

## SHARIAH AND IMMUNITY CLAUSE IN 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA

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### ABSTRACT

*Some people are always cover their abuse of office and hide it under the immunity clause, and thus is common in Nigeria. Their believe is that the immunity clause in 1999 Constitution of Federal Republic of Nigeria is license for them to embezzle and misappropriate public funds. On the contrary Islamic law does not distinguish between the rulers and the ruled in the application of law. The believe of the law is that the law which applies to the lead is equally applies to the leaders there is no distinction between the two of them. Although, this did not mean that Islamic law did not give respect to the leader, rather, the leader should respect the law of the land. The leader according to Islamic law should be honest, upright, trustworthy and show exemplary leadership in the society.*

**Keywords:** *Four Sunni school of laws.*

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## INTRODUCTION

With so many fraudulent practices committed by our ex-executive office holders in Nigeria under the immunity clause Nigerian populace have lost if not completely, hope and interest in the Constitution of this country. Many protagonists and antagonist of immunity have argued in favor or against, in the public lecture, pages of newspapers and of course in court premises the immunity clause still proper solution is yet to be agreed upon. This paper intends to join the band wagon of many other writers on immunity clause from a different focus of legal system, specifically from Islamic law perspective. We shall look at the definition, meanings and analysis of the immunity based on the 1999 Constitution. The Rationale behind the immunity clause is that, leadership quality in Shari'ah, is based on position in Islam regarding immunity, and also it's equality before the law regardless of social status, in accordance with Shariah. We shall look at the negative impact of immunity to the country and how Islamic resolves the immunity clause then the conclusion of this study.

## DEFINITION

Immunity is defined as an exemption from penalty, burden or duty.<sup>2</sup> In what seems to be closer to this definition is one made by Curzon, in his Dictionary of Law as the freedom or exemption from some obligation, penalty or powers of another.<sup>3</sup> Sovereign immunity is an English doctrine of great antiquity; it originated from the old feudal structured of English society. Professor H. Street observes:

*“Just as no word could be sued in the court which he held to try the case of his tenants, so the King, at the apex of the feudal pyramid and subject to jurisdiction of no other court was not liable”.*<sup>4</sup>

This quotation signifies the origin of immunity, that the King can do no wrong, and that no action can be brought to his Court against him without his consent. The expression “the King can do no wrong”. Originally connotes a meaning contrary to the present prevalent meaning it has assumed especially

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<sup>2</sup> Henry, C.M.A., *Black's Law Dictionary* (West Publishing Co., St. Paul Minn, 6th edn., 1990).

<sup>3</sup> Curzon, L.B., *Dictionary of Law* (Financial Times, 5th edn., 1998), 87.

<sup>4</sup> Street, H., *Government Liability* (Oxford, 1953), 1.

in Nigeria. The original meaning was the King was not allowed, must not and was not in a position to do anything wrong. In line with its meaning,<sup>5</sup> Professor L. Jaffe explained that:

*“The King though not liable in his Court (since it seemed an anomaly to issue a writ against oneself) nevertheless endorsed on petitions “let justice be done” thus empowering the Court to proceed”.*

The above quotation explained clearly that, the immunity of the sovereign from suit and his capacity or incapacity to violate the law, is a distinctive independent concept, since the grant of consent is based upon the position that the King has acted contrary to law. Professor Jaffe argued that the dichotomy of suits against the state or sovereign and suits against public officers is ineffective which means every suit that involves, affects or interferes with the Government is as suit against the state.<sup>6</sup> Section 308(1) notwithstanding anything to the contrary in this Constitution, but sublet to subsection (2) of this section.

- a) No civil or criminal proceedings shall be 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, provided that in ascertaining whether any period of limitation has expired for the purpose of any proceeding against a person to whom this section applies no account shall be taken during his period of office.

The provision of subsection (1) of this section shall not apply to civil proceeding against a person to whom this section applies in his official capacity or to civil or criminal proceedings if the person is only a nominal party.

