Abuse of Absolute Diplomatic Immunity from Criminal Jurisdiction: A Critical Study in the light of International and National Law



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2022

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ABSTRACT

It comes as no surprise that the principle of absolute diplomatic immunity has caused the abuse of human rights. Although VCDR provides the remedies in form of waiver and persona non grata, practices show that the conventions need to be amended in order to provide an effective remedy that gives justice to the victims of crimes of diplomats. Principle is based on functional necessity theory, which needs to be reviewed. If immunity is required for proper functioning of diplomats to perform their tasks on behalf of the state, then why they have immunities for non-official acts and for their families. This shows that these customary practice needs to be changed as it is the need of time. This research aims to review the existing International legislation i.e. VCDR, to find out the lacunae that need to be cured.

ACKNOWLEDGEMENT

All praises to ALMIGHTY ALLAH, the Compassionate and Merciful, who conferred upon us the knowledge, ability, and wisdom for accomplishing many challenging tasks.

Our gratitude to Barrister Arooj Bokhari Senior Lecturer, Department of Law, for her close supervision and effective guidance throughout the research project.

Thanks to Ma'am Rizwana Butt, the law library in-charge, for her kind guidance and support throughout our degree.

Many thanks to our friends, specially, Qasim Ali Khan, Danish Dost and Hijab Fatima, for their thorough support, academic input and expert opinions during collection and compilation of data for the research project.

Last but not the least, thanks to our parents for constantly believing in us and supporting us throughout this endeavor.

Khadija Nazahat

Hira Ijaz

5/21/2022

DEDICATION

"Dedicated to the Allah Almighty for his mercy and uncountable blessing."

DECLARATION

We, Hira Ijaz and Khadija Nazahat, do hereby declare that this thesis titled "Abuse of Absolute Diplomatic Immunity from Criminal Jurisdiction: A Critical Study in the light of International and National Law" is a record of bona fide research carried out by us under the supervision of Barrister Arooj Bokhari and that it has not been previously submitted for the award of any degree, diploma or other similar title of recognition. Where material has been used from other sources, it has been properly acknowledged.

LIST OF ACRONYMS

Acronyms	Description
VCDR	Vienna Convention on Diplomatic Relation 1961
VCLT	Vienna Convention on The Law of Treaties 1969
UN	United Nations
UK	United Kingdom
USA	United States Of America
EU	European Union
DRA	The Diplomatic Relations Act of 1978
IHL	International Humanitarian Law
ICJ	International Court of Justice
DCP	Diplomat And Consular Privileges Act 1972
SIO	State Immunity Ordinance 1981
DPA	Diplomatic Privileges Act 1708
DIA	Diplomatic Immunity Act 1952
DIPA	Diplomatic Immunities and Privileges Act 2001
ILC	International Law Commission
U.S.S.R	Union of Soviet Socialist Republics

LIST OF CASES

1. Democratic Republic of Congo Vs Uganda (1999)
2. Dilawar Vs Mansoor Ali (India) 2003
3. Estate of Joviane Waltrick Vs Republic of Georgia (1997)
4. M. Qureshi Vs U.S.S.R., (1981); 377 P.L.D. (SC) 396, 399 (Pak.)
5. M Sher Zaman Vs the State (1977) P Cr. L J 686
6. Muhammad Idrees Vs Colonel Joseph Emmanuel (PLD 2018 Islamabad 355)
7. The Dikko Affair (1984)
8. The Queen Vs The Secretary of State for Foreign and Common Wealth Affairs (2019)
9. The Manual Aryee case (1981)
10. The Queen Vs Vernon Mwaanga (1985)
11. The Raymond Davis case (2011)
12. The Sao Boonwaat case (1967)
13. The Majed Hassan Ashoor case (2015)
14. United States of America Vs Islamic Republic of Iran 1980 (ICJ Rep 3)
15. Yvonne Fletcher Case (1984)

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TITLE

Abuse of Absolute Diplomatic Immunity from Criminal Jurisdiction: A Critical Study in the light of International and National Law.

THESIS STATEMENT

Vienna convention on Diplomatic Relations confers absolute Criminal Immunity to diplomats for establishing communication between States, but because of the practices of its abuses by diplomats, it is not justified, and hence International Convention should be reviewed and revised, to limit this immunity.