, its position, scope, extent and limits need to be restructured and defined in the constitution for legislative efficiency and political stability.