This section applies to the person holding the office of the President, Vice President, Governor or Deputy Governor and the “period of office” mentioned

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<sup>5</sup> Bachaka, ‘A.M. Immunity under Nigeria Law Concept Law and Practice U.D.U.S.’, *Law Journal*, 1/6 (2005): 90; Also Yerima, T.F. Esq., ‘Balancing Equality before the Law and Executive Immunity in the Nigeria Fledging Democracy: An Imperative’, *Legal Thought Ondo State Law Journal*, 1/2 (2005): 1.

<sup>6</sup> Jaffe, L, *Studies and Legal History* (Oxford, 1921), 42.

in this section is a reference to the period during which the person holding such position and is required to perform the functions of the office.

It is interesting to the note that from the aforesaid provision the word 'Immunity' not used. That notwithstanding, the word was borrowed from some other laws<sup>7</sup> which directly used the word i.e. laws of diplomat. In fact, our Constitution has not actually defined the word "Immunity" but section 22(1) of the Diplomatic Privilege and Immunity Act<sup>8</sup> defines it in qualified and plural terms. According to the section "personal immunities" means immunity from suit or legal process...and include...appearance before any Court or other tribunal as a witness. Nevertheless, this definition, applies to section 308 of the 1999 Constitution and, appears to match-make its provisions. Hence it is suitable for adoption. This is responsible for its incorporation in our judicial decision.

## **RATIONALE FOR THE IMMUNITY**

Let me paraphrase the philosophy behind section 308 of the 1999 Constitution, according to the former Attorney-General of the Federation, Chief Akin lolu Olujimi:

*"...was not a shield from prosecution to serving public office holders with criminal tendencies but to make them focus in their governance".<sup>9</sup>*

To many critics of the immunity clause, the provision is antithetic to the doctrine of equality before the law. It is seen further as codification of Orwellian Maxim of "all animals are equal but some are more equal than others".

As quoted above the reason for the clause insertion, into our Constitution, , has been attributed to the public officeholders needs to not be unnecessarily encumbered by a spate of litigation. An unchecked influx of court cases against the public office holders will definitely rock the Government boat. In support of this argument we shall cite the following cases. In the case of *Obih v. Mbakwe*,<sup>10</sup> Eso, J.S.C. observed:

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<sup>7</sup> See Section 1(1) of *The Diplomatic Privileges and Immunities Act* Cap D49 L.F.N. 2004.

<sup>8</sup> See Section 1(1) of *The Diplomatic Privileges and Immunities Act* Cap D49 L.F.N. 2004.

<sup>9</sup> *Vanguard Newspaper*, December 10.

<sup>10</sup> Supreme Court of Nigeria Law Report (1984) 192 at 211.2004/5.

*“I think the purpose of section 267 (now section 308) of the 1979 Constitution is clear; it is to prevent the Governor from being inhibited in the performance of his executive function by fear of civil or criminal litigation...during his tenure of office.”*

Mustapha, J.C.A. (as he then was) expressed the same view in *Alamieyesieghav. Teiwa*<sup>11</sup> when he held that:

*“The intention of the section under reference is to bar any proceedings, civil or criminal which will have the effect of interfering with the running of the office to which the appellant (a Governor) was elected”.*

The sensitive nature of the office held by the President, Vice President, Governor and Deputy Governor, therefore, abhors distraction in any form. The importance of this provision lies in the fact that the office holder cannot waive the immunity conferred on him. Simply because the immunity granted to the holder is not personal but relates to the office he occupies and the state he represents. Thus it is logical that litigations do not become dog in the wheel of governance and administrative machinery.<sup>12</sup> *Alamieyesiegha v. Teiwa* (supra) and the discussion of Court of Appeal on this matter may be relevant here.

Based on this result, one might see the rationale applied to the immunity of the public office holder in Nigerian Constitution. It is worthy to note that the claim of immunity became pronounce in Nigeria in the present political dispensation than the previous one, due to the doctrine of common and daily good governance deteriorated as many corrupted and scrupulous people are elected, either by force or political influence consequently they had ample opportunity to monopolize the privilege accorded to them by the Constitution up to the maximum level under the canopy of immunity.

## **LEADERSHIP QUALITIES IN SHARIAH**

Now, let us examine the context of Islamic law which begins with leadership. The immunity clause surrounds the values of leadership hence it is necessary to examine leadership in Islam. By doing this, it clarities that Islamic solution is the answer. Reason being the discrepancy between the original and present version of leadership explains leader from perspective of Islam, for one to be

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<sup>11</sup> Federation of West Law Report (2001) (Pt. 55) 578 at 584.

<sup>12</sup> Akinsola, L., ‘Immunity to be or not to be?’ 2005: <http://www.google.com/search/const.immunityjune>.

elected as leader or president of a nation the person must possess the following qualities:

1. Justice, with all the conditions pertaining to it. The Knowledge enables one to form an independent judgment to solve problems. A leader should also be sensitive and sharp in using their senses so as to be able to make decision wisely.
2. Wisdom is necessary to administer public affairs within the country.
3. Bravery and the energy necessary to defend Muslim territory and fight the enemy.
4. Piety, upright and trustworthy.<sup>13</sup>

The leader must be an understanding person, upright, trustworthy, patient and firm. The fundamental principle of Islam in this case is that sovereignty over the universe vests in God, the Lord of the world and the responsibilities laid in the hands of leader. Two important consequences flow from this: The first is justice has to be administered not only in the name of Allah's but also according to His Book, which contains His teachings. The second would be that everyone is equal before the law including the leader. That is our focus here, where by no one noimmuned from the law.<sup>14</sup>

## **IMMATERIAL OF POSITION**

The most important thing is leader or president or governors and their vices are expected to be the most pious, up righteous and trustworthy people. It may be interesting to observe that most of our elected leaders hardly possess those qualities especially the latter ones, this is because piety entails fearthe of Allah and righteousness, which are the rein that control the behavior of a leader and streamline his activities. Any leader who does not have fear for Allah would be morally bankrupt in his ruling.

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<sup>13</sup> Khan, Qamaruddin, *The Political Thoughts of Ibn Taymiyah* (Pakistan: Islamic Research Institute, 1985), 143-144; Also al-Jazāhir, A.J, *al-Dawlah Islāmiyah* (Beirut: Maktab al-Islāmī, 1982), 111-112.

<sup>14</sup> Al-Haj Mohammad Ullah, *The Administration of Justice in Islamic* (Delhi: Lahore Law Publishing Company), 2; Also see al-Jazāhir, *al-Dawlah al-Islāmiyah*, 111-112.

## EQUALITY BEFORE THE LAW

Equality before the law is a manifestation of the equality principles. This is the meaning of justice in the eyes of Islam. As far as Islamic law is concerned the law applies to everyone without distinction of leader a ruler the ruled and without prejudice on individuals based on gender, colour, wealth, kin-ship or friendship, position or creed or any differences.<sup>15</sup> In Islam a leader should leave by example in all his endeavors and the uphold rule of law through which he was brought to power.

This is clearly manifested in the first Caliph, Abū Bakr, when he was elected as a Muslim leader. During his inaugural address to the Assembly of Muslims he said:

*“You have elected me your khalīfah (leader) although I am not better than you. I need all your advice and all your help. If I do right, help me. If I do wrong, correct me. In my sight the powerful and the weak are alike and to both I wish to render justice. You should obey me as long as I obey Allah and His Prophet, if I disobey them, you should forsake me.”<sup>16</sup>*

The inaugural address of the first *khalīfah* Islam, Abū Bakr, showed a monument of the democratic principles of Constitutional Government and enlightened administration. The *khalīfah* indicated in his speech that he would not be an autocrat; he would seek the advice of his fellow Muslims and would be responsible for his action and would not immune himself from the Constitution of the land, that is the Qur’anic Constitution. Therefore justice is achieved. Allah says:

*“O you who believe! Stand out firmly for justices as witnesses to Allah, even though it is against yourselves, or your parents or your kind be rich or poor Allah is a Better protector to both than you”*

(Sūrah al-Nisā’, 4: 135)

The clause brings our attention to the excerpt “even though it be against yourselves” This carefully refers to the leader, who can be the executive office holder, is not immune from his action. Islamic law does not accord immunity to executive office holders, and their associates.

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<sup>15</sup> Zaidan, A.K., *Individual and the State* (Malaysafa, Playgraphic Press, 1982), 57.

<sup>16</sup> Rahim, A., *Islamic History* (Lagos: Islamic Publication Bureau, 1981), 55.

Immunity accorded to the executive office holder, in 1999 Constitution could be seen to continue even after their tenure of office. Despite the extreme objection made by the Chairman of EFCC Mall. Nuhu Ribadu, none of the former leaders was brought to book and extend the immunity shield to their family and perceive as their family in Nigeria are infallible human beings. This is an indication that immunity clause is nothing but sheer injustice. Let us observe the rule of law and justice in Islam. ‘Umar al-Khaṭṭāb, the second caliph, was an ideal ruler and leader, who was a role model for his successor and Muslims general with his simplicity and impartiality, the guiding spirit of his life and administration; He strictly lived a simple and unostentatious life and thus left for the world a brilliant example of a very successful ascetic Muslim ruler.<sup>17</sup> He never saw himself as an infallible human being and never acted above the law. This applied to all his family member. For example in a suit brought against a Jew by ‘Umar al-Khaṭṭāb himself, both the Caliph and the Jew went to the court before a *qāḍī*. On seeing the *khalīfah* the *qāḍī* rose in his seat out of deference. ‘Umar considered such an unpardonable weakness. He dismissed the *qāḍī* at once for such an attitudedisplay by the *qāḍī* that gave a negative impression that he was unjust.

On another occasion when *Khalīfah* ‘Umar found his own son, Abū Shamma, drunk he had him publicly flogged, and gave an immediate allowance raise to the *qāḍī*.<sup>18</sup> He equally found the son of ‘Amr bin al-‘Aṣ, the governor of Egypt during the Caliphate of ‘Umar al-Khaṭṭāb, guilty of slapping a Copt because he raced with him and was defeated.

The Copt complained against ‘Amr b. al-Āṣ to Caliph ‘Umar. The Caliph sent for ‘Amr and his son. When the two arrived, the Caliph ordered for the plaintiff, who is the Copt, to be present. ‘Umar asked him, “is this the one who hit you”? He said yes. ‘Umar said “Hit him”. The Copt started hitting the son of the Egypt ruler to his satisfaction. ‘Umar Added: “Beat the noble man more”. After words, he turned to ‘Amr bin al-‘Aṣ and said to him, “since when have you O ‘Amr enslaved people, (when you know that) their mothers have given birth to them as free persons”.<sup>19</sup>

The following cases illustrate this point very clearly. The fourth *khalīfah*, ‘Alī bin Abī Ṭālib, the most learned lawyer of his time, upheld the supremacy of law. The obvious was proven in a suit for the recovery of his armor from a Jew in the court or *qāḍī* of Kufah in Iraq. He appeared personally before the court immaterial of him being the *khalīfah* of Arabia-Peninsular. He lost the case since the only witnesses to support the claim were his slave and his son.

<sup>17</sup> Rahim, A., *Islamic History*, 79.

<sup>18</sup> Al-Haj Mohammad Ullah, *The Administration of Justice in Islamic*, no.6, 8.

<sup>19</sup> Abdul Karim Zaidan, *Individual and the State*, 59.



According to Shariah none of them was competent witnesses. Hence judgment was given in favor of Jew. The Jew was highly impressed by the justice of Islamic law that he embraced Islam and gave the armor back to *Khalīfah* ‘Alī.<sup>20</sup> *Khalīfah* ‘Alī appears before the court and the case continued undistracted or interfered by the Government and the litigation did not turn out to be a dog in the wheel of governance and administrative machinery.

This are the examples of righteous leaders who upheld the law without favor or hatred. They do not perceived themselves as progeny above the law, hence they were able to maintain justice.

## THE IMPACT OF IMMUNITY ON THE SOCIETY

The implication of non-compliance to law equality and discrimination of its application may have negative consequences on the society. On the other hand, strict application of equality before the Law is stills in favor among the citizens and confidence in their rights, and in the necessity for the perpetuation of a state. Non-adherence to such law is considered a neglect and violation to the law in general. This is altered under the pretext of immunity. The law is applied only to weak citizens and not to the influential ones namely political and executive office holder’s famous and popular personalities such as Presidents and Governors, thus leaving the common people to sense a bitter frustration, resulting to diminish trust. The survival or the destruction of the state will not be their concern any longer. In such a situation tyranny spreads and insecurity becomes the order of the day among the public as the rights are only available to the influential parties. The decisive word belongs to the mighty and not by the Law. When the rule in a state reaches this level, it may be difficult to sustain and survive. This situation arises in lieu of Islamic law where it is said: “A just state survives, even though it may be non-Muslim, and an unjust state vanishes even though it may be a Muslim state”.<sup>21</sup> The prophetic tradition may be relevant at this juncture and it runs thus:

*“Destroyed were those among you who, when a high born among them committed a theft, pardoned him and when someone poor among them did it, imposed punishment on him. By God, even if Fatima, the daughter of Muhammad was to steal, I will cut off her hand”.*<sup>22</sup>

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<sup>20</sup> Al-Haj Mohammad Ullah, *The Administration of Justice in Islamic*, no. 12, 9.

<sup>21</sup> Abdul Karim Zaidan, *Individual and the State* (Malayshis play graphic press, 1982), series 5, 57.

<sup>22</sup> Abdul Karim Zaidan, *Individual and the State*, 57.

This is a classic example of a high standard of equality not yet achieved by the laws of modern time. The significant question to us is that what could be next after the executive office holders completed their tenure, and how many of them have been tried and convicted in Nigeria. On the contrary Of course, most of them, if not all, are now a member of the high decision body of this country “Senate” or members of Board of Trustees.

## **THE POSITION OF SHARIAH VIS-À-VIS IMMUNITY CLAUSE**

It is significant to know that, it the rights of the community to censure the President of a country or the Head of a state and all the office holders and Governors. Apart from this, the Head of Islamic state used to invite the community to censure them if they suspect any deviation in their behavior. History has preserved a remarkable precedent of this connection during, the inaugural address of the Caliph Abū Bakr where he said: “If I behave well, support me, if I falter straighten me”. The speech of Caliph ‘Umar bin Khaṭṭāb contained “Those of you who see in me any dishonesty must straighten it”. One of the audiences replied “by Allah if we see in you any of such behavior we will straighten with the edges of our swords”. The leader, ‘Umar, said “Thank God” He has created someone in the community of Muhammad who can straighten ‘Umar with his sword.<sup>23</sup>

At this juncture, I would like to mention a situation during the Prophet of Islam Muhammad (SAW). This however, is not in any way comparing him to any of the executive office holders of modern times. All the Prophets of Allah had divine immunity rather it is just to cite his system of governance for emulation. The noble Prophet did not consider himself to be above the law he also sought to establish this by his own acts and precepts. He established the importance constitutional principle that the head of any Islamic state could be sued both at his private and official levels. During his last sermon at the *hijjatul wadā*, the noble Prophet, showed his love for justice and equality when he publicly declared to the community on any claims pertaining anything he owes to anyone (if any)misapprehension of property by any one harm life or reputation he made himself available to pay the dues to whoever demands it. The audience was amazed and none in the assembly except for one person who claimed some dirhams and paid by the Prophet accordingly.<sup>24</sup> This is another example of the highest level of equality and accountability yet to be witnessed in other generation of recent time.

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<sup>23</sup> Rahim, A., *Islamic History*, 55.

<sup>24</sup> Al-Haj Mohammad Ullah, *The Administration of Justice in Islamic*, 3-4.

All the aforementioned examples and quotations are cited to affirm the position of Shariah and the attitude expected from a leader in a society. The leader or executive office holder should use his veto power to assume as an overall leader or president and exploit the position to cheat his people while consciously knowing, that he is committing crime against them our leaders have determined to do so under the canopy of Constitutional immunity.

In the light of this, one would observe that the executive office holders in Shariah do not exempt or immune themselves from any civil or criminal liability during their tenure of office. They see themselves liable and accountable before Allah and their people, and this has always been monitored by the police that kept his eyes on them against misbehavior, maladministration, mishandling of public funds and squandering the state funds. Without immunity clause in their Constitution they ruled well to the extent that they made indelible marks in the world history.

## **SOLUTION TO IMMUNITY CLAUSE**

It is pertinent to state that immunity has been dogmatically incorporated into Nigerian Constitution. We can do away with it, because its existence in our constitution encourages gross misconduct, civil and criminal offences, especially, corruption.

The immunity of our executive office holders seems to continue even after the expiration of their tenure of office, Mallam Nuhu Ribadu made a pronouncement towards the end of Chief Olusegun Obasanjo regime that, a certain number of serving governors would find themselves in jail for misconduct of public funds. Unfortunately to the public dismay only very few of them were arrested, interrogated and the end set free. We heard nothing about their cases up till now. Where some of them are in the Senate.

The funniest aspect of it is that one of the proponents of the immunity clause Professor B.O.N wabueze said that the protection of executive office holders was essentially for the office and not for individuals. He explained that:

*“To drag an incumbent President to court and expose him to the process of examination and cross-examination cannot be done as it may degrade the office. The interest of the nation in the preservation of the integrity of its highest office should outweigh any objections of the immunity”.*<sup>25</sup>

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<sup>25</sup> Nwabueze, Benjamin Obi, *The Rule of Law* (Spectrum Law Book Publishing, 1993), 35.

He further confirmed that the protection does not extend to his liability, either civil or criminal for their acts but immunity is to suspend enforcement of the liability by civil or criminal proceedings until the time when the office will be vacated. Equally any such proceedings that are already instituted and pending at the time of assumption of office will be suspended. Since liability is not affected, the incumbent becomes amenable.<sup>26</sup>

The aforesaid postulations propounded by the proponents of immunity and they are yet to be enforced in reality to our ex-Presidents, their Vices, ex-Governors and their Deputies. In essence, our own postulation here is that, Nigeria should try a substitute to immunity. It will help a great deal if a clause or clauses are formulated in such a way that it will be unambiguously stipulated in the Constitution where the violation of fear to Allah and accountability are criminal offence. Such a clause if allowed will most likely bring sanity to our society. History bears witness that such system has been put in practice by old generations and it worked in their favor without immunity. There is no immunity in American Constitution and the litigation did not become dog in the wheel of governance nor distract the attention of the President, *Jones v. Clinton*.<sup>27</sup>

## CONCLUSION

It is pertinent to note that Islamic law considers leadership in any form be it religious, political etc. as a trust to the leader who must deliver to those who are entitled to it. Trust and justice are pillars of equitable and righteous

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<sup>26</sup> Al-Haj Mohammad Ullah, *The Administration of Justice in Islamic*, 3-4; also see Yerima, T.F., 'Legal Thought', *Ondo State Law Journal*, 1/2, (2005).

<sup>27</sup> Available at <http://law.com00095-1833html>. In that case the former U.S President, Mr. Bill Clinton was tried by U.S. District Court in 19987, while in office, upon a sexual harassment suit brought against him by former Arkansas State Worker, Paula Corbin Jones. The President's petition to defer the matter until he left office was rejected. Bowman J. of the American Court of Appeal declared that the President just as all other Government officials is subject to the same laws that apply to all other members of American society and that he could find no case in which any public official ever had been granted any immunity in from suit for his unofficial acts. A further appeal to the Supreme Court rested on futility. Justice Stevens emphasized: "*Our decision rejecting the immunity claim and allowing the case to proceed...assume(s) that the testimony of the President both for discovery and for use at the trial may be taken at the White House at a time that will accommodate his busy schedule and if a trial is held, there could be no necessity for the President to attend in person though he could elect to do so*".

Government. Trust (*Amānah*) here means the proper fulfilling of one's obligations to his people subjected over whom he should not feel superior and above the law of the land. Allah says:

*“O you who believe! Betray not Allah and His Messenger, nor betray knowingly your Amanat (things entrusted to you and all the duties which Allah has ordained for you)”*

(Sūrah al-Tawbah, 9: 27)

So, those who fail to deliver their responsibility will face shame and disgrace on the Day of Judgment. The leader of Shariah is indeed, comparable to the guardian of the orphans, to the manager of endowment and to the legal representative to whom has been entrusted to administer an estate. Just as all these persons must act in a way that is most profitable for their charge, they much also act as leader and executive office holders.

Furthermore, Islamic law, wants the executive office holder to know that he is a shepherd of the community and he will have to account before Allah for his proper service to the flock.<sup>28</sup> One of the objectives of the leader in Shariah is to establish the rule of justice and trust as reposed in him by the community. These are two essential qualities of leadership as requested by the Shariah. Justice is a quality universally shared and an innate in the consciousness of man. So, any leader who determines to do justice which springs out from fear to Allah would most likely triumph and succeed.

Nevertheless, any form of leadership is a religious duty as far as Islamic Law is concerned. It is a pious work by means of which a man seeks proximity to Allah.<sup>29</sup> If he acquits himself to the best of his capacity, it would be counted as one of his most righteous deeds. Hence, a leader must look upon the governance as a religious function and means to secure the pleasure of Allah. If he does that he would never see himself above the law and immunity would be meaningless to him. Allah says:

*“The most honorable of you in the sight of Allah is the one most pious”*

(Sūrah al-Syu‘arā’, 26: 13)

Meanwhile, anybody who is pious and finds himself in the position of authority would definitely know that such position is a trust for which he account as a shepherd, he will account for his flock. The noble Prophet (SAW) said:

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<sup>28</sup> Khan, Qamaruddin, *The Political Thought of Ibn Taymiyah* (Pakistan: Islamic Research Institute, 1985), 151-152.

<sup>29</sup> Khan, Qamaruddin, *The Political Thought of Ibn Taymiyah*, 154.

*“Everyone of you is a shepherd, and everyone of you is responsible for his herd. Thus the leader who is the shepherd of the people is responsible for his herd”.*<sup>30</sup>

Hence, such a leader would not misuse the trust reposed in him nor violate the law. Unfortunately, it is different in Nigeria. Where all the people who were elected as the Authority do not fear-God and they do not consider it as a religious duty which would be accountable for in the thereafter. This includes their responsibility for the abuse of immunity clause, a protection given to them by Constitution, engaging themselves in different types of corruptions and embezzlement of public funds, meant for the use of public for the betterment of masses. The irony of this is that, at the time they are doing so, example embezzling the public fund, they would seek for people’s commendation that they are doing a good job.

As a repercussion misplaced the trust and thus in the present time, the consequence leads to is grievous situations namely starvation, arson, killing, assassination etc. The noble Prophet (SAW) says:<sup>31</sup>

*“When the trust is violated, wait for the last hour, He was asked O! Messenger of Allah, what is the violation of it? He replied! When the government is entrusted to the under servicing, wait for the last day”.*

This tradition indicates that we have elected people who are not supposed to be there. That is one of the signs of the end of hour. So, we need to examine ourselves and scrutinize organize properly before electing our leader in future.

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<sup>30</sup> Ibn Ḥajar al-‘Asqalānī, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, kitab waṣāya (Beirut: Dār Kutub al-‘Ilmiyyah, 13 vols., n.d.), v. 227.

<sup>31</sup> Ibn Ḥajar al-‘Asqalānī, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, kitāb riqāqī bāb al-amānat, xi. 404.

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